PROTECTION OF AUTHOR’S COPYRIGHT

This copy has been supplied by the Library of the University of Otago on the understanding that the following conditions will be observed:

1. To comply with s56 of the Copyright Act 1994 [NZ], this thesis copy must only be used for the purposes of research or private study.

2. The author's permission must be obtained before any material in the thesis is reproduced, unless such reproduction falls within the fair dealing guidelines of the Copyright Act 1994. Due acknowledgement must be made to the author in any citation.

3. No further copies may be made without the permission of the Librarian of the University of Otago.
THE POLITICAL STRUCTURE OF NEW ZEALAND

1858 TO 1861

A thesis submitted by

GILBERT ANTONY WOOD,

Ross Fellow of Knox College,
Dunedin, 1960-62,

a candidate for the degree of Ph.D.

in the University of Otago.

1965
To my brother Gavan

1935-1960
# TABLE OF CONTENTS

Acknowledgements

Abbreviations

INTRODUCTION

## PART I THE LEGISLATURE

1. The General Assembly (1) The Imperial Connection

2. The General Assembly (2) Some Domestic Questions

3. Governor and Legislative Council

4. The House of Representatives

5. The Private Member

## PART II GOVERNMENT AND PARTY IN THE HOUSE OF REPRESENTATIVES

6. Parties in the House

7. A Parliamentary Session, 1861: 1. The fall of the Stafford Government

8. A Parliamentary Session, 1861: 2. The survival of the Fox Government


10. A Parliamentary Session, 1861: 4. The last fortnight and native affairs

## PART III THE EXECUTIVE AND JUDICIARY

11. Governor and Executive Council

12. General Government Departments

13. Central-Provincial Relations

14. The Magistracy

15. The Supreme Court

CONCLUSION

APPENDICES

BIBLIOGRAPHY
Tables and Appendices

List of New Zealand acts and ordinance which were disallowed or from which assent was withheld 19

Members of the House of Representatives in the second and third New Zealand parliaments, 1856-1865:
- Table A. Experience in provincial politics 67-8
- Table B. Total service in the General Assembly 70
- Table C. Country of Birth 73
- Tables D and E. Occupation Appendix I 363-8
- Table G. Age when first elected Appendix III 371
- Table H. Justices of the Peace Appendix III 372
- Table J. Length of residence in New Zealand when first elected. Appendix IV 373

Superintendents in the General Assembly, 1853-1876, Table F, Appendix II 369

Divisions in the House of Representatives, 1860. Appendix V 374

Members of the Government:
- Table K. Duration of ministries, 1856-1891 Appendix VI 377
- Table L. Ministers with portfolio, 1856-1864 Appendix VI 378
- Table M. Ministers in the Fox, Domett and Whitaker-Fox Governments, 1861-1864. Appendix VI 381
- Table N. Size of New Zealand ministries, 1856-1866 263
- Table O. Cabinet posts, 1856-1865 271-2

Prices and Wages. Appendix VII 382

Maps and Illustrations

Electoral districts under the Representation Act 1860 88-89

Members of the New Zealand House of Representatives, 1861 163

Map of New Zealand shewing approximately the extent of land acquired from the Natives. 1859. 217

Draft of a letter from Governor Browne to J. Busby, circa December 1858 245

Minutes of an Executive Council meeting, 1 March 1861 255
ACKNOWLEDGEMENTS

It is a pleasant duty to thank the many people who have assisted me in the preparation of this thesis. I am grateful to Mr W. K. Jackson, Professor Angus Ross, Miss S. Hollyer, and Mr B. P. Quin for their encouragement and help. The award of the Ross Fellowship at Knox College, Dunedin, and of a University of New Zealand Research Scholarship enabled me to devote two years to full-time research. I should like to thank the staffs of the various libraries in which I have worked for their unfailing courtesy and helpfulness, especially the staff of the Hocken Library and Central Library of the University of Otago, the National Archives and the Alexander Turnbull Library. My father has made invaluable criticisms of the thesis in draft. I am particularly grateful to my supervisor Professor W. P. Morrell for his constant assistance, advice and kindness.

I should also like to thank Miss A. Pearson, Miss J. Elledge and Miss R. Harkness for their assistance in typing and preparing the final draft.
### Abbreviations Employed in Footnotes

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AJHR</td>
<td>Appendices to the Journals of the House of Representatives.</td>
</tr>
<tr>
<td>GBPP</td>
<td>Great Britain. Parliamentary Papers relative to New Zealand.</td>
</tr>
<tr>
<td>HRA</td>
<td>Historical Records of Australia.</td>
</tr>
<tr>
<td>JHR</td>
<td>Journals of the House of Representatives.</td>
</tr>
<tr>
<td>JLC</td>
<td>Journals of the Legislative Council.</td>
</tr>
<tr>
<td>NZPD</td>
<td>New Zealand Parliamentary Debates</td>
</tr>
</tbody>
</table>

/ (in the citation of correspondence) to

Personal letters and papers are referred to in the footnotes in the form Stafford MSS, Sewell Journal, etc. More detailed information will be found in the bibliography.
INTRODUCTION

By 1858 New Zealand had had less than twenty years of settled government and a responsible ministry had been in office for only two years. The colony had a small and dispersed population of about 60,000 Europeans, mostly born in England or children of Englishmen, and 56,000 Maoris. The difficulties of the newly independent, or partly independent state, are familiar to us today. The new settler rulers of mid-nineteenth century New Zealand had many advantages over modern nation-builders, not least of which was the absence of a sense of urgency, of the need to modernise the economy or create a new sovereign state over-night. There was no oppressed urban or peasant class. The settlers' society was homogeneous, comparatively highly literate, and educated in the traditions of parliamentary government. The depressed race in the country - the Maoris - could be confined within certain areas of the country, and gradually subdued without a vocal international concern to disturb the Government's conscience, although the Government could not escape obstreperous missionaries or the criticisms of humanitarians in the home country. But even these pressures were not felt until the settlers had had several years in which to consolidate a new political regime.

The aim of this study has been to seek the underlying structure and order of the political system and to see how the settlers adapted their institutions and traditions to meet the problems with which they were faced. How did the political system work? Was it efficient and adequate? How did the various parts fit together? In his
study of New Zealand politics in the period 1853-1858 * Dr Herron described the initial unsettled conditions of politics. He concentrated on the disruptive effects of the introduction of an elaborate system of representative institutions in a small community, and drew extensively on newspapers and private letters to give a picture of the society meeting the challenge of the new political system.

This thesis is a study of a more settled period; a period of increasing order and rationalisation of structure, a period of comparative peace before the impact of the Maori wars and of the gold rushes. In particular this is a study of the central institutions of government: the legislature, the executive and the judiciary.

The functions of the central institutions were limited. The heart of the political life of the settlers was in the provinces and not at the capital. Nevertheless a study of the central institutions shows the difficulties of establishing a new system of government. It shows the pressures on a political community which is divided into provinces or states in a quasi-federal system. It shows, too, the powerful force of English traditions, and the difficulties facing settlers who tried to retain inherited customs and institutions in a colony. They did not wish to re-create the old world, but they did wish to re-create the best of the old world. At the same time practical exigencies led to adaptations and modifications and thus gave New Zealand its own distinctive political and legal system.

Various forces were pulling the colony apart. Physically it was divided up with inadequate communicating links. By the time the first Assemblies met, considerable powers had been taken by the six new provinces which, rather than becoming extended municipalities as the Imperial Government had in mind, promptly aspired to the quasi-independence of the former two provinces of New Ulster and New Munster. Although overriding legislative powers lay with the General Assembly, in the early years a quasi-federal system might have become entrenched. Under the first responsible ministers, however, the various parts of the colony were drawn together, central control was exerted and the central administration was made more efficient.

Crown colony government had drifted to a close leaving a backlog of necessary reform for the General Assembly. The old crown colony Legislative Council had met for three months in 1847 and three months in 1851, with two short sessions in between. The first General Assembly met in 1854. Members were determined to obtain responsible government. But they were frustrated. Without guidance from the British Government or from the departed Governor, Sir George Grey, Colonel Wynyard the administrator would not grant full responsible government. Representatives were not prepared to share power with the old crown colony officials and the temporary compromise of a mixed Executive Council broke down. Problems of central administration were postponed until responsible government could be introduced. For the next two years effective government in the colony came from the provinces.

In 1855 another session of the General Assembly was held. On the
arrival in September of a new Governor, Colonel Gore Browne, empowered to establish responsible government, the Assembly was dissolved. The new Assembly met in May 1856. The settlers, at last, obtained control of central government, with the important exception of control of the conduct of native affairs for which the Governor remained responsible. After some weeks of shifting alliances a stable, conservative government was formed under the lead of E. W. Stafford.

The next session of General Assembly was held in 1858. There was now in office a government both responsible to the House of Representatives and experienced in the work of central government. It was not surprising that 1858 was the annus mirabilis in the early history of the General Assembly.

A wide range of reforms was proposed during the lifetime of the second New Zealand parliament between 1856 and 1860. What was achieved offers an impressive argument for the value of representative institutions and of responsible government. If only the Stafford Government had avoided the tragedy of war it could have shown with pride the advances made in European civil institutions during the five years it led the House of Representatives.

The reforms of the first years of responsible government were not the result of the accession to power of a radical ministry keen to promote a comprehensive overhaul. Some reforms would have come about whoever led in the General Assembly: improvement of the judiciary, amendment of electoral procedures, establishment of a Postmaster-General's department and of an efficient mail steamer service, settlement of land claims, provision for constitutional
amendment, provision for improved audit of public accounts. Other reforms were merely the adoption of acts of the British Parliament or the implementation of the recommendations of British commissions of inquiry, such as the abolition of public hangings, adoption of the so-called Jervis' acts on the liabilities and duties of magistrates, and the introduction of a system of land registration which drew on English, Irish and South Australian experiments and proposals. Some measures were a close copy of Australian statutes. Legislation dealing with goldfields, for example, was based on Victorian experience. Successful pressure group activity was behind others. Protestant agitation led to the 1856 Marriage Act, and chambers of commerce and the mercantile community greatly influenced Customs Acts. Finally there were measures reflecting the needs and ideals of ministers: improvement of the machinery of government, civil service superannuation, removal of the judiciary from political pressures, the New Provinces Act and the native legislation of 1858.

Little is said here about the Maoris. In the years 1858 to 1861 the Maori question gave government its biggest headaches. A policy was matured which was expressed both in the wars and in the peace aims of governments in the 1860's. But until the outbreak of war the Maoris were to a considerable degree outside the sphere of day to day administration. The Government had little control over the Maoris or control over the large portion of the North Island which they had not sold to the crown. By the treaty of Waitangi the crown alone had the right to purchase Maori land and in the 1850's Government did little more for the Maoris than pay them for whatever land they would sell. Apart from land purchase commissioners, travellers
and the occasional magistrate, the only Europeans in the centre of Maori territory were a few missionaries and squatters.

The outline political history of New Zealand between 1852 and 1876 has been given definitively in W. P. Morrell's *Provincial System of Government in New Zealand*. There is little occasion to modify his account, although it is hoped that the description of the nature of parliamentary parties in 1860-1 may give added background. Various texts cover the structure of government in New Zealand. The more notable works which relate to aspects of government studied here are L. Lipson's *Politics of Equality*, Leicester Webb's *Government in New Zealand*, R. J. Polaschek's *Government Administration in New Zealand*, New Zealand the development of its Laws and Constitution, edited by J. L. Robson, and *The Constitutional History and Law of New Zealand* by J. Hight and H. D. Bamford. These books, however, cover the early years of New Zealand history in broad sweeps, leaving ample scope for more detailed study of a short period.
PART I

THE LEGISLATURE
CHAPTER 1

THE GENERAL ASSEMBLY: (1)

With the establishment of representative institutions and the granting in 1856 of responsible government, New Zealand obtained self-government in domestic affairs. This was a far cry from full independence, but independence was not sought by New Zealand politicians. Emotionally they were committed to the Imperial connection. In their speeches, their loyal addresses to the Crown, their contributions to patriotic funds, the settler leaders showed their adherence to the Empire. They were monarchists and drew a distinction between the Crown, to which they were loyal, and the Imperial ministers of the day with whom they might well disagree. Moreover New Zealand's dependence was more than a matter of constitutional law. It was a hard fact.

The settlers were unable to defend themselves. Their reliance on the Imperial army to protect them from the Maoris who controlled the greater portion of the North Island tends to obscure their reliance also on Imperial protection from external attack. In the mid-nineteenth century the Australasian colonies were conscious of both the Russian and the French danger. In the South Island of New Zealand it was not war at Taranaki but Napoleon III and the French in New Caledonia which led to the formation of volunteer rifle corps in the early 1860's and pressure on the New Zealand Government for arms.1

---

1 cf B.A. Knox, Colonial Influence on Imperial Policy, 1858-1866: Victoria and the Colonial Naval Defence Act, 1865. Historical Studies ANZ Nov. 1963; Stafford, NZPD 1856-58 (1858) p 406; New Zealander 28/3/60, 18/4/60; Otago Witness 30/7/59, 28/7/60; Otago Colonist 13/7/60; Southern Provinces Almanac •• 1861 pp 47, 89, 175, Otago Witness 21/7/60.
The colony was also financially dependent. After a recession in the mid-1850's the economy again expanded and each year after 1856 customs, the main source of government revenue, returned more than anticipated. Nevertheless the colony was not financially self-sufficient. To clear the various debts inherited from the crown colony period – notably a debt to the New Zealand Company – and to provide a fund for the major capital expenditure, land purchase, an act was passed in 1856 to raise a half million pound loan. This was an essential feature of the "compact" of that year. The colony's credit was negligible and not increased in the early years by seven New Zealand governments competing on the same market for finance. To avoid steep interest rates the colony needed an Imperial guarantee of its loans, and in fact, an Imperial guarantee might be necessary before investors would lend money at all. It required Sewell's skilful negotiations to obtain an Imperial guarantee in 1857 on the security of the revenues of the colony.

By the issue of Treasury bills, by drawing on one fund to meet demands on another, by obtaining bank advances, the New Zealand Government could meet immediate financial needs – while, for example, it waited for customs duties to be collected and forwarded to Auckland, or while a loan was being filled in London. For large loans repayable over a long term it was necessary to turn to the London market. There was not sufficient capital in Australasia especially as, until 1861, the main and almost sole bank in New Zealand was the Union Bank of Australia with its headquarters and directors in England.

After 1860 the colony had to raise money to meet war costs.
For example, in 1860, by the New Zealand Loan Act the Government was authorised to raise £150,000 to meet the expenses arising from the Taranaki war. It was able to raise the money but so slowly as to show the poor credit of the colony. First word of the progress of the loan was received in New Zealand in late July 1861. At that stage, although tenders had been advertised for in all leading London newspapers, only £19,000 was taken up. A month later the Government was informed that £62,800 had been taken up. Twelve months later the full sum had been raised, although even then a considerable portion was still in transit from England. By this year, however, more money was required to meet the relief of Taranaki settlers, and New Zealand's debt to the Imperial Government for its share of the expenses of maintaining troops in the colony was rising steeply.

The Assembly authorised Government to raise a loan of half a million pounds. Over twelve months later, in November 1863, the Colonial Treasurer informed the House that having failed to obtain an Imperial guarantee the Government had only been able to raise £100,000 "which they were authorized to raise by Exchequer bills until the Imperial guarantee could be obtained." By now the Waikato war had broken out and instead of a half million loan Government proposed to raise three million pounds. The colony was sinking into further indebtedness and finding it harder to raise money or to meet its obligations to the Imperial Treasury.

1 cf NZPD 1861 p 248, 351 & 1862 p 541. (The further comments by the premier reported on p 248 of NZPD 1861 should be treated as unreliable, cf below p 46. & NZPD 1861 p 287.
2 NZPD 1863 p 826.
3 cf Morrell, Provincial System p 125 f.
Constitutionally the New Zealand General Assembly was limited in its legislative competence. The Imperial Parliament delegated certain powers to the colonial assembly, but it did not delegate power to amend the Constitution Act except in the case of a few clauses, it only empowered the Assembly to legislate with effect within the boundaries of New Zealand as specified in the Constitution Act (or subsequent Imperial legislation) and the Assembly was expressly prevented from making laws which were "repugnant to the laws of England." It might not levy any duties or enter any commercial agreements contrary to British treaties. It was not permitted to impose duties on articles imported for the supply of Imperial armed forces in the colony. Finally, the Assembly could not interfere with the crown right of pre-emption of native lands, guaranteed to the Maoris by the Treaty of Waitangi.

The other Australian colonies had been invited to share in making their own constitutions. As New Zealand received full representative institutions at one blow, instead of in stages - as did New South Wales, for example - no such privilege could be extended to it. Although the then Governor, Sir George Grey, and certain leading settlers had had a considerable influence on the Constitution Act, no formal recommendations could come from a representative, or partially representative, local legislature. One of the Assembly's first acts was to seek liberalisation of its "inconveniently restricted" constituent powers.¹

¹ Resolution of the House of Representatives NZPD 1856 p 305; cf Browne/Secretary of State 25/9/55, V & P, HR, 1856 A-3.
In 1856 the new Sewell Government set up select committees in both houses to consider alterations to the Constitution Act and the best mode of effecting them. Before the committees reported, however, the Government, now led by Stafford, decided to endeavour to obtain power from the Imperial Parliament to alter the Act. Late in the session Stafford presented a series of resolutions to the House. It is significant that the resolutions stated not the powers of amendment it was desirable to have, but those which the House did not wish to have. There was no doubt in the House of Representatives that this was the correct course. Certain features of the Constitution Act were regarded as essential and the colonists wished to prevent themselves from being able to alter them - as later the New Zealand Government had certain parts of the constitution excepted from the powers the New Zealand General Assembly could acquire by adopting the Statute of Westminster. A group of members had left Auckland and only just over half the House were present when the resolutions were adopted, and the House made its decision on what were the essentials of the New Zealand constitution. The Government then presented the resolutions to the Legislative Council which also adopted them.¹

The resolutions were forwarded to the Colonial Office with the request that the powers sought be granted. By an act of 1857 the Imperial Parliament followed almost in their entirety the resolutions

¹ cf report of select committee, V & P, HR, 1856 D-28; NZPD 1856 p 303 f, 357.
of the New Zealand General Assembly. Henceforth almost the only restrictions on New Zealand's power to amend the constitution were those retained at New Zealand's own request although, manifestly, there were certain powers which would not be granted and which there was no point in seeking. Hence the clauses were entrenched which specifically restricted the legislative powers of the General Assembly. The Governor's powers to veto and to reserve, the British Government's power to direct the Governor in the exercise of these powers, and the right of the Queen to disallow any New Zealand act, were also entrenched.

In addition "the fundamental provisions affecting the existence of the Provincial Councils, the Governor's control over Superintendents, the General Assembly and its powers, and the appropriation of revenue" were all entrenched. Apart from these restrictions, the Assembly was empowered to alter all sections of the Constitution Act.

Primarily, the Constitution Act Amendment Act clarified the General Assembly's powers. On some points it proved inadequate and further amending acts were passed by the Imperial Parliament in the 1860's.

In 1857 the Imperial Parliament also passed an act to guarantee New Zealand's half million loan. As revenue from customs duties and sale of waste lands was the colony's security for the loan, the Loan Guarantee Act stated that all New Zealand acts varying the

1 Morrell, Provincial System p 90. The House decided to entrench section 3, determining the structure of the provincial legislature, by 12 to 7.
colony's revenue were to contain a clause suspending their coming into operation until the Queen had given her assent. The Secretary of State at the same time instructed the Governor to reserve for the Queen's assent all provincial loan ordinances, and section 19 of the Constitution Act, listing the subjects on which the provincial councils might not legislate, was entrenched by the Constitution Act Amendment Act.\(^1\)

All legislation sent home from the colonies was carefully scrutinised. Acts and reserved bills were circulated for comment amongst the various departments which might be affected: the Colonial Land and Emigration Commission, the Board of Trade, the War Office and the Army Commander-in-Chief, the Foreign Office, and for a legal opinion, they were sent by these departments, or by the Colonial Office, to the law officers of the Crown.\(^2\)

Disallowance of the acts of a colony with responsible government was rare. Only two New Zealand acts have been disallowed since 1856.\(^3\)

But this is deceptive. Assent was withheld from various reserved bills, and confirmation of acts was not infrequently delayed and the colony was instructed to pass amending legislation.

The only act which was disallowed in the first decade of responsible government...
government in New Zealand was the Waste Lands Act 1856, by which the control of waste lands was delegated to the provinces. This was contrary to the 1857 Loan Guarantee Act.

There were several acts which were not disallowed only on the understanding that they would be amended. The Absent Defendants and Absent Debtors Acts of 1858, based on Imperial legislation, contained reference to persons in "Foreign Countries". In reply to Colonial Office criticism, the New Zealand ministers pointed out that the acts were actually based on New South Wales legislation, but that did not convince the Colonial Office: the two acts infringed the doctrine of extra-territoriality. In 1860 the acts were re-enacted without the offending clauses and the new acts were deemed to have been in effect since 1858. The Foreign Seamen's Act 1858 similarly had to be re-enacted in amended form in 1860.¹

At first the Imperial Government would not advise confirmation of the Interpretation Act 1858. In this act "the Colony" was defined as the colony of New Zealand, and its boundaries were given, taken verbatim from a clause of the Constitution Act. This, said the Colonial Office, assumed that New Zealand had power to define its own boundaries. Eventually, although still objecting, the Colonial Office

¹ rf Lytton/Browne 2/12/58, Newcastle/Browne 9/9/59, Lytton/Browne 19/2/59, Newcastle/Browne 17/1/60, AJHR 1860 A-4; cf minute by H. Sewell on Debtors and Creditors Act 1862, AJHR 1863 A-1 p 5.
advised confirmation of the act as it did not affect Imperial power.\(^1\)

Confirmation of the Waste Lands Act 1858 was deferred until the Colonial Office had been convinced that the New Zealand Government was as careful as the Office itself to safeguard the securities of subscribers to the half million pound loan.\(^2\) Lengthy discussion took place over the Land Registration Act 1860, and confirmation was delayed for several years until the Colonial Office was satisfied that, as a result of amending legislation, the interests of absentee landowners in Great Britain were fully secured.\(^3\) At this time both Great Britain and most of the colonies suffered from a complicated and obsolete form of determining land ownership. The Land Registration Act was an experimental measure to provide a title to land based on registration. It was recognised by the Imperial Government that such a system might prove highly beneficial to the colony, and it may be suspected that the Imperial Government was less concerned with principles of abstract justice than with refusing to permit a colonial legislature to affect the financial interests of British subjects in Great Britain, or to take steps which might annoy a segment of the British electorate.

The Constitution Act as well as expressly stating that the Governor

---

1 rf Lytton/Browne 2/12/58, memorandum by F.A. Whitaker 16/4/59, Newcastle/Browne 9/9/59, AJHR 1860 A-4. In his despatch Lytton mistakenly said that the General Assembly had altered the boundaries of New Zealand of which the last definition was in letters patent of 1842.

2 rf Lytton/Browne 2/2/59; Carnarvon/Browne 15/4/59, Newcastle/Browne 18/10/59 & 31/10/59, AJHR 1860 A-4.

3 rf AJHR 1862 A-2A; Newcastle/Grey 10/2/63; AJHR 1863 A-1 p. 22; cf below p. 282-3.
should reserve bills if so directed by the Imperial Government, also
required that bills should be reserved if they altered the Governor's
salary or the sum of £7,000 set aside on the Civil List for native
purposes. By the royal instructions issued to a Governor when he
took office, he had to reserve any bill which

(i) granted a divorce,
(ii) granted him a gratuity,
(iii) created a paper currency,
(iv) provided for the raising of money by lotteries,
(v) imposed differential duties,
(vi) was inconsistent with British treaty obligations,
(vii) interfered with the discipline of British forces in the
colony,
(viii) prejudiced the Queen's prerogative or the rights and property
of British subjects not in the colony,
(ix) was to be in force for less than one year, or
(x) which re-enacted provisions already vetoed by the Queen.

He was also to reserve any private bill affecting the property of an
individual unless saving the rights of Her Majesty, Her heirs and
successors, and of corporate bodies and all other persons. The
Governor could also reserve bills on his own initiative.

Reservation either took the form of the Governor "reserving"
a bill for the Queen's assent, or "assenting" to a bill which con-
tained a reserving clause.

---

1 rf Grey's instructions, AJHR 1862 A-1; cf instructions to Browne
V & P, HR, 1856 B-5.
Only one bill was reserved in the sessions of 1854 and 1855. Two bills were reserved in 1856. One increased the Governor's salary, the other conferred on provincial councils a limited power to alter the jurisdiction of inferior law courts. Both bills amended the Constitution Act. Both received the royal assent. In 1858 ten bills were reserved. One, altering the civil list, was reserved in accordance with the requirements of the Constitution Act. Eight of the remainder affected land or the revenues of the colony and hence the security of the half million loan. Of the ten bills only one, the Native Territorial Rights Bill, did not receive the royal assent. This bill, in however restricted a form, waived crown pre-emption of native land to which it was committed by the Treaty of Waitangi as well as by an entrenched clause of the Constitution Act. ¹

Three of the four bills which were reserved in 1860 and the five public bills reserved in 1861 affected land or revenue. All received the royal assent. The fourth bill of 1860, the Native Council Bill, was passed in unusual circumstances, suited no-one in particular and became redundant when Governor Sir George Grey in 1861 formally agreed to ministerial control of native affairs. ²

The standard limitations imposed on a colonial legislature by convention and the royal instructions were less significant in the exercise of the New Zealand Governor's reserving powers than the colony's special race problems and the terms of the Loan Guarantee Act. In most cases the Governor's reservation merely delayed the coming into force of the proposed act. Of the 224 bills passed by the two houses of

¹ cf below p 220.
² cf below p 221f.
the Assembly in the years 1854 to 1861, only three were rejected outright by the Imperial Government. But there could be considerable delays in implementing a legislative programme.

By the terms of the Constitution Act an act could be disallowed at any time within two years after its receipt in London. No act could be considered permanent until it received royal confirmation.¹

New Zealand acts and ordinances which were disallowed or from which assent was withheld.²

<table>
<thead>
<tr>
<th>Ordinances of the Legislative Council, 1841-52</th>
<th>Reserved bills of the General Assembly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Church Extension 1842</td>
<td>Native Territorial Rights 1858</td>
</tr>
<tr>
<td>Land Claims 1842</td>
<td>Native Council 1860</td>
</tr>
<tr>
<td>Municipal Corporations 1842</td>
<td>Provincial Compulsory Land Taking 1863</td>
</tr>
<tr>
<td>Postage 1842</td>
<td>Governor's Salary 1867</td>
</tr>
<tr>
<td>Debentures 1844</td>
<td>Colonial Reciprocity 1870</td>
</tr>
<tr>
<td>Land Fund Appropriation 1851</td>
<td>New Zealand Extradition 1873</td>
</tr>
<tr>
<td>Marriage Amendment 1851</td>
<td>Administration 1878</td>
</tr>
<tr>
<td></td>
<td>Confederation &amp; Annexation 1883</td>
</tr>
<tr>
<td>Acts of the General Assembly</td>
<td>Asiatic Restriction 1896</td>
</tr>
<tr>
<td>Waste Lands 1856</td>
<td>New Zealand Ensign 1900</td>
</tr>
<tr>
<td>Indemnity 1866</td>
<td>Shipping &amp; Seamen Amendment 1910</td>
</tr>
</tbody>
</table>

¹ In 1863 the form of confirmation was revised. Instead of the Secretary of State stating that he had advised her Majesty "to leave Acts to their operation", he would merely state that Her Majesty had not been advised to disallow an act. Newcastle/Grey 26/2/63, AJHR 1863 A-1 p.23; cf A.B. Keith, Responsible Government in the Dominions Vol 2 p.1020.

² Compiled from E.Y. Redward's Index to the laws of New Zealand 26th ed. (1929). Neither Redward nor Butterworth's (Annotation of New Zealand Statutes vol II) makes a correct distinction between "disallowed" and "assent withheld". Assent was also withheld from the Picton Railway (Private) Bill 1861, but the Fox Government did not advise that assent be given.
Often Colonial Office reactions were unpredictable. The very fact that a bill had passed the two houses of the New Zealand General Assembly and had received the Governor's assent was an indication that the colonists considered it free from any clause or phrases which might offend the Colonial Office. If the Imperial Government found it difficult to control a distant colony because of inadequacy of information and slowness of the mails, the colonial government was similarly frustrated in not knowing when or to what extent the Imperial Government would intervene.

The Governor was instructed to transmit all local legislation to the Colonial Office together with explanatory observations and a statement of reasons for the introduction of each act. Although a few acts might be sent shortly after their passage, the bulk of acts was forwarded some weeks after the close of a session of the Assembly, after ministers had had time to write out an explanatory memorandum. There was also delay at the other end while the acts were scrutinised and considered.

In mid June, early in the 1861 session of the Assembly, Fox asked Stafford, the Colonial Secretary, whether a reply had been received to the case against the 1858 New Provinces Act (prepared by Fox, Sewell, "and other legal gentlemen of the House" who wished to dispute the validity of the Act), which had been forwarded to the Colonial Office during the previous session.

Mr Stafford said no reply had been received in answer to the case ..., nor to any of the Acts of last session, with one

1 NZPD 1861 p 231; cf JHR 1860 p 232-3,240; above p 13 n 2.
solitary exception, and which was not of much importance. An Act had been forwarded to the Home Government on 29th November by the first mail after its passing, and the receipt of the despatch had not yet been acknowledged. 1

Almost without exception, the Queen's confirmation of the legislation of 1860 was not received in New Zealand until the end of July 1861, nine months after the close of the session. It had taken as long to receive confirmation in previous years, but 1861 was the first year in which General Assembly met before the fate of the previous session's legislation was known, with the unimportant exception of 1855.

The General Assembly might be considering legislation on a subject while in ignorance of the details of a bill on the same subject being passed by the Imperial Parliament. After 1856 there were many Imperial acts passed which either related to the Empire at large or to New Zealand in particular. 2 Normally the Imperial Parliament would legislate for New Zealand only in accordance with the explicit or implicit wishes of the New Zealand Government and legislature, although the final form of the legislation was determined by the Imperial Parliament.

There was no firm convention that once a colony received responsible government the Imperial Parliament should only legislate for the colony with the advice of the colonial legislature. The most notable example of the Imperial Parliament acting without consultation with the New Zealand ministers or legislature was provided by the New Zealand Land Bill of 1860. This bill was introduced into Parliament

1 NZPD 1861 p 29.
2 cf below p 327 f.
by the Secretary of State, passed the House of Lords and was only
dropped because of successful agitation by New Zealand colonists in
London. The answer of the Imperial Government to the case sent
against the 1858 New Provinces Act was to pass an Imperial act to
validate it. This was not expected by the New Zealand politicians.
For a month after they received word that the bill was before Parlia-
ment they had no idea of its contents. An important result of the
continued overriding powers of the Imperial Parliament, therefore,
was the uncertainty it could engender in the colonial assembly.
Parliament's power was used little, but the possibility was ever
present.

The colony was necessarily subordinate to Great Britain, parti-
cularly in the first decade of responsible government when actual or
potential racial conflict faced the country. As, however, Great
Britain accepted its role as an Imperial power New Zealand did not
lose by the subordination. Although financial aid and military
protection were hedged with conditions they were nevertheless given.
There were also positive benefits derived from attachment to the Empire.
New Zealand obtained a constant supply of immigrants from the home
country. It could count on the Imperial Government for various
services: the opinions of the crown law officers on constitutional
problems, advice on the appointment of judges, donations of British

1 cf below pp 224-5, 227.
2 cf NZPD 1861 p 230, 231, 326, 351; on this act cf correspondence
cited above p 13 n 2.
state documents. Through International Exhibitions organised by the Imperial Government free publicity was given to New Zealand's produce and resources. New Zealand's connection with the outside world was maintained by an Imperial steamer service, jointly subsidised by Great Britain and the Australasian colonies. Once a month steamers sailed from Southampton, and via Suez and King George's Sound mail after 1857 reached New Zealand ports within two months. The settlers obtained the benefits of the international postal service organised by the British General Post Office.

Study of despatches between the Imperial Government and the colonies tends to concentrate on political and constitutional questions. As important was the extensive information service which was maintained. The Colonial Office was fed by Governors with a mass of statistics, documents and confidential reports on the various colonies. In return it circulated a great volume of information: copies of a convention between Great Britain and Japan, a report on the Sydney mint, details of exams for the Indian civil service, papers on the erection of lighthouses in various parts of the Empire, the news that the Queen had given birth to a daughter, a new code of signs or signals for British merchant shipping, Admiralty regulations concerning candidates for naval cadetships, warnings of the danger of war between Great Britain and the United States of America, and so forth.1

The Empire was a great political association. Limitations on

1 cf N.Z. Gazette 1856-1862.
the legislative powers of the General Assembly were a small and inevitable price to pay for membership of the Empire. Prohibitions in the Constitution Act on the Assembly's power to legislate on certain subjects in practice rarely proved inhibiting. There was no desire in New Zealand to alter the basic constitutional framework. Customs duties were the main source of government revenue. They were not levied to control trade and in this period there was no likelihood of a New Zealand government wishing to make commercial treaties. Delays before reserved bills came into operation could be vexatious, but assent normally was granted and the Assembly could make reserved bills retrospectively effective to the date on which they had passed the two houses. In the eyes of New Zealand politicians the Imperial Government might occasionally use the royal veto unwisely, but Imperial control was an instance of the Imperial Government's paternal interest in New Zealand - and that was essential for the colony's development.

1. In particular the prohibition on passing legislation "repugnant to English law" appears to have been a nominal restriction. There was no Judge Boothby in New Zealand. On the contrary, in 1858 an act had to be passed affirming the application of (pre-1840) English law to New Zealand (cf. Memorandum no 2, ASHR 1860: A-4).
CHAPTER 2

THE GENERAL ASSEMBLY: (2)

One of the first questions to be decided once New Zealand gained representative institutions was the site of the capital. No country can avoid tensions between the capital and the rest of the country, and in the absence of an obviously pre-eminent and acceptable town, such as existed in all the Australian colonies, no new state can escape parochial jealousies over the siting of the seat of government. In New Zealand problems created by its terrain and by the development of several "main centres", as they are now called, exacerbated the rivalry between South and North, Company settlements and Auckland, which runs through early New Zealand politics. Hobson created the town of Auckland and made it his capital in 1841. This step represented an appreciation of the need to place government in the centre of Maoridom where its greatest problems lay. Auckland became the colony's largest port and the home of a form of New Zealand establishment: the capital city, the seat of the Anglican bishop and the centre of missionary activity, and the headquarters of the army—a military influence reinforced by the Pensioner settlements on its outskirts.

Against Auckland's vested interest, however, could be set the claims on government of the various Southern settlements which expanded

after 1841. Moreover, under the charter of 1846, the colony had been divided into the two provinces of New Ulster and New Munster. Wellington became the Southern capital and New Munster had its separate administration, its own lieutenant governor and its own senior military officer. For the latter part of his term of office, Governor Grey resided at Wellington. After the introduction of the new constitution, however, and Grey's departure from New Zealand, Auckland once again was the seat of central government.

At first the Southerners expected that with the formation of a responsible government, power and influence would be wrested from the acting governor, the former lieutenant-governor of New Ulster and now Superintendent of Auckland, and that the political centre would be moved South, probably to Wellington. Against such a threat there were attempts of the Auckland Provincial Council to obtain separation of Auckland from the rest of the colony. In the event, however, despite a Southern majority in the House of Representatives, the capital was not at first moved.

Several factors underlay Auckland's retention of the capital. It was much the most populous and settled centre until 1861. For some years there was deep rivalry between Wellington and Nelson over the seat of government. Moreover as the danger of war increased, it became obvious that strong General Government representation at Auckland was essential. Auckland was the natural centre from which to handle a racial war crisis, particularly as the settlers had no control over military arrangements and clearly the military had no intention of

1 cf Herron p 367 et seq.
moving its headquarters. After 1856 the Stafford Government was committed to keeping the capital at Auckland,\(^1\) and in this had the support of Governor Browne.

Dr Herron has described the arguments and newspaper debates in the early years and FitzGerald's failure by a narrow margin in 1854 to secure a majority for his motion to change the seat of government.\(^2\)

The next important session of General Assembly was in 1856. Both Sewell and Fox in forming their ministries declared that they were leaving the seat of government an open question. When Dr Campbell, the Superintendent of Auckland, took the bull by the horns and moved that it would be inexpedient to agitate the question of the removal of the seat of government from Auckland during the current session, he was supported by a large majority in an almost full house: 23 for, 11 against. The large Auckland bloc was supported by two men from Taranaki, most of Nelson, and Otago, leaving Wellington and Canterbury in the minority.\(^3\) In short, at that time, with Nelson's help Auckland could be pretty sure to prevent Wellington obtaining the seat of government.

The vote of 1856 settled the issue for the meantime. It was argued in the House some years later that the question of the seat of government had been agitated in every session of the General Assembly. This is not so. There was argument over the meeting place of the Assembly, but the next time either house approached consideration of

\(^2\) ibid p 372 et seq, p 382-3.
\(^3\) NZPD 1856 p 99. Otago's vote on this occasion was determined by an alliance with the Auckland Progress party, cf below p 114.
the seat of government was 1861. An Auckland motion to improve the accommodation of the Assembly was defeated 22:12. Although the motion implied that Auckland should continue to be the meeting place of General Assembly, this was not necessarily the same question as whether it should be the capital. The voting was also influenced by considerations of economy. Some at least of the members appear to have avoided the issue by abstaining. 1

The next year the question of the seat of government arose explicitly for the first time since 1856. By a narrow margin the House rejected a motion to move the seat of government to "some place in Cook Strait". 2 That Southerners used such a phrase, on which they could all agree, was an indication of the seriousness of the intention to have the capital moved. By 1863 Southerners could muster a comfortable majority for a motion to move the capital and to call on three arbitrators to choose a site in Cook Strait. That year, also, a similar resolution was passed by the Legislative Council. The Commissioners reported in favour of Wellington late in 1864 and their decision was acted upon by the new Weld Government - as indeed, in the terms of the 1863 resolutions, it had to be. 3

What had caused the change from the decision of 1856? It was not just the increased numbers of Southerners in the House. By 1863

1 NZPD 1861 p 154.
2 NZPD 1862 p 394-600.
3 Ibid 1863 p 912 f, 918, 926-40, 949 f; N.Z. Gazette 22/10/64 p 392 (report of the commission on the seat of government). Although Weld made the change of the capital an important feature of his policy, and thus it is associated with Self Reliance, the actual Self Reliance resolutions were moved by Weld and adopted by a Christchurch meeting before the commission's decision was known. (I am indebted to Professor Norrell for this information.)
the Nelson representatives almost all supported the move.

A Southern cry for "separation", or division of the colony, had been heard in the 1850's. Even before the outbreak of the Taranaki war, it had been argued that the South Island should have its own legislature and government. After war broke out the feeling grew. By mid-1862 J. E. FitzGerald from Christchurch informed a friend:

"The Separation Cry has reached a height which requires the Govt to deal with it." 2

After the discovery of gold in Otago small isolated Dunedin had grown almost overnight to equal Auckland as the major centre of New Zealand. It was feasible for the South Island to stand alone. The close vote of 1862 was a reflection of the strong move from Otago for it to have more share in government. The majority in favour of moving the seat of government in 1863 reflected something more. It was no coincidence that the decision came when there was in office for the first time a government in which Aucklanders predominated (the Whitaker-Fox Government of 1863-1864) and when the Maori wars were at their height. Moving the seat of government would "put an end to Auckland supremacy"3 and remove control of affairs from the heated atmosphere of Auckland. Establishing the capital in the centre of the colony also reduced the likelihood of separation. Hence it was opposed by two ardent separationists from Otago. 4

---

1 cf Otago Witness 8/1/59, 18/2/60, 24/3/60; Otago Colonist 10/2/60, (reprint from the Lyttelton Times.)
2 J.E. FitzGerald/H.S. Selife 12/6/62, Selife MSS; cf FitzGerald/Selife 7/12/60, Selife MSS, Letters &c Canterbury Association, Vol II.
3 C.C. Bowme/H.S. Selife 14/9/64, Selife MSS, Letters &c, Vol II.
4 cf Morrell, Provincial System p 121-123.
Discussion during the term of the second New Zealand parliament (1856-60) centred on the meeting place of General Assembly, and it was by confusing the two issues that some politicians came to believe that the question of the capital had been raised continuously before 1863. ¹

The first legislative body to meet outside Auckland was the Legislative Council of New Munster which was summoned to Wellington in December 1848. Grey then announced that he proposed assembling the General Legislative Council alternately in the North and in the South. In accordance with his promise the Council of 1851 was called at Wellington. In addition the final brief session of 1852/3 was also held at Wellington. ² It was understandable then that the first session of the new legislature should have been summoned to Auckland in 1854. ³

There was a brief session at Auckland in 1855 and, after an election, Governor Gore Browne summoned his first parliament to meet at Auckland in 1856. Early in the 1856 session, as mentioned above, Dr Campbell managed to settle the question of the seat of government for the next few years. He then moved that the next meeting of the Assembly should be held at Auckland

"upon which an amendment was moved by Mr Fitzherbert that it should be held in a more central position; and, ... it was carried by 18 to 15 to omit the word "Auckland". Proposals for the insertion of "Nelson", "Wellington," and "such place

¹ cf, for example, NZPD 1863 p 927, 932.
² rf Governor Grey's opening speeches to the New Munster Legislative Council in New Munster Gazette 28/12/48, & the New Zealand Legislative Council in New Munster Gazette 23/5/51.
³ cf Grey/Wynyard 31/12/53, no 15 in Wynyard's Brief Narrative of his career in New Zealand 1851-56; Herron p 367 & note 3.
as the Governor shall deem most convenient" 7 this last motion likely to lead to the choice of Auckland were successively rejected; and finally a motion of Mr Sewell was carried to the effect - "That the next session shall be held in some such more central place as the Governor shall deem most convenient." 9

This was one occasion on which Gore Browne was asked by the House to exercise his personal discretion, but he did not. His reaction may have been influenced by a feeling that any "more central place" was inadvisable. Weeks later he gave an equivocal reply to the House's address. He thought Wellington the most obvious more central place, but he had learnt that the House had rejected both Wellington and Nelson and accordingly asked for more explicit indication of the House's wishes. 2 (It was probably an unconventional move on the Governor's part to refer to the proceedings of the House apart from its formal addresses to him.)

In consequence the House voted again. This time by 18 to 15 it chose Wellington - after Aucklanders had enjoyed themselves with various flippant suggestions. As Dr Herron points out Otago members now had ended their political alliance with the Auckland Progress party and voted in favour of Wellington. But Otago's defection alone did not tip the balance. Previously two Taranaki men had voted for Nelson - undoubtedly the most convenient port for them to reach. This time they voted for Wellington. 4

At this point the Legislative Councillors felt neglected.

---

1 J.E. FitzGerald, NZPD 1863 p 927 (already cited above p 30 n 1).
3 NZPD 1856 p 254; Herron loc cit; cf p 27 n 3.
4 NZPD 1856 p 254; Herron loc cit; cf p 27 n 3.
5 cf AJHR 1877 A-5 & I-II, 1878 A-1 p 1. Governor Browne also noticed the House's proceedings in Message 59 of 1856 (NZPD p 365-6) & Message 2 of 1861 (cf below p 1464).
They presented the Governor with an address stating that in their view the next meeting should be held at Auckland.\textsuperscript{1} The Governor was again faced with the decision, with the gloomy consolation that whatever he did would have the support of half of his Executive Council.\textsuperscript{2} Concerned that he should be empowered to appoint a deputy at Auckland before he and his ministers attended a meeting away from the capital, the Governor decided that the next meeting should be held at Auckland, and that thereafter General Assembly should alternate between Wellington and Auckland.\textsuperscript{3}

The next Assembly met in 1858. The Governor had now been authorised by the Secretary of State for the Colonies to appoint an officer to act at Auckland in his absence. Accordingly, he informed the two houses, he would summon the next session of the General Assembly to meet at Wellington.\textsuperscript{4} In the event, the Government and Governor became tied up in the Taranaki war, and the Governor wished to be in Auckland for a conference of friendly chiefs he had summoned to win Maori support for Government against Wiremu Kingi and his allies. After several prorogations ministers were prepared to accept responsibility for calling General Assembly to meet at Auckland in 1860. It was expected that the next session of the Assembly would be at Wellington in 1861.\textsuperscript{5} Once again, however, ministers

\textsuperscript{1} NZPD 1856 p 255f, 261-2, & cf p 327-8. 
\textsuperscript{2} Sewell Journal 17/8/56 Vol I p 929; cf Stafford NZPD 1863 p 933. 
\textsuperscript{3} Message 14, V & P, LC, 1856 p 136; Message 49, V & P, HR, 1856 p 283. 
\textsuperscript{5} cf NZPD 1860 p 790.
could claim that crisis in the North prevented such a step. Even Fox, when he became premier in 1861, refused to commit his government to a Wellington meeting.\(^1\) When it came to the point, however, the Fox ministers advised the Governor to have a Wellington meeting, and thus, in 1862, for the first time General Assembly met outside Auckland. Shortly after the narrow defeat in this session of the attempt to move the seat of government, the House of Representatives successively rejected motions that the next session of the Assembly should be held at Wellington, at Christchurch and at Nelson. Finally the compromise resolution was passed that the Assembly should meet "at such place as His Excellency the Governor may decide".\(^2\)

In 1863 the General Assembly was summoned to Auckland. This session settled the question of the seat of government and hence of the future regular meeting place of the Assembly. The House resolved that the Assembly should meet at Christchurch next time - but only if adequate accommodation was not yet available at the new seat of government.\(^3\) Nevertheless in 1864 General Assembly was again summoned to meet at Auckland. The decision must have been Governor Grey's as the Whitaker-Fox Government had resigned and were only in office in a caretaker capacity. Grey had not long since bought Kawau Island and apparently was loath to leave Auckland. Since 1865, however, the General Assembly has met at Wellington.

---

1 Ibid 1861 p 231.
2 Ibid 1862 p 625-7.
3 Ibid 1863 p 960,
Before 1865 the continuing tussles over the meeting place of the Assembly cast an air of uncertainty over the central institution of the new system of government. No-one knew for certain when the Assembly would meet or where. Members did not know when they would reassemble and they did not know what ministers would do in the long recess. While Government had good reasons for calling the Assembly to Auckland, it cannot be denied that this was contrary to the express resolutions of the House of Representatives. An element in the distrust which developed of the Stafford ministry, and in particular of its leader, was the uncertainty in which it kept New Zealand politics from its distant seat. In the many months in which Government kept General Assembly in recess, it appeared to take little heed of the recorded views of the central legislature and even less of the views of the elected provincial institutions.

As long as Auckland was the seat of government the small central administration was detached from much of New Zealand life except the small world of officials and soldiers. This was particularly the case as Auckland politicians were embroiled in their provincial quarrels. National leadership came from the Southern provinces. Once men became ministers and backbenchers had returned home, members of the government were cut off from both their leading political supporters and leading political opponents. There was a case for

---

1 It was said that it required a deputation of Auckland members threatening resignation to persuade the Government finally to call General Assembly at Auckland in late July 1860. (Fox/Godley 31/7/60, Godley Correspondence V 7 p 786). Earlier, on account of the Taranaki crisis, members had been circularised that the Assembly would not meet until August. cf Otago Colonist 4/5/60, 18/5/60 15/6/60, 22/6/60, Otago Witness 16/6/60.
moving the political centre South and subjecting Governor and ministers to other, wider, influences.

There was an even stronger case for holding meetings of General Assembly in a more central place. There were difficulties enough in getting members to the Assembly without holding sessions at one end of the colony. It was almost unknown for all members of the Assembly to be present at the same time. By the time late arrivals had taken their seats other members were leaving. Throughout discussion of New Zealand politics in the 1860's it should be borne in mind that the population was small, there were almost no men who had sufficient leisure to participate with ease in public affairs and the only regular form of communication between all the settlements was the mail steamer which went at monthly intervals.

The main factors involved in holding a session of the Assembly were calling it to a convenient place, summoning it to meet at a convenient time of year, providing adequate transportation to the meeting place, and concluding the major business before a significant minority of members returned home. It was difficult to get members to the Assembly and it was difficult to keep them there. In a memorandum of 1864 Reader Wood, the Colonial Treasurer, justified the 1863 Settlements Act on the grounds that,

In consequence of the distance of the various settlements in New Zealand from each other, of the comparative difficulty of locomotion, and the fact that nearly all the members of the Legislature are actually engaged in business, it is only at great personal inconvenience that a Session of the Assembly can be held at all, and it is quite impossible, with short
notice, to hold a Session at which such a number of members can be present as fairly to represent the Colony. During the last Session the Government was anxious to be armed with all the powers they felt it necessary to have to enable them to meet any contingency that might arise. 1

It was feared in 1854 that the prorogation of mid-August, three months after the opening, was intended to force Southerners to go home and thus to abandon the battle over responsible government. 2 In 1855 there was doubt whether a quorum could be mustered. 3 Again in 1858 there was doubt as to whether a session could be held. Parliament was summoned to meet on 31 March. It was then prorogued to 6 April. On 3 April the Kate Kearney arrived at Manukau. It had been chartered by Government to bring up the members from Nelson and Taranaki, but only the member for Omata, Taranaki, and a Taranaki Councillor were on board. With five Auckland seats vacant the House was five short of a quorum, and the Assembly was prorogued till 10 April. By that date there were just sufficient present to make up a quorum of 17, under half the membership. 4

1858 was exceptional as a group of Wellington members stayed away and as there was no machinery for filling vacant seats when the Assembly was not in session. The latter problem was met by the

---

1 Reader Wood/Sir F. Rogers 28/5/64 /sic/ encl. to Cardwell/Grey 26/5/64. N.Z. Gazette 1864 p 358; cf NZPD 1860 pp 512, 514, 584 on the difficulty of getting men to stand for the House of Representatives.
2 cf Weld/Simeon 14/8/54 Weld MSS.
3 cf NZPD 1854-55 p 462; J.E.Fitzgerald, Godley Correspondence Vol IV p 479-480.
4 New Zealander 3/4/58, 7/4/58, 10/4/58; Otago Colonist 21/5/58; cf Stafford, NZPD 1856-8, p 377. Not surprisingly in this session the House had to adjourn on six different occasions on account of lack of a quorum. In the same session by 15:9 the House defeated a motion that no leave of absence should be granted for personal convenience or private business (NZPD 1856-8 p 549).
Elections Writs Act 1858, and the former problem did not recur. Nevertheless the 1858 session was a striking example of the problem of mustering a full attendance.

There were problems of transportation. The difficulties facing members of the first New Zealand parliament are well known.\(^1\) In later years arrangements were made to bring members to the meeting place, but organisation was poor. In 1860 the General Assembly was prorogued at the last moment because the *White Swan* had not arrived. In 1861 the session was opened but business was delayed because of the non-arrival of the *Stormbird*. Fox later complained that no arrangements had been made "for the transmission of the Wellington members". When the mail steamer arrived at Wellington "all the passages had been taken up from Nelson" and the Wellingtonians were obliged to go by the miserable little *Stormbird" in which they were nine days coming". A debate of mutual recriminations ended with Domett pointing out that till the steamer arrived at Nelson, the Nelson members "had determined not to come, because they were told by the agent ... that there would not be room for them all."\(^2\)

The later in the year an Assembly was called, the harder it was to hold a session, as it tended to interfere with farmers' work. It was generally agreed in the House that meetings should start in March or April.\(^3\) Apart from 1856 and 1858, however, this was not achieved, and a factor in the shortness of the sessions of 1862, 1863 and 1864 was the lateness of the season when the Assembly was summoned to meet.

---

1 cf Herron p 389 f.
2 NZPD 1861 p 215.
From the first meeting of the Assembly practical necessities caused a breach in the traditional English concept of the honorary nature of parliamentary service. There was a precedent for an attendance allowance from both Australian colonies and the local provincial councils.\(^1\) Being kept away from home for months on end, a member wrote in 1854, "half ruins the poorer members."\(^2\) A select committee of that year reported that

\[
\text{in order to afford the people the utmost freedom in the choice of their Representatives, and especially to the end that they may not be limited in their selection to persons of independent private property, it was expedient that the expenses incurred in the performance of their duties should be reasonably provided on a liberal rather than on a parsimonious scale.} \quad 3
\]

In a series of divisions it was decided to vote members an allowance of £1 per diem for the duration of the session. Auckland residents were excepted, although those living within twenty miles of the Assembly who had had to leave their homes to attend were allowed 10s per diem. Councillors also were excepted as it was felt that they should have sufficient private property not to require an allowance. For all members free sea transport was voted.\(^4\)

In voting £1 per diem the House was certainly being "liberal

---

1 cf NZPD 1854 p 417-8; Otago Witness 9/2/56. Grey's Provincial Councils Ordinances of 1848 (sect 6) & 1851 (sect 20) had provided an allowance for members.
2 Weld/Simeon 14/8/54 (cited above p 36 n2).
4 NZPD 1854 p 417-8, 421-3.
rather than parsimonious." It was three times or more what a
labourer received.* In proposing 15s per diem J. E. FitzGerald,
not perhaps the best judge of domestic economics, had said

He did not mean to say any one could drink champagne,
ride a horse, or dine every day at Bellamy's upon it ....
\[\text{\$1 at £1 per diem many men would make money by legis-
lating - a thing they ought not to do.} \]

The select committee of 1854 recommended that provision of an
attendance allowance should be made by permanent appropriation, but
this proposal was not adopted. In 1855 the arrangements of the
previous year were continued. In 1856 by a margin of one the
Stafford Government succeeded in having the £1 allowance also voted
to Legislative Councillors. It was not until 1884 that a permanent
honorarium was voted.\(^2\)

Apart from their expenses members had few amenities. Until a
permanent meeting place was determined upon, the parliamentary premises
were necessarily makeshift, and for the rest various facilities were
only gradually acquired.

"A great wooden barnshaped affair" was constructed at Auckland
in time for the first meeting of the General Assembly. It consisted
of little more than rooms for meetings of the two houses. The Council
met in a moderate sized plain room "with no architectural pretension:
whatever" and the House in a draughty hall upstairs. Various altera-
tions were made as a result of members' complaints and of the proposals

\(*\text{cf Appendix VII}.*

\(^1\text{Ibid } p 418 ; \text{ cf Sewell Journal } 17/9/54 \ p 677 \ & \text{ New Zealander}
4/4/60 \ \text{(review of Thomson's Story of New Zealand).}

\(^2\text{V & P, HR, } 1855 \ p \ 138; \text{NZPD } 1855 \ p 558; \text{ NZPD } 1856 \ p 225-6,
265 \ \text{& cf p } 96."
of House committees, but "even," says Dr Herron, "with additions and improvements it was sub-standard - and everyone knew it".\(^1\)

In 1856 it was decided to establish a General Assembly library in conjunction with the Auckland province. By 23 to 6 the House carried a motion to purchase an adjoining building to provide library, reading room &c - although it rejected Fox's proposed addition:

"but that the messengers of the House be clothed in a plain suit of black, with black-silk cravats, and a white ribbon extending between the two upper buttons of the coat as a distinctive mark".

By 1860 the library had 750 volumes. In addition the Assembly library was building up a collection of British official papers, many of which were obtained through the good will of the Imperial authorities. The library's newspaper collection had not yet begun, but members could obtain access to files kept in the Colonial Secretary's office.\(^2\)

The comforts of the "inner man" were also attended to. In 1854 it took the two houses exactly two days to pass an act exempting the meeting place of the Assembly from the provisions of the 1842 Licencing Ordinance, and thus Bellamys was established. The rapidity with which the act was passed, several weeks after General Assembly met, and the indemnity granted to any persons who had previously broken the law to serve members with liquid refreshment, suggests

---

that parliamentarians had already anticipated the legislation and freed themselves from the restrictive shackles of the law.¹

Efforts were made to improve the appearance of the building: for the 1858 session the meeting rooms had the addition of "oak-pattern paper and crimson hangings".² Light, apparently, was supplied by Belmont sperm candles, although shortly the Assembly had kerosene lamps.³ Nevertheless, the buildings were confessedly temporary. In 1856 the Auckland provincial government completed a Government house for the new Governor (built on general government land and designed by Reader Wood), and presented General Assembly with a bill for £10,000. After protracted negotiation Auckland in 1861 finally received a sum settled by arbitration. In the meantime, in part-payment, General Government had conveyed to the province several allotments and buildings, including the General Assembly buildings and after 1858 General Assembly met in the buildings by courtesy of the Auckland provincial government.⁴ Proposals to improve accommodation immediately raised problems of finance and aroused inter-provincial bickering.

As yet, therefore, there could be no provision of rooms for members, let alone the secretarial assistance which some modern legislatures now consider essential. Politics was still an occasional

¹ By the 1842 Ordinance no person might sell quantities of liquor of less than two gallons without a licence. Hours of sale were restricted to 6 am to 10 pm or midnight on weekdays, and 1 pm to 7 pm on Sundays, Christmas Day and Good Friday.
² New Zealander 14/4/58.
occupation and one for amateurs. The Assembly staff was minimal: a clerk and messenger for the Legislative Council, three clerks (one of whom was also the Assembly sub-librarian), a Serjeant at Arms and messengers for the House of Representatives. Modest salaries or allowances were voted the three important officials, the Speaker of the Council (who was also the Council's Chairman of Committees), and the Speaker and Chairman of Committees of the House. They do not seem to have been provided with any staff. In preparing legislation members apparently had to rely on their own resources and even ministers engaged in drafting their own bills.

There was not as yet a government printer and the resources of local printers were stretched to keep the Assembly supplied with its various documents. The journals of the houses were printed as were many of the documents tabled. Even in the first years the bulk of papers were presented in the lower house, or both houses together, and by 1858 a system of publication of papers as various Appendices to the Journals of the House had been developed and is the basis of the modern simple and ordered arrangement.

There were nevertheless two major weaknesses in the publication of records and documents. The work of the House in particular, might be stalled because of difficulties in getting material printed. Business would come up for discussion, but members might have obtained copies of the resolution, or bill, or estimates, only a short time

---

1 cf Estimates of Expenditure for 1861-2, Class II (Legislative), AJHR 1861 post B-IA.
beforehand. Government would be expected to discuss a backbencher's motion but might have received the printed copy only at the beginning of the sitting, while previously the clerk's manuscript copy had been down at the printers.¹

This problem was unavoidable. Even a government printer would have been pressed to keep up with the many bills and papers which had to be printed. What was avoidable was the difficulty of having all the proceedings of the Assembly, apart from the formal minutes, only available in summarised form and published several days afterwards in the local bi-weekly newspapers. Sometimes such reports were grossly garbled. For all that the two Auckland newspapers had short-hand reporters their reports were not necessarily accurate, particularly as the Reporters' gallery was "constructed in a manner unfavourable to the transmission of sound".² In 1861, for example, a select committee was established to investigate serious allegations made by Dr Featherston that C. W. Richmond as Native Minister had been engaged in a conspiracy to take Waitara from Wiremu Kingi. The committee's deliberations were seriously handicapped by its having two conflicting reports from the rival newspaper reporters and on one point Featherston claimed that he had been misreported by both papers.³

Apart from formal notices in the Gazette, the only official statements made by ministers of the crown were those made in the Assembly, and thus the only record kept was in the unreliable reports

¹ cf, for example, NZPD 1861 p 332.
² AJHR 1861 F-3 p 9; cf NZPD 1861 p 311.
³ AJHR 1861 F-3; esp p 6 f.
of newspapers. Even in crown colony days it was realised that accurate reports should be kept of the legislature's proceedings. In 1842 the old Legislative Council decided that government should appoint a competent reporter to report its proceedings. The scheme was soon abandoned, however, after it had been alleged that members tampered with the reports, and that the reporter showed favouritism. Moreover long delays had occurred before the reports were published.¹

At the beginning of the 1854 session Sewell and his friends "arranged by mutual help to get up reports of our own speeches; one to take short notes, and the Speaker to fill them up himself from memory". But members soon became careless and the new ministers had not time to correct their speeches. The only accurate reports were Jerningham Wakefield's reports of his father's speeches and he did "not scruple here and there to doctor and color what has been really said ... In particular, his speeches ... are embellished throughout with cheers".² A select committee was set up by the House to consider reports of proceedings but no report was presented and later no minutes could be found.³

Another select committee was set up in 1856. It recommended the authorisation of £800 for the production of a correct report, leaving the actual arrangements to be made by the Speaker and a press committee.⁴ There the matter appears to have been left.

² Sewell Journal 9/7/54 p 631.
³ NZPD 1854 p 188; V & P, HR 1856 D-17
⁴ V & P, HR 1856 D-17.
The main problem was that while it was appreciated that "It was of great importance .. that the constituencies should be fully informed of what their representatives said and did", few thought that all speeches should be reported in full. Any form of summary, however, was open to objections of misreporting, or half-reporting. There was also a fear that the freedom of the press might be restricted.

And so the Assembly continued to be hampered by its own inadequate records, and despite the ideal of a free press, members of the House were continually complaining of newspaper distortion and alleging a breach of privilege.

It is not at all uncommon to come across complaints of newspaper misrepresentation or to find members criticising opponents for statements or speeches which are not recorded in the Debates. Nor is it rare to have such reports as "Mr Weld, Mr Curtis, and Mr Carter, and other gentlemen addressed the House." Newspaper reports at their best were very full. On 26 July 1861 Stafford pointed out that "a very fair general report of the 1861 Financial Statement had appeared in a journal of this morning, but it was not exactly accurate - there were errors in the figures, which might be typographical, and also errors in the verbal explanations". He then referred to what could only be the rival Auckland paper, the New Zealander, as a "journal which was noted for the labour bestowed and facilities afforded by its conductors to make the

1 Fitzherbert, NZPD 1856 p 153.
2 NZPD 1861 p 209; cf ibid p 311.
reports accurate."¹ Some weeks later, however, he drew attention to gross errors in the New Zealander. A long biting speech on the New Provinces Act by Dr Featherston had been divided between Stafford and C. W. Richmond, and the division lists "were as inaccurate as it was possible to make them." An important statement by Fox, the Colonial Secretary, in answer to a question had been given a "directly opposite" meaning. The latter misreportage was so serious that Fox immediately sent a corrected version to the newspaper.²

In 1862 and again in 1863 the House passed resolutions calling on Government to arrange full and accurate reports of debates. Nevertheless it was not until 1867 that the first New Zealand "Hansard" was issued. An official record of parliamentary debates before 1867, compiled from newspaper reports, was not published until 1885.³

¹ NZPD 1861 p 221.
² NZPD 1861 p 286-7 (already cited above p 10 n 1.)
CHAPTER 3

GOVERNOR AND LEGISLATIVE COUNCIL

The Governor

The Governor was both a part of and distinct from the General Assembly. Under the Constitution Act he had the responsibility of summoning, opening, proroguing and dissolving the Assembly. His power to dissolve was to have important constitutional implications, the first example of which occurred, or was rumoured to have occurred in 1865 (an earlier date than that usually mentioned). More important in the first decade of responsible government was his initiative in seeking a leader of government.

In addition, by virtue of his position as a constituent part of the Assembly he was able to intervene actively to express his views, and more particularly the views which he attributed to the Imperial Government. But the Governor's legislative role extended much further, mostly in his dealings with the popular house. His relations with the Council were more formal and less important.

The formalities of the Governor's communications with the House of Representatives have remained almost unchanged in the past one hundred years. On receipt of a message business is suspended, members rise and remain uncovered while the Speaker reads the message. Hence

1 On the executive functions of the Governor rf below Chapt 10.
2 cf Stafford's memorandum for the Governor 13/10/65, Stafford MSS folder 44; V & P, LC, 1865 App 3; John Hall/H.S. Selfe 15/10/65, Selfe MSS, Letters &c Canterbury Association, Vol II.
3 cf below Chapt 6 esp pp 111-3 & p 134.
the unseemly scenes in 1854 when members wished to register a last protest before reading a message which they knew enclosed a proclamation proroguing the Assembly. As Wynyard's final message arrived on the heels of a previous message it was possible to argue that the House should consider one message before receiving another.¹

The content of messages is now quite different. It was then the only form of communication available to the Governor. Today messages are mere formality and by Standing Orders may be communicated verbally by a minister. Then they were a mark of the Governor's position as a separate house of the Assembly and the Governor might communicate directly with the House without consulting or even informing his ministers.² On the other hand, as the Governor was still permitted to have political views of his own it would have been improper for ministers to pass them on verbally and risk dragging the Governor into party debates. They might indicate when they were acting on his behalf, rather than he acting on their advice.³

Some of the Governor's messages were mere formality, for example forwarding the estimates. If the House presented an address requesting the recommendation of further appropriation the recommendation was sent as a matter of course. Other messages were simply informative: enclosing papers, despatches, correspondence, sometimes in response to a request from the House, sometimes on his own initiative or on

¹ Such procedure is now provided for by Standing Order 399 (Standing Orders of the House of Representatives 1963).
² cf below p 148.
³ cf NZPD 1861 p 378 et seq.
the advice of his ministers. On other occasions he, in effect, engaged in a dialogue with the House, in reply to or resulting in an address from the House. As his activities in administration show, Browne was a frequent engager in conversation on paper.

Most of the thirty-five messages sent in 1858 were of a formal nature. On his ministers' advice the Governor forwarded the estimates, appropriation and other bills; he announced his reservation of ten bills, and proposed five amendments. It was the eleven messages in which he informed the house of his assent to legislation that swelled the list, a reflection of the heavy legislative programme of that year. (In 1860 and 1861 it was additional estimates which kept up the number of messages.) The five amendments were proposed on the advice of ministers although one, relating to land claims (and hence affecting waste lands), was the insertion of a clause reserving it for the Queen's assent. In such cases reservation was required by the Imperial Government as it affected the security of the 1856 half million loan.

Three of the four amendments proposed by the Governor in 1860 were merely technical. The fourth was a reflection of Colonial Office touchiness over any infringement of royal rights. As he was bound to do by his instructions, the Governor proposed the insertion of a clause in the Nelson Roman Catholic Endowments Sale Bill saving the rights of Her Majesty, Her Heirs and Successors, and of any Body Politic or Corporate, &c. There was only one amendment proposed in 1861.

1 cf above p 17.
On the whole the Governor's amending powers were used as a means of occasionally rectifying omissions in a bill after it had passed both houses, although it may be deceptive to judge merely by whether a proposal was recommended by ministers. Normally the Governor acted on his ministers' advice; occasionally ministers might advise in accordance with the Governor's wishes, and this may have been the case with the Governor's amendment to the Qualification of Electors Bill 1858. Sometimes, too, the Governor apparently forgot to add that he was acting on ministers' advice.

There are about three messages a session which merit additional attention: the Governor became a little more expansive. In 1858 he sent messages concerning the impending departure of the 58th regiment, and the question of the next meeting place of the General Assembly, and informed the House that he could not recommend Her Majesty's assent to the Native Territorial Rights Bill. In 1860 he sent papers from the Kohimarama conference showing the desire of the chiefs to have further conferences. Also in 1860 he told the House that he would have preferred that under the Native Council Bill the new Council had the whole administration of native affairs. Later in the session he gave a rather equivocal undertaking that once the Bill became law the management of native affairs should be on the same basis as other departments.

In 1861 he asked for amplification of the House's promise to give full support in the event of further outbreak of war, and on

---

1 cf Herron p 67 & notes; Browne/Lytton 14/10/58 para 11, GBPP/1860/xlvii (H.C. 492).
another occasion, declared his pleasure that, in effect, the new Fox
Government was adopting his native policies.¹

The Governor's intervention, then, was very rare, and on the few occasions that he acted on his own initiative it was on account of his position as Imperial agent, in the fields of defence and native affairs. On domestic matters he did no more than to reserve bills which came within spheres specified in his instructions. For the rest he acted on his ministers' advice. Occasionally, on his own responsibility he forwarded important despatches—concerning a royal marriage, a royal death, or his own recall.

The Legislative Council

The Legislative Council had a freer hand than the Governor. It could and did use its powers to initiate and amend legislation. It even had its first disagreements with the House in these initial years.² On the whole, however, its role was essentially unimportant if not always modest.

Apart from ministerial measures the Council does not appear to have considered itself a chamber for originating legislation. In its address in reply to the acting Governor's opening speech to the second session of 1854, it assured His Excellency that any bills forwarded by

¹ The messages referred to above are, in 1858 messages 5 (JHR p 91), 22 (p 152), 30 (p 181), in 1860 messages 2 (p 12), 29 (p 209), 45 (p 249), in 1861 messages 2 (p 37), 7 (p 73). cf above p 32 & below pp 146, 167-8.
his Government or by the House of Representatives would receive the Council's "careful consideration". It continued to act in this spirit. Only thirteen bills passed both houses of the Assembly in 1854 and four in 1855. In 1856, however, there were 36 bills passed. Of these only eight were initiated by the Legislative Council, four of them by ministers. A further Council bill was lost in the House. Fourteen of the 80 passed in 1858 were initiated in the Council, thirteen of them by Attorney General Whitaker. In 1860 the number passed dropped to 50 although those originated in the Council rose to twenty. Again most Council bills were promoted by ministers. The number passed in 1861 was down to 41 of which but eight originated in the Council.

Most bills originated in the lower house, and most of those bills which did not become law were lost in the House rather than rejected by the Council or disallowed by the Queen. After a slight show of initiative in 1856, Councillors but rarely promoted legislation. Of the handful of non-ministerial measures introduced in the next three sessions, a couple were initiated by the Chief Justice, one was initiated by Dr Pollen as a representative of the Auckland provincial executive and one was the New Zealand church bill (Bishop of New Zealand Trusts Bill 1858). On the whole even private bills tended to be introduced into the lower house.

With but brief exceptions the Attorney General, or his equivalent when that position was for a time a-political, sat in the Council in the first two decades of representative institutions. It was a legalistic age. With continuing reform of English law, the development
of a separate colonial judicial system, and the importance of commerce
for the colony, a stream of law bills came out of the Council:
adoption for the colony of reforms in the English legal system and
a large number relating to commercial practice. Some of the more
notable reforms thus originated in the Council: for example the —
District Courts and Execution of Criminals Acts of 1858, and the
Land Registration and Supreme Court Acts of 1860. But there is
little to suggest that, with the exception of the Chief Justice,
the Councillors could offer much in the way of practical improvements
to the Attorney General's bills. Perhaps their technical nature
precluded this, and certainly they had equally smooth passage through
the lower house.

Apart from passing a number of Government-sponsored technical
law bills, the Council's main work was revising - and occasionally
rejecting - bills sent up from the lower house. In 1856 a Govern-
ment bill, the Supreme Court Practitioners Bill, lapsed in the Council,
and two private members' bills were rejected. One of these, the
Purity of Elections Bill, was the outcome of the deliberations of
a House select committee on the subject, and as Dr Richardson pointed
out, "was a Bill to purify the House of Representatives; it was a
Bill that affected that body themselves." By 4 votes to 3, however,
the Council decided not to proceed with the bill. Only Whitaker,
the minister in the Council, and Tancred and Richardson, the two
former ministers, voted in favour of the bill.¹ The other bill

¹ NZPD 1856 p 345.
rejected was a District Courts Bill.\(^1\) In the same session, the House, with more justification, rejected a Councillor's Disqualification Bill, which could have been criticised as the Council minding the House's business.\(^2\) (The next session a House Disqualification Bill passed both houses).

An argument, and a valid argument, for the Council's rejection of bills in 1856 was that there was need for more time to remedy defects in drafting.\(^3\) In 1858, however, the Council threw out a Government Representation Apportionment Bill by which it was intended to equalize the size of electorates.\(^4\) On this occasion the Council acted on principle. It was probably also the first time that the Council thwarted a Government measure. Another Government bill lapsed in the Council, but the bill apparently was dropped by the Government itself. A private member's bill also lapsed. In addition the Government had to exert pressure on Councillors to secure passage of its native bills and it was forced by Council opposition to drop sections of its Qualification of Electors Bill.\(^5\)

No Council bills were lost in the House in 1858, and only one bill was lost in 1860. This bill provided for the registration of qualified medical practitioners and in the House received the support of Ministers. Objections to it were raised by some members, but

---

1 cf below p 315-'6.
2 cf NZPD 1856 p 163-4.
4 cf below p 33-5.
eventually the bill lapsed on a mere technicality. Fees under the bill were to be paid into the Colonial Treasury. This was a breach of the House's privilege of being the sole originator of money bills (on the Crown's recommendation).¹

Six House bills were lost in the Council in 1860. The Colonial Treasurer's Debtors and Creditors Composition Bill (dealing with bankrupts) and a backbencher's Crown Grants Issue Bill were both thrown out, and a Native Council Expenses Appropriation Bill, initiated by Message, was allowed to lapse. Much more important was the Council's rejection of three successive bills to amend or to suspend the Land Revenue Appropriation Act 1858 by which General Government retained one sixth of the North Island provinces' land revenue for future land purchase.² It was suggested in the Council that these were money bills; it was pointed out in the House that ministers in the upper house should not oppose a bill passed in the lower house, especially when Government had stated that it would offer no further opposition. Council and ministers took no notice.³

In 1860 there was a case for the Council rejecting amendments to the Land Revenue Appropriation Act. The Government which had sponsored the act still retained the confidence of the House and moreover, it was an election year. In 1861, however, amendment of the act was an important policy measure of the new Fox Government. Even this did not prevent the Council from rejecting an Amendment Bill sent up from

¹ NZPD 1860 p 432, 557-8.
² cf below 293.
³ cf NZPD 1860 pp 783, 632, 739.
the lower house: this time by 11:4. Shortly afterwards it rejected a similar bill by 8:4. A further attempt to pass a Debtors' and Creditors' Composition Bill - also a feature of Fox's policy on assuming office - was also defeated in the Council.¹

There had been a general election, the legislation was sponsored by the new Government which came to office after the election, it involved financial appropriation and had been passed in two successive sessions of the lower house. There could be no clearer instance of how the upper house could block the lower, nor of the potential deadlock unless the Government lost office or gained the power of packing the Council. Shortly afterwards both happened, ending the possibility of conflict on this issue.

For the third successive year, in 1862, a Land Revenue Appropriation Act Amendment Bill was sent up from the House. This time the Council gave way without a struggle, but by then a change in native land policy and the ending of the crown right of pre-emption of native land, had reduced much of the importance of the legislation.

The Council's rejection of these few bills should not obscure the fact that it was exceedingly rare for one house to reject the other house's bills. If the five Land Revenue Appropriation Act Amendment Bills are excluded, only ten House bills were rejected by the Council in the sessions 1856 to 1861 inclusive. At least one of these, and possibly more, were dropped with the Government's concurrence.

¹ cf below pp 166, 212.
The Council was not an overworked body. There was an absence of organised opposition, and of private members' bills to clog the programme. Unlike his colleagues in the lower house, the Attorney General had his measures prepared in good time, and the Council commenced the session with a prepared legislative programme before it. The retirement of Whitaker as Attorney General in 1861 did not alter the pattern. His successor, Sewell, was equally prepared to introduce a series of bills into the Council. In consequence, while the House was engaged in political strife, the Council was legislating at a quiet pace. After a few weeks it was almost out of work until bills started to trickle through from the House. Only at the close of the session was it suddenly swamped with business.

A high percentage of House bills were amended by the Council and generally the amendments were accepted without question by the House. Normally amendments were of detail rather than of substance. On the occasions where there was disagreement a free conference settled the question. If sometimes a member may have felt a compromise unsatisfactory, nevertheless the recommendations of the conferences were accepted. Occasionally a constitutional issue was raised, but this could be settled by reference to England without a clash between the houses.

1 The Council adjourned on 15 June 1858, 28 August 1860 and 1 July 1861 because there was no business before the House. On 7 occasions between 1856 & 1861 it adjourned through lack of a quorum - usually an indication that little business was expected. (A quorum was 5).
2 cf Wood, Quiet Conversation p 8 & note 32a; NZPD 1860 p 800, 787.
3 cf NZPD 1858-60 p 129.
After initial doubt it was accepted on the word of the Secretary of State for the Colonies in 1855, that British precedents applied and that the upper house could not change or alter bills of supply. Thenceforth Governor or Administrator ceased to address both houses on the raising and expenditure of public revenues, respecting the sole initiative of the House of Representatives.¹

Once the basic question of finance was determined the Legislative Council showed itself reasonably respectful of the House's rights. For example, it was accepted that the financial resolutions of 1856 (expressing the "compact" of that year) should be rejected or adopted as a whole, although the Council might record its objections to parts of the resolutions.² In the same session an amendment to make the Governor's proposed salary increase retrospective was withdrawn because of the constitutional position. Instead, by altering the bill in a different respect the Council was able to refer it back to the House of Representatives for reconsideration.³

In 1860 the House of Representatives adopted recent resolutions of the House of Commons relaxing the Commons' rule in reference to money clauses in bills sent down or returned from the Lords. The new Standing Order would not necessarily have cleared the Council's

---

¹ As well as addressing his remarks on the appropriation of revenue to both houses, the Administrator had also given the House cause to be affronted when his Government introduced a bill in the upper house (to cope with the abolition of transportation from New Zealand to Van Diemen's Land) while a House select committee was deliberating on the same question (cf report of the select committee on Secondary Punishment, V & P, HR, 1854 sess I.)
² NZPD 1856-58 p 302.
³ Ibid p 332, 337.
Medical Practitioners Bill which was rejected shortly beforehand. But that session the House did accept two minor Council corrections to money bills.¹

By 1860 the two houses had worked out satisfactory procedures for handling relations between them. In 1856 the two speakers conferred on how reports and papers of one chamber could be communicated to the other. They agreed that to avoid "entangling the two Chambers", members should arrange for a member of the other house to move for copies of papers.² From 1860 General Assembly adopted British practice of forwarding bills from one house to the other by clerks without interrupting business. By 1860, also, the two houses had amended Standing Orders to remove discrepancies in their definitions of private bills.³

On matters of national importance the houses co-operated. It was customary for important addresses and resolutions to be moved by ministers in both houses. Such addresses ranged from the joint protest against the withdrawal of the 58th regiment in 1858 to felicitations and commiserations when members of the royal family were concerned - such as when Councillors adopted a House address to the Queen on the occasion of the marriage of the Princess Royal to Prince Frederick William of Prussia, although they disliked portions of it.⁴ Joint select committees were customary on major constitutional

¹ JHR 1860 pp 145, 149, 246; NZPD 1860 p 633.
² NZPD 1856 pp 261, 263.
⁴ NZPD 1856-58 p 546; cf NZPD 1856 p 346, 1856-1860 (1858) p 120, 121, 1856-1858 p 562.
and political issues. In 1860 the two houses passed a joint committee's bill to establish a Native Council as a means of forestalling Imperial legislation on the same subject. ¹ The secret Military Defence Committee of 1861 is an example of an even more important joint committee.

The Council's address in 1856 in favour of the Assembly meeting at Auckland next session, is a rare example of the two houses failing to concur in addresses to the Governor or the Queen. ²

Despite the co-operation between the houses, and the occasional display of power by the Council, as when it rejected the provincialist bills of 1860 and 1861, the Council had an inherent weakness which prevented it ever being more than a minor partner in the legislature. It was small and it was unrepresentative.

When the Constitution Act was forwarded to New Zealand the Governor was instructed to limit the size of the Council to fifteen. In 1857 on ministers' recommendation the limit was raised to twenty, and then in 1862 it was removed altogether. Between 1858 when Government exercised its new powers and added to the number of Councillors, and 1862, the Council achieved a fair stability in membership. The Stafford Government tended to leave it just under full strength, and several absentees each session reduced it to a chamber of not more than sixteen.

It would be incorrect to state that the Council was used for

¹ cf below p 224f.
² cf above p 31-2.
political patronage or that it was packed in the early years.
Nevertheless it was unbalanced in its membership and significantly
different in composition from the popular house.

In all the Stafford Government appointed twelve Councillors.
Two of these were re-appointments, a further appointment was of
G. A. Arney, the new Chief Justice, and another of the commander
of the troops, Wynyard, who until Governor Browne's arrival had been
acting Governor. Of the remaining eight, three were provincialist
in sympathy and four came from new districts which were at this time
being given representation in the lower house. But the Council was
heavily weighted in Auckland's favour as a result of appointments
made before the introduction of responsible government. The other
provinces had one member each, except Canterbury which had three and
Wellington which had two. Auckland members in 1861 made up one
third of the total membership of the Council. Even if the Speaker,
the Chief Justice, the retired Attorney General and a member from
Whangarei are excluded, Auckland still had four representatives.

As might be expected a smaller proportion of Councillors had
been elected to provincial positions than was the case in the elected
lower house. Well over half of the Councillors of the decade of the
second and third parliaments (1856-65) were at no stage elected to
provincial positions: 28 out of the 45 who were Councillors at
some time during this period.

---
1 Judicial officials and other government employees were not dis-
qualified from membership of the Council until 1870. The Chief
Justice of New South Wales had been excluded from the old N.S.W.
Legislative Council after 1843 (H.R.A. ser 1 vol XXII p 810 f,
vol XXIII pp 44, 268) & Chief Justice Martin was not appointed to
the N.Z. Legislative Council.
A justification for having a nominee upper house would be that it represented wealth, respectability and education rather than numbers. To a certain degree this was true of the Legislative Council, although it was more wealthy than educated. 31 of the 45 in 1856-65 drew their living in part or wholly from the land. The remaining fourteen consisted of the Chief Justice and four other lawyers, three merchants and one land agent, two soldiers, two retired officials of crown colony days and one provincial official. Ten had had university education, and ten were soldiers or retired soldiers. Almost all, 39, had already been appointed a Justice of the Peace by the time they became Councillors.

With its weighting towards land, and the absence of provincial politicians, the Council was more conservative and more centralist than the lower house. It also appears to have had less political talent. Almost invariably a new Government had to go outside the existing Council to find a minister to represent it in the upper house. This was the case in 1854, and again in 1861 when Fox became premier. Apart from the two Stafford ministers of the late 1850's, Whitaker and Tancred, almost the only significant exceptions are two Attorneys General in the last decade of the nineteenth century and the first decade of the twentieth.¹

The Council's fatal weakness, however, was not the kind of men who became Councillors but the method by which they became Councillors.

¹ Amongst the men appointed to the Council to be ministers are Daniel Pollen, Henry Sewell, William Gisborne, John Hall, R. Oliver, Sir John Findlay, F. H. Dillon Bell, Heaton Rhodes, T. K. Sidey and Angus McLagan.
Nominees were regarded with distrust. From the first meeting of the General Assembly there was mention in both houses of the need to change the method of appointment to the Legislative Council. The need for an elective upper house was expressed in the policy statement of the "Clean shirt ministry" in Wynyard's speech opening the second session of the Assembly in 1854. As happened with the issue of the Governor's continued control of native affairs, however, the question of having an elective upper house was in the first sessions pushed aside by more immediate political questions. By the time they were settled and there was a stable responsible government it was much harder to change the status quo.

The nominee character of the Council was not entrenched in the Imperial 1857 Constitution Amendment Act, and there was some expectation in the early years that the Council would shortly be made elective. In the meantime, as a Councillor stated in 1856 in advocating that the Council become elective either wholly or in part, "in another place, which he need not name, their legislation was regarded with suspicion, if not distrust".

The Council's deliberations carried little weight outside its own walls. It was the House which was the centre of interest, it was the House which was the centre of power, and it was the House from which came most of the reforms of the first New Zealand parliaments.

1 Fox/Godley 8/3/54 Godley Correspondence Vol 7; Wellington Advertiser 28/1/60 reprinted in Otago Witness 3/3/60; Otago Colonist 23/11/60
2 NZPD 1856 p 78; cf Herron p 260 & notes.
CHAPTER 4

THE HOUSE OF REPRESENTATIVES

Composition of the House*

One of the problems in establishing new institutions is finding experienced men to run them. New Zealand had the advantage of having had three years of representative institutions, at central and provincial level, before the establishment of responsible government. By 1860 there should have been a body of men with experience at both levels to guide the colony. To what extent did it work out in practice?

A major weakness in the system was the considerable turnover in membership in the many months between sessions of the General Assembly, so that the long five year term of the Assembly did not lead to stability in its composition. Defeat at the polls was far less likely to end a member's tenure of a seat than resignation. 32 members of the House resigned or lost their seats by disqualification during the lifetime of the second parliament, 1856-60. Although several were subsequently re-elected it is not surprising that 68 men were elected during those five years for a House which varied in size from 37 to 41. 36 of the 68 eventually ended their parliamentary careers by resigning and an even higher percentage of the Councillors of this parliament eventually forfeited their seats.

There are no ready explanations for the rapid turnover of membership, other than the obvious ones that the population was small and had

* rf below Appendix III p 371 for tables showing age at time of election, Justices of the Peace in the House; also Appendices I and IV, pp 363 f & 373.
too many representative institutions. It was a working population which could ill spare many months away from homes and business, a difficulty accentuated by the prevalence of one-man farms and businesses and by the dispersion of the population. A further reason was its high degree of mobility. Men moved from one part of the country to the other and there was constant movement - of those who could afford the time and had the standing to be politicians - between New Zealand and the home country. For example, three-fifths (32) of the 55 members of the House in 1861 visited Europe in the next few years, and five finally retired there. In addition constant increases in the size of the House, particularly the enfranchisement of areas distant from provincial political centres, brought into the House a steady stream of men with little political experience. In the first elections newly settled Canterbury elected a number of new arrivals, and similarly, new men were returned for the Otago goldfields in the 1860's. There was a bloc of new men returned for Auckland, Canterbury and Otago seats in 1861 after the enlargement of these provinces' representation in 1860.

The House was only drawing to a comparatively small degree on men who had already established themselves in provincial politics. Even excluding 27 men who were elected between 1853 and 1855 and simultaneously or subsequently were elected in the provinces, over one-third (48) of the total 123 men elected during the terms of the second and third parliaments (1856-65) had had no provincial experience when elected and a quarter (30) were never elected to provincial posts. Indeed, even those who had been engaged in provincial politics had had
comparatively little experience. The accompanying table\(^1\) shows that, of the 48 men elected for the second or third parliaments who had had provincial experience at the time of first election, 13 had been returned in 1853 or 1855, and of the remaining 35, 18, or over half, had had less than three years in provincial politics.

Of the 52 members who attended the parliamentary session of 1861 after the elections of the previous summer, 18 had never been elected in the provinces, and 17 of that 18 were newly elected to the House of Representatives. The older hands, the members who had lasted in the House - perhaps with breaks - for several years, had now almost all had some provincial political experience. There were 23 provincial councillors in the House, two Superintendents\(^2\) and nine former councillors.\(^2\)

It can be said, then, that there was a considerable representation of the provincial councils and governments in the House, sufficient to keep provincial interests to the fore, even if the actual political experience of the members might be limited. Local government was not necessarily a preliminary school for General politics. As frequently the reverse was likely to be the case.

The number of provincial councillors naturally had a marked effect in a House where one of the major issues was the respective

1 Table A, over.
2 cf Herron p 194 f; there were usually several Superintendents in the General Assembly. In 1856 all six Superintendents were members of the House of Representatives but this was exceptional. As shown in Appendix II below p 369 , while most Superintendents were at some stage in the General Assembly, only in the case of Auckland and Wellington was the Superintendent a member of the General Assembly throughout the provincial period. For eleven years the Superintendent of Nelson was not in the Assembly.
Table A: Members of the House of Representatives in the second and third New Zealand parliaments, 1856-1865

Experience in Provincial politics

I. Members with experience in provincial politics before election to the House of Representatives

<table>
<thead>
<tr>
<th>Years in provincial posts</th>
<th>1853</th>
<th>1855</th>
<th>1856</th>
<th>1858</th>
<th>1860</th>
<th>1862</th>
<th>1863</th>
<th>1864</th>
<th>1865</th>
<th>1857</th>
<th>1859</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 year &amp; less than 2</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>2 and less than 3</td>
<td>xxx</td>
<td>xx</td>
<td>xxx</td>
<td>xxx</td>
<td>xxx</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>3</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>xx</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>4</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>5</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>6</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

member Crown Colony Legislative Council, but no other experience

<table>
<thead>
<tr>
<th></th>
<th>xxx</th>
<th>x</th>
<th>x</th>
<th>x</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4</td>
<td>9</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>10</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>3</td>
<td>48</td>
<td></td>
</tr>
</tbody>
</table>

continued over
### Table A cont.

#### II. Members without experience in provincial politics who were elected to provincial posts at the same time as or after election to the House of Representatives

<table>
<thead>
<tr>
<th>Years in provincial posts</th>
<th>Year elected to the House of Representatives</th>
<th>1853</th>
<th>1855</th>
<th>1856</th>
<th>1858</th>
<th>1860</th>
<th>1861</th>
<th>1862</th>
<th>1863</th>
<th>1864</th>
<th>1865</th>
<th>1867</th>
<th>1859</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1 year</td>
<td>x</td>
<td>xx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 year &amp; less than 2</td>
<td>xxx</td>
<td>xxx</td>
<td>xxx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 and less than 3</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 &quot; &quot; 4</td>
<td>xx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 &quot; &quot; 5</td>
<td>xx</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>xxx</td>
<td>xxx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 &quot; &quot; 6</td>
<td>xx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 &quot; &quot; 7</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 &quot; &quot; 8</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 &quot; &quot; 9</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 &quot; &quot; 10</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 &quot; 11</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11-15 years incl.</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>xxxxx</td>
</tr>
<tr>
<td>16-20 years incl.</td>
<td>xxx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>xxxxx</td>
</tr>
</tbody>
</table>

#### III. Members who were never elected to provincial posts.

<table>
<thead>
<tr>
<th>xx xxxxx</th>
<th>x</th>
<th>x</th>
<th>xx</th>
<th>xxx xx</th>
<th>xx</th>
<th>xxx</th>
<th>xx</th>
<th>x</th>
</tr>
</thead>
<tbody>
<tr>
<td>xxxxx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>xxx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 17 | 10 | 1 | 3 | 3 | 4 | 0 | 4 | 0 | 3 | 45 |

<table>
<thead>
<tr>
<th>xx xxxxx</th>
<th>x</th>
<th>xxx</th>
<th>xx</th>
<th>xxx</th>
<th>xx</th>
<th>xx</th>
<th>x</th>
</tr>
</thead>
<tbody>
<tr>
<td>xxx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>xxx</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 23 | 23 | 4 | 11 | 12 | 27 | 7 | 9 | 1 | 6 | 123 |
powers to be exercised by General and provincial governments. 14 of the 18 men who had not been provincial councillors, in 1861 supported the centralist Stafford Government or, in the case of late arrivals, opposed the Fox Government. Conversely, 22 past or present councillors supported Fox and only 12 supported Stafford and Richmond.

There is another important point arising from the number of provincial councillors in the House in 1861. Almost all 25 former members who were elected for the 1861 House of Representatives had by this time become involved in provincial politics. In part this is an indication that General politics could lead to the provinces, but it is also an indication of another important feature of the House in this period. The leaders of one session were as likely as not absent in the next. Nevertheless there was a basic core of politicians who in this somewhat erratic fashion dominated New Zealand politics in the first few years. The reason such a high percentage of the re-elected members of 1861 were provincial councillors was that as their re-election in itself indicated they were the stayers in the political course.

Thus while of the total 123 members of the House of Representatives for the second and third parliaments over one-third (48) served for less than the full term of five years - 22 for less than two years - at the other end of the scale was the residue. 26 of the 123 served fifteen years or more. (Of these longer term members a high percentage moved to the upper house for at least a part of their political careers.)

1 See Table B, over.
Table B: Members of the House of Representatives in the 2nd and 3rd parliaments, 1856-1865

Total Service in General Assembly

<table>
<thead>
<tr>
<th>Service in General Assembly</th>
<th>Served in both houses</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1 year</td>
<td>xxxxxxxx</td>
</tr>
<tr>
<td>1 &amp; less than 2</td>
<td>xxxxxxxxxxxx</td>
</tr>
<tr>
<td>2 &quot; &quot; &quot; 3</td>
<td>xxxxxxxx</td>
</tr>
<tr>
<td>3 &quot; &quot; &quot; 4</td>
<td>xxxxxxx</td>
</tr>
<tr>
<td>4 &quot; &quot; &quot; 5</td>
<td>xxxxxxxx</td>
</tr>
<tr>
<td>5 &quot; &quot; &quot; 6</td>
<td>xxxxxxx</td>
</tr>
<tr>
<td>6 &quot; &quot; &quot; 7</td>
<td>xxxxxxx</td>
</tr>
<tr>
<td>7 &quot; &quot; &quot; 8</td>
<td>xxxxxxxx</td>
</tr>
<tr>
<td>8 &quot; &quot; &quot; 9</td>
<td>xxxxxxx</td>
</tr>
<tr>
<td>9 &quot; &quot; &quot; 10</td>
<td>xxx</td>
</tr>
<tr>
<td>10 &quot; &quot; &quot; 11</td>
<td>xxxxxx</td>
</tr>
<tr>
<td>between 11 &amp; 15</td>
<td>xxxxxxxxxxxxxxxx</td>
</tr>
<tr>
<td>incl.</td>
<td>14</td>
</tr>
<tr>
<td>between 16 &amp; 20</td>
<td>xxxxxxxxx</td>
</tr>
<tr>
<td>incl.</td>
<td>10</td>
</tr>
<tr>
<td>between 21 &amp; 25</td>
<td>xxxxxxx</td>
</tr>
<tr>
<td>incl.</td>
<td>7</td>
</tr>
<tr>
<td>between 26 &amp; 30</td>
<td>xxxx</td>
</tr>
<tr>
<td>incl.</td>
<td>4</td>
</tr>
<tr>
<td>between 31 &amp; 49</td>
<td>xxx</td>
</tr>
<tr>
<td>incl.</td>
<td>3</td>
</tr>
<tr>
<td>over 50</td>
<td>xx</td>
</tr>
<tr>
<td></td>
<td>2</td>
</tr>
</tbody>
</table>

The high turnover, the high percentage of members with little political experience, left a few members with considerable influence, although not a sufficient number to make easy the formation of ministries.
This central core of longer term members had qualities to make them the most effective group in the legislature. On the whole the members of the House were not professional men and they were not well educated; but the leading politicians were well educated. At this time, in fact, professional men tended to throw themselves into political life, and lack of administrative and political experience was compensated for by the education and acute observation of current affairs of the men who ran the central government and legislature. Of the 16 (almost one-third of the total membership) who in the 1861 House of Representatives are known to have studied at a university, all but four had been members of the previous parliament. And these four between them later served a total of 106 years in the General Assembly, ranging individually from eight to 51 years. Although, therefore, out of the total number elected to the second and third parliaments only a small percentage were professional men, as they tended to serve for longer periods they formed a larger proportion of the House in any one year than over a long period.

The majority of members reflected the characteristics of the different provinces. Auckland's strongly commercial background contrasts, for example, with the pastoral interests of the South.

1 cf A. Cox, Recollections p 78: "In speaking generally of the men who formed this first Parliament of New Zealand, I have no hesitation in admitting what was often said of them - viz., that they were equal in intelligence and in political instinct to the members of any of the Australian legislatures, and perhaps of a somewhat higher average cultivation."

2 cf Webb, Government in New Zealand, p 42. Webb's tables showing the educational and professional background of members of parliament are rather misleading unless it is appreciated that the high percentage for whom no data were available for Professor Webb, almost certainly were not well educated and were not professional men.
Island provinces. By and large in the second and third parliaments Auckland was represented by businessmen and merchants and some farmers, with retired soldiers appearing under various guises in their new occupations; Taranaki's total of 11 elected in these years included seven farmers; Wellington's and Hawke's Bay's 22 included a mixture of sheep farmers and others, and merchants; Nelson and Marlborough, with 15 members, were predominantly represented by runholders; Canterbury's 22 were equally predominantly runholders, although there were four merchants; Otago's 20 were similar, except that some of the runholders were retired soldiers. 1

Thus General Assembly was composed of a fair cross-section of some of the predominant interests in the various provinces. In general it can be said that the House of Representatives was composed of a large number of landholders (and of course many men with town interests also invested in land), and long established traders and city businessmen. It could also be assured of a group of lawyers, journalists and newspaper editors, retired commissioned officers, and officials for many years connected with government service or the New Zealand Company and its offshoots.

Gold mining by the end of 1861 had made Otago province the most populous province and in the next years was to make Dunedin the leading city in the colony. But it was not gold miners, or those associated with the industry, whom Otago sent to the General Assembly.

1 See Appendix I p 363+ The main sources of information on members' occupations are the Dictionary of New Zealand Biography, Almanacs, and electoral lists, Jury lists and election returns published in the New Zealand Gazette.
Excluding artificers and those engaged in manufactures and agriculture, miners and labourers made up about 40% of the total adult male population in December 1861. These classes, however, have never received representation commensurate with their numbers and the absence of miners and labourers from the House is not surprising.

Table C: Members of the House of Representatives in the 2nd and 3rd parliaments, 1856-1865

<table>
<thead>
<tr>
<th>PROVINCE</th>
<th>England</th>
<th>Scotland</th>
<th>Ireland</th>
<th>Other</th>
<th>Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auckland</td>
<td>xxxxxxx</td>
<td>xxxxxx</td>
<td>xxxxxx</td>
<td>Malta</td>
<td>xxx</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>India</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taranaki</td>
<td>xxxxxxx</td>
<td>-</td>
<td>x</td>
<td>-</td>
<td>x</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wellington</td>
<td>xxxxxxx</td>
<td>-</td>
<td>x</td>
<td>Malta</td>
<td>xxx</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hawke's Bay</td>
<td>xxx</td>
<td>-</td>
<td>x</td>
<td>-</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Nelson &amp; Marlborough</td>
<td>xxxxxxx</td>
<td>xxx</td>
<td>-</td>
<td>Germany</td>
<td>xx</td>
<td>15</td>
</tr>
<tr>
<td>Canterbury</td>
<td>xxxxxxx</td>
<td>xxx</td>
<td>xx</td>
<td>N.S.W.</td>
<td>xxxx</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>India</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Otago &amp; Southland</td>
<td>xxxxxx</td>
<td>xxxxxxx</td>
<td>x</td>
<td>N.S.W.</td>
<td>-</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N.S.W.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>India</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|          | 64 | 25 | 12 | 9 | 13 | 123 |

The diversity of countries of origin and of religious affiliations of the colonists was apparent in the membership of the House of Representatives. For example the strong Irish element in the Auckland province was represented amongst the Auckland members of the House of

Representatives, and Otago returned the largest contingent of Scots. Canterbury had to compete with other provinces to earn the title of most English: over 50% of all members of the House in the third parliament are known to have been born in England. The religious professions are known of only some of the members - 65, for example, of the 123 who were at some time members between 1861 and 1865. These 65 reflected the communal proportions of, in 1861, 45% Church of England (not yet officially Church of the Province of New Zealand), 21% Presbyterian, 11% Roman Catholic and 8% Methodist. In the House the Anglicans were slightly over-represented, the others slightly under-represented.¹

As might have been expected then, the General Assembly was respectable, socially friendly, looked to England for guidance and was secular in tone. It lacked the establishment element either ecclesiastically or in the form of the upper gentry, let alone aristocracy.

The occupations and backgrounds of members affected the tone of the House of Representatives. It also meant that the interests of particular provinces and provincial governments in general were represented. Most groups in the community had a spokesman in the House - teetotallers, merchants, agriculturists, pastoralists, doctors, lawyers, Philo-Maoris, land claimants, sportsmen, and so forth. In this sense the House was representative. This was the more so because

¹ Religious professions are derived in the main from the Dictionary of New Zealand Biography and Almanacs. In a few cases not covered by the above sources information has been culled from Church histories and other published works.
no one occupational or interest group combined to dominate the House. On certain issues the House was divided by rivalries between different provinces. On major issues it was divided into blocs which had as a basis different conceptions of the role of the provinces in the constitution. It is significant that although a certain regional difference is apparent between Government and Opposition in the first years of responsible government (cf below pp. 7-8, 17-2), there was no division on the basis of occupational or other sectional interests. Socio-economic differences which underlie party divisions today were not apparent in the early parliaments. This was due not so much to the absence of certain classes from the House as to the functions of the General Assembly. Because of the provincial system, and because of a basically laissez-faire attitude towards the role of government, the General Assembly's main work lay in law reform, maintaining and improving the court system, organising a colonial-wide communications system, apportioning the colonial revenue between General Government and the provinces, and in discussing race relations. In so far as there were social welfare measures for Europeans - for example in the fields of health and education - these were a provincial function. Also, land regulations were a provincial matter and hence if landowners used the political machinery to further their own interests this was done at the provincial level. In addition, members did not consider themselves the representatives of particular interest groups or delegates of their constituencies, but had an eighteenth century conception of their role as representatives of the community at large - or, on occasion, of their particular provinces.
The Electoral System

According to Leslie Lipson, a modern commentator, the electoral system was neither "democratic" nor "popular". The basis of the electoral system was the Constitution Act and the measures taken by Governor Grey to implement the Act. But once a House of Representatives had been elected under that system and the General Assembly had come into being the New Zealand legislature had extensive powers of revision. By 1859 four Australian colonies had manhood suffrage and four had the secret ballot. If New Zealand had not by that date also adopted such radical measures, it was because there was insufficient pressure for them in the House of Representatives. Too much should not be made of the results of divisions in the House of Representatives, nor of political ideas expressed in debates. 1858 was the year in which the General Assembly revised the electoral system, and in the depleted House of Representatives of that year results of divisions were representative neither of the opinion of a full House nor of public opinion outside the House. The most vocal speakers in debates on electoral reform were a few conservatives. These men declared their principles, but the less articulate majority were more pragmatic and more radical in their outlook. Commentators who quote Hugh Carleton, for example, as typifying the incorporation of English ideas into the New Zealand scene, might sometimes pause to wonder how much weight such a man carried. The reports of parliamentary debates do not indicate whether

fellow members stayed to listen, and they do not indicate how often they stopped to laugh.1

Nevertheless there was a general consensus of opinion. Whether or not the House in 1858 adopted radical electoral measures was largely a matter of chance - depending on the measures proposed by ministers and on attendance in the House on a particular day. But differences of opinion centred on the application of principles rather than on principles themselves.

In comparison with England, and probably even with Australia, New Zealand was a one-class society. It lacked the "vast mass of static forces"2 of the home country; it also lacked the vast mass of dynamic forces. "There existed neither a higher nor a lower class".3 Radical thought, although present in the colony, was not a powerful force. The absence of class divisions meant the absence of class tension and of the clash of principles. New Zealand was a middle class society.

The basic dilemma of New Zealand politicians was that they were attempting to implement in New Zealand political ideas which were not applicable in the colony.4 Standard responses were made in the House of Representatives, but often they had little meaning. The colonists

1 Herron points out that Lipson cites as typical speeches made by an outvoted minority. (Lipson op cit p 20-1; Herron, The Franchise and New Zealand Politics, 1853-8, Political Science Mar 1960 p 29.) Both Herron and Lipson are misleading, however, in implying that the speeches quoted concerned the franchise.
2 N. Gash, Politics in the Age of Peel, p xv.
3 Charles Brown, NZPD 1856-58 p 597.
wished to retain the "English" character of the constitution. But the English constitution had evolved, and its illogicalities were justified by tradition. It was difficult to avoid un-English cut and dried principles when constructing a new constitution. In 1858 it was necessary to revise the electoral system both because of deficiencies in Grey's electoral regulations of 1853 and because expansion of the colony necessitated the creation of new electorates. In that year the basis of the electoral system was laid for future years, and it was on this occasion that politicians faced the dilemma of combining reform with tradition in their electoral law.

The most notable conservative thinker in the House of Representatives was C. W. Richmond. He and Stafford, the only other minister in the House, were not Radicals, but by radical measures they sought to conserve middle class ascendancy. Ministers' remedy for bribery and corruption in elections was the introduction of the secret ballot. C. W. Richmond "dreaded the pressure of a majority". Secret voting "would be a protection for individual opinion, which needed protection against the undue pressure of the many, and against those American tendencies to which all the British colonies were naturally exposed." It would assist and support the weak and the "trimmers"\(^1\) throwing an "aegis over those who needed protection". In addition, if a successful candidate did not know who supported and who opposed him, he would have "the same feelings of impartiality

---

\(^1\) "Trimmers" waited to see the likely result of a poll and then "rushed to record their votes in favour of the successful candidate." (NZPD 1856-58 p 585); cf the English "half-past-three voter", Stanley Hyland, *Curiosities from Parliament*, p 173.
towards all his constituents, unbiased by any feelings of favour or aversion".1

Few, if any, amongst the small band of representatives listening to Richmond would have disagreed with the principles he expounded. There was general disapproval of the American democracy described by Colquhoun,2 H. S. Tremenheere, Alexis de Tocqueville, or Sir Charles Lyell the geologist. Of the superiority of the English system of government there could be no doubt. For their constitutional principles members turned to such authorities as Sir James Mackintosh and the French historian and politician F. P. G. Guizot or to contributors to the Edinburgh Review.3 The importance of the individual and the need to prevent corruption or intimidation of the elector in the exercise of his "public trust" was admitted on all sides. But arguments then current in England against the ballot were translated to the New Zealand scene with little regard for the different conditions of the colony. If reference was not made to Sydney Smith's "Mendacity Box"4 some at least shared Smith's damning view of the ballot. Richmond sought to protect the individual from pressures on his vote; his critics asserted the responsibility of an individual to stand up publicly for his opinions. As in England, the worst that could be said of the ballot was that it was un-English, the

1 NZPD 1856-1858 p 595 & 604.
2 Probably the American political philosopher J. C. Calhoun (1782-1850)
3 Tocqueville was quoted by Richmond in a public address in 1859 (Taranaki Herald 23/4/59, reprinted in the New Zealander 30/4/59); the other authorities were quoted in the debate on the ballot, NZPD 1856-58 p 594 f.
4 rf Hyland, Curiosities from Parliament p 165.
practices of the best clubs notwithstanding.¹

Eventually, by 14 to 11 (25 voting out of a possible 37) "pure
feeling and sentiment"² triumphed and the ballot was rejected.
Government had received a petition for the ballot from the Wellington
Provincial Council,² and it may be that it was only the absence of
Wellington members in 1858 which prevented the bill passing the House
of Representatives.

Other electoral measures of 1858, notably the Corrupt Practices
Prevention Act, restricted such notorious electoral behaviour as
treating and trimming, and thus removed the most pressing reasons
for the introduction of the secret ballot. It was nine years later
before the ballot was again proposed in the House, and not until 1870
that a ballot bill passed the General Assembly.³

Elections were not determined simply by the majority votes of a
number of individuals. In the first place, by the Constitution Act
the vote was granted not so much to a man as to property. The
franchise was "liberal though not universal".⁴ Such an assessment
differs both from Lipson's view that the franchise was narrowly

² Stafford, NZPD 1856-58 p 603.
³ cf D.M. Wylie, Representation and the Franchise in New Zealand
⁴ On the conduct of early elections rf report of a select committee
on Bribery at Elections, V & P, HR 1854 Sess I; report of a select
committee V & P, HR, 1856 App D-28; Hanham thesis p 39 f; Herron
⁵ William Pember Reeves, New Zealand p 99; cf Hanham thesis p 35 f.
restricted and the assertion of his critic Herron that there was virtual universal suffrage.\textsuperscript{1} Certainly, once the Constitution Act was passed earlier Chartist views were no longer expressed. But this may have been because political leaders were satisfied with what they got, rather than because the Constitution Act came so close to Chartist views as to require no amendment. Did not a franchise which gave the vote to householders occupying a tenement worth £10 p.a. in town districts or £5 p.a. outside the towns, enfranchise all but those who were manifestly unfit to have the vote? If, as Dr Herron thinks possible, the franchise was more restrictive in the 1860's and 1870's than in the 1850's, we have not learnt anything more about the franchise but about the absence of widespread poverty in the 1850's. The absence of underprivileged masses naturally meant that a higher percentage of men had the vote than in England - irrespective of the more liberal New Zealand franchise - but it also meant that there was less concern for the few who were underprivileged.

There was no compulsory registration and hence there is no way of telling whether the smallness of the rolls was due to a restrictive franchise or to the apathy of many voters. It is possible that the property franchise was retained to keep Maoris off the rolls, but it is more likely that the absence of moves to extend the franchise in the 1850's was due both to the dominance in the General Assembly and other organs of public opinion of the enfranchised middle class, and to the importance attached to property. Property gave a man a stake\textsuperscript{c}

\textsuperscript{1} Lipson, Politics of Equality p 20; Herron in Political Science, Mar 1960; Herron thesis p 83 f, 96-9.
in the community, and of course, made him less vulnerable to venal influences. 1

A man could only exercise one vote in each constituency, but he could exercise votes in every electoral district in which he was either a householder, or owned a freehold estate worth £50, or possessed a leasehold estate valued at £10 or more p.a., although he had to have owned his estate or resided in a tenement for at least six months, or to have a lease of at least three years' duration. 2

According to the census of 1861 only 39.3% of adult males were on the electoral rolls. There was such variation between electorates, however, that this figure is well-nigh valueless, especially as it was greatly distorted by plural voting. In the two Taranaki electorates of Omata, and Grey and Bell, there was a proportion of 605 and 400 voters respectively to every 100 adult males. Taranaki was an exceptional case as, in consequence of the Taranaki war, the population was herded into New Plymouth or evacuated to Nelson. But in three electorates which were not subject to Taranaki's abnormal conditions there were more voters than adult men (Newton, Hutt and Porirua). At the other end of the scale the average figure was distorted by the special conditions of the gold fields. Apart from an estimated 3,000 miners who were "in different gullies and on the roads" on the day of the census, in December 1861 the electorate of Bruce had 10,899 males but only 664 (6.09%) on the roll. Although there was

---

1 cf Dillon Bell on Monro's qualifications to be Speaker, NZPD 1861 p 2; report of the select committee on Expenditure on Account of the General Assembly, V & P, HR, Sess. II. 1864.

2 Landowners not only able to vote in electorates scattered through New Zealand, but even Australian residents appear on electoral rolls. cf Southland Provincial Council Electoral Roll 1861, New Zealand Gazette 6/6/61 p 139 f.
a special miners' franchise it is apparent that few exercised their right to enrol. Apart from the Bruce electorate there were several other districts in which under 50% of the men were on the roll. Cheviot, for example, had 22.9%, and Lyttelton 29.4%.\(^1\)

By the Constitution Act the Governor was required to draw electoral boundaries in such fashion that each electorate had the same number of electors per representative. Grey, however, drew up electoral boundaries before electoral rolls were compiled and there were marked discrepancies in the size of electorates.\(^2\) The two day "Whig" ministry of T. S. Forsaith in 1854 indicated that it supported legislation to implement the provisions of the Constitution Act, and later one of the ministry's supporters introduced an Electoral Districts Bill to equalize representation. The bill was rejected 18 to nine. The next year an attempt to introduce legislation with similar intention was defeated by a count-out of the House.\(^3\)

In both 1854 and 1855 proposals to apportion seats on the basis of the number of enrolled electors appeared to be aimed at increasing Auckland province's representation in the House. In 1858, however, the Stafford Government's Representation Apportionment Bill was one of a series of electoral reform measures and was not intended to serve

---

1 cf Statistics of New Zealand for 1861 No 3,\&c No 4.
Auckland's interests. The attitude of Stafford and Richmond was that apportionment of members on a numerical basis was as good a means as any other to provide a fair system and one which would provide representation of the various classes and interests in the community. As with the ballot, they presented their reform as a defensive measure and not as a step intrinsically good in principle. They were prepared to have the proposed Act limited in duration. Richmond asserted that maintaining the existing inequalities of size of electorates "would infallibly raise the democratic cry ... and would react to the disadvantage of those interests which might seek to protect themselves by such means."¹

The bill provided for the division of the colony by the Governor each three years into new electoral districts on the basis of number of registered electors. In 1860 there were to be 42 members (an increase of five) and for the elections held after January 1863 50 members.²

The bill was given a second reading in the House by 14 to nine, despite the adverse report of a select committee and despite a minority's vehement criticism of basing representation on numbers. This, it was claimed, was contrary to English political theory and to the balance and representation of "all classes, parties, interests, and opinions".³ Despite, too, the absence in New Zealand of large towns, several members could not rid themselves of the English bogey

¹ NZFD 1858-60 p 7.
² rf report of the select committee on amendment of the electoral law, AJHR 1858 F-1; New Zealander 21/4/58.
³ Weld, NZPD 1858-60 p 13; cf comments by Domett & Carleton quoted by Lipson, Politics of Equality p 20-1.
of town domination.

In the upper house the bill was rejected by seven to five. Two nominee votes sufficed to retain an ad hoc system of apportioning electoral districts for a further two decades.

New districts, however, could not be left unrepresented, and after the defeat of their bill the ministry promoted legislation creating four new country seats. By 1860 further revision of electoral boundaries was necessary. F. A. Weld, one of the staunchest critics of the 1858 Representation Apportionment Bill, had now joined the Government as minister without portfolio. On behalf of Government he moved the second reading of the 1860 Representation Bill. The bill differed from the 1858 bill in two essentials. There was no provision for future revision, and the actual electoral boundaries were to be based on "various combinations of statistical calculations", which, Weld believed, provided "a fair representation of the country, viewed in relation to geographical divisions, to interests, to classes, to property, to population".

The bill was passed and provided the basis of electoral boundaries for many years to come. Despite Weld's implication that Government had some magic formula to guide it, the Government's scheme was based on a few simple principles. The first principle was that there should not be "any fixed adiron-bound system", for "the success and stability of English institutions arise mainly from the fact that they are grown - not constructed." Government, therefore, did not

1 NZPD 1858-60 p 512-3.
alter Grey's electoral boundaries of 1853 unless there were special reasons for doing so. The original electoral districts enfranchised the various pockets of settlement, but, except for a large tract of country in the centre and south of the North Island, almost the whole of the colony was divided into electorates. In consequence, the country district of Dunedin, for example, comprised the Otago-Southland province with the exception of the town of Dunedin, and the Christchurch country district comprised all of Canterbury except some small settlements near Christchurch. The actual limits of an electorate, therefore, were not of great importance, and as with the boundaries of provinces, might be ill-defined and based on inadequate topographical information. In 1860 it was not possible to define all boundaries with precision but many of the original electorates were remodelled to accord with geographical features, and all parts of the colony were now included in some electorate. The result was an apparently extensive revision but one which did not in fact greatly alter the electorates of 1853.

In theory electorates were based, as originally intended by the Constitution Act, on the number of electors on the roll. In practice the total number of inhabitants was of more significance. Where the reconciliation of the interests of the different provinces was clearly a major function of the General Assembly, it was important that each province should be fairly represented in the House of Representatives. Each of the larger provinces was given a number of representatives in proportion to its total population. "No district or districts of sufficient importance to have been formed into a province", Weld
considered, "should have less than two members".1 Taranaki and Marlborough therefore were given two representatives each and on a strictly numerical basis were over-represented.2

Special consideration was also given the mining interest. An electorate of Collingwood, in the Nelson province, was created, and returned one member to represent the Nelson gold fields. Government also sponsored legislation which gave the vote to miners, who were not qualified under the property franchise. A few years later similar considerations influenced the decision to create separate Maori seats. In both cases the principle of representing all interests in the community was reinforced by the recognition that a large disfranchised class could cause trouble and disturbance.3

The main principle involved in the creation of electorates was the right of districts to representation. The 1860 Act added a further 15 electorates to the four created in 1858. Where a district had a large population but was not naturally divisible it was given two or three members. Between 1853 and 1860 there were eleven multi-member electorates. By the 1860 Act the number was reduced to nine. As in the past a large country district, as well as a city, was given more than one member.

1 Ibid p 512.
2 Although, by the 1860 Act the Canterbury electorate of Cheviot and the Southland electorate of Wallace extended over provincial boundaries, this did not affect the apportionment of members between provinces.
Reproduced by courtesy of the Department of Geography, University of Otago. For the original electoral districts of 1853 rf Herron, Structure & Course of New Zealand Politics 1853-58 between pp 62 & 63.
The effect of the Act was to increase the total membership of the House of Representatives from 41 to 53. After gold was discovered in Otago it was given an additional four members in 1862, and before the 1865 General Election the South Island gained a further 13 members, giving it 41 out of the total 70.

The result of the various factors taken into consideration in the drawing of electoral boundaries was a wide variety in the size of electorates. According to the census of December 1861 the number of inhabitants in a single member electorate ranged from 3,205 in the city of Christchurch electorate, to 481 for Ellesmere in the same province. The number of electors per member ranged from over 400 in several single member electorates to 51 in Ellesmere, although this was the smallest electorate by more than 60 voters. The nine multi-member electorates similarly varied in size.

Having cast their votes - in the case of contested elections - electors had little control over their representatives. While the General Assembly was in session, the Southern members were cut off from their constituents, whose protests against any proposed course of action were almost sure to reach Auckland after a decision was made. Frequently, indeed, Southerners would hear of most of the legislation promoted in the Assembly only after the Assembly was prorogued.

1 There were 140 inhabitants in the two Taranaki electorates of Omata & Grey & Bell, but rf above p 82; Statistics of New Zealand for 1861, Nos 4 & 8.
The value to a society of an informed and lively public opinion was fully recognised. Even in the days of crown colony government, it was thought in the Legislative Council that "a knowledge of our deliberations is most important to the community".¹ Later, in 1856, William Fitzherbert, arguing for the publication of summaries of parliamentary debates, declared "the efficiency and vitality" of representative government "depended on healthy public opinion. Without such public opinion, Responsible Government would virtually cease to exist, that chamber might as well have no reporters' or strangers' gallery, they might close their doors and transact their business in a small comfortable parlour." Although nothing came of it, the House passed Fitzherbert's motion calling for "accurate and authentic reports of the substance" of debates in the House.²

As in England, "the power of public opinion as expressed through the medium of the press was generally acknowledged."³ Government and the legislature had to be in conformity with public opinion. This did not mean, however, that a member was bound by the opinions of his electors or of the inhabitants of his electorate. There were occasional attempts to force the resignation of a member who had acted against the interests or wishes of his constituents. In 1856, Dillon Bell's Wellington opponents urged his electors to call on him to resign.⁴ In June 1858 J. P. Taylor was elected member for the Dunedin country district. His only pledge to electors was that he

¹ Governor Hobson in 1842, quoted in NZPD 1856-58 p 159.
² NZPD 1856 p 152-3, 158-63; cf above p 44f.
³ Gash, Politics in the Age of Peel p 26.
would oppose the attempt by J. A. R. Menzies to divide Murihiku (Southland) from the Otago province. After his election, however, Taylor supported the New Provinces Act. In late 1859 and early 1860 public meetings were held in different parts of his electorate and scores of electors signed a requisition calling on Taylor to resign. Taylor, however, refused, and retained his seat until the dissolution of parliament in November 1860.¹

A member normally accepted two obligations. He was a representative of the people at large, and he was a representative of a particular province.² Taylor aroused considerable ire because he was considered an apostate to Otago's cause. His was a special case, however, for although elected by men resident near Dunedin, he was a settler at Jacob's River (now the Aparima River at the mouth of which Riverton is situated) in the Murihiku district. J. B. Ferguson, on the other hand, not only resided in the Ahuriri (Hawke's Bay) district, but was returned by Ahuriri electors. Hence his support for the separation of Ahuriri from the Wellington province was a legitimate expression of the demand of his constituents for the formation of a new province. In 1860 Bell and Mantell, members for the new electorate of Wallace, were in a similar position in pressing for the separation of Murihiku from Otago.

Apart from the special circumstances of potential new provinces,

---

¹ Otago Colonist 11/6/58 (advertisement), 17/2/60, 16/3/60; Otago Witness 2/4/59, 3/3/60 (advert.); cf below p 121 n 1 ; cf the promise of W. J. Dyer, candidate for Dunedin city, to resign on the requisition of a majority of electors, advert. in Colonist 21/12/60, & W. H. Reynolds' promise to resign from the Otago Provincial Council, Witness 22/3/56.
² e.g. addresses of candidates for Auckland city, New Zealander 7/4/60; cf Colonist 20/11/60, Witness 24/11/60.
however, where the interests of a province were at stake, its representatives in the House voted en bloc, for example, on the organisation of the steam postal service, the siting of the capital, or the apportionment of a province's public debt after it had been divided. The boundary dispute between Canterbury and Otago was finally settled in 1861 at a meeting which members of the House of Representatives attended as representatives of the two provinces. 1 Such an attitude on the part of members is hardly surprising. It is an expression of the quasi-federal nature of the constitution. What is significant is that except when, in effect, acting as delegates of the various provinces, members normally recognised no committal on their votes other than their own principles or prejudices. In part this was because the immediate and local needs of a member's constituents concerned the provincial council rather than the General Assembly.

Pledges to the electors were sometimes made on the hustings, particularly by the more radical members. 2 But as frequently, candidates refused to make any pledges and few members committed themselves sufficiently precisely to be bound in any way in the General Assembly. A typical electoral address was Taylor's in 1856 in which he would only pledge himself to opposing division of the province, or that of Theophilus Heale standing for Auckland Suburbs in 1860. Heale stated that he was an independent; he

2 cf NZPD 1856 pp 81, 70, 162.
cordially supported the present ministry but claimed unfettered discretion. The conservative gentlemen from Nelson, in particular, thought it more dignified to make no pledges.

The relationship of a member to his constituents is further shown by attitudes towards the member's residence in his electorate. The Qualification of Electors Act of 1858 removed any doubts as to whether a member had to be on the electoral roll of his electorate. In 1855 Domett was elected member for the town of Nelson without his knowledge and when he was living at Ahuriri. Dr Featherston was member for Wanganui in the first parliament and for Wellington thereafter. Having represented Wellington city between 1856 and 1858, William Fitzherbert then transferred to the Hutt electorate. Dillon Bell, who had represented the Hutt in 1856 and then resigned to live at Auckland as Land Claims Commissioner, was in 1866 elected member for Wallace. For two of the five years in which he represented the Taranaki electorate of Omata, James Crowe Richmond was provincial secretary of Nelson. In all these cases the members had property in their electorate. Nevertheless it is clear that although the representation of districts was the main factor in the drawing of electoral boundaries, the members of the House did not feel particularly beholden to the electors of their district, nor did they necessarily have much contact with them between elections. In the House their duty was to acquitted themselves worthily as citizens and as representatives of the people.

1 Southern Cross 27/1/60; cf Hargreaves' electoral address, advert. in New Zealander 4/4/60.
2 cf Domett NZPD 1861 p 297, Stafford NZPD 1856 p 29, Monro NZPD 1854 p 353; cf below p 98-99.
3 rf NZPD 1858-60 p 126.
CHAPTER 5
THE PRIVATE MEMBER

As might have been expected, once a responsible government was in office, the initiative in legislative work tended to be with the ministers, although the backbencher had a more important role a hundred years ago than he has today. By simple motion for leave to introduce a bill, it was open to any member to propose legislation. As a matter of courtesy, leave almost invariably was granted, and a first reading given. The House sat at noon on Tuesdays, Thursdays and Fridays. Wednesday was committee day and the House did not sit until 5 p.m. By the Standing Orders, Government business only took precedence on Tuesdays and Fridays. As shown in the description of the 1861 session below, with only two days a week at its disposal Government might be held up in proceeding with the estimates and its legislation. For the private member, however, Wednesday evenings and Thursdays gave ample time for him to raise business, and he was well-nigh assured of having a second reading debate on any bill he promoted.

1856 was the most notable year for private members' bills: 24 of the total 54 initiated. Sometimes a group of opposition members combined to promote a bill. Sometimes a member produced a bill without prior consultation with his political colleagues. Many of the bills of 1856 were referred to select committees, replaced or dropped. Only 12 of the 24 eventually passed both houses, representing nevertheless almost one half of the successful bills originating in the House or by message from the Governor. Some of the legislation
derived from the recommendations of select committees, for example the Land Claims Settlement Act which was introduced by A. Domett, the chairman of the select committee on land claims.¹ In part it was a matter of chance whether a bill was piloted by a backbencher or a minister.

1858 presents a very different picture and marks the end of the period when select committees tended to dominate the legislative process. In this session 38 bills were initiated in the General Assembly, 78 of them by the Government. Only eight bills (all House bills) lapsed, five in the House itself and three in the Council. Six of the lapsed bills were among the 42 initiated by Stafford. (Four of the six were electoral bills.) The absence of organised opposition left the initiative with the Government, which was glad to seize it. Apart from financial and native measures, which normally were Richmond's responsibility, and the various technical law bills promoted by the Attorney General, Whitaker, in the Council, Stafford introduced all the major legislation of the session—an indication of the role of the premier and of the all-encompassing work of the Colonial Secretary.

The number of public bills initiated in 1860 dropped to 60 of which 39 were initiated in the House or by message. Once again Government was responsible for the larger number: 27 in the House and most of the Council's 21. Government's uncertain leadership

¹ cf above pp. 53, 60 and below p. 78.
of the House is shown by the fact that eight of the nine bills lost in the House (apart from one Council bill which lapsed in the House) were Government bills, five of which were withdrawn. Backbenchers promoted the unsuccessful New Provinces Act Amendment Bill and the three bills to amend the Land Revenue Appropriation Act 1858 which were successively thrown out of the Legislative Council. Apart from these four bills, there were only eight backbencher bills, four from each side of the House. This was no more than the number of private member bills in 1853, despite the return of an active opposition to the House in 1860.

It is in this session, incidentally, that a new type of bill appears, the private bill. There had been odd instances before but this was the first occasion that private bills appeared in any number. Seven were passed. These bills were initiated outside the House by private individuals and organisations. They were normally sponsored in the House by backbenchers.

After 1858 the number of acts passed each year settled down at something over 40. When there were ministerial changes, the initiative again passed more to the private member. Of the 56 public bills initiated in 1861, nine were initiated by the Stafford Government, 15 by the Fox Government, eight by the Legislative Council, and the remaining 26 by private members in the House.

In this session more bills were lost: 18 in all, four of which were rejected outright, which is more than in preceding sessions.

1 cf above p 55.
The largest single contribution was still made by the leader of government, however. As premier Stafford and Fox promoted altogether twelve bills, several of Fox's main measures being introduced not when he held the post of Colonial Secretary but the more limited position of Attorney General.

It is apparent that once responsible government was established the leadership in legislation came from the premier. A stable government completely dominated the legislative programme. Only when a new ministry came to office did the initiative in part revert to the backbencher, but in any case after 1858 the most desired reforms had been effected and there was less demand for legislation.

Moreover, once the House had a responsible ministry members expected the Government to take the initiative and it was normally considered the task of the Government to formulate the appropriate legislation when the House desired a change in the law. Ministers were no more the puppets of the House than the backbencher was the puppet of his constituents. On occasion the House would attempt to dictate to the Government, as in 1860 when it resolved that the Government should prepare appropriate measures to close down District Courts. In general, however, members did not wish to tie the hands of the executive and they were very suspicious of attempts to appeal over the heads of ministers and members to the people.

In 1861 G. M. O'Rorke on behalf of A. Saunders, both supporters of the new Fox Government, moved that in the House's opinion "it is

1 cf Lord John Russell on a similar attitude in the House of Commons after the passing of the Reform Bill. Cited by Norman Gash, Politics in the Age of Peel p 32 n 66.
2 cf below p 318-319.
highly desirable that any measures of importance to be submitted for its consideration should, as far as practicable" be published in the Gazette and transmitted to members some time before the session began. O'Rorke thought that it would facilitate business and "abridge the inordinate length of ... sessions", and that "it would prove extremely acceptable to honourable members if measures involving great constitutional questions, and Bills of a heavy and complicated nature, requiring calm deliberation, were made public before the meeting of the Assembly."¹

The provincialists had complained with justice that the Stafford Government had sprung the New Provinces Act on the General Assembly in 1858 without prior warning. From the Treasury benches, however, Fox tended to see things differently. "The Ministry were responsible to this House alone, and not to the people directly, but ... [O'Rorke's] resolution would tend to make it direct." He would not oppose the resolution "if the House thought proper to adopt it, but it must be on the distinct understanding that the Government was not bound by it." Dillon Bell, a centralist, claimed that "the real intention of this motion was to change members of this House from representatives of the people into delegates of particular constituencies." Stafford, the late premier, considered that the motion "was not consistent with the principles of Responsible Government." The motion was negatived.¹

In the same session two Auckland members, also Fox supporters,

¹ NZPD 1861 p 274-5.
were snubbed when they moved that it was "inexpedient" to call out the Auckland militia. Fox stated that "if the resolution were carried, [the Government] would still act on their own individual responsibility".¹

The legislature should not interfere with the legitimate functions of the executive, and neither should dance to the tune of the popular will. As far as the work of the legislature was concerned the backbencher had every right to speak, to criticise and to participate fully.

The work of the House was far less under the thumb of the ministers than later became the case. Although party feelings might influence the choice, the selection of its officers, for example, was a House and not a ministerial function. The first Speaker, Charles Clifford, was elected in 1854 after prolonged discussion between members before the opening of the session. Once he, a "Southerner", was chosen it was agreed that the Chairman of Committees should be a "Northerner" (i.e. Auckland). The choice was complicated by Auckland factional disagreements which eventually were settled by the withdrawal of one of the candidates, Hugh Carleton, in favour of his rival F. W. Merriman.²

Clifford was readily re-elected Speaker in 1856, but the choice of Carleton or Merriman for the Chairmanship of Committees this time had to be determined by a division, in which incidentally,

¹ NZPD 1861 p 241.
the two Sewell ministers in the House voted on opposite sides.

Carleton won 21:5.1 In 1861 he was re-elected without opposition.2 Despite the various political changes of the next decade Carleton continued as Chairman until he ceased being a member of the House at the end of 1870.

Clifford, however, retired from politics in 1860. In 1861 another Southerner, Dr Monro, was elected Speaker unopposed. He was nominated by Bell, a supporter of the Stafford Government, and seconded by Carleton, an opponent of Government. Monro continued as Speaker until he lost his seat in 1871.

Speaker and Chairman of Committees were elected by free vote of the House and tended to be re-elected even if they were out of sympathy with the Government of the day. The Speaker in particular maintained a fair degree of impartiality from the chair, but in such a small House his office did not preclude him from political activity. Clifford, for example, had made no bones about his opposition to the New Provinces Act and spoke out and regularly voted in committee with his Wellington colleagues. Monro and Carleton were even more politically committed than Clifford. If therefore, the Speaker was not always perfectly impartial, he was as likely to err in partiality.

---

1 NZPD 1856 p 7.
2 In 1861 Carleton’s provincial opponent John Williamson nominated G. M. O'Rorke for the position but O'Rorke declined. O'Rorke became Chairman ten years later and subsequently Speaker.
towards the opposition as towards the Government. 1

Although the Standing Orders gave Government opportunity to overcome opposition obstruction it neither had sufficient control over the House nor the will to do so. With no time limit on his speeches a backbencher was free to speak for hours on end. 2

Standing Order 12 of 1856 3 stated that any member might move that the House should divide on a question, and if seconded, such motion was to be put without discussion. The use of the closure, however, was almost unknown. When, in 1856, two newly arrived members had given the opposition a majority over the Fox Government, the opposition forced the closure of an eight hour debate, and the House adopted a resolution critical of the Government's financial policy. This was an abnormal situation. The next day the Government was defeated on a vote of no confidence. 4

There were no further contested closure motions until 1861. The debate on Fox's New Provinces Act Amendment Bill had continued into the night and had degenerated into an exchange between Carleton and Williamson, bitter rivals in Auckland politics, although both

2 cf Richmond's reference in 1861 to the five hour speeches of Fox and his colleagues when in opposition (NZFD 1861 p 237).
3 For its first three sessions (two in 1854 and one in 1855) the House of Representatives acted in accordance with temporary Standing Orders prepared and adopted in 1854. New Standing Orders were adopted in 1856 and with various amendments were in force until 1865.
4 NZFD 1856-58 p 104-5 & 107 f; cf below p104.
supporters of the Fox Government (although Carleton opposed this
bill). A Government backbencher moved the closure. The motion
was not put until the two had finished their exchange and was then
easily carried, only a small group of opposition members voting
against it.\footnote{NZPD 1861 p 273-4 (6/8/61).}

Later that session a select committee report was presented
on the allegations of James Busby against Dillon Bell. Busby had
long-standing grievances over his claims for land acquired while
he was British Resident before 1840. He had been quite intemperate
in his remarks about Bell, a respected member of the House and Chief
Land Claims Commissioner. When the report of the select committee
was presented many members thought it wiser and more dignified to
ignore the whole business. To forestall debate C. W. Richmond
moved "the previous question". The closure was then moved and
carried 16:10 in an a-party division and Richmond's motion was
adopted.\footnote{Ibid p 375.}

These examples of the use of the closure show that on the very
rare occasions on which it was used, it was not used by Government
to end opposition obstruction, but when members in general thought
a debate should be ended. Despite strong and acrimonious debate
there was a strong sense of British fair play in early New Zealand
politics and Government would not risk antagonising members by
attempting to use the closure. Later the closure was dropped
altogether, and as late as 1894 the House rejected attempts to
reintroduce it - even subject to definite restrictions.¹

A more important procedural motion was that of adjournment. By Standing Order 26 any member might move the adjournment of a debate, and if seconded the motion was to be put forthwith. If Government wished to force business through it was a more subtle technique to insist that the House continue sitting until a debate was concluded than to move the closure. It was not until 1861 that the tea break was introduced, and if still sitting at 5.30 p.m., the House adjourned until 7 p.m.² It was thus a strenuous matter sitting late into the night. Members had little fear of the closure being applied while they were eating or drinking a cup of coffee downstairs. But debates were ill-organised and it was by no means unknown for a debate to collapse suddenly as some members were out of the House and others not expecting to speak straight away.³ If members wished to have their say they were wise to stay in the House and if they wished to escape to the fresh air outside the best course was to move the adjournment of the debate. Adjournment motions were also an effective means of harassing Government.

Sometimes then voting on adjournment motions was a-political. On other occasions such motions were a part of parliamentary tactics and voting was along party lines. In either case, however, Govern-

¹ rf JHR 1894 13/7/94. The closure was reintroduced in 1931.
² rf JHR 1861 pp26, 45-6, 57-60, 73.
³ cf the fiasco over the Address in Reply debate in 1860, NZPD 1860 p 170.
ment had little control. If backbenchers wished to adjourn they could terminate a sitting. When the House was sitting in committee adjournment could be used to kill business altogether, if the motion was carried that the chairman report progress, without the rider that he request leave to sit again. This was the tactic used by opposition members and rebellious Government supporters in 1860 when they dismissed a series of resolutions on native affairs.¹

Much of the backbencher's independence therefore had the effect of obstructing Government business. In the House's committee work, however, he played a constructive role.

By Standing Orders select committees numbered from five to ten members. As there might be thirty or forty committees set up each session most members of the House were involved in at least some committees. Wherever the Assembly met the majority of members would be many miles from home or business. Pressure of private affairs might cause absenteeism for part of the session, and the odd Auckland members could still attend to their business concerns, but as long as they were present most members could devote themselves full-time to parliamentary duties, and were free for committee work in the mornings and on Wednesdays. (By Standing Order 103 committees could not continue their work after the House went to prayers). In 1860 (apart from J. J. Symonds an Auckland member who but rarely attended the House) every member was on several committees, with the strange exception of A. W. Renall from Wellington. The load

¹ cf below 124-125.
was by no means evenly divided. T. B. Gillies, an Otago member with practically no political experience, sat on sixteen committees, including most of the important committees. Apart from Richmond, a minister, Fox, the leader of the opposition, and Sewell an outstanding independent who as the session advanced moved closer to the opposition, the other major committee men were Domett, Dillon Bell, Crosbie Ward and John Williamson. Williamson was the Superintendent of Auckland, and the other three, and Gillies, were among the men who tended to dominate politics in the third New Zealand parliament (1861-1865). It was not their party affiliations which put these backbenchers on committees but their own abilities.

It was open to any member to propose the establishment of a select committee and such a motion was unlikely to be rejected by the House. On the whole it was backbenchers who wanted select committees, and subject to the approval of the House, the mover nominated the members. Only four of the thirty-one select committees of 1860 were set up at the instigation of ministers. Some of the remaining committees were established automatically, such as the Standing Orders Committee (convened by the Chairman of Committees) or the Audit Committee, elected each session by ballot under the terms of the 1858 Audit Act. Also, by Standing Orders all private bills had to be referred to a select committee and there were at least eight such committees established in 1860. Nevertheless this leaves a number of important committees for which backbenchers were responsible, such as the Crown Grants committee (on the work of the Crown Grants Office), the Distillation Committee and committees
on the steam postal service, the legality of the New Provinces Act, and the Waikato Committee. These committees were convened by back-benchers on both sides of the House. The Waikato Committee was proposed by Hunter Brown from Canterbury, one of the least politically committed members of the House. It probed into the whole story surrounding the failure of the Government's attempts in 1857 and 1858 to introduce civil institutions for the Maoris in the Waikato.

Both Fox and Bell were on this committee and greatly influenced by it, and these two men alternated as Native Minister during most of the crucial years 1861-64. Brown in July 1863 was appointed Resident Magistrate for the Maoris of the Hawke's Bay area and in 1865 Civil Commissioner for Native Affairs in half the South Island.

Not all committees were as hard-working and valuable as the Waikato Committee. Some never presented a report. Of those which did report, however, it was rare for their reports to be rejected. The only instance in 1860 of the House rejecting a committee report outright was the rejection of the recommendation of the Distillation Committee that local distillation should be permitted. But with a group of teetotallers in the House this was almost as much a matter of religion as of politics or administration.

The select committees of the first parliaments were important, but no more important than select committees in the New Zealand House of Representatives today. The main difference was that at

1 cf above p 13n 2 & 20.
2 cf remarks by the Speaker, NZPD 1856 p 84, 1860 p 513.
that time Government did not dominate the committees. Backbenchers proposed most of them and nominated the membership. Naturally a member endeavoured to obtain fair representation of views on a committee. In particular any committee whose work involved provincial jealousies such as the steam postal committee, or the committee to determine the debt General Government owed Auckland province for building a Government House, was carefully composed to include representation of the various provinces. But Government did not nominate the chairman. As the convener normally was chairman, as likely as not he was an opponent of Government, and membership in party terms was more a matter of balancing Government, opposition and independent than of ensuring a Government majority.

In general, the backbencher was not bound by party bonds. If he followed a party line it was by choice. At any time he might act independently in proposing legislation or in having established a select committee on a topic he considered important. In select committees, or in committees of the whole House, he frequently could contribute ideas and proposals without fear of upsetting his party leaders - or friends in the case of those who acknowledged no leader. In the many points of legislation or financial appropriation which came before the House there were few, which at that time, were considered a matter of party. Only on major issues would

1 cf comments on the composition of the Military Defence Committee of 1861, NZFD 1861 p 8 and p 16.
2 Except for private bills committees, it was customary for one of the ministers to be a member of each select committee. The only exception in 1860 was Featherston's Steam Postal Service Committee.
either side attempt to organise members into voting blocs and for the rest Government followed the wishes of the House as expressed in the voices and votes of the backbenchers.
PART II

GOVERNMENT AND PARTY IN THE

HOUSE OF REPRESENTATIVES
CHAPTER 6

PARTIES IN THE HOUSE

In most of the work of the House of Representatives the background and experience of the members, and to a large degree their grouping into representatives of provinces, was less important than the division into Government and Opposition party blocs. Dr Herron has described the confusing patterns of the first sessions of General Assembly where "centralist" and "provincialist" were in part labels without content, where members moved from one side to the other, and where, in 1856, there appeared to be fragmentation into a series of parties. Nevertheless he does show that there was at least some form of party grouping, and that the "centralist" "provincialist" labels were bandied about and argued over.1

The party divisions of 1856 take on a different aspect when viewed from, say, the year 1860. The very confusion which Dr Herron describes led directly to a definite pattern in subsequent sessions, and the centralist-provincialist explanation of political division which Dr Herron strongly criticises, in 1860 is not a school text book misconception, but the basic factor in general politics.2

The two main causes of the confusion of 1856 were Browne's selection of a premier before the Assembly met, and the determination of the Auckland provincial Progress party to wreck a ministry containing

1 cf D. G. Herron, Provincialism and Centralism, 1853-1858, in Chapman and Sinclair ed, Studies of a Small Democracy. This essay by Dr Herron is a condensation of several chapters of his doctoral thesis.
2 cf Herron op cit p 10 and note 1.
one of their opponents regardless of the principles for which the ministry stood.

From early in the 1854 session there were regular meetings of a group of members at King's Boarding House to determine tactics and after the resignation of FitzGerald and his colleagues, supporters of the late ministry under threat of Gibbon Wakefield's trouble-making formed a party numbering more than two-thirds of the House. Fitz-Gerald was elected leader, although it was Sewell who was the real leader. Every measure was carefully considered out of doors before being carried inside.

As only twelve of the thirty-seven members elected in late 1855 had been members of the first General Assembly, in 1856 it was necessary to start de novo in becoming acquainted and in establishing political positions. The same process would have occurred of sorting out of leaders and shaking down into organised groups, but Governor Browne unwittingly cut the process short. On Monday 14 April, the day before the Assembly was opened, Southern members held a meeting to determine a course of action and to decide whom they were to put forward as leader.

"Sewell spoke first, and before he had concluded, our task was put an end to by a note from the Gov. to Sewell requesting him to form a government. ... No shell from Sebastopol more speedily or effectually scattered a group of 'Allies' than did this little billet the assembly of Southern legislators - we dispersed at once, never again to meet on a similar footing."

Of the three members of the House of Representatives who had formed the FitzGerald ministry of 1854 Henry Sewell was the only one then at Auckland. He had also led the House in the short session of 1855. Probably, however, it was not these considerations, but a desire to keep out the ultra-provincialists from Wellington which caused Gore Browne to send for Sewell, and Sewell to accept the Governor's invitation to form a ministry. ¹

Sewell had to form his ministry in a vacuum, without knowing the political groupings in the House. Instead of a responsible ministry arising out of party it tended to cut across party. Two distinct groups opposed the Sewell ministry. The Wellington ultra-provincialists, soon joined by the three Otago members, disagreed with the centralist tenor of Sewell's policy statement. The Auckland Progressives objected to the inclusion of F. A. Whitaker in the cabinet. Between them they had a majority in the House, and on the first major division of the session the ministry was defeated and resigned on Saturday, 3 May 1856.

When the House reconvened on the following Wednesday Sewell announced that with the passage of the Pensions Bill the three old officials had resigned and their offices were now held by the responsible ministers. This extraordinary situation was the result of the titular leaders of the two opposition groups, the Superintendents of Auckland and Wellington, being unable to form a ministry. In consequence the Sewell ministers continued in office. ²

² rf NZPD 1856 p 73-4.
The opposition then set about forming a more organised party. Terms of agreement were drawn up and a shadow cabinet formed. At some stage, implicitly or explicitly, the Otago members agreed to vote for Auckland as the seat of government and as the venue of General Assembly meetings for the next four years. In return the Auckland Progressives were prepared to support a ministry headed by William Fox, a leading member of the Wellington ultra-provincialist party.¹ A few days later by 17 to 15 the House adopted Fox's financial resolutions embodying his programme and Sewell again resigned.

Far from keeping the Wellington ultra-provincialists out of office, the premature formation of a ministry resulted in an alliance of convenience between the ultra-provincialists and Aucklanders, and thus led to the formation of a Fox Government. Shortly afterwards, however, two Nelson members arrived and joined the opponents of the Fox Government. By 18 to 17 a motion of no confidence moved by E. W. Stafford was passed by the House. Stafford then formed the Government which with some changes of personnel was to continue in office until 1861.

For the rest of the 1856 session Stafford had a secure majority. The Fox alliance broke up.¹ Several members of the Auckland Progress party thereafter voted more or less consistently with the Government.

¹ rf NZPD 1856 p 319-325 (Fox denied any knowledge of the compact between Auckland and Otago members). cf Herron thesis p 385 and Cumming The Compact and Financial Settlement of 1856, Chapt IV. As Cumming points out there is ambiguity in the use of the term "compact of 1856". At the time, in 1856, the only "compact" referred to by members of the House, was the compact between the Auckland Progressives and the Otago members. Nevertheless, in the following years the term "compact of 1856" referred to the financial settlement expressed in a series of resolutions moved by Sewell as Colonial Treasurer in the Stafford Government. This settlement was the basis of the financial relations between General Government and the provinces for the next few years. (cf Morrell, Provincial System Chapt V.)
as also did a couple of other former supporters of the Fox Government. The new groupings continued in the ensuing sessions of the General Assembly. ¹ Fox had had to temper his provincialism to obtain a majority. Now he declared that "if he ever again took office in this country it would be as the victorious leader of an ultra-provincial policy." ²

The fall of the Fox Government therefore marks the end of the early confusion. Henceforth in General politics issues tended to be determined in accordance with General Assembly groupings and not by provincial party prejudices. After the breakup of the Fox alliance opponents in provincial politics could be found voting consistently on the same side of the House of Representatives. Stafford and his supporters alone belonged to a group large enough to provide a ministry joined by common principles - principally that of maintaining a unitary and not a federal state. If party gives order and meaning to parliamentary processes then, whatever the merits of the Stafford ministers, their accession to power was necessary for that order and meaning to be achieved. As shown below, irrespective of the unnatural alliance which brought Fox to power in 1856, there were factors both in the support he could muster and in his own personality which resulted in a Fox Government weakening the effectiveness of party divisions. As long as Fox led the opposition, however, and

¹ To determine the strength and meaning of party formations in the period 1856 to 1861, every division of those years has been analysed. Generalisations on voting behaviours are based on this analysis. ² NZFD 1856 p 325.
Stafford the government, party could operate with effect in the
House of Representatives.

Dr Herron has analysed the financial programmes of the three
governments of 1856 and has shown that the differences were not
sufficiently great to warrant the assumption that the House was
divided by definite political principles.¹ Nevertheless speakers
on both sides of the House believed that there was a difference of
principle between the "centralists" who supported the Stafford Govern-
ment and the "ultra-provincialists", Fox and those who continued to
support him after the defeat of his Government.²

In 1856 there were differences over such issues as control of
native affairs, the pensions to be voted for the retiring "old
officials", and the honorarium for the nominated Legislative COUN-
cillors. The ultra-provincialists waved what might almost be called
a "democratic" flag against the vestiges of establishment, nomineism
and crown colony government, while centralists, some of whom had
shown equal vigour on these issues in the past, were now prepared to
compromise. In their ranks were two important crown colony officials,
Domett and Bell, and Dr Monro, a nominee member of the old Legislative
Council. Whitaker, the Attorney General, in the upper house, had
also held posts under crown colony government.

The centralists tended to have a "high" view of government, to
co-operate with the Governor and to restrain the provinces. The
ultra-provincialists wished to reduce the Governor's powers and to

¹ Herron thesis, Chapt II; cf Herron essay cited above p 111 n1,
Cumming, Chapt III and V, Morrell Provincial System p 83 f.
² cf, for example, NZPD 1856 (Address in Reply debate), Sewell p 43,
Fox p 55, Richmond p 57, Hall p 63.
hand considerable financial and judicial control over to the popularly elected local governments. It was Stafford's centralist government which gradually drew the colony together, bringing the provinces more under central direction, and imposing checks on the activities of provincial governments by its administrative directives, its legislation, and its division of the original provinces.

Dr Herron has given various reasons why representatives of certain provinces were centralist and others provincialist.¹ He shows, for example, how men's enthusiasm for central control waxed and waned depending on whether they had control in their own provinces. One important point which does not emerge from a study of just the first years of New Zealand's representative institutions is the general political consistency of members after the fall of Fox. Some of the factors Dr Herron mentions can explain that consistency. Taranaki was small and dependent and tended to be centralist. Nelson, its closest neighbour by sea, was also one of the weaker provinces. It was Wellington's greatest rival for the seat of government and as Wellington from 1853 was controlled by Featherston and the ultra-provincialists, this rivalry could be a part explanation of the centralism of Nelson's representatives. On the whole, however, Nelson's centralism derived from the attitudes of those who happened to represent it in the Assembly. Canterbury and Otago, further from the seat of government, tended to be moderately provincialist. Auckland with its large representation and its strong political divisions did not vote as a bloc. Later, the handful of representatives

¹ Herron thesis passim, especially p 245-7, 294, 342, 343 f.
from the new provinces tended to support the centralism which was the main guarantee of the continued existence of their provinces.

Too much should not be made of these factors. As shown below, quite apart from the attitudes of individual members which suggest an element of chance in the voting patterns of provinces' representatives, the only true provincialists were a group of Wellingtonians and Aucklanders.

How did party affect the work of the Assembly? In the first place it was a consequence of party that Stafford became formal leader of the centralists in 1856 and was able to form a stable ministry. Thereafter there was a body of men in the House who were prepared to support the Government and keep it in office, if only to keep out the Foxites. Apart from bringing political stability, however, party had little effect on the most constructive work of the second New Zealand parliament. In part this was because, once there was an established ministry, the ministers led the legislative work of the House, and ministerial measures do not appear to have been approved by, let alone formulated at, meetings of the governing bloc.¹ The other more important reason was that the only comprehensive legislative programme presented to General Assembly in the first few years of representative institutions, was the programme presented by the Stafford Government in 1858 when party activity was singularly lacking.

1858 was an abnormal and peculiar session. The absenteeism

¹ cf below p151.
of that year has been mentioned above. Only twenty-nine of a possible thirty-seven attended and not all twenty-nine were in the House at the same time. In addition, eleven of the twenty-nine had not been present in the previous session of 1856. It was a small House in which a considerable proportion had not been caught up in the party groupings of 1856. In the absence of the hard core of the provincialists, the Wellington group, the remnant of Fox supporters were leaderless and ineffective. The Government was able to put through its programme with little difficulty, e.g. bringing lower court officials under central control, passing the Land Fund Appropriation Act, providing local government for areas neglected by provincial governments (achieved by passage of the New Provinces Act), and disqualifying judicial officers from being elected to Provincial Councils or the House of Representatives. This last measure was of more importance at the provincial than at the General level. Provincial politics aroused the most intense party feeling. The local Resident Magistrate had been considerably involved in party strife at Auckland and Wellington, where party feuds were most notable.

If the Wellingtonians had been present in the House of Representatives in 1858 they would have done more than provide an effective opposition. They would have challenged the continuance in office of

---

1 above p 36.
2 cf Morrell, Provincial System, p 89 f. The Stafford Government was also responsible for the removal of two Justices of the Peace from the Commission of Peace: C.J. Phrazen of Wellington in 1858, and Alfred Saunders of Nelson in 1860. Both cases involved local party feelings as well as unjudicial behaviour on the part of the Justices.
the Government - unless it mended its centralist ways.

Late in the 1858 session, almost four months after it began, by 13 to 8 the House gave a second reading to the New Provinces Act. The presence in the House of South Island members elected after the session began shows that Wellington members recently elected or re-elected could also have reached Auckland by this date. Had they been present the bill probably would not have been passed. The resignations since 1856 had led to a change in the complexion of the House. The provincialists had gained two Wellington seats - giving them seven out of eight - and Canterbury now had five provincialist members instead of at least three centralists. On the basis of voting on the New Provinces Act and on voting in 1860, it appears that if all members had been present, the voting on the New Provinces Act would have been 19 for and 18 against. It is almost certain that in a full House Government would not have driven the Canterbury members into opposition by pushing the New Provinces Bill.

The second major issue in politics in the term of office of the Stafford Government, was the Taranaki war. As a result of its stand over the Waitara purchase the Government very nearly lost office in 1860.

Eleven members of 1858 had resigned by 1860. In the ensuing by-elections the provincialists gained a member but with the support of four members from newly created electorates, Government had a majority of three, 22:19 in a House of forty-one. Three Aucklanders, however, deserted the Government on account of the Taranaki war, and the Government gained but one vote in return. On the provincialist
issue the respective strengths became 20 for Government and 21 against. As two Otago members and one Auckland member were absent, the actual position was Government 18, opposition 20 (including both the Speaker and the Chairman of Committees). Government survived because several provincialists supported it over the Taranaki war and because, on the crucial division on whether to repeal the New Provinces Act, one member crossed the floor.

1860 was the first session in which an established government faced an effective opposition. Despite the confusing effect of the Taranaki war which cut across the central-provincial issue, it is possible to see the effect of parties and bloc formations. The most obvious point is the apparent lack of party organisation. The analysis of divisions given in Appendix V (below p 374) shows little stability in voting. In part voting figures reflected fluctuations in attendance, but it is also clear that parties could not, or did not, turn out a regular vote. Undoubtedly there were parties in the House. On many issues the result of a division was known before the conclusion of a debate. Speaking as an independent in the debate on the New Provinces Act Amendment Bill, Carleton commented that "the time had been when he was linked up with party, and knew every vote in the House, but now he knew only by hearsay." Carleton was told, and as it proved was told correctly, that the result would be 19:18 for or against the Bill depending on his vote.²

¹ It is assumed here that J.F. Taylor, an absent member for Dunedin Country was a Government supporter. If this is correct we should qualify Professor Morrell's statement that in 1860 the provincialists were weakened by the absence of two Otago members (Provincial System, p 105). Gillies claimed he would have had Taylor's support for the New Provinces Act Amendment Bill (NZPD 1860 p 731), but this appears unlikely.
² NZPD 1860 p 680.
Party affiliation, however, was weak. At any time a member might vote against his customary friends if he disagreed with them on a particular issue. Many divisions were on a-political matters or, as for example on the Representation Bill, involved conflicting provincial interests. If party affiliations affected votes, then, it was only in the case of a few key issues.

A further factor which obscures the existence of parties was the large body of self-professed independents in the House. Such men might still be strongly partisan and in their speeches and votes could be indistinguishable from a party man. Amongst them, however, was a middle bloc - something akin to the floating vote - and the results of divisions were in part determined by which side managed to win some of the members of such bloc. As members did not wear badges or proclaim their party affiliations - in General politics at least - and as there are not extant party lists from this period, it is sometimes hard, if not impossible, to tell the difference between an independent exercising his independence and a party man exercising his right of personal judgement.

The leaders of each side, the ministers and Fox, the recognised leader of the opposition, each had a group of members who normally would follow them. On major political issues the group would form

---

1 The earliest formal record of a party meeting discovered in the course of this study is the minutes of a meeting held in the committee rooms of the House of Representatives on 14 October 1865. The 18 members present called on Stafford to undertake the administration of the Government. (Stafford MSS folder 50); cf minutes of opposition meetings in September and October 1871 (Stafford MSS folder 11).
the central core of a larger bloc. On, for example, the question of repealing the New Provinces Act, those dissatisfied with the Act held a meeting (probably in one of the committee rooms of the House). As both members of a party group, the ultra-provincialists, and independents in sympathy with the party's aims on this issue were present, this was more than a regular party or caucus gathering. On such occasions the party members might have to compromise to formulate a policy on which they could win the support of the independents. In 1860 it was not Fox, recognised as leader of the opposition and the leader of the ultra-provincialists, but T.B. Gillies (an Otago member) who was chosen to move the New Provinces Act Amendment Bill. Gillies was an independent and a strong supporter of the Stafford Government on the Taranaki war question.¹

Particularly in the case of no confidence motions, there was not only a matter of gathering together members dissatisfied with the Government, but of lobbying and bargains — perhaps offers of a Government appointment — to win the support of the one or two members who would determine the result.

As each session began with a number of new members present, each side of the House had to feel its way, testing opinion and tempering its measures to suit the moderates. It took time to discover the political outlook of some of the new men. Perhaps some of them took time to work it out for themselves. Thus, although party brought some meaning to the House's legislative work, it might be

¹ cf comments by F. D. Bell, NZPD 1860 pp 683 & 688.
some weeks before party strengths clarified and even then party
differences were only meaningful on major issues on which independents
could be organised. The effect of the unknown or floating element
might be to restrain the Government in some of its measures - as it
would have been restrained over the New Provinces Act in 1858, and
as it had been restrained over the Native Offenders Bill of 1856.
As was shown in the 1860 session and in the early weeks of the 1861
session, this could have an inhibiting effect on the Government.
While it was cautiously testing opinion, and while the opposition
was also moving cautiously, parliamentary business limped along.

The first weeks of the 1860 session were dominated by the
question of the Taranaki war. On this issue Government had a clear
majority. The Canterbury members were the determining factor, for
although tending to vote with the provincialists on questions affect­
ing the rights and powers of the provinces, on native affairs they
generally ranged themselves behind the Government. Of the repre­
sentatives of the other provinces, the Wellingtonians and some Auck­
landers were normally opposed to the Government and Nelson and
Taranaki members supported the Government. The remaining provinces
had too few representatives in the House to make generalisation
possible.

On proposals to alter the management of native affairs neither
side could win a clear majority. The Wellington ultra-provincialists
and their allies wanted responsible government, the Government and a
group of its supporters wanted to retain the status quo, and a further
group supported Sewell's suggested half-way measure, the establishment
of a board to run native affairs. Once the board proposal was rejected, however, the Government secured a majority for the status quo. This was but one of a series of resolutions which were debated for five weeks, as a result of which the House in committee passed resolutions representing a "conglomerate of opinions".\(^1\) At this point the more extreme Government supporters on the war issue combined with the Wellingtonians to throw the resolutions out by preventing their being reported to the House.\(^2\) The division between extremists and moderates on both sides, in short, could lead to various voting combinations.

If the rejection of the resolutions showed the confused pattern that could emerge and the Government's inability to control the House, the Government's reaction to the situation showed how it could restore order. Government could both appeal to members' loyalty and utilise some members' dislike of Fox to achieve its will. It is probably true to say that the existence of Fox as leader of the opposition was a help to the Government when it wished to control the House.

Anti-centralists, whom one can with reasonable accuracy describe as provincialists, outnumbered the centralists. But there was considerable difference between opposing the New Provinces Act and what it symbolised, and supporting the ultra-provincialist party from Wellington and its allies from Auckland. The radical professions

\(^1\) Stafford, NZPD 1860 p 498-
\(^2\) NZPD 1860 p 463 (Division no 17 in Appendix V, below p 374.)
of this party have been described above. While the Government lost several supporters over the Taranaki war, this was more than compensated for - on native questions - by the support it had from some anti-centralists. In other words anti-centralists might like Fox's provincialism but that did not make them like Fox nor give them cause to approve his allegiance to the "peace at any price" men.

Government's reaction to the rejection of the resolutions was to request members to reconsider their votes, stating that otherwise "the Government were precluded, from introducing any measure, as the House were unprepared to legislate on the subject." Another vote was taken and this time sufficient members reversed their votes to give Government a majority. In the interim Government had managed to obtain a majority on an even more important vote: the second reading of the Native Offenders Bill.

The Native Offenders Bill faced Government with its most crucial test of the session. It was a revival of a bill of 1856 which had been desired by the Governor but was dropped by the Government when it found it would have difficulty in securing its passage. "It was a Bill to enable the Governor to issue a bull of commercial excommunication in certain cases." The Governor would be empowered to prevent trade with certain districts in which native offenders were received and harboured, and heavy penalties could be imposed on traders who broke that ban. In imposing such drastic measures on

---

1 Stafford, NZFD 1860 p 498.
2 Domett, ibid p 471.
the Maoris, Government also subjected Europeans to controls which were considered contrary to the traditional rights of Englishmen, as expressed (if we agree with Fox) \(^1\) in the Magna Carta.

After preliminary soundings and a meeting with supporters and some independents, ministers knew that they could obtain a majority by making the second reading of the Native Offenders Bill a ministerial question. Nevertheless one or two Government supporters were against the Bill, and having scored a tactical victory with the second reading, Government later felt obliged to drop the Bill. \(^2\)

The war issue had not only increased the number of Government supporters in the House. It had also increased the number of members who, while considering themselves Government supporters on this, the major issue of the session, did not consider themselves members of the Government's "party". Such men might be extremists on the question of the Taranaki war but this did not stop them embarrassing the Government, as they had done over the resolutions on native affairs, or deserting it on the provincialist issue later in the session. With such men in its ranks the Government could not push its views too far - even in native matters.

The vote on the second reading of the Native Offenders Bill showed that a majority of the House preferred a Stafford Government

---

1 NZPD 1856 p 276.
2 rf NZPD 1860 p 481, 492, 497, 582-3; the second reading division is no. 18 in Appendix V. Carleton, Williamson and Sewell were the only members in the House in both 1856 and 1860 who changed their minds on the Native Offenders Bill in that period.
to a "peace at any price" Government. Once the native question was out of the way, however, members were free to attempt to restrain the Government's centralism, and the Government lost control of the House. There was an anti-centralist majority and as the session advanced that majority tended to increase.\(^1\) The most important votes were on the distribution to the provinces of all surplus revenue, the repeal of the New Provinces Act, and on the General Government's retention of one-sixth of the land revenue under the Land Revenue Appropriation Act 1858.\(^2\) Only on the New Provinces Act Amendment Bill did the Government secure a majority. This was an issue on which votes followed clear-cut lines. As shown above (page 111) a vote of 18 for Government and 19 against (with a provincialist in the chair) might have been expected. Government was saved because one man, Carleton, crossed the floor. Carleton had deserted the Government because of its support of the Waitara purchase. But he was not at heart a provincialist, and he was a firm supporter of the New Provinces Act. As he was member for the Bay of Islands this was probably to be expected. He found a face-saving formula in his "hasty declaration at the beginning of the session that ... he would offer no embarrassment to the Government."\(^3\)

Whether Government in fact would have resigned if defeated is an

---

1 cf Appendix V, below p 374-6.
2 Divisions 21, 23, 30, 31, 45, 46 in Appendix V; cf above p 55 and below p 157 and p 298.
3 NZPD 1860 p 631; division 45 in Appendix V. The actual voting was 16 for the Bill, 17 against. Four members apparently paired.
open question. It was assured of a majority in the Legislative Council for the New Provinces Act, there was an election in the offing, and the majority of the House clearly wished it to stay in office.¹ Moreover it was only on the provincialist issue that it was in a minority.²

Sufficient has been said to show the general division of the House into blocs in the second parliament (1856-60) and the ability of the Stafford Government to stay in power and, on most issues to control the House. It can be seen that parties brought some basic meaning into the parliamentary process but that the looseness of party bonds, and the large body of "independents", gave considerable freedom of action to backbenchers and permitted the House to force its will on Government on the provincialist issue.

If the House divided into Government and Opposition blocs, and if the core of each bloc consisted of a party, it would be a reasonable expectation that on the defeat of a government the leading members in the opposition party formed the new ministry. This was not so. There are several reasons. In the first place there was a shortage of men who were prepared to become ministers. "The difficulty ... was to get men who would replace Ministers - who would give up their own business, their supervision of their own

---

¹ C. W. Richmond's wife, writing to her brother Harry Atkinson, predicted a defeat for the ministry on this issue, but said if this happened, the ministers "will go to the country upon it". (Emily Richmond/H. A. Atkinson, 7/9/60, Atkinson MSS 1990.)
² cf Appendix V.
affairs, at a great loss, to hold uncertain and temporary offices.\textsuperscript{1}

It was common to form stop-gap ministries until a permanent government could be formed. The result might be a marked change in the composition of the government. In 1854 it was planned to re-cast the FitzGerald ministry at the end of the session; the Stafford ministry was re-formed at the close of the 1856 session; both Fox in 1861 and Domett in 1862 recruited new ministers within weeks of taking office. Premiers had great difficulty in forming a government.

Secondly, to ensure victory in a vote of no confidence an opposition leader had to engage in negotiations and bargains. By some political curse governments' fates were almost invariable determined by one or two votes. A leader could not form a ministry from amongst his party colleagues. He had to retain the support of the floating vote. In the early 1860's many members, particularly independents, wished to see established a coalition government, or in modern terminology, a government of national unity. If defeated on a question of principle a government was expected to resign. But this need not mean the advent to power of the opposite side. Once a principle was established the same men in a reshuffled ministry could be expected to perform the ministerial duties. Let the House lay down the general principles, but let the best men administer the government: there was a widely-held feeling in the House that

\begin{flushleft}
\end{flushleft}
ministries should contain the best available talent. During the early 1860's this feeling was reinforced by the opinion that at this time of crisis a coalition of the leading politicians would provide the strongest government.

Such views on the composition of government appear incompatible with the party divisions described in the preceding pages. They were incompatible. But then members were not always rational. It is understandable that men should become involved in strong party activity, and should be pleased that as a result, on an important principle the Government was defeated and resigned. If the Stafford Government had been defeated over the New Provinces Act in 1860 the anti-centralists would have achieved their aim. Nevertheless undoubtedly many wished to have both their provincialism and the Stafford ministers. It should not surprise us that men wanted the incompatible.

The first step in the formation of a ministry was the selection of a premier or ministry-maker. There were occasions when opponents of Government met and chose a leader: this happened for example in 1856 in the case of opponents of both the Sewell ministry and the Fox ministry. In such circumstances the selection of the premier was straightforward and he might even have a cabinet arranged.¹ In 1861 Fox led the opposition to the Stafford Government, and subsequently Richmond led the opposition to the Fox Government.

¹ cf above p.114. When Sewell resigned a second time in 1856 he advised the Governor to send for Stafford. Stafford, however, had to admit his inability to form a government and Sewell then had no option but to advise the Governor to send for Fox.
In the late 1850's and early 1860's the ultra-provincialist party was the most closely knit group in the House. Provided other anti-centralists accepted Fox as their leader there could be a strong provincialist bloc. If, however, other anti-centralists did not accept Fox, then this side of the House lacked a leader who could be assured of a majority in the case of the centralists being defeated. In 1860 Gillies led the attack on the New Provinces Act. Had the Stafford Government been defeated and resigned on this occasion Fox would not have been the obvious choice as premier. 1 The result might well have been a reshuffle of the Stafford Government. Stafford himself might have been dropped and one of his supporters have formed a government which included Gillies. Perhaps this is fantasy; but it also happens to be very much what actually happened in 1862.

On the one side of the House there was a small group of ultra-provincialists which was the spearhead of the anti-centralist bloc. On the other side of the House sat the centralists. They were by no means as well organised as the ultra-provincialists, but they formed a much more cohesive body than the anti-centralists, finding agreement on both the desirability of strong central government and on the correctness of the Stafford Government's actions over the Waitara purchase. To obtain an effective body of supporters Fox had to persuade South Island anti-centralists to support his party: his side of the House was more a coalition than one bloc. The centralists had no such trouble. They came from all parts of the

1 cf F. D. Bell, NZFD 1860 p 638 (cited above p123 n 1 ).
colony - and were not so closely identified with one man as their
leader as the ultra-provincialists. The centralists supported the
policies of the Stafford Government and stood behind Stafford as
long as his ministry stayed in office. They then immediately
dropped Stafford and chose a new leader. It took Stafford years
to come back to power, and then he came back on the shoulders of
the anti-centralists.

In 1862 the Fox Government fell before the other side was
properly organised to take over. The motion on which the Govern-
ment fell was moved by Curtis, a loyal centralist since 1856, but
not one of the leading members. Fox recommended the Governor to
send for Stafford as the past premier. Stafford, however, had been
displaced as centralist leader and Richmond, his successor, had
retired from politics. Stafford suggested FitzGerald, as one who
had not been involved in recent party politics, and FitzGerald
suggested Domett. FitzGerald was an idealist and thought Domett
could form a coalition with Fox. It was not idealistic to hope
for a coalition. It was idealistic to hope for a Domett-Fox
coalition. Domett formed a centralist ministry (of which Gillies
was a temporary member) and shortly afterwards in a dramatic scene
in the House, two of Fox's ministers agreed to join Domett's Govern-
ment. Within a few months, however, the Domett Government collapsed
under its own inertia and the 1863 General Assembly was faced with

1 NZFD 1862 p 481, p 583 f; cf the debate in 1863 which led to
Russell joining the Whitaker-Fox Government, NZFD 1863 p 749f.
further ministry-making. This time Grey on his own initiative
sent for Fox and Fox formed a coalition with Whitaker, Stafford's
Attorney General, and also managed to recruit ministers from the
previous Government.

If there had been parties in the past how did these various
strange ministerial combinations come about? The first point is
that some form of party activity in the House was inevitable.
Coalition governments merely succeeded in bringing political chaos.
Further, as had been the situation when Sewell was premier in 1856,
a man who had not come to the premiership through the expression of
the House's will was not in a strong position to maintain a majority.
In general, a man chosen by the Governor was not as effective as
premier as a man chosen by a meeting of his fellows. It also
happened for various reasons that the ministries of 1861, 1862 and
1863 were weak ministries. Governments collapsed rather than were
defeated. Finally, the actual nature of the parties contributed to
their disintegration. Fox could not hold together both the small
close party of ultra-provincialists and the larger body of less
ardent anti-centralists. He had to compromise when in office in
order to keep the support of the latter group, but the consequence
was to break up the ultra-provincialist party, and it was this party
which had provided the core of the anti-centralists. Without this
core the bonds of anti-centralism were too loose to hold a voting
bloc together.

1 NZPD 1863 p 747.
The inherent tendency of the anti-centralist bloc to disintegrate was encouraged by the ministerial combinations of the early 1860's. It was also encouraged by the decline of the provincialist issue in these years. When Fox came to power in 1861 he could not introduce a "provincialist" policy. The anti-centralist case against the Stafford Government had been related specifically to the New Provinces Act and the distribution of surplus revenue. Members then also wished to show Government sharply and clearly that they did not approve of further centralisation. By 1861, however, the New Provinces Act had done its work, the surplus revenues had been given the provinces, and the last object had been achieved by the defeat of the Stafford Government. The raison d'être of the anti-Stafford coalition ceased when Stafford lost office.

In the subsequent years the main issue was the handling of the King Movement. On this there was bi-partisan agreement. Underlying the ministerial changes of 1861 to 1864 there was a basic unity. Uninterrupted longevity did not become a feature of New Zealand governments until the Liberal Government came to power in 1891. Before then the longest-lived ministry had been the Stafford Government of 1856-61. The normal pattern was a change every three to five years, and this was as true in the early 1860's as later. In 1856 the Stafford Government came to office because a ministry was required which could establish order at the centre of government. In 1861 Fox came to power because members were assured that if need be he would attack the King Movement as effectively as would his

1 cf Appendix VI below p 377f.
political rivals. The policies of the Domett and Whitaker-Fox Governments were implied by the policy of the 1861 Fox Government, and it was no accident that both of these two ministries recruited from their predecessors. The ministers of these years were not outstanding politicians. With the exception of the more able Fox, Whitaker and Sewell, the ministers of 1861-4 had not held office before 1861 and did not hold office again after 1864.1

1861 to 1864 were crisis years in New Zealand history. Until the power of the Waikato Maoris was broken, normal political patterns were distorted. The issue of the role of the provinces before 1861 brought an order into politics and caused the division into voting blocs. The Taranaki war in 1860 started the disintegration of these blocs and thereafter the threat of a Waikato war and the war itself completed the disintegration. The weak, short-lived governments of these years were evidence of the benefits which the central-provincial issue had brought in the preceding period.

1 There are slight exceptions to this statement. Mantell after a brief period with first the 1861 Fox Government and then the 1862 Domett Government, for a time was a minister in the 1864-5 Weld Government; Gillies was a minister in the 1872 Stafford Government which lasted a month; Bell was a minister without portfolio for two years between 1869 and 1871; Featherston who was a minister for one month in 1861 was minister without portfolio between 1869 and 1871, probably because he was one of the Commissioners to the Imperial Government; Pollen, a Legislative Councillor, was minister without portfolio 1861-2 and subsequently served in various ministries in the 1870's. cf the list of ministers 1854-1864 in Appendix VI below p 378-381.
CHAPTER 7

A PARLIAMENTARY SESSION, 1861: 1. The Fall of the Stafford Government; Monday 3 June to Friday 12 July

In the previous chapters the various parts of the legislature have been described. In the ensuing pages it is hoped to show the legislature actually in operation. No session of the General Assembly was typical, particularly in the early years when each session saw further developments and changes in the system. There are reasons, however, for choosing 1861 for an example of a parliamentary session. The third New Zealand parliament which sat from 1861 to 1865 was the first parliament to be elected after responsible government had been inaugurated, and it was the first to be elected under conditions sanctioned by the New Zealand legislature. More important, 1861 marks a political turning point. It is the last year in which politics were dominated by the centralist and anti-centralist blocs which had been established in 1856. In the third parliament various ministerial combinations destroyed those blocs and brought chaos to party formations. Each year of that parliament saw the installation of a new government. In consequence the order which had been created in the legislative process was lost as no ministry was able to steer through the Assembly the measures it had matured during the previous recess. The seeds of party disintegration are apparent in the 1861

---

1 For an account of the 1861 session rf also D.C. Doig, History of the first session of the third New Zealand Parliament 1861-1866, M.A. thesis, Canterbury University. 1934.
session. They were primarily the failure of Fox to establish the ultra-provincial government at which he had aimed in the previous years, the sterility of the centralists after the reforms the Stafford Government had put through in 1858, and the increasing dominance in debates of the Maori question which cut across the party lines established on the issue of centralism versus provincialism.

"THE SECOND PARLIAMENT of New Zealand, which had been prorogued from the 5th November to the 31st December, 1860, was dissolved by Proclamation on the 5th of November, 1860. New writs were issued, and the new Parliament was summoned to meet on the 30th day of May, 1861, from whence it was prorogued to the 3rd day of June, 1861, on which day it met for the despatch of business.

Parliament was opened by Commission."¹

The three Commissioners took their seats in the Council chamber and the Clerk was sent to require the immediate attendance of the members of the House of Representatives. When they had come the Speaker announced that the next day His Excellency would declare in person the causes of his calling Parliament together, the Commission was read by the Clerk, and the Representatives were then dispatched to their chamber to "proceed to the choice of a proper person to be Speaker." Back in the lower house, the Representatives took the oath before Judge Johnston and having elected Dr Monro Speaker,

¹ NZPD 1861 p 1.
adjourned till next day. In the meantime Councillors had been sworn in before their Speaker, T. H. Bartley, as one of the Commissioners, and also adjourned.

Shortly after two o'clock next day His Excellency the Governor entered the Council chamber and took the chair. The members of the House of Representatives were summoned to attend. "Mr Speaker, accompanied by members, and preceded by the Serjeant-at-Arms bearing the mace" solemnly proceeded downstairs to the Council chamber, and when the Representatives had come, His Excellency was pleased to deliver his speech. He had little to say. The main task before the Assembly was the voting of supplies and consideration of the crisis in race relations. But this year Government did not offer any important policy measures, in fact, as a Councillor afterwards complained, he had never heard a "poorer, weaker, more milk-and-watery composition." ¹

Back in their chamber, the members of the House of Representatives gave a first reading to the Naturalization bill, and heard the Speaker re-read the Governor's speech. ² The formalities over, the House was ready to begin the work of the session - or almost ready.

The "Stormbird" with a large number of Southerners on board had not arrived and the House adjourned for two days - two not entirely

¹ Ibid p 11.
² The practice of the Speaker re-reading the Governor's speech began in the second session of 1854. (NZPD 1854 p 348).
wasted days as members already present could digest, if not the Governor's speech, at least papers on the war tabled that day by the premier. But the "Stormbird" still had not arrived when the House reassembled. This was not as bad as in 1862 when it was the Governor who was missing, but after dealing with a series of routine matters, the House adjourned for a further five days till Tuesday, 11 June - as Stafford had proposed originally, before accepting a two-day adjournment when members protested at the waste of time. They were at least able to take the necessary steps to fill two vacant seats, establish three routine select committees, raise several questions and give opportunity for the Aucklanders Williamson and Carleton to air their personal vendetta. With its smaller numbers and greater preponderance of Aucklanders, the Council was not affected by the late arrival of the "Stormbird" and was able to proceed with its work, the introduction of legislation and the address in reply debate, while the lower house was adjourned.

By Tuesday 11 June - a week and a day after the first meeting - the House at last prepared for business. Even then there was a delay of many days while Fox prepared the ground to attack Government and Government skilfully dodged. For weeks sittings usually lasted only

---

1 The Elections Writs Act 1858 provided for the issue of writs to fill vacancies when the House was in recess. Apart, however, from stating that resignations should be addressed to the Speaker even if there were a vacancy in the office of Speaker, the Act did not specify how a member should resign, or in what circumstances a seat was vacant by resignation. (cf NZPD 1861 p 7). Four writs were issued in the first weeks of the session.
two or three hours. This was an unsettled session. For a considerable period little could be done until the fate of the Stafford Government was determined, and after that business had to be rushed through as members wished to return home. Two of the new members, F. Jollie and J. O'Neill, moved and seconded a motion to present an address in reply to the speech of His Excellency - a rather unusual procedure for the lower house: the upper house were not sure what its customary practice was. Both speakers naturally showed confidence in the ministry although the mover thought they had been a little timorous in the war. Thereupon the premier moved that a committee of Jollie, O'Neill and the three ministers in the House draw up an address. Doubtless ministers had already prepared a draft address and the committee promptly was able to present its report to the House. The address was not very impressive, consisting in fact of the original speech prefaced by the appropriate phrases: "We thank your Excellency for informing us", "We concur in your Excellency's belief". This time the opposition were not caught on the hop as they had been in 1860. Instead Fox rose to announce that he did not propose to raise a debate - "it was not right.... before newly-elected members had acquainted themselves with general facts, which could only be done by careful perusal of the official documents before the House". He then showed the line of attack he would develop by criticising the inadequacy of Government's defence

1 cf NZPD 1860 p 170-172.
measures and claiming that if Government had continued Fenton's policy of 1857 the natives would have become loyal to the Crown, and that even at this eleventh hour it would be possible to revert to that policy. He concluded by announcing a challenge to the Government "on Wednesday week". After rather desultory discussion the debate faded out, the address was adopted, and "it was ordered, that Mr Speaker, accompanied by the mover and seconder of the Address, do present the said Address to His Excellency the Governor". ¹

During the following week the House was concerned with calling for information, setting up committees, and with the first stages of a few bills. It was not surprising that Fox on Friday 14th asked "whether it is the intention of the Government to lay any, and what, Bills on the table of this House, and when the House may expect the same; also when the Government will be prepared to lay the estimates on the table".² Nor was it surprising that the premier's reply that "the Government intended producing certain Bills from time to time" and the estimates would be ready in less than a fortnight left members somewhat dissatisfied.² The previous day Weld, the Native Minister, had proposed the appointment of a select committee to consider the question of a Native Land Court, and met opposition taunts that the Government should be leading the House and putting forward a measure. Complaints against governments sheltering behind committees are not new.

It was an inconclusive week although the opposition was

¹ NZPD 1861 p 21 f.
² Ibid p 40.
collecting ammunition against Government: where were documents on native affairs ordered to be tabled last session and the copies of the Waikato Committee report "containing a full and complete history of the King question" which were to have been distributed? There were motions for a return of officers in the Land Purchase Department and purchases made; for the cost of the war, loss of lives and property etc; for the number of persons in the Native Secretary's office; for the correspondence concerning McLean's resignation as Native Secretary; for a return of the reserved one-sixths of the proceeds of land sales retained by central government; and so on. Backbenchers were responsible for the appointment of two useful committees of inquiry - on measures to prohibit the importation of diseased cattle\(^1\) and on the steam postal service.

On Wednesday, 19th June, the political battle really commenced, when Weld presented a series of resolutions on native affairs. The Taranaki war had revealed the grave threat posed by the King movement and in 1861, having patched up a peace in Taranaki, the Government was preparing to force submission on the King Maoris. Accordingly Weld's resolutions affirmed (1) that a sovereign authority independent of the British Crown was "incompatible with the security of the colonists, the civilization of the Natives, and the welfare of both races"; (2) that it was "the duty of the colony\(^\text{c\,ordially}\) to second the measures taken by the Imperial Government for the assertion of Her Majesty's sovereignty, and for securing a lasting peace"; and (3) "that, if, unhappily, negotiations should fail, this House... does not shrink

\(^1\) cf below p 305.
from the consequences of a resort to force".  

The negotiations centred on the declaration which Browne, on his ministers' advice, had made to the Waikato tribes in May demanding submission and restitution of plunder and compensation for losses. This was the first major issue debated in the House, and to avoid confusing the issue Fox withdrew his no confidence motion. The debate did not hinge on the ends to be achieved, and a subsequent change of ministers and of Governor did not affect the final decision to bring the King movement under government control.

In Fox's words: "The question to be discussed this session was really the adjustment of the relations between colonists and the Natives - the most important question that had ever been or ever would be brought before the House while a race of colonists inhabited this Island." The House was not the most expert or restrained body in which the question could be faced. Some members had had close and long association with Maoris, others, from the South, knew little more than what they read in the newspapers or the material presented them in the General Assembly. All knew that they were on the brink of war - a war which Great Britain would be obliged to finance and from which Maoris would be the greatest sufferers. History showed how unlikely it was that two races - white and native - could live

1 Ibid p 64.
2 rf AJHR 1861 E-1B p 11-12; cf Sinclair, Maori Wars p 233-4. (In footnote 48 on p 234 Professor Sinclair gives 25 April instead of 21 May as the date of the declaration. The correct month is given in the text.) rf NZPD 1861 p 117 for a statement by Weld that ministers had advised the issue of the declaration.
3 NZPD 1861 p 35.
together without a preliminary war. As yet preliminary wars had been fought in the northern and southern parts of the North Island. The centre remained unpacified. The future of the country lay in association of the two races in one civilization under one sovereign and this was blocked by the King movement.

There was unanimity in the House on the three basic propositions; there should be negotiations with the King Maoris; if there was no satisfactory outcome the solution would have to be war; and any war with the Maoris would be an Imperial war. Weld's first resolution was passed with at most two dissentients. When the second resolution was moved an Aucklander, J. C. Firth said "I could have wished that, in the introduction of the resolutions ... the Native Minister had assured the House in a manner more distinct that this matter is an Imperial question," and proposed an amendment combining the second and third resolutions to emphasise "the liability of the Imperial Government to pay the expenses of this war". The amendment was agreed to. Instead of not shrinking from the consequences of a resort to force, the House merely recorded the "duty of the colony cordially to second the measures taken by the Imperial Government" if negotiations should fail.

A few bills had been considered, more questions asked, Fox had given warning that he would move his vote of no confidence and

---

1 Apparently Curtis from Motueka dissented and also told his neighbour E. McGlashan from Dunedin "to say 'No,' which he did, after the resolution had been put; but he was sure the Speaker did not hear him." It does not appear that McGlashan wanted the Speaker to hear him. (NZPD 1861 p 67.)
2 NZPD 1861 p 67-8.
Richmond that on Wednesday, 26 June, he would present his financial statement, when on Tuesday, 25, a message was received from the Governor. The House had already shown marked slowness in proceeding with the business of the session and the major work of the session was further postponed by the Governor's bombshell. The Governor "as the representative of the Imperial Government" felt that an occasion had arisen "when it is proper for him to communicate with the Legislature independently of his Responsible Advisers." He wished to have clarification of the resolutions passed by the House. "Her Majesty's Imperial Government expects from the colony a full and cordial co-operation both in men and money; and, unless he is assured of its continuance, the Governor is not prepared to instruct Lieutenant-General Cameron to employ the Imperial forces."¹

On 26th January 1861 the Secretary of State, the Duke of Newcastle, had written to Gore Browne expressing his surprise that the Governor should have assented to moneys being drawn from the Commissariat Chest for the pay etc. of the Taranaki militia and volunteers without securing a guarantee from the Colonial Government that these advances would be repaid by the colony.² This was but one instance of the series of exchanges between Imperial Government and Colonial Government over contributions to military costs. Negotiations centred on the British Government's attempts to obtain adequate colonial contributions towards the cost of defence of New Zealand, the colonists' attempts to fix responsibility for expenses on the British Treasury,

¹ Message 2, NZPD 1861 p 75.
² AJHR 1861 A-2.
and the Colonial Government's manoeuvring with the Governor to avoid more than limited payment. In the end the colonists played their hand so skilfully that the bulk of their debt was finally wiped out as a result of Stafford's negotiations during his second premiership. In 1861 the debate was still in its preliminary stages, and Browne, straight and unsubtle as he was, intervened in the House's debates to secure a straight recognition of the colonial obligation to give "hearty assistance" with money and men. Shortly after the Speaker had read the Governor's message Richmond announced that "the nature of His Excellency's message might prevent his (Mr Richmond's) being able to make the Financial Statement of which he had given notice, and he asked the forbearance of the House." Copies of the message were not yet available and its consideration was postponed till the next day.

The House reassembled on Wednesday, 26 June at 5 p.m. After routine business, Richmond introduced two major bills to impose checks on the expenditure of public moneys. Inevitably they raised the issue of central-provincial relations and were to be one of the most contentious issues of the session. Although the Government had at last brought forward major proposals they were not considered until the House had faced the Governor's message and then debated Fox's motion of no confidence.


2 cf below p 195 f.
The Governor's message raised the problem which underlay all discussion of native affairs in the early 1860's: how were native affairs to be administered? How to reconcile the need for change - the Taranaki war and the King movement and the report of the 1860 Waikato Committee \(^1\) clearly revealed the need - with the refusal of either Governor or colonists to agree to any reduction in their powers? Any colonial government had to face demands in the House for greater colonial control of native affairs together with refusal to admit or imply colonial responsibility for war costs. By his action the Governor embarrassed his ministers, and "for the first time since the establishment of Responsible Government His Excellency had taken his place on the floor of the House". Thus Fox opened the debate on the message. What, he asked, was the position of ministers? The Governor had consulted with ministers over the proclamation of martial law and the steps which followed; it was generally believed that Weld's resolutions had been considered by the Executive Council before their presentation in the House. Now the Governor was departing from the terms of the agreement of 1856 when responsible government was established.

"Mr Stafford said he would simply state that the Government knew nothing at all about the message till it came down to the House, and he was rather taken by surprise in that respect; and if he talked for two hours he could not say anything more." Ministers did recover sufficiently, however, to claim that the Governor acted "most rightly" and Richmond cited a precedent from 1858 when both Houses passed an

---

\(^1\) rf AJHR 1860 F-3 & cf above p 107, below p 225-6.
address praying that the 58th Regiment should not be removed, to which the Governor had replied, after consulting the officer commanding the troops and the Native Secretary, that he did not think the removal of the Regiment would endanger the colony. Actually this was not an apt precedent for on that occasion the Governor was acting exclusively on behalf of the Imperial Government. On native affairs it had been customary for the Governor to consult his ministers. ¹

In committee Stafford defended the Governor's "proper, regular, and entirely precedented course". In reply to the Governor he moved "one of the most pregnant addresses ever proposed for the consideration of this Legislature": "to the extent of the limited resources of the colony, this House, so far as in it lies, both as regards men and money, is willing fully and cordially to co-operate with the Imperial Government"; the House assents "to the organization and maintenance of such part of the colonial forces as may be necessary for the defence of the several settlements" and accepts the Imperial Government's conditions for advances from the Commissariat chest. With mounting passion Stafford roundly asserted that if the colony refused to take its share "we deserve to be branded first, as cowards; secondly, as slaves; and thirdly, as knaves" and sat down amidst cheers. Despite Stafford's support of the Governor, Fox, typically, asserted that he "and those with whom he usually acted" had decided "to lay aside all party action and to give the Ministry their cordial concurrence in

¹ NZPD 1861 p 77-79; for the 1858 case ref Message 5 JHR p 91(1859).
fighting out the constitutional battle on which the Governor had thrown down the gauntlet". Nevertheless he moved adjournment of the debate so that he and his friends could prepare an amendment. Only a couple of members had spoken but Stafford accepted the suggestion and the House shortly adjourned.¹

The next day again the House sat but briefly, from noon to 1.45 p.m. and apart from some discussion on making the Military Defence Committee a secret committee, which eventually was agreed upon, little business was done. This is not to say, of course, that nothing was done. Select committees were sitting and preparing their reports, members were drawing more and more information from Government in oral answers and parliamentary papers, and a trickle of legislation was going through; for example, a bill to amend the 1858 Registration of Electors Act was this day introduced by the Colonial Secretary.

Next day, Friday, June 28, the House spent several hours debating its reply to the Governor. There was no quorum in the Legislative Council that afternoon. Once again the debate began with a stirring ministerial speech, this time from C. W. Richmond. The House's reply was a question of paramount importance. The Governor's message "brought the House at last to the point; and for God's sake let them come to the point like men ... The Governor had informed the House that he was not prepared to go on without the co-operation of the colonists. Now, for the first time in the history of England that he (Mr. Richmond) was aware of, the question of peace or war was in the hands of a colonial Assembly." He and his colleagues "believed

¹ NZPD 1861 pp 79, 81, 84.
that the colony had been long drifting to this point, and ... that
the crisis had now come... The Government believed that the utmost
cautionshould be exercised on their part not to urge on the question;
but they knew that the inevitable hour of conflict must come.¹

Stafford then again moved his address. "The Chairman of
Committees said the address was different from that already read to
the House. After an irregular discussion" Stafford proposed
referring the question to the Speaker, and there was further discuss-
ion; finally, Stafford withdrew his motion and the chairman ruled
that as the original address had not been read by the chairman because
of the motion to report progress, Stafford "could therefore amend
his motion without leave".²

What had happened? The previous day (Thursday, 27 June) Fox
had called a meeting of "some of his more or less warm supporters"³
in a committee room of the House to consider an amendment to the
reply and more than a majority of the House attended. The meeting
was not just a party caucus. It was attended by members who, if
not members of Fox's party, were disquieted by the terms of the
Government's address (drawn up and presented by Government without
consulting its supporters) and were prepared, on this issue, to
force an amendment on the Government. It was an alliance of con-
venience in which all those who wished to force a change on Govern-
ment on an issue on which they felt strongly, were prepared to work

¹ Ibid p 93-4.
² Ibid p 94-5.
³ Ibid p 100.
out a formula on which they could agree without thereby forming a party or being committed to future co-operation.

All agreed on the gravity of the issue in 1861. Ministers appealed to members to rise above party, to determine the issue irrespective of party feelings about the present occupants of the ministerial seats. Fox declared that his friends had agreed to "lay aside all party action" on the question and appealed to, and received, corroboration of this from Hugh Carleton in the chair.\(^1\)

The meeting Fox called then, if not bi-partisan, in that members of Stafford's party almost certainly did not attend, was not merely party either. Some members there proposed amendments which the majority would not accept and the proposals of Alfred Saunders, an unattached member, were then accepted unanimously. In keeping with the non-party nature of the proceedings Saunders was requested to move the amendment in the House. Accordingly he gave notice of motion, and his amendment was printed and circulated. The Government conferred with Saunders, suggested amendments which he rejected and then on its own initiative took over his amendment and incorporated it in the address. It had played this trick once before and it is at this point that the explanation emerges of Firth's amendment to Weld's resolutions which prompted the Governor's message. For this amendment to the resolutions, which Government had accepted, had forestalled an amendment along the same lines which the opposition had intended to introduce and on which they were prepared to force a division. On both occasions Government thereby stole the

\(^1\) cf ibid p 84.
opposition's thunder and thus caused the inconclusive nature of proceedings so far. The Government's manoeuvre was successful because both parties were attempting - in fact were forced - to cast their resolutions in such a form as to win support from some of the independents. And whichever party got in first naturally had a majority. Hence the frustrated annoyance of the opposition.

Innocent enough on the surface, the amendments both to the original Native resolutions and to the House's reply to the Governor were intended to safeguard the colony against what was feared might be unreasonable demands on men and money. It was in fact the gloss put on the amended Weld resolutions both in the House and in the press which prompted the Governor's message, rather than the wording itself. Objection to Stafford's original address in reply to the message centred on fears that the colony was being committed to any measures which the Governor might request, and in particular to alterations to the Militia Act, which imposed a 30-mile limit on militia service. In the revised address the House declared that at the present juncture "the pecuniary cost" of maintaining the Queen's sovereignty must be of a secondary consideration to the colony. In defining the assistance "the colony is prepared to afford" the House assented "to the organization and maintenance under the present Militia Acts" of such colonial forces as were necessary to defend the various settlements. A conclusion was tagged on pointing out that the employment of the militia would disrupt the "industrial pursuits of the colony ... thereby greatly diminishing its resources" and would be "far more costly than the
employment of a larger number of Her Majesty's troops" if they could be procured. After some wrangling over the rightness or wrongness of the Government's proceedings the amended address was agreed to, and shortly afterwards at 8 p.m. the House adjourned, having sat longer than on any previous sitting.¹

The great tussle was just beginning, however, for Fox's long-deferred vote of no confidence was at last to be debated. On the following Monday (1 July) the Council met, the Speaker read the prayers, and then, there being no business, the Council adjourned. Next day, Tuesday, it followed the lower house in setting up a secret military defence committee, accepted the House's amendments in a minor bill (Commissioner's Powers) and adjourned. It did not meet on Wednesday and had no quorum on Thursday. The House had no quorum on Tuesday but on Wednesday, after it had formally adopted the address in reply to the Governor's message and dealt with a couple of other matters, it deliberated on the fate of the Stafford Government.

Opponents of the Government had assembled at Auckland with high hopes of this time turning it out of office. Although the provincialist reaction in 1860 had failed - perhaps because of mistakes in tactics - the Government was put "in a sufficiently contemptible position" and it was beaten on almost every question of finance.²

¹ Ibid p 95 f. Additions to the original address are underlined.
² Otago Colonist 23/11/60; cf Otago Witness 15/12/60, and Featherston's address to Wellington electors, reprinted from the Wellington Independent in the Witness, 8/12/60; cf also, Fox/Godley 4/9/60, Godley Correspondence, V. 7.
If the Wellington ultra-provincialists could turn the issue away from the rights and wrongs of the Taranaki war they should be able to muster an anti-Government majority, provided the elections had not too much altered the party strengths. Only a vote of no confidence, or a division on one of the major questions on which centralists and provincialists disagreed, could show the precise effect of the elections.

The three men on trial, Stafford, Richmond, Weld, sat on the treasury benches under a strong glare of light; a large Auckland audience packed the gallery, spread on to the floor, overlapped into members' seats, and contributed to "the stifling heat of that ill-ventilated barn" which affected the speeches of members on both sides of the house. If it was not the heat it was the cold, and one unfortunate gentleman ended the debate in great pain having been given acute rheumatism by the draught from an open window. The debate raged for three days - Wednesday until 11 p.m., Thursday from shortly after noon until about 11.30 p.m. and Friday afternoon. Twenty-two members - almost half those present - rose to praise or to blame, to vent the accumulated grievances of five years against the Government or the provincialists. And until the members divided on each side of the Speaker's chair, and the tellers reported the results to the Speaker at half past four on Friday afternoon, the final issue was in doubt. The votes of old hands were predictable. There were twenty-one present who had cast votes in the previous two divisions involving survival of government: the no confidence division on which Fox fell in 1856 and the Native Offenders Bill second reading on which
Stafford survived in 1860. Only one of these ended in 1861 on the opposite side from his stand in one of the previous divisions. But there were twenty-six new members of the House, and with so little business transacted - the only legislation put through had been uncontentious proposals from the Legislative Council - the allegiance of some remained uncertain. Several had as yet not addressed the House and there had been but one division - on printing as parliamentary papers further rejoinders in the pamphlet debate on the causes of the late Taranaki war. Although there were three further divisions before the final motion was put, two were procedural and one was a motion to improve accommodation in the House and by implication involved the non-party question of the seat of Government. Only eleven of the new men spoke in the no confidence debate and it was not till the closing hours of the debate that one member was prompted by Fox's anxious enquiry to declare his position.

The rights and wrongs of the Taranaki war were put aside. Fox did not wish to revive that dispute. He was not now debating principles. Instead he played skilfully on those points most disturbing to his fellow settlers and like many successful radicals, when on the verge of power, was more concerned with showing the greater efficiency of a Fox government than with presenting new policies. The Executive Council decision to support Gore Browne

---

1 John Williamson, Superintendent of Auckland (cf below p294). More by accident than design, at the time of each of the three crucial divisions Hugh Carleton was opposing the Stafford Government.  
2 NZPD 1861 pp 74, 115, 151, 154.  
3 cf ibid p 74.
on 25 January 1860 was "fatal" because it enabled Newcastle to treat
the war as a settlers' war and to charge the colony with its cost;
the proclamation of martial law was an error because the colonists
were not warned, were unarmed and utterly unprepared; while the
"Ministry had, with an infatuation almost amounting to insanity,
advised the Governor to arm the Natives to the teeth" by repealing
Grey's prohibition on sale of arms to Natives. Then after Newcastle's
Despatch was received with its reference to the "Governor's quarrel
with Kingi" Ministers rushed in to conclude an ignominious peace when
a final blow might have settled the war. And they were unprepared
for a Waikato war. Fox called for bona fide negotiations which might
yet avoid war and claimed the Stafford Government could not negotiate
with Maoris since they were known as the authors of the Taranaki war
and fathers of the Native Offenders Bill. In short, Fox offered more
effective negotiation on the terms already put forward, and if it
failed, more effective war which should appear clearly as an Imperial
war. He concluded a two-hour speech by bringing up the sore point
of the Government's centralism and the mean tricks he felt they had
played on Wellington.¹

¹ Stafford jumped on Fox's conversion: "I can well conceive the
trembling anxiety of mind with which he has at last removed the mask
under which he has hitherto acted", but now he had come forward as a
War Minister, to win the support of some at the expense of "conflict
with others with whom he sympathized, and whose support he did not

¹ Ibid p 103-107.
wish to lose". The Colonial Secretary claimed - with justice - that ministers had always insisted that it was an Imperial war, and, naturally defended the part they had played in it. "The whole time of the Government by day, and the greater part of it by night, has been, and will be, one perpetual negotiation as to Native questions ... one perpetual consideration of representations, memorials, letters, and replies."2

But Government was aware of its probable defeat. Stafford that night felt ill and unable to speak with effect, and his speech became long and rambling as he faced all Fox's charges. He was not the only one to suffer - probably from the cramped and stuffy atmosphere - and next night C. W. Richmond, a sufferer from asthma, had to plead for an adjournment.

Behind the leaders the supporters took various stands; to some the native question was the main issue; to others provincialism; some felt that the Government were managing the war question well and that Fox and his allies had let the colony down by their philo-Maori propaganda of the previous year, others were still worried about Taranaki and felt the Natives would never trust the Stafford Government again, while yet others wanted toughness but accepted Fox's assurances that he could fight a war as well as his opponents. Richmond summed up the debate in a long and able speech in which he stressed the "modest dimensions" of ministerial powers: "We cannot

1 Ibid p 107-8.
2 Ibid p 112.
and will not accept the responsibility either for the Native policy of New Zealand, or for the military conduct of the late campaign"; in every important particular "our policy [in native affairs] has not been allowed to bear its natural fruits." 

So often in the past had ministers defended the Governor and the system of administration of native affairs that it was significant that on this occasion, his last speech as a minister of the Crown, Richmond revealed more frankly than in the past some of the frustration under which ministers had laboured, and by implication, the defects of the system which he had defended loyally.

After final comments by Fox the House divided on Friday, 5 July. The motion was carried 24 to 23, and the business of the General Assembly, little advanced, ground to a halt until a new ministry had been constructed and its policy prepared.

Only the skilful manipulations of a political genius, or the quirks of fate could have so arranged the disposition of men that in the first week of July 1861, Fox had a majority in the House. The numbers were so evenly balanced that the elevation of Monro to the speakership gave Fox his majority of one. H. A. Atkinson, C. W. Richmond's brother-in-law, despite the dispatch of a government steamer, arrived just an hour and a half too late. His vote, plus Monro's, would have saved the Government. 

1 Ibid p 156 & 166.
2 A. S. Atkinson journal 5 Jul, Jane Maria Atkinson/Margaret Taylor 7/7/61, Richmond-Atkinson Papers Vol 1 p 712-3. cf A.S. Atkinson's letter of 17/6/61 to H. A. Atkinson urging him to "come up as soon as possible" (Atkinson MSS). Atkinson was elected on 20/6/61 in place of W. C. King who had been killed by Maoris the previous February.
Two members had leave of absence, T. B. Gillies and Crosbie Ward. Both in 1860 had shown their desire not to put Fox into office. H. S. Harrison, a Foxite, that day re-elected member for Wanganui, would have been balanced by the remaining absent member, W. Colenso, four days earlier elected member for Napier. This gives Fox a minimum of twenty-five, with a possible twenty-seven for the other side, and it is not surprising, therefore, that within a few weeks the centralists attempted to repeat the events of 1856 and to use late arrivals to regain office. The reasons for their failure are described below.

They had, in the words of the centralist Firth, fixed "the destinies of the colony for good or evil, and that for many a day". Few modern commentators would disagree with Fox in believing that they had fixed "for good". To those who see the Taranaki war as a great and ineradicable blot on New Zealand race relations this was retributive justice on Stafford and his colleagues, while apart from this unhappy question the Government had completed its notable constructive achievements. But there are arguments for saying that the chance result of this particular division was disastrous for New Zealand. In burying "the unjust and unholy war" had Fox sold his soul for office? His had not been the chief voice of conscience in the General Assembly in 1860 but he had upheld and brought a large

---

1 Harrison had been elected member for Wanganui in the general election but was disqualified under the 1858 Disqualification Act as he then held the post of sheriff. (cf NZPD 1861 p 25).
2 NZPD 1861 p 137.
3 Weld ascribed this description of the Taranaki war to one of Fox's principal supporters - presumably Featherston (NZPD 1861 p 99).
bloc of votes to the support of Featherston and Carleton and others who appear to have been deeply perturbed. His party had provided a venue for the views of obstreperous but deeply religious men outside parliament. Once Fox was in office the strength of opposition to any future "unholy" activities was lost, and it may be suspected that as a member of Government Fox was more susceptible to settler pressures than had been Stafford and Richmond. The most shameful deeds of confiscation were proposed when he was Native Minister in 1863-4. More truly, perhaps, one may repeat Gisborne's judgement of Fox that "his impulsive nature threw him, heart and soul, into certain views; and when the inexorable logic of facts and change of conditions proved to him the necessity of alteration, he did not think of modification, but rushed into opposite extremes." At the least it may be said that the Stafford Government would not have done worse than did its successors, particularly if it had had an organized opposition probing for chinks.

Within twenty minutes of their defeat ministers tendered their resignation though it was not until midday next day, Saturday, that Fox received his summons to wait on the Governor. Monday was spent in negotiations with his party friends, and on Tuesday the House adjourned after twenty minutes until the following Friday, 12 July. Meantime the Council had met on Monday and Tuesday to adjourn and by Friday, with still no word of the new Government, adjourned again. That day the House met, adjourned for one and a half hours to enable

---

1 Gisborne, *New Zealand Rulers*, p 105 (on Fox's abandonment of provincialism); cf *ibid* p 167-8 on the Whitaker-Fox Government.
Fox to present his cabinet to the Governor, and when it resumed Fox listed his Ministers, except for the position of Postmaster General and Secretary for Crown Lands which was "kept open". Fox was Attorney-General and leader of the House, Dr Featherston Colonial Secretary, Reader Wood Colonial Treasurer, W. B. D. Mantell Native Minister, and John Williamson and T. Henderson had seats in the Executive without office. Stafford immediately expressed his "astonishment and surprise" at the inclusion of Mantell in the ministry. Mantell had dissented from the House's address in reply to the Governor and was reputed to disagree with Fox's acceptance of the Governor's terms to the Waikatos. Stafford had pointed out the grave weakness of the Fox Government - its lack of cohesion - which the loose bonds holding together Fox's majority made almost unavoidable. Fox's most able supporters were his ultra-provincialist friends from Wellington but an ultra-provincialist ministry could not have maintained a majority in the House.

In reply to Stafford Fox promised to give a full statement on the Government's native policy next Tuesday. The House then adjourned for the weekend.
MEMBERS OF THE NEW ZEALAND

HOUSE OF REPRESENTATIVES, 1861

(reproduced by courtesy of the Hocken Library)
This key is reproduced from the Supplement to the Jubilee number of the Canterbury Times, 19 Dec. 1900. It is the same key as that provided for the enlarged version of this photograph which hangs in the corridors of the present Parliament Buildings. This photograph almost certainly does not show the buildings in which the General Assembly met but, probably, Government House, Auckland. (cf above p 41.)
CHAPTER 8

A PARLIAMENTARY SESSION, 1861:

Tuesday 16 July to Thursday 1 August

The General Assembly had opened on the 3rd June. Now, six weeks later, it had a new government - if not necessarily a secure government - but had accomplished little else. On Tuesday 16 July Fox's policy was announced in the upper house by Dr Pollen, appointed that day to the Council as Government representative, and in the lower house by Fox himself. The Government's policy was much as might have been expected after Fox's speech a week earlier.

In commentaries on this period too much stress tends to be laid on changes of policy with changes in ministerial personnel. Native affairs were "the all-absorbing question of the day" and with scarcely a dissentient voice the House had supported Weld's resolutions on native affairs. It was not the advent to power of Fox which caused postponement in attempts to enforce the Governor's declaration of terms of May 1861 to the Waikato. Before the fall of the Stafford Government, the Governor and the Assembly's secret Military Defence Committee had both decided that there were insufficient troops in the colony for an attack. The most important policy of any New Zealand government continued to be the reduction of the King Maoris to submission to British sovereignty - by force if necessary. The Fox Government was reconciled to the possibility that affairs might "terminate in a hostile and bloody end." If this should happen the

1 Pollen, NZPD 1861 p 174.
2 cf Browne/Maria Browne 29/6/61 & 5/7/61, Browne MSS 2/4 Nos 13 and 14.
Government "would conduct...[the war] with vigour to a satisfactory and honourable conclusion, to be terminated only by a peace which would be creditable to the British nation."\(^1\) By this Fox meant, as Lloyd George meant and as Churchill meant, the complete surrender of the enemy, or "insurgents" as Fox preferred to call them.\(^2\)

For the meantime Fox intended to put more heart into negotiations for peace and more life into political institutions for the Maoris along the lines indicated by Richmond as Native Minister in 1858 and approved by the Waikato Committee of 1860. Negotiations "should not be conducted by paper missives ... but face to face with the Natives, intercourse being had with them by the Native Minister perhaps"\(^1\) - a reminder that for the first time since the introduction of responsible government the politician charged with native affairs had personal experience in negotiating with Maoris. The Maoris had come to view the Government "as a gigantic land-broker". To create confidence with the Natives - and here Fox was explicitly referring to "that large section of Natives who had not been engaged in actual insurrection against the Crown" - the Government would advise His Excellency "to give an unmistakeable assurance that all land sales should be stopped, at least for the present" with the exception of certain negotiations nearing completion.\(^1\) The Land Purchase Department had outlived its usefulness and Fox proposed to suspend its functions and perhaps abolish it altogether. Instead he turned to the accepted panacea of all their difficulties: individualization of title and eventual direct purchase. Here Fox was taking up the intentions behind the disallowed

---

1 Fox, NZPD 1861 pp 175, 174, 173.
2 Some modification is required in Professor Morrell's contrast between Fox's "policy of pacification" and the "vigorous prosecution" policy of Stafford and Richmond (Provincial System, p 111); cf Sinclair's more cautious comment, Maori Wars, p 213.
Native Territorial Rights Bill of 1858, although he proposed in the first instance to develop Weld's idea of an independent tribunal to investigate land titles. Determination of land titles would also ease the way for the construction of roads on which, before railroads or telegraph were practicable, both parties laid great stress.

Fox's policy boiled down to winning the support of peaceful Maoris for the adoption of Western type land-tenure and political institutions and then persuading the "insurgent" or defiant Waikatos to come to terms. It is hard to see how this could have succeeded, but it is also hard to see what else he could do. This was putting new life into the previous Government's policy - not replacing it.

The actual legislative measures proposed by Government were few. Fox disclaimed ultra-provincialism: he would merely strengthen the provinces in the powers they already had. He proposed to prevent the creation of new provinces, restore the Land Fund one-sixths to the North Island provinces, and re-cast Richmond's two bills to control public expenditure, in particular to give greater recognition to the rights of provinces. Apart from a short Bankruptcy Bill, instead of the Stafford Government's much lengthier bill to which commercial interests objected, renewal of the 1860 Arms Act and abolition of District Courts, this was the extent of the policy he outlined.

The House considered two private members' banking bills - now under ministerial patronage, including one to set up the Bank of New Zealand, whisked through some other legislation and having sat for three hours adjourned till next day.

When it reconvened on Wednesday 17 July, Featherston, temporarily
Colonial Secretary, immediately plunged into the controversial question of the land one-sixths and re-introduced his unsuccessful Land Revenue Appropriation Act Amendment Bill of 1860.1 Crosbie Ward had now arrived and joined the Wellington speakers in their complaints at the breach in 1858 of the 1856 "compact". In the preliminary skirmishes it became apparent that while Stafford was prepared to compromise C. W. Richmond intended to fight. The House adjourned after another short sitting.

There were brief discussions next day, Thursday 18 July. Bell successfully moved that a memorandum by the Governor on native affairs already tabled should be translated into Maori and His Excellency requested to transmit it to the principal chiefs. This would show that the Governor "had long since sketched out the Native policy which the present Government had appropriated as their own"; Fox's policy statement was taken "almost entirely from His Excellency's memorandum". It would show, added Weld, that Gore Browne was "a real friend of the Native". Fox agreed with the motion, "entirely concurred" with the memorandum, but still claimed that his views were his own and were also very similar to Bell's. And fortunately Mantell entered the House in time to answer Stafford's taunt that the new Native Minister "had never yet expressed any opinions in public" and was able to reassure Dillon Bell at least by his "manly and straightforward statement" that "Honesty is the best policy".2

In a message in reply Gore Browne had "much pleasure" in

---

1 cf above p 55. 2 NZPD 1861 p 182-186.
assenting to the House's request that the memorandum be translated and published. He was "much gratified at finding that the House concurs in his views generally" and did not doubt that this would "tend materially to restore confidence in the minds of the Natives". There was a slight sting in his concluding comment that publication would "naturally lead the Maories to expect that provision" would be made for carrying these views into effect and "the Governor therefore recommends the subject to the consideration of the House".¹

Government still had no business for the House, although Reader Wood was preparing his first budget, and after sitting two and a half hours the House adjourned for five days until Tuesday, 23 July. Meanwhile the Legislative Council was continuing its regular sittings but also had little business before it.

It is not uncommon nowadays for it to be some weeks before the budget is presented to the House, but it was not till seven weeks after General Assembly opened that members were finally given something positive to discuss. Reader Wood's budget presented on Tuesday 23 July contained few surprises. Richmond apparently had left the Treasury in such order that it was a straightforward matter, with the aid of the Auditor-General and the Under Treasurer, to sort out the accounts, and as C. W. Richmond promptly pointed out Wood was not the financial reformer his hustings speeches might have led one to expect. Both Richmond and Stafford jumped on Wood's readiness to accede to the "urgency and importunity" of the Imperial Government for refunds to

¹ JHR 1861 p 73.
the Commissariat. Richmond and Stafford had been fencing on this issue and it was not surprising that Wood, newly elected and with little government experience, should have failed to see the finesse with which the game should be played.

Here, indeed, was a marked difference between the two parties. Twice the House had forced the Stafford Government to modify its resolutions qualifying New Zealand's readiness to support the war effort. Stafford's Government was happy to give the Governor all the reassurance he wanted in fine words from the House of Representatives while watching every penny with dogged persistence. "In many respects", Richmond asserted, the claims of the Commissariat Department were "utterly and entirely inadmissible", and Wood had underestimated the set-off, colonial expenditure on barracks since 1858. The claims, Stafford added, were "a very great piece of impertinence" for they emanated from "a subordinate department in the colony", and as "Chief Secretary" he had not recognised any claims advanced without instruction from the Imperial Government. Moreover, when the militia was called out by the Crown it became "an Imperial force, the entire expense of which should be borne by the Imperial Government" and hence Wood should not have estimated militia expenditure at £40,000 per annum.¹ The session was warming up; the centralists were not yet admitting defeat and were showing some skill in their tactics.

Next day, Wednesday 24 July, the House further debated Featherston's Land Revenue Appropriation Act Amendment Bill. "Provincialism run mad" Richmond called it; Stafford had already shown himself con-

¹ NZPD 1861 p 197-200.
ciliatory: he was bound by an understanding that if after the election a majority supported the bill, he would offer no further opposition. He "thought the other branch of the Legislature would equally abide by that understanding". Richmond, however, did not — nor for that matter did the Legislative Council. Stafford apparently failed to inform Richmond, although then Colonial Treasurer, of his promise, and Richmond fought the bill with vigour but to no avail. The bill was given a second reading.¹

The rest of the evening was spent in discussing future sittings. When should the estimates be considered? Some members at least, had spent all day on committee work, as it was a Wednesday — one member claiming that he had sat eleven hours in the House that day — and had had little time to consider the estimates, especially as copies had been distributed but half an hour before the House convened. Suddenly, however, members were talking of getting home. Southerners wanted to catch the next steamer leaving in a fortnight's time, and Wood supported their newly-discovered desire for haste.

The main business during the three and a half hours sitting on Thursday 25 July was debate on the third reading of Featherston's Land Revenue Appropriation Amendment Bill. On Friday, however, the House sat until 10.30 p.m. The Government was pressing to get on with consideration of the estimates, and the sitting began with debate on Fox's motion that at their rising they adjourn until Monday instead of the customary Tuesday.² In all sixteen members spoke, some several

² cf above p 37 n2.
times, and it appears to have been a fine party wrangle. Over-
shadowing the work of the House was a forthcoming motion of no con-
fidence. When the Stafford Government fell the House was five short
of its total membership. Since then three members had arrived, a
fourth, Gillies, had leave of absence of the session. The opposi-
tion had been reorganised under C. W. Richmond, and as soon as the
vessel arrived from Napier with the new Napier member on board, had
a fair chance of defeating the Fox Government.

Having eventually agreed to sit on the following Monday the
House had its first skirmishes on the Provincial Audit and Public
Expenditure bills. These bills were almost the only major legis-
lation presented by the Stafford Government, and now, apart from
Featherston's bill, were the first major legislation of the Fox
Government to be debated. Members had only had the new bills for
twenty-four hours and the debate soon adjourned "to give members
time to examine and compare" Fox's and Richmond's rival bills. The
Government concurred in the adjournment in order to proceed to the
estimates that evening. On the motion to go into committee of supply,
however, Stafford pointed out that members still had not seen an
accurate report of Wood's financial statement of the previous Tuesday.
So instead of considering the estimates the Committee of Supply spent
the evening debating the report of the Committee on Steam Postal
Service.

The House still did not turn to the estimates when it reassembled

1 cf above p 45.
after the weekend. This was a session of surprises and interruptions. On Saturday 27 July the overseas mail arrived and Monday's sitting began with Stafford asking whether the Governor had received various items of information. Fox replied that they had not been received but "most important despatches had arrived, and they would be communicated to the House today", whereupon the Speaker announced the arrival of Message No. 12 from His Excellency. It was as brief and curt as usual.

"Thomas Gore Browne, Governor.....
The Governor transmits ... a copy of a despatch marked "Separate," dated 25th May, 1861, received from His Grace the Duke of Newcastle, K.G., on Saturday, the 27th instant.

Government House, Auckland, 29th July, 1861."
The enclosed despatch, while assuring Gore Browne of Newcastle's confidence in him - and in a private despatch Newcastle was even more cordial - announced that Newcastle had "determined to place the government of the Islands" in the hands of Sir George Grey, having regard to Grey's "peculiar qualifications and experience".¹

Grey was the last, ablest, most unpopular and most autocratic of New Zealand's unpopular and autocratic crown colony Governors. During his five years as Governor the courteous, straight and honourable Gore Browne had completely altered the nature and image of the Governorship. He had probably now become too identified with the Taranaki war and its political supporters to have worked very well with Fox who had taken little care to except the Governor from his

¹ NZPD 1861 p 230, 229.
bitter attacks on the Stafford Government. But in late July the centralists in the House of Representatives were poised for a comeback under C. W. Richmond. The return of Grey transformed the political situation. The centralists were stunned. For five years they had loyally upheld the Governor's right to administer native affairs. But they had never anticipated the return of Grey to claim that right. The provincialists, too, had little cause to delight in seeing Grey again. But for them the blow was easier to take. Grey's last actions had appeared to centralists to be to attempt to sabotage the new constitution, by delaying the introduction of the central institutions and by handing over considerable powers to the provinces. Provincial government leaders in Nelson and Canterbury had viewed these dealings with suspicion. The Wellingtonians, however, had appeared all too willing to play Grey's game and to accept all provincial powers he was prepared to give. Further, he had shown some skill in his personal dealings with Maoris. Fox had come to power with three general aims: to halt the centralising tendencies of Stafford; to alter the system of administering native affairs—from 1856 he had supported responsible government in native affairs; and to make greater efforts to have personal dealings with the Maoris and to attempt to wean them away from the Maori King movement. The replacement of Gore Browne by Grey was likely to help all three aims; the question of responsible government if only because centralists would be uneasy in trusting Grey with control. Grey's slippery nature was well known and centralists could easily foresee that he would bolster his own abilities by disparaging those of his pre-
decessor. It was even possible that he would, for this reason, attack the justice of the Taranaki war.

It was understandable, then, if short-sighted, for Fox to be more aware of the confusion of the centralists than of the evils which would result from the change. "Now that our 'mutual friend' Sir George Grey is to take the matter of native affairs in hand", he wrote to a friend, "we are very hopeful that the best results will follow." His reappointment "took the other side of the House entirely aback and may be considered as putting an extinguisher on their policy".1

After the message had been read Fox moved that it should be printed and Stafford sprang to his feet: he "thought it very desirable that every honourable member should have a chance of seeing in print the important despatch which had been transmitted for their information, as it must have taken them by surprise". He was aware a month ago that Grey had offered his services and that the Imperial Government were considering the proposal. He also knew of Grey's plan to settle the New Zealand question. "Those who had admired Sir George Grey would now have an opportunity of assisting him, and of continuing their admiration. Those who, on the contrary, were not satisfied with the system of Sir George Grey would not possibly be expected altogether ....

Mr Fox rose to a point of order, and said that he intended to move an adjournment till to-morrow." Stafford agreed, and the motion was carried. The House had sat thirty minutes.

1 Fox/E. Catchpool, 10/8/61. Catchpool MSS folder 5.
There was nothing members could do. Browne was not disgraced: they could not defend an honour which was not impugned, though when he left Browne was given full evidence of the trust and affection in which he was held by many New Zealanders, and as for Grey ... they were powerless. This was a sharp reminder of the still dependent nature of the colony and the wisest step was to make the best of a bad job. And bad job it was. Grey was too strong a person to let his Ministers run the country - even after the final grant, in 1863, of New Zealand responsibility for native affairs. But his post no longer permitted him to run the country himself as an autocrat: he ruled by guile rather than by authority. This was in the future. All that was realised in 1861 was that Grey's return transformed the political scene, and the discussion which Fox cut short was not revived, though the Grey shadow lay over the House for the rest of the session.

Next day, Tuesday 30 July, the House at last turned to consideration of the estimates. The Committee of Supply approved the votes for Class I (Executive), Class II (Legislative) and in Class III (Judicial) approved the vote for Supreme Court expenses. But the opposition then staged a debate on the miserable £300 proposed for District Courts, which the Government intended to abolish.¹ Doubtless it was as much a matter of party tactics as of principle which caused the opposition to stall business at this point. That day William Colenso, member for Napier, had taken his seat in the House.

¹ cf below p 319.
On the afternoon of Wednesday 31 July, the Government proposed postponing the orders of the day in order to continue consideration of the estimates. The opposition, however, had different priorities. Its leader, C. W. Richmond, "begged the Government to understand that he should use every possible opportunity the rules of the House afforded to oppose" forcing through supply before the bills on the notice paper had been dealt with. The Government "had not known what opposition was yet; but he should resort to every opposition to interrupt the debates until the Audit Bill (No. 2) had been considered and a decision come to upon it".¹

Why should Richmond now wish to block the Government? His no confidence motion had been put down for next day. Was he trying to hold up business until it had been debated? Did he really believe that the Audit bills which imposed checks on public expenditure were so important that they should precede consideration of the estimates? This, undoubtedly was a factor, but perhaps not the major factor. A consideration of the divisions which the opposition forced: on postponing the orders of the day, on going into committee of supply, and on reporting progress, gives some clue as to what was going on. The Government won all three divisions. At most 47 members voted, but there was only one member who did not vote in any of the three divisions, an opponent of Government, and if he is included the figures are 26:26, i.e. with Monro in the chair Government had a majority of one, and in committee, with Carleton in the chair, a

¹ NZPD 1861 p 236-7 (cited above p 102 n 2 ).
minority of one. Richmond needed win over only one member to displace the Government. It has been stressed already that although the Stafford Government had become unpopular this was balanced by the distrust many felt for Fox and his associates. The centralists had fair hopes of utilising that distrust, not to revive the old government, but to form a differently based ministry under a new leadership. Loyalty to a defeated leader is not a strong political trait and as C. W. Richmond cuttingly informed his brother in 1858, Stafford's ministerial colleagues did not need to be informed of his defects.¹

Early in the session Arthur Atkinson, an employee in the Native Secretary's Office, had written to his brother Harry prophesying that even if the Stafford Government were defeated

"the Wellington knaves and Auckland blockheads will find the Government chairs a little too warm for them - a good many of the Otago & Canterbury men are pledged to turn out the Stafford Ministry but they would be quite as ready to turn out Fox and Featherstone (sic) - & the consequence probably will be a middle ministry in which our side of the country will be fairly represented - in fact according to the programme I have seen almost as well as now". ²

When Richmond was threatening obstruction Carleton, an uncertain weather-vane, spoke of a "third party" which had been formed "with a view of effecting a strong Ministry".³ Even if we discount the existence of such a party it is apparent that Richmond and his friends had hopes of replacing Fox by a new centralist ministry relieved of

² A.S. Atkinson/H.A. Atkinson 17/6/61, Atkinson MSS Folder 2A.
³ NZPD 1861 p 237.
the unpopularity which they felt hung round Stafford's Government. Richmond was attempting to force Government to face discussion on the Audit bills as a preliminary to his no confidence motion, for this Bill was one of the main issues on which he hoped to secure their defeat. Although he was unsuccessful, the Committee of Supply continued at length the debate on the item of £300 for District Courts so the Government made no progress on the estimates, and eventually the House adjourned with little done. It was over three weeks later before the House returned to the estimates.

The next day, Thursday 1 August, Fox rose to make a ministerial statement: Williamson and Featherston had resigned and Crosbie Ward and Henry Sewell had joined the ministry. This was a blow to the opposition. Both the retiring ministers could have been liabilities to the Government. Williamson was deeply involved in Auckland provincial politics and Fox required the votes of some of his Auckland opponents, and Featherston epitomised the strident voices of the ultra-provincialists and philo-Maoris which a Fox ministry had to mute in order to retain office. The inclusion of Ward and Sewell brought the Government nearer the centre of the political spectrum. Richmond announced that he would postpone his no confidence motion for a few hours. He wished to move immediately into discussion of the Audit bills. He disclaimed intention of making the Audit bills a party question "in order to inflict a defeat on the honourable

---

1 Sewell was not then a member of either house of the General Assembly and Fox stated emphatically that he would not take oaths of office until he was a member (NZPD 1861 p 241) - a stricter adherence to constitutional proprieties than that observed today in Great Britain.
gentlemen who occupy the Ministerial seats - which I believe we could do if we desired it".¹ Maybe not, but he was certainly aware of the disunity in the Government ranks on this question and quite shrewd enough to exploit it.

Fox declined to fall into the trap. The Government would not go on with important business with a no confidence motion hanging over their heads. "There is other business of an important nature that may be now discussed, without going on with Bills that raise peculiarly a party question." He had out-witted Richmond. If he could survive the no confidence debate he was secured in office.

He had guaranteed that success by a ministerial re-shuffle and it was best to keep clear of the Audit bills until afterwards. A few days later he wrote to a Wellington friend in exultation: "the Stafford-Richmond party may be considered as defunct forever." As earlier quoted, he credited the re-appointment of Grey with this result while he treated his ministerial re-shuffle as an incidental question. "Personal difference among Auckland men necessitated Williamson's retirement before we face vote of want of confidence No 2² and to avoid an unpleasant situation, Featherston "who as well as W. only held office for the session [they were both Superintendents] agreed to retire at the same time. Sewell and Ward would have been in from the first but both were absent from Auckland when we were Cabinet making."³

¹ NZPD 1861 p 240.
² Dropping Williamson was almost certainly the price that Carleton, if no-one else, exacted for continued support of the Government.
³ Fox/E. Catchpool, 10/8/61, Catchpool MSS folder 5.
It is quite possible, considering the development of an association between Sewell and the Wellingtonians during the 1860 session that he would have joined the ministry at the outset. It is not so likely that Ward would have done so. As he stated in explaining his reasons for accepting office, the Stafford Government had been turned out on "the war question and the Native question", and he had no opinion on the Native question, and in 1860 differed with Fox on the war question. A few years later he wrote to the highly respected observer of Canterbury affairs, H. S. Sefte, to defend himself for having deserted the Weld Government and supported the Stafford provincialist party. In the meantime, with Wood and Sewell he had been willing in 1862 to serve under Fox's antithesis, A. Domett. It appears, then, that he was a weak man of uncertain political loyalties, but with a provincialist leaning. In his speech to the House on 1st August 1861, as in his letter to Sefte in 1866, he puts forward a confused and defensive argument, bitterly attacking those whom he had deserted. He believed that Grey's reappointment removed the war question from the House's cognizance, and moreover it was desirable that the Middle Island should be represented in the ministry. Only a few days earlier he thought Grey's return justified separation of the two islands.

This incident might lead us to share his contemporaries' distrust of Fox. His letter to an old friend glides over, if it does not actually distort, the situation, and as in 1856 he had formed a
Charles Brown did not fit into his ministry in 1856, differing over the crucial issue of provincialism, and now that Fox put so much weight on native affairs, he had two ministers, Mantell and Ward, who appeared to represent a very different approach on that question from the one which Fox had proclaimed. Mantell, Ward and Sewell too, more even than Fox himself, were men who despite some strong convictions, and in the case of Ward and Sewell, of bitter partisanship, were politically unstable, unable to remain true to any government or party.

By thus weakening the cohesion of his ministry, however, Fox ensured his continuance in office. He had prevented his Government breaking on Auckland provincial antagonisms and guaranteed Ward's crucial vote in return for a seat in cabinet. The divisions the previous night had indicated a probable party strength of 26:26 - Ward had already been wooed and won even if the engagement was not announced. With Monro in the chair, at midnight on Thursday, 1 August, Fox defeated Richmond by one vote. It was a narrow shave even if governments in those days commonly operated on a margin of one.

It is not, at this time, much help to know whether party leaders drew most of their support in the House from representatives of the North or the South Island. Fox had 18 supporters from the North Island and eight from the South Island; Stafford and Richmond had 11 and 15 respectively. More significantly, Fox drew support from a solid phalanx of nine Wellington representatives and nine of the 15
Auckland representatives. There appears no particular significance in the districts which members represented: in double member constituencies members might be of the same political persuasion, or, as likely, differ. What is noticeable is that Stafford and Richmond drew support fairly uniformly from the whole colony with the exception of Wellington: a substantial minority from Auckland, five of the six Nelson members, seven of the nine Canterbury members, the small North Island provinces of Taranaki and Hawke's Bay, two of the five from Otago (if the absent Gillies is included), and one of the two from both Marlborough and Southland. This pattern is not markedly different from that of 1856.

The opposition had hoped to swing E. McGlashan, younger brother of the John McGlashan whom Macandrew dragged down with him in Otago. A. S. Atkinson noted in his journal that McGlashan "told us ... that he thought C.W.R. one of the foremost men if not the foremost man of the Colony or perhaps of the Australian Colonies." Yet he attempted to form a coalition and "when he found that the Opposition made it a sine quà non that C.W.R. should have a seat in the cabinet he determined to vote with Ministers, which he did so turned the scale ... his reasoning certainly is rather inconsequential."¹

But that inconsequential reasoning - if one man can be held responsible for the result of the division - did more than end the political career of one of New Zealand's ablest and sharpest politicians. The defeat of the Stafford Government was as much a defeat for the leader of the ministry as for his party. The failure of

¹ A.S. Atkinson journal, 1 Aug 1861, Richmond-Atkinson Papers Vol I p 718.
Richmond's counter-attack was the defeat of a re-formed party which had hoped, with justice, that it could provide a strong government, and the victory of a party which could not. Mr Maurice Fitzgerald, the compiler of the early volumes of New Zealand Parliamentary Debates, apparently found no record of the no confidence debate and merely records the names of 15 speakers. It is less regrettable that we lack the substance of the speeches, for doubtless they traversed well-trodden ground, than that the brief space accorded the debate may obscure its importance. Stafford's victory in 1856 led to five years of stable government and a parliamentary process made effective by the interplay of two defined parties bound by recognisable principles and overriding provincial jealousies. Richmond's defeat in 1861 led to five years of unstable government and disintegration of the parliamentary parties, to the extent that in 1865 Stafford with the support of the provincialists could turn out a Weld Government because of centralising taxes proposed by the Colonial Treasurer, William Fitzherbert, who in 1861 stood out as one of the staunchest of the Wellington ultra-provincialists.

A Richmond Government would neither have suffered from the lack of cohesion of the Fox and Whitaker-Fox Governments nor the lack of leadership of the Domett Government. It was fortuitous circumstances which brought Fox in and kept him in. The electorate had little effect on the party balance; it was the odd absentee or resignation which determined the result. In 1861 the absent Gillies might have voted out the Stafford Government but it is unlikely that he would have voted to retain a Fox Government and the true state of the parties
in the House in 1861 was 27:26 against Fox, the 27 including the
Speaker's casting vote. Mantell, too, both as member for the
Southland electorate of Wallace and in his attitude towards native
affairs belonged to the other side, as they took delight in pointing
out and as he soon recognised himself. The Fox Government's majority
was ramshackle and uncertain. In office Fox started to lose his
staunchest and most committed allies and with them the platform on
which he had stood.

By 1st August 1861 General Assembly had sat two months. In this
time certain business had advanced but almost nothing had been com-
pleted. Neither the out-going Government nor their successors had a
prepared legislative programme. Almost the sole essential work before
the Assembly was approval of finance for the coming year. With peace
patched up at Taranaki and final settlement of the King question
dependent on the outcome of negotiations with the Waikato Maoris,
there was little the legislature could do in advancing towards a new
basis of relations between the two races. There was no point anyway
in taking any measures until it was seen what Sir George Grey had in
mind or would attempt to do. He was expected to arrive shortly and
meantime was incommunicado as he sailed to New Zealand. The centralist-
provincialist battle was really over. The Stafford Government had
gone just about as far as it wished to go in its centralising measures:
the provincialists could attempt to reverse that centralising slightly,
but in fact could not return to Fox's "six colonies".

Neither side had seen Fox's original victory in the House as
final. Now, however, he had survived the best counter-attack
centralists could muster. They accepted their defeat and Richmond and Stafford announced that they would not again attempt to overturn the Government that session. The preceding pages describe the prologue to the legislative work of 1861: the establishment of an unchallenged government. The next section describes the epilogue, the winding up of the session. There is little in between.
CHAPTER 9

A PARLIAMENTARY SESSION, 1861:
3. The New Provinces Act and the Audit Bills;
Friday 2 August to Friday 23 August

The New Provinces Act

Fox had at last filled all cabinet posts and formed a permanent, as opposed to a temporary, government. Apart from its hopes to put relations with the Maoris on a new footing the Government's policy was essentially the negative one of reducing the centralising tendency of some of the legislation of its predecessors particularly the two body blows against the provinces - the 1858 Land Revenue Appropriation Act and the New Provinces Act. It was committed to the passage of Audit bills of a less centralising nature than those proposed by C. W. Richmond, and wished to abolish District Courts. The only other major business was the estimates. Already the House had passed Featherston's bill to amend the Land Revenue Appropriation Act, and Fox hoped that by sitting on Saturday 3 August and Monday 5 August the House could dispose of the remaining business within the next few days permitting the Southern members to return home. They could then dispose of non-controversial items; given New Zealand politicians' love of legislating there was still a considerable number of bills before the Assembly.¹ There was a mass exodus of Southerners a week later when ten members were granted leave of absence: the four Otago members, three of Wellington's nine, and several others, in all eight Government supporters and two opposition. Nevertheless the Assembly was to remain

¹ cf Stafford, NZPD 1861 p 244.
in session for over a month. It was long enough for members to bring up important proposals, but despite such highlights the session drifted to a close with most questions postponed.

Although there was an anti-centralist majority in the House who had been prepared to turn out the Stafford Government, as already stated, it was not a cohesive bloc. The centralists had dropped Stafford and with him the need to support the degree of centralism to which his Government had committed itself and its supporters. Even Richmond, the new centralist leader, was moving towards a more moderate position on the question of the New Provinces Act. On the Government side of the House, Fox was caught by the fact that his support consisted of both moderate provincialists and ultra-provincialists. When it came to putting any legislative programme into effect, he could not hold his supporters together. Moreover, for the last part of the session they were relieved of the need for loyalty to the ministry by the opposition's promise not to make any further attempt to overturn the Fox Government. Fox's supporters lacked any strong bond other than opposition to a defunct Government's centralism. The cabinet itself had little more cohesion.

The New Provinces Act had achieved its main purpose with the formation in March 1861 of the province of Southland. It was still possible, however, that South Canterbury, Wanganui and North Auckland might also attempt to break away. These rather remote contingencies influenced attempts to reform the Act and in particular proposals to alter the number of electors who could requisition separation. The Government proposed - as had been attempted without success in 1860 -

1 cf above p 128.
to pass legislation simply to prevent the creation of further new provinces, but leaving the existing new provinces to continue to operate under the Act where it was applicable. The passing of the New Provinces Act was in the eyes of Fox and his allies one of the gravest sins committed by the Stafford Government. Checking its continued operation was naturally a feature of the programme outlined when Fox took office and "the most important" of his proposed legislative measures. Yet in opening the second reading debate of his New Provinces Act Amendment Bill on Saturday 3 August the premier announced that "the Government did not make this a Ministerial question; the majority of honourable members in the Government were in favour of its being left an open question." Fox was one of those politicians of the day, and there were not so many, who defended the existence of parties in the General Assembly as a necessary feature of the parliamentary process. His career as premier in 1861 was a striking example of the weakness of a government when it failed to have an organised party behind it. Fox's action on this occasion was the more surprising since in 1860 it was clear that there was greater support for amending the New Provinces Act than for any ministry headed by Fox. Possibly the Government wished to ease the passage of the bill by keeping it as much as possible clear of party loyalties. It is more likely/the inclusion of Mantell, a Southland representative, in the cabinet caused it to take this line.

1 Fox's ministerial statement, NZPD 1861 p 175.
2 NZPD 1861 p 249.
The House spent several hours on Saturday and again the following Tuesday debating the bill. Carleton, member for the Bay of Islands, who had recovered all his original enthusiasm for the 1858 Act, moved an amendment to throw the bill out. But this straight loyalty to the Act did not suit the mood of the House. C. W. Richmond, for example, declared that the Act had always been intended as a temporary measure. In 1860 the then Government fought to retain it to permit the separation of Murihiku (Southland). Now the Act had answered its purpose and he was prepared to agree to its repeal — provided there was no attempt to permit re-annexation.

"He believed the passing of the New Provinces Act had been the political destruction of the Stafford Ministry; and he was perfectly content with his political annihilation..... He had done his work, and he believed it to be a good one." 2

He was right: the work was completed and could not be undone. It was too early to say that the Act was a failure: that remains a debatable question. It had at least served to stress the rights of outlying districts to some form of local self government and some share of the revenue derived from their lands. The nature of the provincial system of government in New Zealand was closely connected with the problem of local government, a problem still today awaiting a satisfactory solution.

Weld, whose electorate of Cheviot included a portion of the new province of Marlborough, shrewdly sabotaged the bill by putting forward the main and irrefutably just principles behind the Act.

1 On Carleton's position in 1860 cf above p 128.
2 NZPD 1861 p 253.
As an amendment he moved that before repealing any portion of the New Provinces Act, it was the duty of the Government to prepare a measure "to secure to outlying districts local self-government in local matters, and a fair proportion of the revenue raised within their limits". If the amendment were carried he would agree to the suspension of the Act till the end of the next session. Carleton then withdrew his amendment.

The debate flew off in all directions as the various points of view emerged: the group from Wellington and Otago who wanted to permit re-annexation of the lost areas; a large group of moderates who were prepared to accept the status quo, many of whom supported Weld's amendment; and the two or three extreme centralists who wished to keep the Act intact. These views were entangled by the possibility of further areas splitting off, fears of re-annexation, provincial quarrels over local government organisation, and, in this unsettled session, doubts as to the effect of legislation being promoted in the Imperial Parliament. The issue was determined by the Wellington bloc who, apart from Fox, voted in favour of Weld's amendment becoming the motion before the House, and then voted against its adoption. The result was that by 26 to 21 the House accepted Weld's amendment instead of voting on the second reading of the bill, and then by 25 to 21 refused to adopt it. It was still open for Fox to re-open the question at a later date - if he thought he would have greater success next time.

1 Ibid p 256 & 267, 2 cf above p 22. 3 NZPD 1861 p 274.
It was late on Tuesday night, 6 August, that the House rejected the New Provinces Act Amendment Bill. The steamer was now due to leave Auckland. Next day the House completed the committee stages of six bills, passed two others, and adjourned at half past ten at night until the following Tuesday, 13 August. This marked the end of the main business. The adjournment was taken presumably to permit some members to make arrangements for leaving Auckland. Government would now try to steer clear of new and controversial proposals. With the departure of some of his supporters Fox was unlikely to secure passage of the New Provinces Act Amendment Bill, and was anyway unlikely to raise such a controversial issue in a depleted House.

In 1860 it was from Otago that the lead came in attempts to block the creation of new provinces. This year Canterbury was the endangered province. On Friday 9 August, while the House was in recess, Watts Russell, one of the Canterbury representatives in the Council, attempted to introduce a bill to suspend the operation of the New Provinces Act for a session: the compromise solution that would probably have been accepted in the lower house if Fox had agreed to Weld's suggestion. The measure, Russell claimed, was desirable "on account of the disturbed state of the country at Timaru, consequent on the discovery of goldfields in that neighbourhood". The debate is not recorded but at its conclusion Russell's motion was defeated by 6 to 5. The Council was so small and unrepresentative that little can be deduced from this vote but it was a fair indication to Fox.

1 Ibid p 277.
that even if he got a bill through the House it would be lost in the Council.

A few days later, Cracroft Wilson, member for Christchurch, introduced a second New Provinces Act Amendment Bill in the House of Representatives. This sought to increase the number of electors who could requisition separation from 150 to 250 and to require the petition for separation to be published for eight weeks in a newspaper in the mother town. The significance of the latter provision was that it had been complained that people in outlying districts could organise a requisition, perhaps containing forged names, and have separation effected while the provincial government and others concerned knew nothing of the affair.

Government supporters had left Auckland on the assumption "that no fresh Bills on matters of importance would be brought in during the remainder of the session". Fox wished to avoid controversial issues now that he had lost his majority. What, however, was really objected to by the most ardent provincialists was any measure which, by modifying the Act, might subsequently reduce their hopes for total repeal. Wellingtonians, moreover, would not support a measure which might save Canterbury but not necessarily protect other provinces - for example, Wellington from the loss of Wanganui. The premier therefore opposed the bill, said it was contrary to the understanding about new business, and announced that Government was still making up its mind about its own bill - (the bill on which

ministers would have a free vote! - with which it might yet proceed. Stafford replied that the opposition had only stated that they would take no further steps to remove the Government from office; would not ask them to resign if they were defeated on any question. Richmond

"twitted Ministers for their candour in making all questions open questions, and the smooth, easy, and accommodating manner to themselves in which they were gliding through the business; they were bound to nothing, and open to everything. He compared them to a liquid, and complimented them in not being likely to be thrown off their equilibrium state". 1

Ministers were a ready target for such jibes. Fox did not succeed in preventing the introduction of Wilson's bill. When the second reading was moved a week later he no longer spoke of proceeding with his own bill. Now he claimed that no harm could be done at the moment. "There was not the slightest doubt but that the days of the New Provinces Act were numbered" and that it would be repealed next session. 2 In the division the remaining Wellington members opposed the bill because any improvements would jeopardise eventual repeal of the Act, the two members from Hawke's Bay (and possibly Dillon Bell) because they supported the Act in its entirety, while the majority voted for the bill, either because any improvement was better than none, or like Weld, because in amending the Act they were subscribing to its principles. Numbered among the majority were Fox's three ministerial colleagues. (Henderson, minister without portfolio, did not vote, but then he was rarely in the House.)

1 Ibid p 305.
2 Ibid p 325.
There were three divisions in committee which despite changing combinations each time resulted in a tied vote, and each time Carleton in the chair gave his vote for keeping the Act as effective as possible. The result was that the committee agreed to reduce the numbers required to sign a requisition from 250 to 201, and rejected Fox's amendment that no new province should be created till authorized by a resolution of the House. In these divisions Fox regained the support of Wood and Ward, and even, for his amendment, of Mantell, as well as most Aucklanders and some Canterbury members. It was the Wellington members whose votes permitted the reduction in numbers and the defeat of Fox's amendment. The Wellington phalanx was breaking up. In the latter part of the 1860's members of this group which had been the most solid voting bloc in the House ended on opposite sides. Defeated in the attempt to further its own bill, the Government was unable to control the fate or content of Wilson's bill moved from the opposition back benches. In particular the premier had lost his close liaison with his Wellington associates without gaining a co-ordinated ministerial team.

Next day, Friday 23 August, the bill received its third reading and was sent to the Legislative Council. Watts Russell sponsored it, and this time had no difficulty in securing its passage by 7 to 4. The report of the debate is uninformative, but it may be noted that no Councillors, not even the two ministers, followed the premier's lead in opposing half reform as worse than none.

Here the story ends. This is surprising. The big issue on which the Stafford Government was nearly toppled in 1860, which
Richmond said underlay their defeat in 1861, which aroused united protest from men agreeing on little else, disappears from the political forum. Next year Fox resigned and his successor Domett was not prepared to sponsor an amending bill. Late in 1863, Fox though back in office had done nothing, and backbenchers attempted repeal. It was too near the end of the session to be effected. A New Provinces Act Limitation Bill was introduced in the short 1864 session but rejected on its second reading three days before the prorogation. Weld's Limitation Bill in 1865 was also thrown out. This session, however, Fox's prediction finally proved correct. A short bill sponsored by James Macandrew, newly returned to politics after his eclipse, was passed and thenceforth new provinces could be created only by special act of the legislature.

The Audit Bills

The one condition made by the opposition to its promise not to attempt to oust ministers in the closing weeks of the session was that the Audit bills should be decided upon before the estimates were finally passed. That more effective control was required of expenditure by public authorities was clearly apparent. Licence was taken by public officials which probably was not dishonest but sometimes was shady and raised a spectre of corruption. New Zealand was a small lusty colony which showed the inherited characteristics of the mother country - a rough and haphazard administrative structure

1 rf above pp 147, 171, 176, 178-9.
2 NZPD 1861 p 305.
and traditions of public rectitude, as well as more clearly colonial features—recognition of the need for administrative efficiency on the one hand, and on the other of the right of the people's tribune to push aside bureaucratic and legalistic restraint on their powers.

From the first days of New Zealand government there were serious abuses touching senior officials. In 1855 the House set up a committee to disentangle the government's accounts. In 1856 a committee investigated charges of corruption made against the "old officials". They were cleared. That same session, without necessarily implying corruption or dishonesty, the House refused to pass supplementary estimates for the preceding year unless more adequate accounts were provided. There was a clear example of dishonesty in the case of the late Collector of Customs and Sub-Treasurer at Nelson. He was responsible for a defalcation of about £1,900 of which but £700 was recovered. It was alleged that this was not the only case.1

It might be hoped that better control would be exercised under responsible government, but the acts of the Wellington and Otago Superintendents had shown a new and equally grave problem. The concern voiced by Stafford ministers when Featherston for several years spent provincial money without legal appropriation, was probably based on more than an opportunity to score off a political opponent. The Governor, too, was gravely concerned.2 In the Supreme Court...

1 NZPD 1856 pp 343, 126, 133-4, etc; cf, in crown colony days, Executive Council meetings of 8/9/45, 9/9/45, 16/9/45 & 18/9/45 to consider discrepancies in the books of an "old and very respectable" Government officer, George Cooper, the Collector of Customs.
2 cf below p 243.
Featherston's expenditure was permitted on grounds of public policy rather than of strict law; it required the "whitewashing" session of the Wellington Provincial Council in 1861 to restore legality to his administration, although there was no suggestion of corruption on Featherston's part.

It was the Macandrew case in Dunedin, however, which showed that action must be taken. At the request of the Otago Provincial Council, in March 1861, James Macandrew was dismissed from the Superintendency by the General Government for his use of public funds for private purposes. The Auditor General, Dr Charles Knight, was sent down to investigate, and found that the provincial treasurer had advanced Macandrew £1,000. The situation was made possible "to a certain extent by a laxity of procedure against which successive auditors had protested in vain".

It was doubtless a matter of coincidence that the most marked abuses occurred in the two most provincialist provinces, and that the Superintendents involved were or had been close political allies of Fox, but this gave an edge to discussion in the House and affected the alternative proposals put forward. The degree to which the General Government should accept responsibility to interfere where there was maladministration at provincial level was a contentious issue. Fox's personal wish, and that of his closest associates of recent years, was to leave provincial matters to the provinces but Fox accepted the

1 Wakefield vs Featherston in the Supreme Court 23/9/58, Wellington Independent 25/9/58; cf Spectator 25/9/58.
2 NZPD 1861 p 214.
3 McLintock, History of Otago p 434.
fact that the majority of the House required central intervention. His difficult task was to meet the wishes of the majority without altogether sacrificing his principles. It had taken him little over a week to prepare his own Audit bills but, as mentioned above, the second reading debate on his Provincial Audit Bill was adjourned and was not revived till a week later, after the defeat of Richmond's motion of no confidence.

Fox purported in his bill to "recognize to the full the rights of the provinces to direct their own resources". This was an enunciation of principle which stood up poorly to the actual legislation he proposed. Once it was decided to impose an audit system on the provinces the only questions could be the penalties which might be inflicted for misappropriation and the independence and power which an auditor should have. If Otago experience showed the abuses which could occur when a Superintendent had too much freedom, Wellington experience showed how a council majority could attempt to block the Superintendent and force him to break the law to carry on administration. Most members of the House were also provincial councillors and knew full well the unstable and heated nature of provincial politics. Many had experienced the frequent harassment to which provincial governments might be subject.

There was little opposition therefore to Fox's removal of the "Draconian" penalties which the Stafford Government intended to impose.

1 Fox's ministerial statement, NZPD 1861 p 175.
2 cf above p 65 f.
on Superintendents for misappropriation: repayment from their own pockets and disqualification from office for three years. Dispute centred on the licence a provincial government might have to expend moneys on public services without prior appropriation, the appointment of auditors and the preconditions for prosecution of Superintendents. In cases where an official used public moneys for private purposes - straight out theft - there could be no disagreement. The provincial auditor was to commence criminal proceedings "forthwith".

For an acute lawyer Fox made a muddled second reading speech. Perhaps as leader of government he was finding it difficult to expound a bill which as opposition leader he might have torn to pieces. Carleton caught him out so neatly in poor argument that it is worth quoting. Fox had criticised severely the provisions in the late Government's bill introduced by Richmond that before money could be paid to a provincial government the auditor would have to certify that it had been specifically appropriated. This would be most injudicious: "An earthquake might occur, or a flood, or some ordinary convulsion of Nature not foreseen by the Legislature ...."

Carleton commented that when the great Wellington earthquake occurred he felt it even at Auckland. "He was sitting at a table with several others ... no one but himself knew what was the matter, and he told them what it was. Some few others had felt it, but not many." Having thus, we may assume, cast doubt on the seriousness of some earthquakes, Carleton went on to quote Fox that

"If the Superintendent was not allowed one farthing of money beyond what was authorized by Act - if he had to get his Provincial Council together for every little matter of
this sort - the Provincial Legislatures would be soon reduced to the condition of municipalities."

"It would be observed," Carleton continued,

"that, shortly before, the honourable member's argument was based upon great events - in fact upon earthquakes; now it was reduced to trifles; but it was clear that the lesser difficulty might be got over by making a fair and liberal provision in the Appropriation Act for contingencies. As to the greater difficulty - the earthquake difficulty - the Superintendent must be content to call his Council together after each. Then, again, the honourable member had observed that the most stringent Audit Act could be evaded by passing an Appropriation Act throwing all into the item of 'Contingencies'. Of course that could be done, but the Governor would be bound to disallow the Act."

It was a confused question. If, to avoid General Government intervention, provincialists left the effective working of the act with the provinces, they either made it possible for the Superintendent with the support of a council majority to over-ride the act, or for a fractious council to put a Superintendent into court for misappropriation regardless of the good faith of his actions. Fox's proposal was to have an auditor merely state whether the money had been appropriated, give full particulars of the expenditure to the council, and then at the direction of a majority of the council, to "proceed against the person who had mis-spent any money - not criminally - to require him to repay the money out of his own pocket." The auditor would be appointed by a majority of the council and removed by a two-thirds majority - in contrast to the Stafford Government provision for central appointment and, it was assumed, removal. Fox's proposals

---

1 NZPD 1861 p. 219-220.
2 Ibid p 218.
did not avoid the difficulties and were to be subject to prolonged debate. Fox was forced to accept alterations.

It would be wrong to imply that while Fox was battling without great success or strong support from his ministerial colleagues, a united opposition front bench was probing open the Government's weaknesses. There was no opposition front bench. Not only were Stafford and Richmond too strong for either merely to echo the other, but having been twice defeated they had no organised party behind them; on these bills feelings were mixed on both sides of the House. Stafford and Ward differed on the question of who should appoint auditors: Stafford wished to modify C. W. Richmond's bill, Ward to modify Fox's. It was understandable therefore that the opposition accepted Fox's bill instead of Richmond's, also that in the committee stages the Provincial Audit Bill was subject to a series of amendments. Only a few diehard provincialists, like Brandon and Fitzherbert, long standing members of the Wellington provincial government, opposed the basic principles of the bill.

Despite criticisms from all quarters the bill received its second reading on Friday, 2 August, and on Monday 5 August it was committed. Disagreement now centred on clause 14 - how the auditor was to proceed in the case of misappropriation. The new minister Crosbie Ward proposed an amendment to his leader's bill. Fox had deliberately provided for civil action. But, said Ward, "an Appropriation Act was a law; ... the breach of that law was a crime,
subjecting the perpetrator to a penalty."¹ Instead therefore of
the auditor merely tabling an account of legal and illegal expendi-
ture, Ward proposed that any person expending public money on public
service without legal authority should be subject to a penalty of
£100 to be recovered summarily on prosecution by the auditor or
deputy auditor. This change was likely to appeal to centralists,
but provincialist sentiment was appeased by a rider that no prosecu-
tion might be commenced except upon a resolution passed by an absolute
majority of the provincial council. The amendment passed 35:6.
Only Brandon, Fitzherbert, and Taylor from Wellington, Dick from Otago,
Saunders from Nelson, and Domett, centralist but also provincial
secretary of Nelson, voted in opposition. Featherston was not present.
Former party lines emerged on the next division in which Fitzherbert
succeeded in inserting a clause limiting the act's operation to the
end of the next session but one. Stafford then with ease secured
adjournment of the House till next day. Fox and Wood and many of
their usual supporters were out-voted by a combination of opposition
and some Auckland Government supporters, plus the unpredictable
Mantell, the Native Minister. It was Government supporters from the
South who wished to complete the major business while they were still
there to maintain an overall Government majority.

Next day, Tuesday 6 August, Fitzherbert's clause was recommitted
and an opposition member secured passage of a further amendment pro-
longing the act until the end of the 1866 session; until, that is,

¹ Ibid p 246.
after the next general election. Two opposition members who had supported Fitzherbert's clause now voted with their usual colleagues. They were joined by Mantell and two other Government supporters. It was a neat example of the opposition capturing sufficient swinging votes to modify, but not reject, a provincialist move.

Fox had accepted Ward's amendment. It may have been part of a bargain when Ward agreed to join the Ministry. Now, however, Fox tried another method to soften the rigours of the proposed act, suggesting as an additional clause that clause 14 should not apply when unauthorised expenditure did not exceed one-eighth part of the total amount appropriated. This seemed likely to reduce the measure to a farce. Fox's reply that the council, if it distrusted the Superintendent, could always "pass their appropriations one-eighth less than was required" hardly met serious criticism.

With the assistance of several Government supporters C. W. Richmond was able to have the amendment rejected. Domett was the only opposition member to vote with the Government.

By the evening of Tuesday 6 August, the House had made little progress since the defeat of the second no confidence motion. The Provincial Audit Bill and the first New Provinces Act Amendment Bill had taken hours of debate to the exclusion of consideration of the estimates. Nevertheless the most contentious business was in a sense completed. The Provincial Audit Bill had passed its committee

1 Ibid p 263.
stages - except for one clause which required formal approval in Committee of Supply - and was almost certain to be passed. In which case a similar measure applying to the central government should also pass without much difficulty. It did not appear now that Fox could force through his New Provinces Act Amendment Bill, but the opposition had indicated that they might accept a temporary suspension of the 1858 Act. The House could not fail to vote supply. It was therefore a matter of winding up uncompleted legislation and finishing the estimates. After a colourless evening sitting on Wednesday 7 August Southerners packed their bags and sailed home.

But Fox was still hoping to modify his Provincial Audit Bill, and Richmond had privately worked out further proposals to control public expenditure. When the depleted House re-convened on Tuesday 13 August the premier recommitted the bill to again consider clause 14 - Ward's clause. He now proposed to substitute "not less than two thirds of the entire number of members" for the "absolute majority" of the provincial council required to authorise prosecution for misappropriation. This would prevent "a factious majority of one" acting through party feeling. Comments made on the amendment reflected the positions of the members. Weld, one of the few members not involved in provincial politics, pointed out that a few office-holders and contractors bound to the executive might block prosecution. Colenso and Domett, who belonged to provincial governments, supported the amendment. Curtis and O'Neill from provincial oppositions opposed it. The amendment was defeated 18:14, 32 members
voting out of a now possible 41. Most of the 18 were centralists; the minority were a mixture but included the ministerial team. On this occasion Fox had succeeded in bringing them into line with him. Ward, himself a contractor and supporter of his provincial government, not surprisingly approved the amendment to his clause.¹

The rest of Tuesday was spent on the estimates to which, at last, the House returned. It continued consideration of Class III (Judicial), before adjourning at the comfortable hour of 5.30 p.m.

Two days later, on Thursday 15 August, Fox again tried to amend the Provincial Audit Bill. This time he was successful by 21 to 15 in inserting "3/5" of the membership of the council, in place of "absolute majority". He won the support of four more members for three-fifths than for two-thirds, as well as several who had been absent on the previous occasion. As Colenso pointed out, three-fifths of a small council was only one vote more than an absolute majority. It was a modest success for the premier. The bill was finally through and passed the Legislative Council without amendment.

There was little other business on Thursday 15 August. In reply to a question Fox promised next day to give a definite answer as to how long he expected the session to last, commenting that "he was not aware of any business that would take much time except the estimates".² On Friday 16 August he was equally optimistic. Apart from Richmond's Control bills and the Government's Audit Act Amendment

¹ Ibid p 288.
² Ibid p 298.
Bill, "there was nothing left ... but the estimates, and one or two Committees\(^1\) which had yet to report." There was also the New Provinces Act Amendment Bill which Wilson had introduced that afternoon. Fox proposed to sit that evening and proceed with the estimates. The supplementary estimates and the two or three bills remaining would occupy them next week. They could then adjourn till the mail steamer arrived and during the week before the steamer sailed south again, "complete the little business remaining" and consider any amendments made by the Legislative Council.\(^2\)

The House kept within the schedule sketched by the premier. It was prorogued just over a fortnight later: indeed it had to be for no-one could have justified remaining in session after the steamer left. It did not proceed with business as expected all the same. To begin with at 7 p.m. the House adjourned through lack of a quorum so the estimates were not continued that night. The other items all took longer than anticipated. Sittings the next week continued until 10 or 11 at night - comparatively late in those days - and even then they did not return to the estimates until Friday 23 August.

There was no time for an adjournment. The House was still busy when the steamer arrived in the middle of the following week on 28 or 29 August.

After its premature adjournment on Friday 16 August, the House

\(^1\) In particular there was the long-awaited final report of the secret Military Defence Committee which was not presented until the close of the session on 27 August 1861.

\(^2\) NZPD 1861 p 306.
took its usual long weekend until Tuesday 20. Much of that day's sitting was devoted to debating C. W. Richmond's Public Expenditure Control Bill no 2. First readings had been given both Fox's and Richmond's bills. Richmond now brought up another bill which he had not discussed with any of his colleagues. His new bill he introduced as a moderate and more elaborate substitute for the measure he had sponsored while still Colonial Treasurer.

Legal checks on public expenditure were particularly Richmond's field. In the last weeks of the session he tried to expound his ideas to his fellows. His efforts were frustrated by inertia, misunderstanding, provincialist suspicions of his avowed centralism, and, in the case of control of General Government, by the natural accusation that having lost office himself he was now attempting to hamstring his successors. There was an uncompromising logicality about Richmond, productive of comprehensive measures but not lending itself to compromises, the catching of the mood of one's fellows which brings success in the parliamentary process.

Precise, legal and regularised control over public expenditure was Richmond's object. "In England", he pointed out, "the Exchequer held the purse, the head of that department issuing only such sums of money as were covered by an Act of Appropriation". If the Pay Department of the Executive demanded money in excess of that the reply was inexorable: "'Go to Parliament for Supplies.'"

1 Ibid p 263.
The Comptroller General of the Receipt and Issue of Her Majesty's Exchequer, to give him his full title, was a permanent official, independent of politics, whose office was created in 1834 when the Exchequer was completely remodelled. In 1860 the New Zealand Auditor General had recommended adoption of the English practice, and this was endorsed by the House's Audit Committee - if in a very modified form. In 1861 Richmond, also, did not wish to burden the colony with the duplication of officials required if the custody of public money was to be separate, as in England, from the function of payment. Instead Richmond proposed that colonial and provincial treasurers should have to keep two accounts: receipt and pay. The check would be imposed on transfers from one account to the other. He would prevent "the transference of money from the receipt to the pay account without the certificate of the Auditor that the money so transferred had been appropriated for the particular service." The measure was not quite as stringent as this. For the meantime Richmond was satisfied with preventing a treasurer from spending more than the gross amount voted each year. It was only a small step; he did not wish to overdo things, otherwise they would be "met with the application of the old maxim - 'Salus populi, suprema lex,' and their penalties would be utterly set at defiance if made unreasonably tight."

1 cf Samuel Redgrave (comp), The Official Handbook of Church and State; containing an historical account of the duties and powers of the crown and the legislature - and of the civil, military, judicial, and ecclesiastical authorities of the United Kingdom and colonies, 1855 ed p 135-7.
The Provincial Audit Act established a check on provincial governments by setting up a statutory watchdog to watch the accounts. Subject to provincial council veto an auditor was to institute legal proceedings against an official who, however honest, expended money on public services without legal authority. It imposed a deterrent on Superintendents in particular. Richmond, however, cut to the core of the problem. Under the existing system a treasurer, central or provincial, had complete control of public moneys. The Provincial Audit Act and its companion measure inflicted a penalty on those who abused the system. Richmond wished to make misappropriation impossible.

Early in the life of the Fox Government Richmond remarked that the head of the Government "put him in mind of an actor whom he had seen at the Adelphi in the farce of 'Patter and Clatter'. That performer would not allow any of the others to speak a single sentence; when any of them attempted to utter anything he would always speak for them himself, and then turn round and tell them it was just what they had meant to say."¹ Since then Fox had obtained a more vocal colleague in the person of Ward, the Postmaster-General. Doubtless too, Wood the Colonial Treasurer had led the discussion, which is not reported, on the estimates. Eventually even Mantell, the Native Minister, spoke out on the vote for his department. Till now, however, Fox and Ward, speaking to some degree at cross purposes, had borne the brunt from the treasury benches of the debate on the Audit bills. It was only on the second reading of Richmond's revised

¹ Ibid p 182-3.
Public Expenditure Control Bill that Wood, sometime voluble adjutant to Fox as leader of the opposition, came to the fore on a subject which related more to his portfolio than those of the Colonial Secretary and Postmaster-General, or even Attorney General as Fox had been when first he tabled his bills. Wood urged the House to avoid excessive legislation and "tying the hands and fettering the reasonable discretion of Executive officers." He moved that the bill be read a second time in six months. Fox agreed. It would require "an immense amount of clerks to do unnecessary work", and by permitting any person to sue for the £100 penalty, Richmond cunningly evaded the safeguard incorporated in the Provincial Audit Act. Stafford quoted the more stringent act passed by the Victorian parliament and the debate concluded with Fitzherbert going "into details of illegal expenditure by the late Colonial Treasurer."¹

It was 10.30 in the evening when the House finally divided. There were seven absent as well as those who had left Auckland. Richmond's bill was rejected 18:16. Almost certainly there would still have been a Government majority if all 41 had voted; the addition of the absent Southerners would have given it a solid majority. Although the opposition was now in a majority, several members crossed the floor on this issue: Domett and Colenso and three others. Once again it is apparent that the weight of opinion fell somewhere between Fox and Richmond. Both sides had to manoeuvre

within restricted limits.

The controls sought by Richmond were imposed some years later, ironically enough by one of his staunchest parliamentary opponents of 1861, W. Fitzherbert. As Colonial Treasurer in the Weld Government Fitzherbert introduced the Comptroller's Act 1865. In February 1867, in office again under Stafford, Fitzherbert appointed J. E. FitzGerald Comptroller General and six months later he sponsored the Public Revenues Act 1867. This Act not only tightened up the controls imposed by the Comptroller's Act but also greatly increased the powers of the Auditor General. The legislation "did everything short of arriving at the climax some ardent minds seemed to desire, of authorizing the decapitation of Ministers for spending money without authority."\(^1\)

In 1861, however, the House was not yet prepared to give greater powers to the Auditor General. On Friday 23 August Fox moved the second reading of the Audit Act Amendment Bill to apply to General Government provisions similar to those applied to provincial governments by the Provincial Audit Bill. It was not surprising that Fox's and Wood's unenthusiastic advocacy of the bill failed to secure its passage. Fox wound up a brief debate with the comment that "they would not do any very great injury by adding one page to the amount of waste paper the colony was in possession of."\(^2\)

The 1861 session was finally drifting to a close. The House of

---

1 Fitzherbert, NZPD 1867 p 919.
2 NZPD 1861 p 338.
Representatives had completed consideration of the legislative programme outlined by Fox when he took office. 1 Fox had been successful in securing the passage of two bills: a Debtors and Creditors Composition Bill which replaced the Stafford Government's Bankruptcy Bill, and the Land Revenue Appropriation Act Amendment Bill. Both were revivals of bills thrown out of the Legislative Council in 1860, and both were again rejected by the Council in 1861. 2 Fox had had to withdraw a bill to abolish District Courts and his New Provinces Act Amendment Bill, and had been unable to prevent the passage of an opposition New Provinces Act Amendment Bill (no 2). The Government had lost control over voting on the Provincial Audit Bill so that the final Act differed significantly from that originally proposed by Fox. Finally, Government had suffered outright defeat on the Audit Act Amendment Bill. Its sole success was the passage of a bill to renew the 1860 Arms Act.

The only important work still before the House of Representatives was the voting of supply and the consideration of any questions raised by the monthly mail due to arrive in a few days' time.

---

1 cf above p 166.
2 cf above p 55-56.
CHAPTER 10

A PARLIAMENTARY SESSION, 1861:
4. The last fortnight and native affairs;
Friday 23 August to Saturday 7 September

After the rejection of the Audit Act Amendment Bill, the evening of Friday 23 August was spent on the estimates. The House completed Class III (Judicial), IV (Registration), V (Customs) and VI (Postal). This left only VII (Militia), VIII (Native), and IX (Miscellaneous or General). Class IX was completed on Tuesday 27 August.

The main item on Wednesday night was a private member's bill. By Thursday 29 August the mail steamer had arrived. But it did not bring the new Governor, nor questions for the immediate consideration of the Assembly. The House rose early while the Council, under the impact of bills now being sent up, sat into the evening.

On Friday 30 August the House debated the £10,000 requested by Government under Class VIII. In proposing the vote, Mantell, the Native Minister, declined to suggest any plan for the future government of the Maoris. They had the "excellent plans of Governor Browne, and in a short time - possibly by Tuesday next, or in the course of the following week - Sir George Grey would have arrived" doubtless bringing his own plans.¹

The Government and members of the Assembly were quite mistaken as to the date of Grey's arrival which occurred well over a month later - over a month after the Assembly had been prorogued. Fox

¹ NZPD 1861 p 356; doubtless Mantell assumed that Grey was coming on by separate vessel from Sydney, where the trans-Tasman steamers collected the English mail.
treated Grey's return with an easy optimism and he, and Mantell in particular, from late July when they received news of Grey's reappointment, acted as though they were absolved of all responsibility for developing their own native policy. To a certain degree this was justifiable. By 1861 the debate over the native question was over. There was general agreement on the policies to be adopted. The system of divided control of native affairs had been proved defective although any major change had to be delayed until Grey arrived.

One of the conditions imposed by Governor Browne before he granted responsible government in 1856 was that the ministers should not have control of native affairs. Sewell accepted the conditions but discussion in the House of Representatives was overshadowed by debate first over the pensions to be granted the three "old officials" and then the central-provincial issue. As described above Sewell took office only because his opponents could not form a government. The House had neither endorsed nor rejected Browne's conditions. Browne had a government which the House had failed to displace and in this sense could consider that responsible ministers had accepted his conditions on behalf of the House. Subsequent ministries could not undo what Sewell had done.

In 1856 the House showed itself suspicious and dissatisfied over the Governor's reservation of control. Money for native affairs was voted grudgingly, ministers were forced to drop the Native

1 p 113.
Offenders Bill and, late in the session, resolutions were passed in favour of colonial control of native affairs.¹ Ministers had misgivings about the administrative arrangements to be made, and at the close of the session presented the Governor with an ultimatum: unless they were given the right to see and to comment on native correspondence they would resign and declare responsible government at an end. On this point the Governor was forced to give way.²

The Colonial Office, also, only approved Browne's reservation of control with reluctance and after some delay. "The maintenance of so large a military force in the colony", the permanent under-secretary minuted, "affords an ample justification of such a measure."³

The reliance of the colonists on the Imperial army for protection was the main factor in continued Imperial control of native affairs. Despite the resolutions of the House of Representatives, the ministers, having secured a say in native affairs, in September stated that as the maintenance of Imperial armed forces "is for the present indispensable ... it would be unreasonable to object to the exercise, on the part of the Imperial Government, of a potent voice and paramount authority in the direction" of native affairs.⁴ Later, in 1859, Lord Carnarvon on behalf of the Secretary of State also wrote strongly against the surrender of Imperial control "whilst Her Majesty's

⁴ Minute of 2/9/56, encl 4 to Browne/Labouchere 21/9/56, GBPP 1860 xlvi 2719.
Government feel themselves constrained to justify to Parliament the large expense which every year is incurred for the maintenance of a Military force in New Zealand.\(^1\)

In the years after 1856 Colonial Office, Governor and New Zealand ministers all supported Browne's reservation of control. In 1858 C. W. Richmond, at that time Minister for Native Affairs (although without the formal title) claimed that "no one could fail to see the stability of a system which was like a mast with two stays." Governor and ministers acted as a check on each other. Apart from £7,000 p.a. set aside for native affairs by the Constitution Act, the House had power over the purse and could "require the consent of its representatives, the Responsible Ministry, to the administration of those funds."\(^2\)

In the years 1858 to 1860, however, mutual checking plus the distant restraint imposed by the Imperial Government paralysed implementation of a policy. The aim of any native policy was to bring Maoris under European law and order. Outside the towns little had been achieved by 1858. The economy of the country rested on customs and profits from the sale of crown lands. Continued purchase of Maori land was essential to the development of New Zealand as a European colony. As government land purchasers pushed further into the country and as Maori resistance to land sales developed, it became increasingly difficult to purchase land. At the same time

\(^1\) Carnarvon/Browne 18/5/59, N.Z. Gazette 27/7/59 p 182-4; also in GBPP 1860 xlvii (H.C. 492).
\(^2\) NZPD 1858-60 p 21; Richmond formally became Minister for Native Affairs on 27 August 1858. cf Sinclair, Maori Wars p 89, NZPD 1856-58 (1858) p 512.
MAP of NEW ZEALAND,
showing approximately
THE EXTENT OF LAND
acquired from the Natives.

Andrew Sinclair
Surgeon-Captain

Land acquired from the Natives
Land under Negotiation
Land claimed by the Natives

Endorse to Governor Bowen to the Duke of Newcastle, 20 September 1857,
GBPP 1860 xii (H.C.442).
tribal feuds fought out in the vicinity of New Plymouth while British soldiers watched, showed the necessity of establishing effective British sovereignty.

It was generally held that the key to eventual union of the two races under one law and government lay in the adoption by the Maoris of individualized land tenure. New Zealand would become one country when Maori and European lived together and land was a saleable commodity like any other property or chattel. There was no suggestion that all land could or should be sold by the Maoris, but land only came under English land law after it had been ceded to the crown and crown grants had been issued to the new owners. The most important measure to be taken, therefore, was the introduction of a system whereby Maori landowners could be granted individual land titles without the prior sale of the land to the crown. Governor Browne considered such a measure an urgent necessity. In March 1857 he had decided to recommend the insertion of a clause in the Imperial New Zealand Constitution Amendment Bill to enable him to issue crown grants to native proprietors who wished to retain their land. Ministers heartily concurred with the Governor's ideas and said they would themselves introduce legislation in the next session of the General Assembly. Satisfied, the Governor did not write to the Colonial Office.1

In the meantime the development of the Maori King movement presented Government with a challenge, and perhaps an opportunity.

1 cf Browne/Lytton 15/10/58, GBPP 1860 xlvii (HC 492); Browne/C.W. Richmond, 29/3/58?, Richmond-Atkinson Papers Vol 1 p 374. re the Constitution Amendment Act rf above p 12-13, and cf below p 339 & n 2.
F. D. Fenton, appointed in January 1857 Resident Magistrate at Whaingaroa (near Raglan), forwarded reports on political activities amongst the Waikato Maoris. Word of their organising civil institutions and attempting to develop a code of law caught the imagination of Governor and ministers. In 1854 Walter Harsant had been appointed Resident Magistrate for the Waikato district but he did not speak Maori. In May 1857 Harsant and Fenton exchanged positions.

The native policy which Richmond presented to the House of Representatives in 1858 was based on Fenton's idea that Government should guide the Maoris in the development of civil institutions. "We cannot mistake this cry of a whole people for law and government" Richmond declared. "It is high time we should have done with the miserable shifts to which we have been put ... Inaugurate the reign of law and cease to rely on mere personal influence." 2

The two most important measures proposed by the Government were the Native Districts Regulation Bill and the Native Circuit Courts Bill. Both bills were permissive and were limited in operation to those districts where native land title had not been extinguished. The first provided the "machinery of a simple local legislation" superseding provincial law, while the Native Circuit Courts Bill sought to make "better provision for the Administration of Justice in Native Districts." It was an extension of the 1846 Resident

1 cf Richmond, NZPD 1856-58 p 470, 1860 p 587.
2 NZPD 1856-58 p 449.
3 Ministers' Memorandum on Native Affairs, 29/9/58, encl to Browne/ Lytton 14/10/58 GBPP loc cit, also in AJHR 1860 E-1.
Magistrates Ordinance. In addition to the Resident Magistrate sitting with Native Assessors when hearing disputes between Maoris, provision was made for the introduction of Maori juries.

Both bills were passed by the General Assembly. In addition, however, there was a "graver question" to be handled by the Assembly. Without a measure "to promote the acquisition by Natives of individual titles, and to accelerate the extinction of the Native title ... any Native policy must be incomplete." The Native Territorial Rights Bills introduced a cautious system for the individualization of native land title and its corollary, direct purchase by Europeans from the Maoris. The bill was in accordance with the Governor's wishes expressed the previous year, but it contained restrictions on his action with which he would not agree. He also objected to a 10s. per acre tax imposed on each acre sold under the act to private European purchasers. Such a tax, he considered, implied that Maoris did not have complete ownership of their lands.

Both sides sent lengthy explanations to the Colonial Office in October after the 1858 session concluded. Nine months later they received a rebuff from Lord Carnarvon on behalf of the Secretary of State: he considered any form of direct purchase "in the highest degree unadvisable." To the bill's proponents it appeared that the

1 Richmond, NZPD 1856-58 p 449.
2 Browne/Lytton 15/10/58, GBPP loc cit; Browne/C.W. Richmond 19 & 21 May, 1, & 7 June, 13 July 1858, Richmond-Atkinson Papers Vol 1 pp 399-400, 404, 407, 413-414.
3 Carnarvon/Browne 18/5/59, N.Z. Gazette loc cit (above p 216 n 1). This despatch was drafted by Sir F. Rogers (minute of 11/1/60 on Browne/Newcastle 20/9/59, C.O. 209/151).
settlers' most constructive native measure had been sacrificed on the altar of Imperial responsibility. Before the despatch arrived the Governor had agreed to experiment with a form of direct purchase in the Auckland province. Now he refused to budge. Any further steps would require new proposals to the Colonial Office and another long wait for its reply.\(^1\)

In the meantime, in February 1859 Sewell had returned to the colony which he had left in late 1856. He rejoined the ministry but almost immediately afterwards broke with his colleagues and resigned. He was long enough in office, however, to suggest to the Governor a means of overcoming the impasse which had been reached in attempting to solve the native question. The whole problem should be placed in the hands of a board or council nominated by, and directly responsible to the Governor - a bridge between Governor and periti (experts on native affairs) and ministers. Sewell's proposal was rejected by the ministers who thoroughly disliked the concept of a powerful board operating alongside the cabinet. Browne, however, could find cogent arguments in support of the scheme from his chief native advisers and the periti. In reply to Carnarvon, twelve months after the 1858 legislation was forwarded, Browne in September 1859 sent a long despatch and weighty memoranda to the Colonial Office.

Although there was disagreement over the administration of native affairs, Governor and ministers agreed on the main lines of native policy. In his despatch, Browne proposed the issue of crown grants for land retained by Maoris and, in certain districts, the introduction

---
1\(^\text{Richmond, NZPD 1860 p 309-310.}\)
of direct purchase subject to the control of the Governor and the
new council. Browne was very conscious of the strength of European
pressure to obtain more land. Like his ministers, however, he
believed that the increasing Maori resistance to land sales could be
overcome without sacrificing the interests of the Maoris. Government
land policy should be to provide the Maoris with sufficient inalien-
able land for their needs, to set aside ample reserves, and then to
open up the rest of the land for regularised settlement.¹

1860 was a turning point in the debate over the native question.
The outbreak of war at Taranaki and the support for the "insurgents"
from King Maoris were sufficient to cast doubts on the effectiveness
of the administration of native affairs. More important, however,
was the three months session of the General Assembly during which the
story of the previous years became public. Once disagreements between
ministers and Governor, and in particular between ministers and the
Native Secretary, were public it was no longer possible to speak of
the "stability of a mast with two stays." If the policies of 1858
had not been carried out there was considerable evidence to suggest
that divided control and the independent position of Donald McLean as
Native Secretary were to blame.

Shortly after the General Assembly met on 30 July 1860 the
Governor sent to the two houses a short abstract of his despatch of
September 1859.² Although Richmond declared that everything was

¹ Browne/Newcastle 20/9/59 & encls (ordered to be printed 27/7/60),
GBPP 1860 xlvi (HC 492); also in AJHR 1860 E-6A; cf extract from
Sir George Grey/Earl Grey 30/8/51, an enclosure to Browne's despatch.
cf also resolutions of the House of Representatives of Sept 1860,
NZPD 1860 p 514-5.
² Message 1, JHR 1860 p 12 (7/8/60).
hung up and Government was "crippled" until the Imperial Government had replied,¹ Sewell forced a full discussion of his council scheme and of native affairs generally. The House adopted Sewell's motion that "it is necessary to devise measures for the better management of Native affairs", but it rejected his council proposal. As, in fear of receiving a bill from the Imperial Government for current war costs, the House also rejected full responsible government, it was left with the status quo. It did, however, pass a resolution that the Native and Land Purchase Departments should be separated.²

In 1856 Governor Browne had stated that as he was not granting colonial control over native affairs, it followed necessarily that "the Chief Land Purchase Commissioner and his subordinates must take their orders from the Governor alone."³ Browne based his reservation of control on section 73 of the Constitution Act which retained the sole right of the crown to buy native land.⁴ He therefore stressed control of land purchase rather than of native affairs generally. How McLean, as Chief Land Purchase Commissioner, came to control the whole sphere of relations with the Maoris by also being appointed Native Secretary is obscure. In April 1856 Fenton was appointed acting Native Secretary. In the negotiations at the close of the 1856 session it was agreed that McLean should have both offices, but at whose suggestion and for what reason was later not even recalled

¹ NZPD 1860 p 309-310.  
² JHR 1860 p 923 (14/9/60); NZPD 1860 p 320, 514-5; cf above p 124-5.  
by the men responsible for the arrangement.¹

The result of the combination was that the Governor appeared to the Maoris "in the character of a land-jobber" whose main interest was "buying their lands at a cheap rate to make a market by resale".² If Government was to guide the Maoris, and in particular the King Maoris, into adopting Western civil institutions, clearly the functions of the Native Department should be distinguished sharply from the functions of the Land Purchase Department.

While the House was still debating a series of resolutions on native affairs, word was received that on 28 June the Secretary of State for the Colonies had introduced a bill into the House of Lords affecting the New Zealand land question. But it was not until the arrival of the next mail, in late September, that members of the House received further details. Informed politicians such as Sewell had had a fair knowledge of the negotiations and failures of the previous years. On Saturday 23rd September 1860 the mail steamer arrived at Auckland with a bundle of Times. Suddenly, almost over-night, all the problems of native affairs became public knowledge in the colony. The system of divided control collapsed, brought down by Gore Browne himself.

In the second reading debate in the House of Lords on the New Zealand Land Bill, Browne's despatch of September 1859 was freely

¹ cf minutes of Governor & ministers, May 1861, Archives of the Maori Affairs Department, M.A. 1/2 61/58. (I am grateful to Mr Alan Ward for drawing my attention to this file) cf Sinclair, Maori Wars p 101 note 71.

² Sewell, NZPD 1860 p 281.
referred to. Browne, now, could have no objection to releasing the full text of his despatch and it was tabled by ministers on 26 September. Members now saw that the Governor had recommended the New Zealand Land Bill which would alter the system of administering native affairs and would provide for the establishment of a native council. Moreover, suggestions in the House of Lords of settler irresponsibility also derived from the Governor's despatch. Not only had he said that the Europeans wanted Maori lands "and are determined to enter in and possess them recte si possint, si non, quocunque modo"; he had also sent inflammatory articles from a disreputable (and by now defunct) Auckland newspaper.1

In the last weeks of the 1860 session it was not possible to recast the whole shape of native administration. The House was engaged in lengthy and controversial debates over the Native Offenders Bill and the centralist legislation of 1858. Nevertheless it was possible to take steps to discourage the Imperial Parliament from legislating for New Zealand. A joint committee of both houses of the Assembly was set up on 3 and 4 October to determine what steps should be taken.

On the same day, 26 September, that Browne's despatch was tabled, the House set up the Waikato Committee to examine Fenton's work in the Waikato in 1857 and 1858 and to investigate the reasons for Fenton's removal in 1858. In its report the Committee declared its approval of Fenton's work. It stated that the important defect in the arrangements in force of late years in the administration of native affairs "becomes glaringly apparent in the circumstances attending his Fenton's removal and the suspension of his operations: namely the

1 Browne/Newcastle 20/9/59, AJHR 1860 E-6A.
entire want of harmonious action between the Ministry and the Department of the Native Secretary". This report was not presented until the close of the session, but C. W. Richmond, Sewell and Fox, the House representatives on the joint committee on the Imperial legislation, were also members of the Waikato Committee. By the time that the joint committee report was presented to the Assembly on 12 October the Waikato Committee had accumulated ample material to show the entire want of harmony. Its investigations revealed McLean's hostility to Fenton and it was apparent that McLean had been responsible for Fenton's removal.

To forestall the Imperial Government's New Zealand Land Bill it was necessary for the General Assembly to propose an alternative measure. In its report presented to the two houses on 12 and 16 October, the joint committee recommended that if the Imperial bill became law the Governor should "be moved to defer bringing it into practical operation" until the Imperial Government had had the opportunity of considering New Zealand's proposals. New Zealand should seek

"an Act of the Imperial Parliament enabling the General Assembly ... to make laws to regulate the purchase, acquisition, or acceptance of lands of or belonging to the Natives, and to regulate the acceptance of any release or extinguishment of their rights in any such land, and to prescribe and regulate the terms on which conveyances, releases, and extinguishments shall be accepted, ... subject to the proviso that all such powers be exercised by the Executive Government after hearing the advice of"

1 AJHR 1860 F-5, p.4.
2 cf Richmond, NZPD 1860 p 308 (15/8/60).
a permanent advisory Native Council established under authority of a colonial act. The committee concluded its report by stating that passage of such an act

"would require the reorganization of the Department for Native Affairs, which should, for the future, be placed on the same basis as the other Departments of Government." 1

The Assembly adopted the report and instructed the committee to prepare the necessary legislation. By the time the committee's Native Council Bill was presented to the Assembly on 26 October, the next mail had arrived with the news that New Zealand settlers in London had successfully persuaded the Imperial Government to withdraw its Land Bill.2 But it was too late to turn back. The Assembly had committed itself to change, and the enquiries of the Waikato Committee had shown the necessity for change. The session had almost ended. The Native Council Bill was pushed through both houses, but amendments in the Legislative Council necessitated further consideration by the House of Representatives. The House stalled. It first required an assurance from the Governor "that the ordinary control and departmental administration of Native Affairs shall be placed under Responsible Ministers, subject to the provisions of the Bill, and the proper constitutional action of the Supreme Head of the Executive." On the last day of the session the House received an equivocal assurance from the Governor. Once the bill became law he would agree to placing control under Responsible Ministers in accord-

1 JHR 1860 p 174-5; NZPD 1860 p 656-7.
2 "Sir" C. Fortescue/Browne 27/8/60 (received 25/10/60 & tabled in the House 30/10/60), AJHR 1860 E-6B.
ance with the House's terms, but he added the significant words: that the proper constitutional action of the head of Executive was to be understood as having "the same interpretation as regards Native Affairs, as in reference to the other Imperial Subjects."¹

The House then approved the bill, the Governor announced its reservation, and the Assembly was prorogued.

Little more could be done in New Zealand until the Imperial Government had come to a decision on the Native Council Bill. In March 1861, however, the Governor sent a memorandum to his ministers raising the question of a Native Land Court. He concluded with a brief note stating that he thought arrangements should be made to separate the office of Land Purchase Commissioner from that of Native Secretary. Ministers were cautious and conflicting in their minutes on the first suggestion. On the second Stafford noted that it could be carried out at once. Weld, now Native Minister, reaffirmed his strong desire to see separation effected. Some time ago he had asked McLean to furnish him with information on the necessary steps to be taken; only McLean's urgent duties had prevented this being done. Weld thought they should wait, however, until word was received concerning the Native Council.²

Shortly afterwards the first reaction from London to the Native Council Bill was received. The Secretary of State showed little enthusiasm for the bill and deferred his decision.³ Weld thereupon

---

¹ JHR 1860 p 247 (3/11/60); NZPD 1860 p 802; Message 43, 5/11/60, JHR 1860 p 249.
² minutes of April 1861, M.A. 1/2 61/58.
³ Newcastle/Browne 26/2/61, AJHR 1861 E-3; cf Fortescue/Browne (private) 26/2/61, Browne MSS 1/1 14.
formally recommended that the two offices be separated. The Governor approved and McLean's resignation as Native Secretary was notified in the Gazette of 31 May 1861.¹

This was the situation when Fox became premier in June 1861. The aims of future native policy were clearly laid down. Apart from legislation to permit individualization of native land title, the statutes of 1858 provided the basis for developing the ideas of Fenton. Before further steps could be taken to individualize native land, or to introduce responsible government in native affairs, the fate of the Native Council Bill would have to be determined. In July the Secretary of State's despatch was received stating that he had communicated his views on the Native Council Bill to Sir George Grey.² Nothing further could be done, therefore, until Grey arrived.

The one important change in the House of Representatives was that, regardless of which ministers were in power, members of the House were prepared as never before to be generous in their vote for native affairs. And the Government, again whichever Government was in office, was prepared as never before to ask for money. There were several reasons for this change. In the first place there was increasing knowledge of what needed to be done. For example, the House and Government were at last aware of the total neglect to which Maoris

---
¹ minutes of 13/5/61 & 29/5/61, M.A. 1/2 61/58; McLean relinquished the senior position of Native Secretary as that office would cease to exist if the Native Council Bill were brought into operation (minutes of May 1861).
² Newcastle/Browne 27/5/61 announcing Grey's appointment as Governor, AJHR 1861 A-3; cf Morrison/Colonial Secretary (of New Zealand) 24/6/61, AJHR E-3K.
in the South Island had been subjected. Secondly, with the change of administration expected, ministers could have more initiative in native affairs and thus had steps in mind for which they required money. Members of the House, on the other hand, were more prepared to vote money to be expended by ministers than by McLean, of whose activities few had much knowledge. Finally, the growth of the King movement had shown everybody that if war were to be avoided more effective measures would have to be taken to draw Maoris into support of the European system of government. It is not being unduly cynical to add that the members of the House were sensible of the value of public relations. If Britain were to fight a war for the settlers then it would have to be assured of the righteousness of the settlers' cause. The settlers were exceedingly sensitive to English criticisms of them and allegations that they had been less than generous towards the Maoris.

Apart from certain central administrative costs and special grants for the holding of conferences of friendly chiefs (of which only one, in 1860, was actually held), past appropriations for native affairs had amounted to roughly £15,000 p.a.; little more than the £7,000 reserved for native affairs by the Constitution Act and £7,000 for state aid to missionary schools under a Native Schools Act of 1858. The additional £10,000 requested by Government in 1861 was therefore an impressive increase. Although Mantell was fairly vague on the proposed expenditure of the £10,000 it was readily voted by the House.

1 cf NZPD 1861 p 243-4, 248, 357; AJHR 1858 C-3.
The only alteration made was, on the initiative of the opposition, the insertion of a clause that the money should be expended only on ministers' advice. This was so much in accordance with what Fox had preached in the past that Government readily agreed, more especially as Fox thought that

"Sir George Grey would no doubt come with ample powers of drawing on the Imperial Treasury, beside which the amounts voted by the House would be insignificant." 1

On Tuesday 3 September the House approved the vote of £10,000 for native affairs, and also voted supply for class VII (Militia). Only one important item remained to be considered: the vote for the Land Purchase Department. Although there could be little doubt of McLean's ability, he was the only important crown colony official who had not been subordinated to responsible ministers. There was considerable distrust of the "old officials" in 1856 and some of that distrust was inherited by McLean's department after responsible government was granted. The Land Purchase Department was not integrated with the rest of the General Government administration. Problems arose because there was no official rapport between the Land Purchase Department and land selling departments. 2 A vocal minority of members of the House had long advocated the abolition of the crown's right of pre-emption. 3 Some may have been land sharks, but many felt that the introduction of direct purchase was a necessary

1 NZPD 1861 p 358.
2 cf NZPD 1860 pp 633, 635; JHR 1860 p 208 (report of the select committee on the Featherston block, Wairarapa).
3 cf NZPD 1856 p 335-6, 352; 1856-58 (1858) p 73 et seq, p 149; (also 1860 p 358 f); R. D. McGarvey, Local politics in the Auckland province 1853-62, A.U. thesis 1954 p 231 f.
step towards the integration of the two races. Once the Taranaki war broke out critics of the Land Purchase Department could claim that the department had stirred up trouble, "teasing" the Maoris for their land. Finally, by 1861 Maori resistance to land sales had grown so strong that in many parts of the country the department had had to cease operations.¹

On Friday 6 September, the House voted the sums requested by the Chief Land Purchase Commissioner and then, with Fox's blessing, adopted a series of resolutions moved by Bell for the consideration of Grey when he assumed the government of the colony. The House declared "that the time has arrived when it is necessary that a thorough and radical change shall be made in the organization of the Land Purchase Department"; "an indispensable step to reform must be the total separation ... between land-purchasing and political functions"; and no reorganization of the political branch of the service "will be effectual or satisfactory" unless "the conduct of the ordinary business of native administration" is placed "under responsibility to the Assembly", subject to the Governor's initiative and decision where Imperial interests are involved. Lest Grey should have any misunderstanding of the matter, the concluding resolution stated that "this House cannot justly be expected in any future session to pass estimates for perpetuating the existing system."²

¹ cf memorandum by McLean, 25 August 1861, M.A. 1/2 61/115; NZPD 1861 p 379.
² NZPD 1861 p 383.
The native policy of Sir George Grey, the administrative changes made while he was Governor, and Dillon Bell's Native Lands Act 1862, were a natural outcome of the position reached in 1861. Bell's Act finally provided for the individualization of native land titles and for the introduction of direct purchase of native land by the settlers. It was under this Act that the first Native Land Court was established.

On native affairs Fox in 1861 was not leading the House but following it. This both saved his Government the embarrassments which it met on the Audit bills and made it possible for Mantell to remain Native Minister. Whatever views Mantell may have had on native policy, and he kept them well hidden, it was at least apparent that there was little in common between him and Fox. The man closest to Fox on native affairs was Bell, his fellow member on the 1860 Waikato Committee, soon to become acting Native Secretary under Fox and then to succeed him as Native Minister - for Mantell resigned shortly after General Assembly was prorogued.

Fox was an idealist, but had to shed his ideals to maintain a majority in the House. His Government's policies were those of cautious and unimaginative moderates. In the ministerial changes of 1862 Government shed Fox and with him lost its idealistic overtones which had been most apparent in Fox's appeals for negotiations with the Waikato Maoris and his enunciation of principles late in the session.\(^1\) In 1863 Fox again became a member of Government but at a time when he no longer saw it appropriate to be idealistic in his

\(^1\) *Ibid* p 364-5.
attitude towards the Maoris.

On native affairs Fox could maintain the cohesion of his Government by postponing decisions until Grey arrived. On provincialist issues he could not maintain cohesion. Fox's ministers were moderates. He himself was an ultra-provincialist. As head of government he had to modify his ultra-provincialism, taking a position between that of his ministers and that of his ultra-provincialist friends with whom he had acted since 1856. The long debates over the Audit bills showed clearly that on a particular issue, either the ultra-provincialist party broke up, or Fox found his old associates voting against his Government, or Fox voted with his friends and had his ministers voting against him - as for example happened over a farewell address to Gore Browne.¹

The importance of the political developments of 1861 lies not in the advent to power of a Fox Government but in the removal of the previous Government. As leader of the ultra-provincialists Fox led the attack on the Stafford Government, but it was the moderates who benefitted. In 1860 some had wished to have both the Stafford war ministry and a government less stringent in its control of provincial governments. In the period 1861 to 1864 this was what they got.

At twelve o'clock on Saturday 7 September, "a message was received from His Excellency the Governor commanding the attention of honourable members in the Legislative Council Chamber."

"Mr. SPEAKER, accompanied by members, and preceded by the Serjeant-at-Arms bearing the mace, proceeded to the Legislative Council Chamber, when the Governor delivered a Speech to the members of both Houses, and declared the Assembly to stand prorogued."
PART III

THE EXECUTIVE AND THE JUDICIARY
CHAPTER 11
GOVERNOR AND EXECUTIVE COUNCIL

The Governor*

The central executive consisted of four elements: Governor, Executive Council, cabinet and public servants. Their task was limited by the smallness of the country, by the then restricted role of government in the community, and by the decentralisation whereby many governmental functions were undertaken by the provincial administrations. After 1856 a firmer lead than previously was given from the centre, but even so, although the central executive expanded and was better organised, General Government remained a small body of individuals with a limited range of duties.

At the centre of the executive was the Governor. All formal powers were exercised in the name of the Governor or of the Governor in Council, and he was the channel of communication between the home government and New Zealand. In consequence he had a more comprehensive view of central government than anyone else.

The sources of his power were threefold: powers conferred on him by the Constitution Act and his Commission and Instructions, the powers which convention gave the Queen of England, and which he exercised in the colony as Chief Executive, and his position as representative of the British Government.

The Governor spoke with the authority of an agent of the Imperial Government to men whose position was essentially that of administrators

* rf also R. M. Fletcher, The powers of the New Zealand Governor under responsible government, M.A. thesis, V.U.W. 1939.
of a subordinate region of the Empire. He was an active salaried official responsible to the Colonial Office. Although paid from the colonial revenues, his salary had been fixed by act of the Imperial Parliament and could be altered only with the approval of the Imperial Government. Technically, after 1828 colonial governors were under the same rule for term of office as then prevailed in the Indian administration, and after six years a Governor should "as a matter of course, retire from his Government" unless there was some special reason for retaining him. ¹ As there were an increasing number of posts to which he could be transferred, colonial governorship could become a career service. In practice the position was not so straightforward: Governor Fitzroy was recalled within two years and did not again hold a governorship; Governor Grey was Governor under various titles for eight years,² and although Gore Browne and Grey on his return to New Zealand both served just over six years, the termination of their offices was not expected in New Zealand, and in the case of Grey meant the end of his colonial service career. The possibility of a Governor's recall, or of the extension of his term of office, and Imperial control of the salary he received, stress the fact that he was an efficient rather than a merely dignified part of the constitution, that his office was active and political. His primary duty was to

¹ Murray/Darling circular no 2, 31/5/28, H.R.A. ser 1, vol XIV, p 218; cf Bay of Islands Observer 10/3/42 citing new Colonial Regulations.
² Initially, in late 1845, Grey took office as "lieutenant" or acting governor, and could be considered covered by the special reasons qualification in Murray's circular. Grey left New Zealand at the close of 1853, exactly six years after he assumed office as Governor-in-chief under the charter of 1846.
uphold Imperial interests, seeing "that the mother country receives no detriment."¹ As far as his ministers were concerned, the Governor alone was arbiter of what constituted an Imperial interest.

It mattered little whether the stream of circulars and despatches from the Secretary of State for the Colonies came to the colonial ministers through the hands of a Governor or of a High Commissioner - the information was received in either case. Despatches from New Zealand to the Colonial Office, however, were a different matter. It was a firm Colonial Office rule that any communications from a colony should be forwarded through the Governor together with any comments he cared to make. The use - or abuse - of this power by Grey in his first term of office has been described by Dr McLintock.² After 1856 this power of the Governor was important in relation to military affairs and questions of native policy, but otherwise was of little significance. The Governor was also expected to send regular reports on the country and its politicians, but again this right and duty was of more significance in the days of a crown colony Governor than after 1856: apart from the stress Gore Browne laid on the problems created by the rapid growth in provinces' powers after 1853, his reports were significant only in the picture he painted of racial problems. Browne's dislike of extreme provincialism might have influenced the Colonial Office's reaction to the acts of an ultra-provincialist ministry, but such a ministry never came into office.

More important than the Governor's role as liaison between the British and New Zealand governments, was his liaison between civil and military authorities in New Zealand and - a topic outside the scope of this thesis - in particular the role he played in the 1860's in the quartet of Governor, Colonial Office, local military officers and War Office. By his Commission the Governor was Commander-in-chief and Vice Admiral in New Zealand. The Governor could disagree with the local military but from the New Zealand ministers' point of view all matters concerning defence were a matter of negotiation with the Governor. The long-term issue of finance was settled in negotiation with the Imperial Government, the short-term question of issues from the Commissariat Chest was a matter of the Governor's discretion. Argument over payment for construction of barracks developed in the years before the outbreak of the Taranaki war. It was closely associated with the question of disposition of the troops - if ministers considered it necessary to post troops to a particular area, they had to persuade the Governor to issue the necessary directives. Again, on the question of the number of soldiers in the colony, long-term decisions were made by the home authorities, but the Governor could exercise some discretion in retaining the troops while negotiations took place, and he could support, or refuse to support, his Government's arguments for retaining the troops. For example, despite instructions

1 cf AJHR 1858 A-3, A-3A, 1860 A-7; R.M. Fletcher, The Governor as Commander-in-chief, Historical Studies. Australia & New Zealand Nov. 1943. At this time the relations between Governor and local officer commanding the troops were governed by a circular of 2/9/57 issued by the Commander-in-Chief of the British Army (quoted in the N.Z. Gazette 12/2/58).
from Great Britain, Gore Browne in 1858 for a time delayed the
return of the 58th regiment, and the degree to which Grey obstructed
the policy of the home government and delayed the withdrawal of the
troops in the 1860's is described in detail in the thesis by G. C.
Hensley. In the calling out of the local militia, while ministers
could advise, the decision lay with the Governor. Similarly the
decision to declare martial law at New Plymouth and to attack Maoris
resisting survey of the disputed Waitara block was the responsibility
of the Governor, even if he did obtain the concurrence of ministers
through the Executive Council. When Grey decided to reverse the
steps taken to acquire the Waitara block, he too sought his ministers'
concurrence, but he too had the final decision and the final responsi-
bility. In 1860 it was Governor Browne who called on Governors of
neighbouring colonies to send assistance when the war broke out.
That his ministers concurred in these steps does not alter the situation
(although in terms of practical politics the Governor was almost bound
to secure their approval to safeguard his own position). From the
time the first responsible government took office there were outbreaks
at Taranaki and possible disturbances elsewhere which apart from any-
thing else gave the Governor a key role in the government of the
country.

Apart from questions of defence and the handling of native affairs,

1 The Withdrawal of the British Troops from New Zealand 1864-1870.
2 cf R. S. Boyd, Imperial troops in the Maori Wars 1860-1866, M.A.
thesis, V.U.W. 1957, p 29, 44 note 61 (Waitara war), 82 (Browne's
policy towards the Waikatos), 95 (withdrawal from the Waitara block).
the Governor's role in administration was less significant. He was essential to the working of government but was not powerful or even very influential. Possibly if Browne had been a civilian and interested in domestic problems he could have obtained a more important role.

Before responsible government was granted Gore Browne defined his position under the new system, stating, inter alia, that

"in all matters under the control of the Assembly he would be guided by the advice" of his ministers regardless of his own opinions, adding, in an explanatory memorandum, that

"of course, he reserves to himself the same constitutional rights in relation to his ministers as are in Britain practically exercised by the Sovereign." 1

A decade later Bagehot formulated the Queen's three rights, to be consulted, to encourage and to warn. Today it is apparent that Queen Victoria's intervention was more active than Bagehot supposed, but without knowledge of the writings of either Bagehot or later constitutional commentators, Browne was determinedly conscious of these rights and made sure that his ministers appreciated them also. Every aspect of government came within his purview. He sent a stream of memoranda to his ministers: answers, questions, reminders and suggestions: "Without desiring to interfere," for example, he pointed out to them the opportunity which had arisen "for establishing a

---

1 minute of 15/4/56 & memorandum of 18/4/56, V & P, HR, 1856, App A-13; also enclosures to Browne/Labouchere 30/4/56, GBPP xlvi: 2719(1860). cf Merivale, Lectures on Colonization p 666: "under responsible government ... /the governor/ becomes the image, in little, of a constitutional king."
complete and efficient system of immigration"; he thought a person outside the Post Office had been placed over an official there "without any sort of claim except that of private favor" but would not interfere; he suggested beautifying the Auckland Domain; wanted to know when the General Assembly was to meet; suggested the establishment of a Government Investment Fund; wanted ministers to supply a memorandum for the British Government on the address of the Superintendent of Wellington to his Council; asked for the Attorney General's opinion on unauthorised expenditure by the Wellington provincial government; and so forth. When he learnt by private letter from the Governor of Victoria that his ministers had made proposals to the Victorian government concerning steamship communication between the two colonies, he reprimanded his responsible advisers: he was to be informed officially when they decided upon a particular course so that he could record his opinion on the documents or bring the matter before the Executive Council. 1

A host of unexciting statistics were placed before him and a score of decisions continuously passed through his hands for formal approval. In his original minute of April 1856 Browne had stated that "in approving appointments to vacant offices, he will require to be assured that the gentlemen recommended are fit and eligible for their respective situations." Although under responsible government the Governor followed the advice of ministers as a matter of

---

1 Memoranda of 18/3/58, Stafford MSS folder 4, 15/10/59, 14/7/59, 6/6/59, 18/4/59, 12/9/59, 8/10/59, 8/1/59, ibid folder 3.
course, he personally noted his approval of the appointments of such comparatively minor officials as coroner, sheriff, clerk of the Supreme Court or clerk for the Attorney General.¹

By his Instructions the Governor was empowered to exercise the royal prerogative of pardoning criminals. The few capital sentences passed had still, as under crown colony government, to be considered by the Executive Council.² In other cases it was the opinion of both the Attorney General and the Chief Justice in 1860 that, although the Governor was advised on pardons by the Attorney General, he remained responsible for the actual decision.³

As constitutional head of the executive, the Governor was involved in the day to day government of the country. He acted on ministers' advice, but could insist that they justify their recommendations and that they at least consider matters he brought to their attention. At set hours during the week the Governor was accessible to the ordinary citizen,⁴ and through him private grievances could be brought to the attention of his ministers.⁵ In addition, especially when communications were poor, a perambulating vice-regal party could

---

¹ Archives of the Justice Department, J 1/1 passim.
² cf Executive Council minutes of 3/1/62; Labouchere/Browne 4/10/57. AJHR 1858 A-5; Fletcher thesis p 150 f. Returns of capital sentences executed were sent at irregular intervals to the Secretary of State, Archives of the Governor-General, G.25. Under the Execution of Criminals Act 1858, certificates of execution were published in the Gazette. None were notified until 1862. At least 8 criminals were executed between 1855 and 1856, 6 of them in the Auckland province.
⁴ cf Chapman's New Zealand Almanac for 1860 p 150.
⁵ cf, for example, Browne's draft letter to Busby on p 245.
Draft of a letter from Governor Browne
to J. Busby
in answer to a letter from Busby
dated Auckland 16 December 1858.

Reproduced by courtesy of
the National Archives,
Wellington.
My dear Mr. Smith,

I will of course see Mrs. Smith or any one who desires to see me but I think it will be well that she should know that I have been looking for it is my honor that does it, we are loyal subjects.
My Dear Mr Busby

I will of course see Mrs Smith or any one who desires to see me but I think it would be well understood that she should know how far it is in my power what seeing me really means.

My advisers being, ex officio, responsible for my acts they must necessarily have the opportunity of advising me in reference to them; and Any petition which I send home must therefore either reach me through them or be referred by me to them. It will then be forwarded to the Sec of State with their remarks on it and any which I may find it necessary to add. Such a course is essential to the existence of what is termed responsible Gov

that My advisers being, ex officio, responsible for my acts they must necessarily have the opportunity of advising me in reference to them; and Any petition which I send home must therefore either reach me through and any deviation from it would be a breach of the faith on my part.

You will also perceive that personal any expression of opinion which personal sympathy might lead me to express would be better reser.

You will also perceive that If under these circumstances If knowing that I can express no opinion Mrs S wishes to see me I shall without the advice of my R.A. be happy to see her at a tomorrow at 11 a.m.

* The underlined portions are written in a different colour of ink.
perform a useful unifying function. One of Browne's first acts was to tour the various parts of the colony, establishing personal contact with provincial leaders and meeting the people. Wherever he went there would be a levee, a dinner, a ball, perhaps a concert: probably not very different from vice-regal receptions today except that the small population permitted more personal contact with the local citizenry.¹

Unfortunately, in 1859 on his second round Browne became involved in the land dispute which led to the Taranaki war and thereafter, apart from visiting New Plymouth, he considered it his duty to remain at or near Auckland. In fact his more active political role in the mid-nineteenth century made it less easy for the Governor to perform his social functions outside the capital than is the case today. In the days before electric telegraph it was undesirable that the Governor should long be absent from the seat of government, although it should be remembered that government was so small that it was relatively easy for a sizeable proportion of the cabinet to accompany the Governor. When the Governor travelled, part of the machinery of government went with him so that there were cabinet ministers attendant on the Governor and cabinet ministers resident at the capital. It is probable that the colony's silver seal accompanied the Governor on his travels, and formal decisions were made and published from the Governor's temporary

It was harsh but not entirely unjustified for Fox to comment that Browne "has exhibited a strong aversion to locomotion during his whole administration, having only paid two flying visits to the European settlements during the five years that he has been here, contentedly passing his time at the remote headquarters of Auckland." The effect, however, was that Browne was strongly influenced by a small Auckland group and was isolated from the South. His brief visit to the Waikato in 1857 showed how a Governor in his travels not only could improve relations with Maori (or European as the case might be) but also himself learn in the process.

The Executive Council

The transition to responsible government centred on the Executive Council. Old officials were displaced and the Governor appointed to his Council ministers who had the confidence of the popular house of the legislature. The nature of the responsible government established hinged to a considerable degree on the relationship of the Governor with the Council. The functions of the Governor in domestic affairs resembled those of the Queen in England. But the Executive Council had no counterpart in England. It was a colonial institution.

---

1 On the Governor's formal custody of the seal of the file on the Great Seal of the Dominion in the Archives of the Internal Affairs Department, I.A. 158/90 file 79/2533.
2 Fox/Godley 5/5/60, Godley Correspondence Vol 7p765. Governor Grey when he returned showed no greater desire to travel South than had Browne.
The Executive Council derived from the Governor's Commission and Instructions. In crown colony days it was a consultative body, consisting of a few senior officials summoned by the Governor to consider business which he laid before them. The Governor was instructed to consult with his Council in the execution of the powers and authorities committed to him by his Commission. After responsible government was granted he was further instructed only to exercise his powers "by and with the concurrence" of the Council. But as in the past, he need not bring before it matters which he considered too unimportant to require the Council's advice, and in urgent matters he could act without first summoning a Council. He could still act contrary to the Council's advice, reporting all the circumstances to the Secretary of State at the first convenient opportunity.¹

Certain powers might be conferred on the Governor in Council by local enactment. Mostly these were powers to make regulations by order in council. In the 1850's the New Zealand House of Representatives refused to grant the Governor any additional powers in the reserved field of native affairs. For example, in 1856 a clause was inserted into the Native Reserves Act stating that "every act which is authorized or required to be done by the Governor under this Act shall be done only with the advice and consent of the Executive Council of the Colony." Similar restrictions were placed on the

¹ cf Browne's Commission & Instructions, V & P, HR, 1856 App B-5; Grey's Commission & Instructions, AJHR 1862 A-1.
Governor's exercise of powers under the Native acts of 1858.\textsuperscript{1}

In the first years of responsible government the role of the Executive Council in a colony depended to a considerable degree on the various governors and their responsible advisers. Alpheus Todd wrote in 1880 that where responsible government had been established it was not customary for the Executive Council to be "assembled, as under the old system, for the purpose of consultation and discussion with the governor." It was only "convened for purposes required by law, or when it ... might ... be necessary to hold consultations unconnected with party politics."\textsuperscript{2} But in the 1850's responsible government in the colonies was still a novelty and the role of the Executive Council was not well defined. Even the Colonial Office apparently was uncertain as to the relations which a Governor should have with his Council under the new system. In January 1858 Mr Secretary Labouchere sent a private and confidential circular to colonial governors requesting a report on how far they considered the Governor's attendance at the deliberations of his Council useful or desirable.\textsuperscript{3} Sir W. T. Denison of New South Wales met an unexpected difficulty in having no power to remove members from the Executive

\textsuperscript{1} cf D. K. Hunn, Control of Native Affairs under Responsible Government, M.A. essay, VUW 1959, p 38-40; W. L. Renwick, Self-government and Protection: a study of Stephen's two cardinal points of policy in their bearing upon constitutional development in New Zealand in the years 1837-1867, M.A. thesis, VUW 1962, e.g. p 295, p 311 f, 383.
\textsuperscript{2} Parliamentary Government in the British Colonies p 37.
\textsuperscript{3} Labouchere/Browne 30/1/58, cf Browne's reply of 14/5/58, Governor-General Archives, G 25/7.
Council. He inquired from the Colonial Office whether he had the legal power to summon only ministers of the day to Council meetings. The Secretary of State was not very helpful in his replies to Denison's queries, although eventually Denison was sent supplementary instructions empowering him to remove Councillors from office. It had taken the Colonial Office some months to realise that North American governors already had such powers.  

In a despatch to Denison in February 1858, Labouchere stated that he had no objection to the Governor having non-official members (i.e. non cabinet ministers) actively participating in Council meetings. What Labouchere considered essential was that the arrangements which the Governor made should be fixed in concurrence with his responsible advisers. This, in fact, was the main advice the Colonial Office offered in questions concerning the Executive Council and the Governor's relations with his ministers.

In the Executive Council the Governor had to hand an institution which he could use to meet his ministers and to discuss problems with cabinet. Under Governor Gore Browne, as under his successor, the New Zealand Executive Council did not develop into an important institution. Browne did not utilise the Council to bring order and co-ordination into the new system of government or to formalise his

1 Documents respecting members of the Executive Council, V & P, NSW, 1859-60 Vol 1 p 1125 f. Sir William Thomas Denison was Governor of New South Wales from 20/1/55 to 22/1/61. In addition he was issued with a Commission as Captain-General & Governor-General.

relations with his ministers. The rather haphazard way in which Browne used his Council may be seen by considering contemporaneous developments in New South Wales, mother colony of New Zealand and its closest neighbour. New South Wales was larger, more developed than New Zealand, and had an easier transition to responsible government, avoiding the fiascos of the New Zealand General Assembly in 1854. Unlike Browne, Governor-General Denison received revised Instructions and a new Commission along with the New South Wales constitution of 1855. Despite these differences the task facing Denison and Browne was similar. Denison deliberately used his Council as the means of introducing responsible government. Like Browne, Denison appointed a ministry before the meeting of the legislature, and as in New Zealand, the Governor's nominees shortly lost office. As Denison was not bound by his new Instructions to include officials ex officio in his Council, he could restrict membership to future responsible ministers without waiting until they assumed departmental responsibilities.

On 29 April 1856 the Donaldson ministers were appointed to the Executive Council of New South Wales. The first parliament met in late May and a fortnight later the ministers assumed their portfolios. Some weeks later the Council, at the Governor's invitation, settled the departmental arrangements for the new system of government: the number of ministers and the responsibilities of each.\(^1\) Then, on

---

\(^1\) New South Wales Executive Council Minutes no 39, 4/8/56, & cf no 54 13/10/56, N.S.W. State Archives.
15 September 1856 Denison presented a long memorandum to the Council outlining the nature of the new system as he envisaged it. The Governor expected ministers to deal personally and individually with him, or to present their personal recommendations for endorsement of the Executive Council. On major questions or in cases involving new principles of policy, he expected ministers to meet beforehand and to present their views in a minute to the Governor to be laid before the Council for discussion. Clearly Denison expected all formal matters to be routed through the Council. Finally, and the most significant point, Denison wished the Council to have regular weekly meetings. Councillors discussed the Governor's memorandum and accepted his proposals.¹

Probably Denison was unduly pedantic and undoubtedly the range of government duties in centralised New South Wales required more organisation than was necessary for New Zealand. On the other hand Browne was not sufficiently bureaucratically minded. The result in New Zealand was not simply that the Executive Council was less important than the Council at Sydney. The machinery of government was less systematised at this level, a reflection of Browne's greatest defect as a Governor. He was unsystematic and he was limited in his interest in the work of government. Neither defect would have mattered had he not been involved in a situation which required

¹ cf Denison/Secretary of State 25/9/56 especially encl 2, extract of proceedings of the Executive Council on 22/9/56, V & P, NSW, loc cit.
either bold leadership, imagination and flexibility of mind, or else a readiness to give full and defined responsibility to ministers. Hence the uncertainties and confusion in the administration of native affairs.

In reply to Labouchere's confidential despatch of January 1858, Browne gave a fairly detailed outline of the relations established between himself and his ministers. While he did not use the Council for discussion of "Colonial policy", he stated that "when there has been any difference between myself and my advisers on matters affecting the interests of the Crown I have always required that they should be considered in Council and recorded in the minutes."\(^1\) In practice the Governor and ministers tended to sort out differences of opinion in private interviews and in the exchange of minutes - the Memorandummiad of 1864 had a precedent in the 1850's.\(^2\)

In one important field however, that of defence, Governor Gore Browne still used the Council for consultation. In 1860 there were seven special Council meetings summoned on account of the Taranaki war: on 25 January the Governor submitted to a full Council the question of completing the Waitara purchase, and after "full consideration of the circumstances" the Council advised the steps which led to the outbreak of conflict. Next month a full Council assembled to hear the latest reports from Taranaki before the Governor left for New Plymouth. Some four months later the Council met to

---

1 Browne/Labouchere 14/5/58, G 25/7 (cited above p 249 n 3).
2 cf AJHR 1858 E-1A & Browne's correspondence with C.W. Richmond, May-July 1858, Richmond-Atkinson Papers Vol 1, p 399 et seq, cited above p 220 n 2. Memorandummiad was J. E. FitzGerald's description for the quarrel between Grey & the Whitaker-Fox ministry, Gisborne, Rulers & Statesmen p 168; cf AJHR 1864 E-1.
consider Colonel Gold's urgent requests for more troops. "At the request of the Council" Commodore Loring R.N. and Colonel Mould, the commander of the Auckland garrison, attended. The Council recommended sending all possible troops, the ordering of rifles, etc. On 24 September it considered measures to face the feared attack on Auckland, and it met twice, in October and November, to consider further measures to protect Auckland. It also met in late October to receive a report from the Native Secretary that as the result of the murder of a Maori, Major Speedy might be in danger because of a state of excitement at Patumahoe, a village near Auckland.¹ The Council wisely recommended that Major Speedy should be warned of his danger, and that two or three steady police constables should be placed under his orders - ostensibly to investigate the murder.²

In summoning his Council to discuss these matters, however, Browne was not necessarily consulting only his responsible advisers. Others competent to advise were invited to attend. On one occasion, on 22 January 1861, the two ministers attending were outnumbered by the Auckland garrison commander, a captain of the Royal Navy and the Native Secretary. Except for the notable case of deciding to complete the Waitara purchase, Browne neither formally committed the ministry

¹ Major James Speedy was appointed Resident Magistrate at Papakura in January 1859.
² Minutes of the New Zealand Executive Council, 25/1/60, 26/2/60, 3/7/60, 24/9/60, 13/10/60, 16/11/60, 20/10/60; cf minutes of 1/3/61 reproduced on p 255.
MINUTES OF EXECUTIVE COUNCIL MEETING

FRIDAY 1st MARCH, 1861

(reproduced by courtesy of the National Archives, Wellington)
Friday 1st March 1861.

Present

His Excellency the Governor
The Honorable the Colonial Secretary
The Attorney General
The Colonial Treasurer
Henry J. Lawrence
J. A. Weld

Absent

The Officer Commanding the Forces

The Council met pursuant to Adjournment.

The Minutes of the last Council were read & confirmed.
The Colonial Secretary brings before the Council the question of the pay to be given on and after the 1st March instant, to the non-commissioned officers and men of the Militia & Volunteers at Tararua & Ohakune who are or may be on actual service, and recommends the following rates viz:-

Tararua Militia & Volunteers.

1. All men of the above force, who are not receiving extra pay for performing Customs or other duties whether civil or military which exempts them from regular military duty, to receive pay at follows:

Officers 3/6, Corporals 3/-, Privates 2/6 per diem in addition to such rations and allowances as are issued to her Majesty's regular
regular troops serving at Taunui.

2. All men of the above force receiving pay as stated above to continue to receive the rate of pay without issued rations.

3. All men of the above forces on actual service in the field to receive the pay as follows:

- Serjeants 3/- per diem
- Corporals 3/- per diem
- Privates 2/- per diem

When on service in garrison or quarters:

- Serjeants 3/6 per diem
- Corporals 3/- per diem
- Privates 2/6 per diem

Without rations.
Clothing to Taranaki Militia

When on special service as night or day patrol, special rates of pay to be received according to circumstances.

The Colonial Secretary also recommends that the Taranaki Militia, who have now been on severe service for twelve months, shall receive winter clothing and also suit numbers of pairs of Boots as the regular troops are entitled to receive during each year.

The Council is of opinion that the above recommendations should be acted on and that the following order in Council relative to the pay of the Auckland Militia be published in the Gazette.
to his views nor, unlike Denison, used the Council as an opportunity to have regular round table discussions of ministerial recommendations previously determined by them in cabinet.\(^1\) On a few special occasions, Browne used the Council, not as Denison had proposed, but as it had been used in similarly difficult circumstances before 1856. It provided an opportunity for the Governor to seek the collective advice of senior officials - not necessarily all sworn to the Council - without thereby lessening his own discretionary powers.

For the rest, however, Council was restricted to such formal business as by law had to come before it. Government decisions were recorded not so much in the Council minutes as in exchanges of letters which were not official papers, or in the form of Browne's monogram on documents in departmental files.

For its regular business Council met but erratically - after the Fox Government came to office in 1861 the Council apparently did not meet for four months. There were only nine formal meetings in 1860. Even so the Council had more business to attend to than in previous years, as various orders had to be made consequent on the outbreak of war, such as constitution of militia districts and regulations for the services of volunteers. In all, 26 orders in council were issued, 16 relating to defence, and the Council advised the issue of two Proclamations. Various formal decisions had to be made with the development of the Collingwood goldfields, such as proclamation of a

\(^1\) cf Minute of NSW Executive Council passim, & extracts from Council proceedings, encl. to NSW Colonial Secretary/N.Z. Colonial Secretary 17/9/58, AJHR 1860 D-1f5f.
goldfield and constitution of a warden's court. Then there were
harbour and quarantine regulations, the setting of new postal rates,
the authorisation of land grants (normally to a Superintendent for
public purposes), or a retiring allowance to a civil servant, or a
native education grant (in this case to the Church of England) —
and this just about covers the work in one of the busier years of
the Executive Council under Gore Browne. After Browne's retirement
in the course of the next year the Council's work continued along the
same restricted lines.

Three reasons why the Executive Council did not develop into a
body for the regular meeting of ministers with Governor are (1) the
weakness of the old Executive Council, (2) the existence of anomalies
in the composition of the Council, and (3) the smallness of the
cabinet.

When Browne arrived in New Zealand in late 1855 he had an
Executive Council consisting of three "old officials", Sinclair the
Colonial Secretary, Shepherd the Colonial Treasurer and Swainson the
Attorney General, and Lieutenant Colonel Wynyard the senior military
officer. All were members \textit{ex officio}. All were members of long
standing and had tended to be "yes men" under Governor Grey.\footnote{cf Rutherford, \textit{Grey} p 154-5.}
Browne's main concern was to assess the native problem. For expert
advice in this field he had to turn to such men as Lieutenant
J. J. Symonds the Native Secretary, McLean, the Land Purchase
Commissioner, Bishop Selwyn, Chief Justice Martin and others of long experience - the so-called *periti*. For knowledge of the settlements in the former province of New Munster he could expect no help from officials who had had little official responsibility for that area since the creation of the province in 1848 - the year of the foundation of Dunedin and before the foundation of Christchurch. In the other field which interested him, the usurpation of powers by the provinces, he could hardly expect to receive helpful advice from the men who, after Governor Grey's departure, were primarily responsible for that situation developing. Finally, had he wished to understand the financial position of the government he would have had to turn to Dr Charles Knight, the Auditor-General.

Before the establishment of responsible government, therefore, Browne had little cause to turn to his Council and considerable reason to seek advice outside his Council. Once a responsible ministry was installed neither Governor nor ministers had much incentive to set up a vigorous Council. In the field of native affairs the Governor continued to seek advice from outside his Council or ministry. In addition, membership of the Council was not restricted to responsible ministers even if it did not include the chief irresponsible advisers.

There was nothing in the Constitution Act about the Executive Council and the Instructions to the New Zealand Governor had not been revised since 1846. In 1856 Browne replaced the three civil officials by three responsible ministers and was able to add to their number by appointing ministers with or without portfolio, but Colonel Wynyard remained a member of the Council.
In a despatch of May 1855 Lord John Russell had stated that as soon as the British Government heard of the establishment of responsible government in New Zealand, fresh Instructions would be issued to the Governor omitting the senior military officer from the Council, and in his negotiations with Sewell as premier-designate Browne wrote that "he will not object (having the Queen's sanction to that effect) to limit the members of the Executive Council to his responsible Ministers." But a month later, when the short-lived Fox ministry was in office, Gore Browne in reply to Russell's despatch requested that the decision be "carefully considered. It appears to me that the presence of the officer commanding the troops is attended with many advantages." Viewing a subject "in a professional light only" his opinion might differ from that "given by a person acquainted with the affairs of the colony, and responsible in that respect." The Governor explained that by the relations established between himself and his responsible advisers "it is understood that questions of ministerial policy are not to be brought before the Executive Council, which will only be convened for purposes required by law to be approved in Council, or when it may be thought necessary to hold consultations unconnected with party views." Browne concluded with a reminder that the senior military officer succeeded the Governor in the event of the latter's death or removal from the colony.

2 Browne/Labouchere 23/5/56 GBPP loc cit.
Ministers also accepted the continued membership of the senior military officer. In answer to a question in the Legislative Council in July 1856, Whitaker, Attorney General in the Stafford Government, stated that there "were many occasions when it would be very desirable that the Ministry should have the assistance of the officer commanding the troops to aid their deliberations, more especially on military questions. It was the intention of Ministers that he should continue to hold his seat."¹

It is worth recalling that both Browne and Grey were themselves army officers. Nevertheless there were arguments for retaining the officer's membership, although not, one would have thought, for his automatic inclusion *ex officio*. Should military matters arise in a non-party way, it might be useful to know on the spot what the troops could or might do, especially as Governor and commander of the troops were responsible to different authorities in Great Britain. Ministers had no cause to involve the Governor in their domestic policy, but every cause to tie Governor and Colonel to responsibility for troop movement. As C. W. Richmond wrote to his brother-in-law in 1858, ministers had decided that the racial disturbances at New Plymouth should be discussed at a meeting of the Executive Council. "We desired [Wynyard's] ... advice as a military man, and also to secure his hearty concurrence in any measures that might have to be taken."²

In December 1861 Grey assumed office as Governor under revised

¹ NZPD 1856 p 290.  
² C. W. Richmond/H. A. Atkinson 14/2/58, Richmond-Atkinson Papers, Vol 1 p 349.
Instructions, in which all reference to \emph{ex officio} members of the Council was deleted. The senior military officer, however, continued to participate in Council meetings at least until the end of 1863, taking the chair in the absence of the Governor. On the departure of Wynyard with the 58th regiment in late 1858, Colonel Gold took his seat in the Council. He was replaced by Major-General Pratt who arrived in New Zealand in August 1860. Pratt in turn was in April 1861 succeeded by Lieutenant General Cameron, sent out from England to command operations at Taranaki.\footnote{Wynyard, Gold & Pratt were not gazetted as members of the Executive Council and this has misled some authorities. \emph{e.g.} \textit{Parliamentary Record} p 32, Scott, \textit{N.Z. Constitution} p 79-80.}

The small size of the cabinet was another reason for the unimportant role of the Council. The various ministerial reshuffles of the early 1860's and the appointment of ministers without portfolio can give a false impression of the size of the cabinet.\footnote{\textit{cf, for example, Lipson's mistaken comment on the size of Domett's cabinet, Politics of Equality} p 95.} In the first years of the Stafford Government there were two full-time ministers and one part-time minister, the Attorney General, and it was not until late 1860 that cabinet grew to five full-time ministers.

From the start, premiers used the device of appointing ministers without portfolio. Stafford himself had no portfolio until after the prorogation of the 1856 session of the General Assembly. As cabinet had no formal existence, it was by being sworn as members of Council that a ministry was officially constituted and recognisable, and in particular, it was only as members of the Council that ministers
without portfolio had any status. Appointment as a minister without portfolio was a harmless, and one suspects, frequently meaningless reward for support in the House, although as minister without portfolio Weld in 1860 shared the parliamentary duties of his two colleagues in the House of Representatives. A premier might nominate a minister without portfolio to be a government representative in the Legislative Council or, in the 1860's, resident in the South Island. Sewell was no longer a member of cabinet or an active minister when he was in England in 1857 and 1858. But as a member of the New Zealand Executive Council he was able to represent the colonial government officially in his negotiations for the Imperial loan guarantee. Similarly, the two Commissioners sent to England in 1869, Featherston and Bell, were members of the Executive Council.

With the exception of a few months in 1862-3 there were not more than two ministers without portfolio in a government and often, when General Assembly was in recess, there were none. Only in 1861-2 were there two such ministers resident at Auckland. As far as sharing the burdens of government were concerned, or participating in cabinet discussions either in or outside the Executive Council, the contribution of ministers without portfolio appears to have been negligible.

The cabinet planned by the FitzGerald ministers in 1854 was to have consisted of Colonial Secretary, Solicitor General, Colonial

---

1 cf Table N over.
Table N: Size of New Zealand Ministries
1856-1866
(cf Table O below p37N-2)

<table>
<thead>
<tr>
<th>Year</th>
<th>Ministry</th>
<th>Size of ministry during session</th>
<th>Size of ministry in recess</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Ministers with portfolio (in House)</td>
<td>Ministers without portfolio (in House)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ministers</td>
<td>Ministers</td>
</tr>
<tr>
<td>1856</td>
<td>Sewell</td>
<td>3 (2)</td>
<td>1 (0)</td>
</tr>
<tr>
<td></td>
<td>Fox</td>
<td>3 (3)</td>
<td>2 (1)</td>
</tr>
<tr>
<td></td>
<td>Stafford</td>
<td>3 (2)</td>
<td>2 (2)</td>
</tr>
<tr>
<td>1858</td>
<td>&quot;</td>
<td>3 (2)</td>
<td>1 (0)</td>
</tr>
<tr>
<td>1860</td>
<td>&quot;</td>
<td>4 (2)</td>
<td>1 (1)</td>
</tr>
<tr>
<td>1861</td>
<td>Fox</td>
<td>4 (4)</td>
<td>3 (2)</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>5 (4)</td>
<td>2 (1)</td>
</tr>
<tr>
<td>1862</td>
<td>Domett 1</td>
<td>4 (4)</td>
<td>2 (1)</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>4 (4)</td>
<td>3 (2)</td>
</tr>
<tr>
<td>1863</td>
<td>Whitaker-Fox</td>
<td>5 (4)</td>
<td>0 (0)</td>
</tr>
<tr>
<td>1864</td>
<td>Weld</td>
<td>5 (4)</td>
<td>0 (0)</td>
</tr>
<tr>
<td>1865</td>
<td>Stafford</td>
<td>5 (5)</td>
<td>2 (0)</td>
</tr>
</tbody>
</table>

Note
Sewell as minister without portfolio 1856-8 is not included in the above figures. Nor is he included for the two months in 1859 when he was Colonial Treasurer. (Stafford was then absent from the colony.)

Scholefield's Parliamentary Record p 32-3 is misleading: General Cameron was not a member of a ministry, Sewell in 1861 was a Legislative Councillor and in 1862 was not a member of the Domett ministry, and Richardson and Mantell were not Legislative Councillors in 1864.
Treasurer, and Native Minister. It was hoped that having resigned, Swainson would return to office to perform the duties of crown law officer in New Zealand as Attorney General. ¹

The cabinet actually established in 1856, however, was a rather different body. Late in 1856 Stafford became Colonial Secretary and Richmond became Colonial Treasurer, and also carried out the functions of Commissioner of Customs and Native Minister. Swainson was on leave overseas but the acting Attorney General, Whitaker, not only had been appointed Attorney General but was also a member of cabinet.

In late 1856 when the first responsible ministers undertook the government of the colony, the Executive Council consisted of Governor, the commander of the troops, two political heads of department, and the local crown law officer. It is small wonder if there was no need to institutionalise relations between Governor and ministers in the Executive Council.

¹ Sewell Journal 3/6/54 p 605.
CHAPTER 12

GENERAL GOVERNMENT DEPARTMENTS

As the Stafford Government came increasingly to gain control of affairs and to extend the functions of the General Government it strengthened the central executive. In 1856 the General Assembly delegated certain functions to the provinces, for example control of magistrates' courts, postal services, and waste lands (although the Waste Lands Act was later disallowed\(^1\)). In 1858 there was further rationalisation of functions and central control was increased.\(^2\)

Only one important department of government had been abolished as a result of the establishment of the provinces, that of the Surveyor-General. The responsibilities of other central agencies were reduced - for example those of the Registrar-General. For the rest, apart from certain public services which were formerly supervised by the Colonial Secretary or officials who were in communication with the Colonial Secretary's office, the main effect of the administrative changes of these years was not to transfer work from one government to another, but to transfer responsibility. There is a significant difference. Much of the administrative problems of the early years was due not so much to confusion and change of duties as to the absence of any government agency or department which was performing the duties satisfactorily. When the first sessions of the General Assembly were

---

\(^1\) cf above p 14-15.

\(^2\) cf Morrell, Provincial System p 89 f; Polaschek, Government Administration in New Zealand p 18 - 20.
held there were in existence provincial administrations aware of local needs. It was natural therefore to pass certain essential functions of government to governments which were in being and able to accept additional duties. Only in 1858 was there an administrative machinery in existence, or planned, at Auckland to undertake new duties. In 1858 therefore, it was natural to pass to the General Government duties requiring centralised organisation, but it is only partially correct to suppose that General Government took back functions from the provinces. It is more correct to state that in 1854 and 1856 there was a tendency to give the provinces the duty of undertaking neglected public services, and in 1858 and thereafter to give General Government that duty. Administrative changes then are commonly administrative innovations, and as the provincialising measures of 1856 in particular are evidence of the inadequacies of the General Government, the centralising measures of 1858 are evidence of the inadequacies of provincial governments.

The main changes made in 1858 were: the return of control of the lower tiers of the judiciary to the General Government, the establishment of a separate Crown Grants Office and creation of the office of Secretary for Crown Lands, the establishment of a Postmaster-General's office, the establishment of an Attorney General's department, the strengthening of the departments of the Auditor-General, the Registrar-General, and the Colonial Treasurer, and the creation of the offices of Commissioner of Customs and Native Minister.

The methods adopted to give legal effect to these changes are an indication of the peculiarities of the public accounts: some changes
were made by alterations to the Civil List or departmental votes, but others do not appear in the Appropriation Act at all and were effected by special legislation and financed from separate accounts.

The Civil List covered the senior officials of the central government establishment, although only the salaries of the Governor and two judges and the vote of £7,000 for native affairs were specifically itemised in the schedule to the Constitution Act. The first major reform of 1858 was to double the number of major departments of state from two to four and to provide each with a minister and permanent head paid from the Civil List account. The salaries of ministers was raised from £700 to £800 p.a. and the permanent heads were to receive £400 p.a. The simplicity of this structure is both revolutionary and deceptive. The new departments were those of the Attorney-General and the Native Minister. The Attorney-General's department was to undertake those functions of a modern department of justice which the Colonial Secretary's Department had not relinquished to the provinces, together with the control of Resident Magistrates, sheriffs and coroners, now restored to General Government, and of newly created District Courts.

Creation of a Native Minister's Department gave formal expression to the arrangements made between Governor and ministers in 1856. In fact it did not result in any immediate administrative change. Richmond continued to perform the same functions under a new formal title, McLean continued to double the roles of Chief Land Purchase Commissioner and Native Secretary and to run his own private empire. The Native Secretary's salary was used to bring McLean's salary as
Commissioner up to the figure of £400 p.a. and to provide an Assistant Native Secretary.

In 1853 control of customs collection was transferred from the Commissioners of the Treasury in London to the New Zealand Government. At first the colonial government merely retained in force the instructions to customs officers which had been issued to them by the British Commissioners. One of the tasks of responsible government, therefore, was to bring customs into the regular administrative system. A massive Customs Regulation Act was passed in 1858. By that Act the title of "Commissioner of Customs" was created. It was also intended to have a Secretary to the Commissioner as permanent head of the department. But this was a paper department. The Colonial Treasurer's Department and the Customs department continued to be the same. 1

The next department was that of the Postmaster-General, an office created by another act of the General Assembly. He was voted no salary, however. This is not surprising. The Postmaster-General's office was also that of the new Secretary for Crown Lands. This position also was created by statute, and the salaries for the new department were met from fees charged on the issue of crown grants. Although both new positions could be held by a cabinet minister, only the position of Postmaster-General was excluded from the provisions of the Disqualification Act 1858 and could be held by a member of the House of Representatives. The position of Secretary for Crown Lands was not necessarily a political post and in 1864 became a permanent position.

---

No provision was made for a permanent head of the department (or departments).

The main changes made in 1858 then, were the creation of four new ministerial posts (Commissioner of Customs, Native Minister, Postmaster-General, and Secretary for Crown Lands), each on paper with its own little department. The actual change was the creation of two new departments: those of Attorney General and of the Secretary for Crown Lands. As there was already an Attorney General in cabinet the ministry was increased from three to four and H. J. Tancred, a Legislative Councillor, having become minister without portfolio during the course of the 1858 session of the General Assembly, at the close of the session assumed the offices of Secretary for Crown Lands and Postmaster-General. His duties although nominally performed by others in the past were in fact new. The Crown Grants office had been neglected when attached to the Colonial Secretary's Department, and the provinces had had little more success, in association with the Colonial Secretary's Department, in establishing a colonial postal service. The Postmaster-General was also responsible for the new subsidised steam service negotiated by Sewell.

What the Stafford Government had done in 1858 was to create paper departments which could be brought into being as the occasion arose. In the course of 1859 Henry Sewell returned to New Zealand and relieved Richmond of the Treasury, but almost immediately he broke with his

---

1 of C.W. Richmond, NZPD 1856-58 p 512; Otago Witness 24/7/58, Otago Colonist 10/9/58; D. Robertson (comp), Early History of the New Zealand Post Office p 54; H. Robinson, A. History of the Post Office of New Zealand p 83-7; Stafford, NZPD 1856-58 p 405.
colleagues and resigned. A reason he advanced, though not the chief one, was that it was unnecessary to have five ministers. As Stafford was overseas in 1859 and Tancred also acted as Colonial Secretary it was not until Stafford resumed his duties in November 1859 that government actually consisted of even four ministers.

In November 1860 F. A. Weld, who had served an apprenticeship as minister without portfolio in the 1860 session of the General Assembly, was appointed Native Minister, raising the number of cabinet ministers to five. In the next decade there was little change in the composition of cabinet apart from the addition of the occasional ministers without portfolio. Cabinets in the 1860's fluctuated in size between five and seven ministers of whom four or five normally held portfolios.

The main changes made in the early 1860's were the creation of the department of a Minister for Colonial Defence and the removal of the post of Secretary for Crown Lands from cabinet.

The Stafford Government's reforms appear to have provided an adequate political machinery for government of the 1860's, and something on which future governments could build. The Atkinson Government of 1890 and the Liberal Governments of the 1890's consisted of seven ministers with portfolios and one without. The portfolios which dated from the 1860's were in the charge of four ministers. The remaining three ministers were concerned with the various new departments which had developed under the drive of Julius

---

2 cf Table N above p 263 & Table O over.
POSTS, NOVEMBER 1856 - MAY 1865

holders only are included)

<table>
<thead>
<tr>
<th>COLONIAL TREASURER</th>
<th>COMMISSIONER OF CUSTOMS</th>
<th>POSTMASTER GENERAL</th>
<th>SECRETARY FOR CROWN LANDS</th>
<th>MINISTER FOR COLONIAL DEFENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.W.Richmond</td>
<td>Richmond</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Richmond</td>
<td>Richmond</td>
<td>Tancred</td>
<td>Tancred</td>
<td></td>
</tr>
<tr>
<td>Richmond (Sewell)</td>
<td>Richmond (Sewell)</td>
<td>Tancred</td>
<td>Tancred</td>
<td>for two months</td>
</tr>
<tr>
<td>Richmond</td>
<td>Richmond</td>
<td>Tancred</td>
<td>Tancred</td>
<td></td>
</tr>
<tr>
<td>Wood</td>
<td>Wood</td>
<td>Ward</td>
<td>Ward</td>
<td></td>
</tr>
<tr>
<td>Wood</td>
<td>Wood</td>
<td>Ward</td>
<td>Ward</td>
<td>1863: Russell</td>
</tr>
<tr>
<td>Wood</td>
<td>Wood</td>
<td>Gillies (1864:Domett)</td>
<td>Gillies (1864:Domett)</td>
<td>Russell (not in cabinet)</td>
</tr>
<tr>
<td>Fitzherbert</td>
<td>Fitzherbert (1865:Richardson)</td>
<td>Richardson</td>
<td>(Domett)</td>
<td>Atkinson</td>
</tr>
<tr>
<td>Stafford</td>
<td>Stafford</td>
<td>Stafford (Domett)</td>
<td>Haultain</td>
<td></td>
</tr>
</tbody>
</table>
Vogel and in consequence of the abolition of the provinces.

The Stafford Government was not so successful in reforming the lower ranks of the public service. Stafford himself was aware of the need to systematise appointments and promotions in the public service, but a bill he introduced in 1860 lapsed and was not revived. It was not until his second ministry that a Royal Commission of 1866 resulted in the first reforms in this direction. Poorly paid, with each department developing its own internal rules, with officials responsible to more than one permanent head and minister or even to both central and provincial governments, and subject to political patronage, the public service suffered in morale and in quality.

The difficulties of government in such circumstances, with occasional problems arising from incompetence and dishonesty, should not disguise the fact that at the top of the structure the colony was most fortunate in its officials. The permanent head of the Colonial Secretary's Department was William Gisborne, a New Zealand public servant since 1847, later a minister of the Crown and a writer on New Zealand affairs. Richmond and his successor as Colonial Treasurer, Reader Wood, were well pleased with the abilities of R. F. Porter whom Richmond brought into central government from Auckland provincial government service and who became first permanent

---

1 of Richardson/Stafford 19/10/67 suggesting appointments as rewards for services to government, Stafford MSS folder 41; correspondence between Stafford and government officials in the Legislative Council, JLC 1868 App 1 p 5 ff.
2 cf above p 196. The Collector of Customs at Timaru was dismissed in 1865, but the reason was not given (N.Z. Gazette 8/4/65 p 78.)
head of the Treasury. Whitaker's Assistant Law Officer was F. D. Fenton, later head of the Colonial Defence Department and then Chief Judge of the Native Land Court. The Auditor-General was Dr. Charles Knight whose abilities kept him in his post for many years after three "old officials" were retired in 1856. Domett was appointed Secretary for Crown Lands in 1864. Henry Sewell was another leading politician turned civil servant and was chosen first Registrar-General of Lands in 1860, although almost immediately he returned to politics before that post became effective and for a time the position was held by a cabinet minister. F. D. Bell made a successful Chief Commissioner of Land Claims from 1856 until 1862. The abilities of McLean the Native Secretary and Chief Land Purchase Commissioner are well-known. Nor can doubts be cast on the competence of the first Supreme Court judges. Whatever may be said of district appointments at the headquarters of government there were men of undoubted ability and fit to meet the responsibilities of government.

Central government responsibilities were comparatively simple and straightforward. Outside the capital most government duties were undertaken by the provinces. It is an over-simplification, but not a gross over-simplification, to say that the district officials of General Government were restricted to dispensing justice, collecting customs duties and running the mails, while a small army of land purchasers operated in the North Island under a separate command subject to general direction by the Governor advised by ministers. Control of crown lands, or waste lands, as they are variously

1 On Fenton cf above p 219.
described, although formally with General Government was to all intents and purposes vested in provincial governments,

From the public accounts, the estimates, and the Almanacs of the day, it is possible to draw a picture of General Government departments in the last twelve months of the Stafford Government.

The Colonial Secretary's Department was the most important department at Auckland and his duties are the hardest to define. His department was larger than those of his colleagues, consisting of four to five clerks under a permanent head, as well as clerks in the Patent Branch. Apart from dealing with the provinces his department ran elections, handled the affairs of the General Assembly and all work relating to the militia, and dealt with a host of miscellaneous duties: implementation of the Weights and Measures Ordinance, publication of the Government Gazette, civil service superannuation, naturalization of aliens, reception of the reports of the Registrar-General (who handled registration of births, deaths and marriages); the holding of triennial censuses under the 1858 Census Act, supervision of the work of the Inspector of Public Works, 1 correspondence with the Colonial Agent in London. The host of

1 Colonel Mould R. E. (mentioned above p254) received a small salary as Inspector of Public Works. He was available as a consultant to provincial governments and supervised public works for Maoris, for which General Government was responsible. He was also a commissioner to settle the Canterbury-Otago boundary dispute (Otago Gazette 7/11/59). His salary was omitted from the estimates in 1861 (NZPD 1861 p 320 -7).
officials in the colony who were responsible to the Colonial Secretary were almost exclusively electoral officials who normally were the local judicial officers.

The Attorney General and the Assistant Law Officer, with the aid of a clerk, were responsible for the efficient administration of the law courts. The Attorney General was chief law adviser of the Government as well as head of a department. The work of the Crown Grants Office and of the Post Office is self-explanatory. The combined department in 1860 was staffed by a minister and two clerks. There were post offices in the charge of a postmaster, assisted by clerks, in each province. In addition honorary postmasters were appointed in country districts.

Under the Colonial Treasurer, the Treasury at Auckland was staffed by a permanent head, an accountant and a clerk, and in addition there was a further clerk on the Customs establishment. There was a collector, or sub-collector, of customs at each port of entry, sixteen in all in mid 1861. The collector also held other government posts, most commonly postmaster and/or sub-treasurer. Depending on the size of the port, the local customs office might employ clerks, tidewaiters, boatmen, etc. Sub-treasurers were responsible for government revenue collected with the exception of land revenue. In 1859-60 £178,197.2.6d. of the Colony's total £202,007.6. ld ordinary revenue came from customs so that customs officers were responsible for the collection of 88% of the colonial revenues, and were the Treasury's key district officials.2

1 cf below p 301 8 n 1.
2 rf return of collectors and sub-collectors of customs, AJHR 1861 B-7; statement of receipts and expenditure for the year ended 30 June 1860. AJHR 1861 B-7 n 1.
From the first days of Crown colony government there was an effective agency to audit the public accounts. Initially there was a local Board of Audit responsible to the British Commissioners of Audit. In 1846 Dr. Charles Knight was appointed Auditor General and as such became the main expert on the finances of the colony.\(^1\) Audit provisions were strengthened by the Audit Act of 1858 which made permanent statutory provision for the salary of an Auditor of the Public Accounts, specified his duties and established a House of Representatives Audit Committee of three with extensive power to scrutinise accounts and to examine officials. This committee, incidentally, was later dropped and it was not until the present Public Expenditure Committee in 1963 replaced the Public Accounts Committee that the House again had a strong committee to examine public finances. In 1860 the Auditor's establishment consisted of himself and two or three clerks.

The Auditor and the House Audit Committee could uncover misappropriation by the Colonial Treasurer, but as long as the Colonial Treasurer was not guilty of any criminal activity he could misappropriate to his heart's content. He had entire custody of the funds of the colony, whether appropriated or not, and the only check was that, by the Constitution Act, before money could be drawn the Governor had to sign a warrant. However, as the Audit Committee reported in 1861, the vouchers for sums disbursed by the Treasurer or Assistant Treasurer (the latter being sums under £2,000), were "from time to time collected together, and, subject to the previous queries of the Auditor of Public Accounts, put into warrant for the Governor's signature, after the

\(^1\) of Herron thesis p 459.
money has been actually paid away." This practice effectually deprived the Governor of his "comptrolling power over the issue of public money." 1

Thus it was possible for Richmond in 1860 to expend over £3,000 under the Bay of Islands Settlement Act 1858 although there had been no appropriation for this purpose. Furthermore, he was able to dip into various "deposits, trust, and other funds (not being Revenue)" and employ them "as a working balance". As stated below (p 298) between 1858 and 1860 Richmond had withheld from the provinces surpluses achieved under some votes to balance excess expenditure under other votes, although it was at least arguable that he was obliged to forward all surpluses to the provinces. The legislation, however, was vague and left the matter to the discretion of the Treasurer. 2

The Land Purchase Department was not a part of the General Government establishment being financed from the half million loan of 1856 and operating largely independently of the cabinet. Its head was Mclean and at Auckland he was assisted by an accountant, an interpreter and two clerks. In addition in 1860 there were District Commissioners nominally stationed at the Bay of Islands, Kaipara and Whangarei, Thames and Piako, New Plymouth, Napier and Wellington. Their duties were to circulate in their various districts, attending Native meetings, assisting Resident Magistrates and negotiating land purchases. In short they were roving officials experienced in dealings with Maoris. In mid 1861, when admittedly the work of the Department was drying up, a return was presented to the House of

1 AJHR 1861 B-1A p 4.
2 cf Wood's Financial Statement of July 1861, NZPD 1861 p 192; report of the Audit Committee, AJHR 1861 B-1A p 5; NZPD 1860 p 649-50, 1861 pp 76, 291, 317-9; Surplus Revenue and Ordinary Revenue Acts 1858; above p 207.
Representatives stating the duties and present whereabouts of officials of the Department. Three of the District Commissioners were then in Auckland. For example, the Wellington Commissioner was completing negotiations for land at Manukau and was "occasionally employed on matters arising out of the Native Insurrection." Two were at New Plymouth. Of the six District Commissioners only one was working in his official district the Bay of Islands, another was at Napier, his district, but was about to proceed to Stewart Island. The remaining Commissioners were at Auckland or New Plymouth.¹

The Land Purchase Department and Native Secretary's Department were closely related. Not only, as shown above, were the District Commissioners carrying on Native Department work as well as merely purchasing land, but the central administration appears to have been combined. The Assistant Native Secretary was McLean's second in command and acted in McLean's absence in the Land Purchase Department. The formal establishment of the Native Secretary's Department, in addition to the Secretary and Assistant Secretary, consisted of interpreter and a couple of clerks. Outside Auckland it had few district officials. In mid 1861 six Resident Magistrates were attached to the Native Department and a small salary was paid to two officials, at Nelson and Dunedin, to settle differences between Maoris and Europeans in their respective districts.² For the rest the

¹ AJHR 1861 C-4.
² rf return of persons employed in the Native Secretary's Department, AJHR 1861 E-5.
Department had to rely on missionaries and others to keep it informed of developments in Maori areas - apart that is, from the land purchase commissioners.

Administrative tribunals were no novelty in mid-nineteenth century New Zealand. The most important in the late 1850's was the Commissioner to determine land claims. Settling land claims was a problem that Hobson had had to face immediately on assuming the government of the colony, and indeed, had concerned Governor Gipps before that. To the initial problem of settling the claims of those who had purchased land before the proclamation of British sovereignty, Governor Fitzroy added a new problem. By proclamations of 26 March and 10 October 1844 he waived the crown's right of pre-emption, permitting direct purchase from the Maoris on payment of a fee to government: first of 10/- an acre and then of 1d an acre. The proclamations were disallowed by the Imperial Government and Governor Grey was given the task of determining the rights of those who had acted under them. Despite ordinances passed and the investigations of various commissioners, the question was sufficiently unsettled for the House of Representatives in 1854 to adopt, on the recommendation of a select committee, a resolution that "the final settlement of outstanding Land Claims throughout the Colony is one of the principal objects requiring the attention of the Legislature."

Two years later, opening the 1856 session of the General Assembly Governor Gore Browne hoped it would "lose no time in authorizing the formation of a Commission with full powers to settle the many vexed questions connected with land claims." As an Auckland Provincial
Councillor commentet, the "existence of these claims was paralyzing the land affairs of Auckland." Early in the session another select committee was set up to examine the question. It recommended the establishment of a Court of Land Claims whose decisions should be "final and altogether irrevocable." With the blessing of the new Stafford Government, Domett, the chairman of the committee introduced a bill to effect the committee's recommendations. By the Act of 1856 "it was decided to begin all over again." Commissiones were "to hear and determine all claims which might have been heard examined and reported on" under the various land claims ordinances as well as those arising from Fitzroy's proclamations.

A leading official of many years standing, sometime New Zealand Company agent and more recently a Commissioner to hear claims deriving from the obligations of the New Zealand Company to settlers, F. Dillon Bell was appointed sole Land Claims Commissioner in November 1856. During the six years in which he held the position, Bell investigated 1,375 claims, of which the great majority were "old land claims" dating from before 1840. In his final report Bell stated that "only very few claims remained unsettled"—although as the files show some of the very few remained unsolved for years afterwards. In addition

1 National Archives preliminary inventory no 9, Archives of the Old Land Claims Commission, p 3
2 cf Rutherford, Grey p 122 f; V & P, HR, 1854 (II) report of the select committee; JHR 14/9/54; V & P, HR, 1855, enclosures to Message 12; Peter Plume J.L. Campbell/Tracts for the Times no 1 June 1856/ p 3; NZFD 1856 pp2, 98; V & P, HR, 1856 D-21 report of the select committee, containing an outline history of land claims.
some special cases were outside the jurisdiction of the Commissioner.\footnote{cf, e.g., NZPD 1856-58 p 399-400, 1858-60 pp 151, 546-7, 574, 1861 p 292-3.}

Nevertheless the Court of Land Claims was one of the most successful institutions established under responsible government.

The land registration system, on the other hand, was not a conspicuous success, although eventually it was to be as great a blessing to the colony. In 1854 British Commissioners were appointed to report on the registration of title on the sale and transfer of land. Their report was tabled in the New Zealand General Assembly in 1858. It could leave no room for doubt as to the deficiencies of the contemporary situation in Great Britain, and indeed in the British Colonies generally. The Stafford Government promised to give careful consideration to the question of land registration during the recess. Its promise was fulfilled, if only because of the powerful pressure from the influential chambers of commerce in the various provinces. The Land Registry Act 1860 was also influenced by a bill put before the parliament at Westminster, by the workings of the Encumbered Estates Court of Ireland, and by the system introduced by Torrens in South Australia.\footnote{AJHR 1858 D-1; NZPD 1856-58 p 538; NZPD 1858-60 pp 350, 432-3, 518.}
Under the Act it was intended to replace "registration of title" by "title by registration" doing away with the "terrible burden on landowners - ... the necessity ... of investigating the past title every time the land changed owners." Under the new system every fresh purchaser would "get a parliamentary title", although for the meantime registration was to be voluntary. ¹

It was a bold step to pass the Act. The registries in some provinces were "in inextricable confusion", and if successful the new system would be one of the most important law reforms instituted since the foundation of the colony. In December 1860 Henry Sewell, a supporter of the Act in the General Assembly, was appointed first Registrar-General of Land. Doubtless his main task in the following months was the compilation of regulations which he presented to the Attorney General in May 1861. The regulations were given statutory effect by an amendment bill of 1861. Nevertheless nothing further was done, in part because of a long delay before the 1860 Act received royal confirmation. In the course of the session Sewell took on a full-time job as Attorney General but a new Registrar was not appointed. Fox supported the system but in curiously ambiguous fashion, the Domett Government intended putting the Act into operation, and so did the Whitaker-Fox Government. It was not until the Land Transfer Act of 1870 that it became fully operative, and not until the Land Transfer

¹ NZPD 1858-60 loc cit.
Act of 1924 that all deeds were made subject to the system. 1

In the first years after 1860 therefore, the Registrar-General of Land was a nominal office.

The only New Zealand official overseas was the colonial agent in London. In 1858 Sewell while representing the New Zealand Government in London was doing his best to persuade his colleagues that the colony required a permanent agent. He was so far successful that in 1858 Government proposed appointing him to the post at a salary of £500 p.a. and a select committee of the House of Representatives was set up to consider the question. The scheme did not then eventuate but in 1859 Stafford saw John Morrison in London and authorised him to open a temporary agency subject to a decision when Stafford returned to New Zealand. It was not until December 1860 that this appointment was gazetted but his commission was dated 24 January 1860 and his office had already been open some months. In May 1860 Superintendents were circularised requesting them to forward to Morrison by every mail their governments' official published papers. The Agent's main duty was to bring New Zealand before the general public and to provide information. It was also useful to Government to have an official resident in London. For example, he obtained books for the General Assembly Library, arranged the trans-shipment of animals and birds, sent out newspapers and documents (such as the Imperial New Provinces Act, or the Blue Book containing Governor-General Denison's critical

letter to Gore Browne on the Taranaki war) and was appointed agent in London in connection with the 1862 International Exhibition.¹

One further function of General Government yet to be described, and one of its most important functions, was exercising a centralising and co-ordinating role in the provincial system.

The two most important central executive controls over the provinces were legislative and financial. The financial arrangements were settled by an Act of the General Assembly, but the actual administration was in the hand of the Colonial Treasurer's department. Under Stafford, General Government was vigilant in its supervision of provincial legislation, and the Government's decision to dissolve provincial councils only when requested by both Council and Superintendent had an important effect on provincial administration.

Disallowance

It is generally accepted that after the advent of responsible government, slack central supervision of provincial ordinances was replaced by vigilant scrutiny and disallowance of offending ordinances. On the face of it this is a fair assumption. Only three ordinances were vetoed (disallowed or assent withheld) in 1854, five in 1855, and four in 1856. In 1857, after the Stafford Government had come into office, 12 ordinances were vetoed. But two facts should cause us to hesitate in taking these figures at their face value. The crown law officer responsible for scrutinising the legality of provincial ordinances was the Attorney-General, and for almost 12 months before the introduction of responsible government the acting Attorney-General was Frederick Whitaker who was also Attorney-General in the Stafford Government. Most of the 12 ordinances which were vetoed in 1857 were rejected on the grounds of repugnancy to General Assembly legislation or on the grounds
of being incompatible with provisions of the Constitution Act, and four of them were contrary to the recently enacted Waste Lands Act. It may also be noted that two of the first letters that C. W. Richmond as Colonial Secretary had to write to Superintendents informing them of the disallowance of ordinances were to the Superintendent of Nelson, and the Superintendent of Nelson at that time happened also to be head of the General Government. It hardly seems likely that Whitaker should suddenly have started noticing illegalities after he became a cabinet minister, or that Stafford should have chosen his own ordinances as the first on which his government exercised a new vigilance.

It is not unlikely that there was increasing awareness on the part of members of the General Government - whoever happened to be in office - of the need to watch provincial ordinances. But then central government could not by executive action alone rationalise central-provincial relations. Once General Assembly had started legislating however, the provinces could be expected and required to keep off fields where there was General Assembly legislation.

In 1856 General Assembly delegated to the provinces power to enact laws for regulating the sale, letting, disposal and occupation of the waste lands of the crown. By section 1 of the Waste Lands Act every such provincial bill had to be reserved by the superintendent for the Governor's assent. In 1857, therefore, the General Government felt bound to advise the disallowance of all provincial ordinances relating to waste lands if the superintendent had exceeded his powers by himself giving the Governor's assent. In mid 1858 word was received of the Imperial disallowance of the 1856 Waste Lands Act and in consequence the
Governor had to withhold assent from a group of provincial waste lands ordinances enacted under powers delegated to the provinces by the 1856 Act. In addition, because of the (Imperial) Loan Guarantee Act 1857, the Secretary of State instructed the Governor not to assent to provincial loan ordinances except under specific conditions and only after the Provincial Council concerned had followed set procedures, such as giving prior notice of its intention to pass such an ordinance. There was therefore a further group of ordinances from which the Governor had to withhold assent.

After the initial chaotic conditions, the New Zealand politicians realised the need for greater co-ordination and the General Assembly, once summoned, could itself deal with questions which previously had either to be settled by the provinces or not tackled at all. Gore Browne on his arrival in 1855 was shocked at the extent to which the provinces had enlarged their powers. Finally, after 1857 the Imperial Government insisted on closer central control to maintain the security of the half million loan. These factors, at least as much as the establishment of a stronger central government in 1856, explain the increased number of provincial ordinances disallowed in 1857 and subsequent years.

Apart from those occasions on which the General Government claimed it had no option but to veto a provincial ordinance, there were certain policy questions on which the Colonial Secretary wrote firmly and sometimes sharply. When first he became Colonial Secretary, Stafford found that his clerks were cloaking his letters in ambiguous circumlocution, but his letters to Superintendents show that his clerks had learnt how
to write bluntly and to the point. 1 Stafford recommended the disallowance of Dog Registration ordinances which he considered might cause trouble with dog-owning Maoris, he recommended disallowance of ordinances which could lead to diversity and confusion in land tenure regulations. In 1857 he wrote in the strongest terms about a Wellington ordinance 'to provide against certain persons leaving this Province clandestinely'. The ordinance, Stafford declared, "is of a most objectionable tendency; and, if not repugnant to the letter of the Law of England, is most certainly at direct variance with the spirit of the British Constitution." 2

Sometimes Stafford sugared the pill, regretting the technical flaws in an ordinance which necessitated the Governor's veto and perhaps suggesting other means of achieving the same end.

At least

In all, in the years 1857 to 1860 inclusive, 39 ordinances were vetoed; 14 because they infringed the Waste Lands Act 1856, were invalidated by the disallowance of that Act, or were contrary to the Secretary of State's instructions concerning provincial loans. Must

---

1 cf Stafford, NZPD 1861 p 183: "When the late Ministry came into office he found that at first the official letters, prepared in pursuance of minutes written by himself, when laid before him to be signed were very far from being in accordance with the minutes of reply he had supplied...on one occasion, when he wished to write to Mr. Fitzgerald, the late Superintendent of Canterbury, a letter of considerable importance, it was submitted for signature in a form which might mean anything or nothing...a genuine circumlocution letter. He summoned the clerk...who had prepared the letter, and inquired how it was that his minutes had not been followed. The reply was, "Sir, it was always the opinion of Mr. Swainson and Dr. Sinclair that the General Government should not commit itself to any opinion".

2 AJHR, 1858 A-4: p 3; cf Stafford, NZPD 1858-60 p 115.
Half of the remaining 25 were inconsistent with General Assembly acts or with the Constitution Act. (These 25 Ordinances vetoed in 1857-1860, an average of six to seven per annum, may be compared with the eight ordinances disallowed in 1854-1855.\(^1\)) Professor Morrell tentatively concluded that in the early days of the provincial system disallowance on grounds of general policy was most common in the case of loan ordinances.\(^2\) With the exception of loan ordinances disallowed in accordance with the instructions of the Secretary of State, however, this does not appear to have been the case.

Undoubtedly Stafford's letters must sometimes have caused hard feelings, as when he criticised the Wellington ordinance cited above, or criticised the Superintendent of Nelson for not forwarding duly authenticated copies of bills, and pointed out grave defects in one of them, or told the Superintendent of Canterbury that one of his ordinances was full of omissions and inaccuracies as well as contravening the Constitution Act.\(^3\) Nevertheless most disallowances were on legal grounds, and on all occasions Stafford's objections appear to have been soundly based. Where he was most critical in his comments, the provincial governments may well have wished not to publicise the deficiencies he had found in their legislation. In consequence there was little comment in the General Assembly on the disallowances, nor was the Government merely destructive. As well as sometimes suggesting alternative modes of procedure, the Government helped the

---

1 rf papers relating to the disallowance of provincial Ordinances, V & P, LC, 1856, AJHR 1858 A-4, AJHR 1860 A-5, AJHR 1861 A-1. For slightly different figures cf tabular schedule of provincial ordinances, 1853-1861, AJHR 1862 A-4A.
2 Provincial System p 56 note 2.
provincial legislatures by sending out circulars indicating correct procedures and guided them by stating the grounds on which a Superintendent should refuse assent to a bill, or should reserve it for the Governor's assent.

Dissolution

The General Government had three further formal powers over the provinces. By section 4 of the Constitution Act the Governor might disallow a superintendent's election, and by additional royal instruction in November 1857, the Queen delegated to the Governor power to remove a Superintendent from office on receipt of an address from a majority of a Provincial Council. By section 13 of the Constitution Act the Governor might at any time dissolve a provincial legislature. The first two powers were reserve powers which were unlikely to be invoked. In 1861 at the request of the Otago Provincial Council, James Macandrew was removed from the Superintendency of Otago, but Macandrew's re-election six years later was not disallowed: "he was almost certain to stand and be elected again". ¹

The power to dissolve was a different matter. When the provincial legislature sought a dissolution in order that a larger and more representative Council might be elected, or to seek electoral approval for particular policies, the Governor was merely the instrument for effecting the dissolution. In six of the nine provinces the legislature was at least once dissolved before the expiration of its four-year term. During the Stafford Government's term of office two of these dissolutions took place. The first, the dissolution of the New Plymouth legislature, was

¹ Morrell, Provincial System p 174; cf above p 197.
apparently in accordance with the wishes of the Council and of some electors to have a new Council elected after provision had been made for enlarging it. The Government disregarded the Superintendent, Charles Brown, and Brown's feelings were not soothed by his failure to secure re-election. Few, however, worried about Charles Brown, and this dissolution may be regarded as a legitimate use of General Government powers to act in accordance with provincial wishes.¹

The other dissolution, of the Auckland legislature in 1857, raised difficult questions. Should General Government intervene if party feelings caused the breakdown of relations between a provincial executive and the provincial council? Was General Government obliged to restore legality? Did it have the necessary powers to do so?

In determining the advice it would tender the Governor, the Stafford Government had several fairly well defined principles:

1. requests from the provincial legislature (i.e. both Superintendent and Council) normally would be acted upon

2. Government would not intervene to the detriment of one part of the provincial legislature or of one provincial party

3. action to prevent illegality by provincial administrations would be taken only when Government had an unchallengeable case to present to the courts.²

¹ NZPD 1858-60 p 36. The papers relating to the dissolution of the New Plymouth Provincial Council in December 1856 were tabled in the House of Representatives in 1858 but are not printed (rf JHR 1858 p 159).

² cf Stafford/Superintendent of Auckland, 18 August[1857], quoted in NZPD 1858-60 p 35; Stafford, ibid p 36 – 7; C.W.Richmond & Stafford, ibid p 715,729.
These principles appear reasonable, and it is typical of the Stafford Government that it should have formulated such guiding rules. In practice, however, they did not necessarily meet the circumstances of a particular situation, they did not help maintain cordial relations with provincial politicians, and they did not suffice to prevent a deadlock in the province of Wellington.

Difficulties arose almost simultaneously in Auckland and Wellington, the two largest provinces and the two most subject to inflamed party feelings. At Auckland J. L. Campbell was elected Superintendent in the provincial elections in late 1855. He resigned within twelve months and John Williamson was elected in his stead. The new Superintendent was of the opposite political party and was faced with a hostile majority in the Provincial Council. Within a few months the Council became involved in a disputed election. There was no adequate machinery to settle such electoral disputes until the Provincial Elections Act was passed in 1858. Eventually, in July 1857, both candidates for the seat in question resigned. The Superintendent thereupon issued two writs for the election of one member, on the grounds that one had been duly returned and recognised by the Superintendent, and the other had been declared elected by resolution of the Provincial Council. In the by-election two members were returned. Both were excluded from the Council by the speaker. The Council decided to adjourn, and the Superintendent retaliated by proroguing the Council for an indefinite period.

The Superintendent thrice requested a dissolution but the Progressive majority in the Council opposed a dissolution until the electoral rolls had been purified. It was a scandalous situation but not an easy problem for the General Government to settle. It could see no means of obtaining
a successful prosecution of the Superintendent although clearly he had
acted beyond his powers in issuing two writs for one seat. Government
studiously avoided becoming involved in provincial party politics and would
not let one branch of the legislature force the other to go to the polls.
Fortunately it found a loophole in the obstructiveness of the Council, and
finally, in August 1857, granted a dissolution on the grounds that the
Superintendent wanted a dissolution and that the Council in adjourning
without transmitting any business had virtually declared "that they would
not work".¹

After several months, then, General Government was able to clear up the
mess by a dissolution but its strong disapproval of Williamson's actions
turned Williamson into a political foe, and its granting of a dissolution
antagonised Williamson's opponents.

On two other occasions the Stafford Government was called upon to
intervene. In the case of Nelson it refused a request for a dissolution
from the Provincial Council, which was antagonistic to the Superintendent.
In the case of Wellington it refused Featherston's request for a dissolution
to rid him of his Council.

In the provincial elections of late 1857 Featherston's party was
defeated by the Reform party, although Featherston himself was re-elected
Superintendent. He soon announced that he could not work with his
Council, resigned, and was re-elected. The Reform party, however,
showed no desire to re-submit to the electors. During most of the four
year term of the second Wellington Provincial Council, Featherston with
a minority executive carried on the provincial government without legal
appropriations. A Reform attempt to obtain a Supreme Court injunction
to prevent the Superintendent spending unappropriated moneys was rejected.

¹ Stafford, NZPD 1858/ p 37; cf NZPD 1858-60 p 32 f; Auckland Provincial
General Government was perturbed but could take no action - except grant a dissolution, and in accordance with its guiding principles it would not do that.¹

In the cases mentioned above the General Government's inability to prevent destructive provincial political battles is manifest. Government probably was unwise to refuse a dissolution to the Wellington Superintendent, although had such a dissolution been granted, Government might have been faced with a series of requests for dissolutions as the various Superintendents quarrelled with their councils. It was almost unavoidable that General Government should antagonise provincial politicians and the Stafford Government deserves credit for its firmness and its refusal, to the best of its ability, to let New Zealand degenerate into six unstable republics.

The relations between General Government and the provinces are similar to those between the Imperial Government and the colonial government. There was an over-tone of slightly patronising superiority in the despatches and public statements of members of the senior government, and a hint that the subordinate government was inferior in experience and competence as well as politically unstable. From the various collections of private letters now available it appears that no close relations developed between members of the Stafford ministry and the provincial executive heads, and that where there was co-operation between central and provincial governments it was at a formal and not a personal level. In part this may reflect the bureaucratic mind of Stafford, and assuredly efficient government administration requires the recording of decisions in formal documents. It also reflects the attitude of the ministers towards the provinces: a rather surprising attitude considering that Stafford, C. W. Richmond,  

¹ Morrell, Provincial System, p 96-7; NZPD, e.g. 1858-60: debates on the New Provinces Act Amendment bill, especially Brandon p 705, Stafford p 729; cf above p 196-197.
Whitaker and Tancred had all been key figures in provincial executives. But there was physical separation of the provinces from the capital, and there was political, and in some cases social, antipathy. Otago was not only distant but its first two Superintendents were political opponents of the Stafford Government in the General Assembly. Fitzgerald was an unpredictable politician of strong but changing opinions, and his successor at Canterbury, W. S. Moorhouse, was outside the social circle in which Stafford and his colleagues moved. At Nelson a gentleman doctor (Monro) supported by Stafford, was defeated by a sawmiller (J. P. Robinson) for the Superintendency which Stafford vacated in 1856. Marked political differences between Stafford and the Wellington provincialists had already become apparent before the party divisions of 1856. Dr Campbell, a gentleman merchant and a short-term member of the Stafford Government, was succeeded as Superintendent of Auckland by John Williamson. A stationer and publisher, Williamson had little in common socially with the ministers.

The social and political differences between the Stafford ministers, and provincial leaders were probably in part a consequence of the popular character of the Superintendency which affected both the type of individual elected and the political speeches and acts by which he gained election. The Stafford ministers, on the other hand, divorced from popular politics and pressures, tended to think themselves gentlemen first and politicians second. Stafford and Richmond, in particular, genuinely appear to have distrusted the provincial governments and to have doubted their competence, or political integrity, or both.

By the end of its term in office the Stafford Government had antagonised most provincial governments. The New Provinces Act along
ensured opposition in the General Assembly from provincial leaders from Otago, Canterbury and Wellington. The ministry had lost the political support of Williamson. Even Domett, a consistent Government supporter and a personal friend of ministers, as a Nelson provincial government official had cause to write angry private letters to them. In 1859 he accused them of a breach of faith and of doing their best "to quash the province of Nelson altogether." ¹

Nevertheless the political system necessitated central-provincial co-operation, and however bad personal feelings might become, co-operation was maintained.

Finance

Financial co-operation was enforced by the Constitution Act. Without taxing powers of their own the provinces had to be financed by funds raised under authority of the General Assembly and collected by officials of the General Government. Both central and provincial governments drew from the same pool, but the provinces had to draw after the General Government.

After 1856 the basic financial relations between centre and provinces were stable for a decade. Land revenue went to the provinces. In return each province had to contribute a fixed sum towards the interest and sinking fund of the half million loan of 1856. In accordance with the imprecise terms of the Constitution Act all "surplus" ordinary revenue went to the provinces in proportion to the revenue raised in each province. In 1856 the Stafford Government promised that the "surplus revenue" would amount to at least three-eighths of the customs revenue. As stated above, in 1859-60 customs revenue provided 88% of the total ordinary revenues; in fact the percentage was much higher, as the two other important sources of

¹ Domett/C.W.Richmond 17/10/59, & of Domett/Richmond 30/10/59, Richmond-Atkinson Papers Vol 1 pp 492-3 of Herron p 613-5.
revenue, court fines and postal charges, barely sufficed to cover judicial and post office costs. In 1858 Richmond as Colonial Treasurer not only announced that the provinces would receive more than three-eighths for the previous period, but for the coming year might expect two-fifths - an increase, as he proceeded to show, of one-fortieth. ¹

The Stafford Government made three major modifications in the distribution of revenue. It localised expenditure so that before assessing the proportion of revenue raised in a province local General Government expenses were deducted. Secondly, by the Land Revenue Appropriation Act 1858, one-sixth of the land revenue in the North Island provinces was retained by General Government for future land purchases. Thirdly, in determining what was "surplus revenue" Richmond used savings under one vote to meet excess expenditure under another, thus reducing the surplus available to the provinces.

The provincialists in 1860 failed to secure repeal of the New Provinces Act and the bills to amend the Land Revenue Appropriation Act were thrown out by the Legislative Council, but a resolution was passed forcing Government to give all surpluses to the provinces, and to charge excess expenditure to the revenues of the subsequent year, regardless of any savings made under particular heads. As Richmond rightly and rather bitterly pointed out, the provinces thus benefitted from General Government economies. ²

¹ NZPD 1856-58 p 514 & 510 (Richmond's Financial Statement); Herron p 507.
² cf Morrell, Provincial System passim; in 1858 Richmond had charged excess General Government expenditure of 1856-57 to 1857-8, NZPD 1858-60 p 510; return of the full "surplus revenue" to the provinces had been demanded by a select committee on the Public Finances in 1856 (V & P, H.R., 1856-D-11, & cf report of a select committee of 1855 & Herron p 478-9); NZPD 1858-60 p 795 & JHR 1860 p 241.
At the close of the 1861 session, in his swan song in New Zealand politics — although he probably did not realise at the time that he would never be in parliament again — C. W. Richmond, now in opposition, attempted to establish a set of principles covering the vexed question of General Government approval of provincial loans. As stated above any general power to veto loan ordinances was reinforced by the instructions of the Secretary of State, which imposed close restrictions on provincial loans.

Richmond's proposed principles were presented in a series of resolutions. In the last minute rush, and the general lack of sympathy for the strict financial principles which Richmond was now preaching his resolutions only reached the top of the Order Paper on the eve of prorogation and were never debated by the House. In his introductory speech, however, Richmond made two important points.

Earlier that session he had suggested that it was the passage of the New Provinces Act which led to the fall of the Stafford Government. Now he advanced another reason for the fall: the Government's refusal to assent to certain provincial loans. In either case Richmond at least had no doubt that it was the centralist-provincialist issue which had been the chief factor in the fate of the governments between 1856 and 1861.

Secondly, Richmond showed "how inextricably entangled were the finances of the colony with its several parts — the provinces." He pointed out the contingent nature of provincial revenue, "which it was at any moment in the power of the House to reduce to nil." "The House had a direct interest in the extent to which the Provincial Legislatures affected to encumber the revenues of the colony." Already ordinary provincial revenue from three-eighths of the customs revenue and sundry other sources barely sufficed to cover the cost of provincial establishments and the
interest rate on current provincial loans. Excluding a £300,000 loan which the House had authorised for the construction of the Christchurch-Lyttelton railway, provincial loans then amounted to a round quarter million pounds which at eight per cent meant an annual interest charge of £20,000. (For the financial year ending 30 June 1860 the General Government had credited a net sum of £93,869 13s 5d to the provinces.)

It is small wonder that after the Maori wars worsened finance became Government's greatest worry, or that the end result was the abolition of the provinces.

**Administrative co-operation**

The main divisions of responsibility were that the provinces handled waste lands administration, roads and public works, immigration, education, local government (so far as that was established), police and gaols, but had little control over the judicial system, race relations, land purchase and survey, sea communications, customs and defence. There is little need here to dwell on the apportionment of administrative duties. The initial confusion has been studied in detail by Dr. Herron, and the arrangements made over a longer period have been the subject of a special study by R. M. Mullins. Based on research into three provinces, Nelson, Hawke's Bay and Otago, Mullins' thesis shows the extent to which General Government delegated duties to the provinces, even where, as in control of waste lands, harbours, goldfields, importation and movements of diseased cattle, formal responsibility remained with the General Assembly and the General Government. In certain minor General Government fields, such as registration of births, deaths and marriages, and inspection of weights and measures, provincial control was practically complete, while in others, organisation of Resident Magistrates' courts, taking of censuses,
postal arrangements, General Government might rely to a greater or lesser extent on provincial advice. As Mullins comments, General Government officials were few in number and mostly restricted to the main towns, so that the Government had to call on the local knowledge and experience of provincial administrators when making appointments, drawing up administrative districts etc.

The actual day to day contact between central and provincial governments can be seen from a survey of the letter books and registers of a particular province - in this case Canterbury. Most dealings were with the Crown Lands department, and the Colonial Secretary's department. Crown Lands department communications of the late 1850's related to crown grants which were forwarded to the Governor for signature and then returned.¹

A steady stream of despatches went each mail between Colonial Secretary and Superintendent. In fact most of the Superintendent's letters were addressed to the Colonial Secretary. Surprisingly little of the co-operation between provincial and General Government administrators is evidenced in the correspondence, suggesting that much of this co-operation operated at the local level rather than between Colonial Secretary and Superintendent. There is little discussion or exchange of views in the correspondence, and the major part is taken up with the exchange of information.

The introduction of responsible government did not lead to amendment in the Colonial Regulations which required the Governor to forward a stream of statistics to the Colonial Office. The habit of collecting

¹ For the procedures of the Crown Grants Office rf report of a select committee, JHR 1860 p 107-8,
statistics is one of the Victorians' great gifts to the modern community. As with the Empire at large, so on the colonial scene, exchange of statistical information was an important element in uniting the country and in giving Government at Auckland the competence to administer the affairs of the colony.

The early colonists were statistically conscious: an enormous quantity of Almanacs - as in the Australasian colonies generally - fed the settlers' desire for information. The Stafford Government was responsible for several Acts to improve crown colony ordinances, notably the Census Act, the Marriage Act, and the Registration Act. It is from this period that the annual published volumes of Statistics of New Zealand derive.

The Colonial Secretary required returns of prisoners, prices of livestock and provisions, and official papers for forwarding to the Colonial Agent in London. He asked for a report on experiments with a new type of wheat, and passed on inquiries for missing persons. He watched the accounts of the province, requesting details, perhaps making probing enquiries, as in May 1861 when he asked for an explanation of a discrepancy of £499 10s 0d in the Canterbury accounts.1

1 Superintendent of Canterbury's Letter Book no 84 (Superintendent/Colonial Secretary) Provincial Secretary's Letter Register (1860-1863) Inwards no 909 (Colonial Secretary/superintendent); Superintendent's Letter Book no 82, Provincial Secretary's Register Nos 860, 1132, 1240; Superintendent's Letter Book no 88; no 103; Provincial Secretary's Register no 1130; Superintendent's Letter Book no 86, Provincial Secretary's Register no 900, 1023; Provincial Secretary's Register 1244, 811, Superintendent's letter Book 91; Provincial Secretary's Register 1246 (this letter asking for an explanation of the discrepancy in the accounts was answered within 10 days of its leaving Auckland), cf 1126.
In return the Colonial Secretary forwarded various official papers. Although many Government decisions and official announcements appeared in the Gazette, it was a natural courtesy for the Colonial Secretary to forward personal copies to the Superintendent when the material might be useful or important for the provincial government. It was also a means of drawing the attention of the provincial government to new regulations etc. Thus the Colonial Secretary forwarded Judges' rules for Debtors' prisons, Harbour regulations, official returns, a copy of the latest volume of New Zealand Statistics, and copies of some of the Acts passed by the General Assembly — perhaps for distribution to the local constabulary.¹

Other miscellaneous items appear in the Canterbury registers: a despatch from the home government concerning certificated teachers from England which was circulated round the provinces; a request that the Superintendent have published in the Provincial Gazette a notice concerning the Taranaki Settlers Relief Fund; an offer of a £300 reward; a proclamation of the International Exhibition to be held in England in 1862; or, from the Superintendent, word of the death of Dr. Sinclair, former Colonial Secretary of New Zealand.²

There are examples of straight administrative co-operation. For example, in April 1859, in answer to despatches from the Colonial Secretary, the provincial government suggested the appointment of three additional registrars under the Registration Act and Marriage Amendment Act of 1858, and the division of the province into seven districts instead of four as it was at that time.³

¹ Provincial Secretary's Register Nos 1350, 1658, 1021, cf 1238.
² Provincial Secretary's Register Nos 1190, 1352, 1511, 1539, 1235.
³ Superintendent's Letter Book no 18; cf Provincial Secretary's Register no 1200, 1241.
Another example is the implementation of the Weights and Measures Ordinance. This Ordinance was passed in 1846 to establish standard weights and measures in the colony, and to prevent "the use of such as are false and deficient." It was stated in the preamble to the Ordinance that standard weights and measures (pound, ounce, dram, bushel, peck, gallon, quart, pint, gill and a Standard Measuring Rod) were "about to be imported into the colony". As they did not arrive until 1859 there was some delay in implementing the Ordinance.

On 5th May 1859 the Superintendent of Canterbury wrote - with impressive promptitude - in reply to a despatch from the Colonial Secretary of the previous month, informing the Secretary that the Canterbury Provincial Council had voted money for standard weights and measures, but the provincial government had delayed action until His Excellency's government had imported the originals. He now requested a set for the province. Nine months later, in March 1860, the Superintendent was informed that a set of weights and measures for Canterbury had arrived. He was requested to specify the boundaries of the district within which he considered it desirable to bring the Ordinance into effect, and to recommend a suitable person for appointment as Inspector. The provincial government would have to provide his remuneration. The Superintendent replied in July and by the end of 1860 General Government had forwarded the set of weights and measures and the warrant appointing an Inspector, and had gazetted a proclamation extending the Ordinance to Canterbury.

---

1...Otago Witness 29/10/59 (arrival of the standard weights and measures in the colony); Superintendent's Letter Book no 26 (5/5/59); Provincial Secretary's Letter Register (1853-60) no 436, (Tancred/Superintendent of Canterbury 31/3/60); Superintendent's Letter Book 111 (12/7/60); Provincial Secretary's Register (1860-1863) 791 (Colonial Secretary/Superintendent 12/12/60), 792 (13/12/60); Proclamation in N.Z. Gazette 14/12/60; & of Provincial Secretary's Register 847, 903, 1055, 1128, 1239.
A better example of co-operation is provided by the sudden panic in 1861 when pleuro-pneumonia appeared in the Australian colonies. The provincial governments of both Canterbury and Otago requested General Government measures to prevent the importation of diseased cattle. After some delay Government issued the desired proclamation. Meantime General Assembly had met. The problem was equally grave in Auckland as the Commissariat was buying Australian cattle to feed the troops. A House select committee was appointed, and subsequently a bill was promoted. It had a slow progress through both houses but eventually was passed. The Diseased Cattle Act was immediately brought into effect by the new Fox Government, a local Canterbury ordinance was disallowed, and the Governor's powers under the Act were delegated to the Superintendents, resulting in a series of provincial proclamations to prevent spread of the disease. ¹

General Government co-operated with the provincial governments in delegating Waste Lands control, in settling the Otago-Canterbury boundary dispute, and after the Fox Government came into office delegating the Governor's power of appointing provincial returning officers. Later, goldfield administration was delegated, and so it went on. ²

There are few instances of complaints. The main defect of the system was slowness in communication - and both General Government and the Canterbury provincial government were guilty in that respect. The month's delay before the Superintendent recommended the precise measures

1 NZPD 1861 pp6 & 30; Provincial Secretary's Register (1860-1863) no 1242, 1429; N.Z.Gazette 21/6/61; Provincial Secretary's Register 1541, 1665, 1667; N. Z. Gazette 1/10/61, 7/9/61, 12/7/62, etc.
necessary to put the Weights and Measures Ordinance into effect in 1860 has been mentioned above. It took at least a fortnight for a reply to be received, but time varied considerably depending on the mails. Steamers went once a month and the 1861 steamship timetable allowed seven days from Manukau harbour to Lyttelton, with three days spent at Nelson and Wellington. There are instances in the Canterbury Registers of the Superintendent replying within nine or ten days of the letter leaving Auckland. Normally processes were more leisurely. A delay of well over a month was not unusual. Where information was sought many months might elapse. In February 1861 the Colonial Secretary asked that the Secretary for Crown Lands be supplied with a detailed account of sums expended on account of the Land Survey Department under the 1858 Waste Lands Act. The letter was answered in June. Generally in correspondence between Auckland and Christchurch about two months elapsed between the sending of a letter and the acknowledging of a reply. ¹

Sometimes parcels got lost in the mail. In February 1861 the Colonial Secretary wrote to the Canterbury Superintendent that he was sending separately 15 copies each of the Arms Act and Foreign Seamen's Act for distribution to the local police force. These Acts, for preventing desertion and misconduct of foreign seamen and to regulate the sale and importation of arms, had received the Governor's assent in the preceding

---

¹ Provincial Secretary's Register no 1020 (Colonial Secretary/Superintendent of Canterbury 26/2/61, noted in the Register as answered on 19/6/61); an example of an actual exchange is; Superintendent's letter Book no 61 (Superintendent/Secretary for Crown Lands, 28/11/59), Provincial Secretary's Register (1853-60) no 1032, no 246, (Secretary, Crown Lands Office/Superintendent 7/12/59, in reply to above), Superintendent's Letter Book no 65 (Superintendent/Secretary 4/1/60, acknowledging the Crown Lands Secretary's letter). It is unlikely that correspondence could have been carried out any quicker.
September and November respectively. In May 1861 the Colonial Secretary wrote that if the copies had not arrived he would forward further copies. In June he sent 15 more copies of the Foreign Seamen's Act but regretted that the Arms Act was out of print. As by Order-in-Council the Arms Act had been in force since February this kind of mishap could be most inconvenient.\(^1\)

Sufficient has been said to show the interdependence of provincial and central governments, and to indicate how much of General Government work consisted in working in co-operation with the provinces, rather than in attempting to run affairs by means of a large General Government bureaucracy spread through the country.

\(^1\) N.Z.Gazette 2/2/61; Provincial Secretary's Register nos 1021, 1253, 1349; cf Superintendent's Letter Book no 101 on the non-arrival of copies of the N.Z.Gazette.
CHAPTER 14

THE MAGISTRACY

The Resident Magistrate

In the mid nineteenth century the Justice of Peace in England was still an important administrative official as well as a judicial officer. In New Zealand also there were unpaid magistrates from one end of the country to the other but in practice, while the Justice of the Peace was an important figure he was not the mainstay of local administration or justice. The reason was simple: the absence of a leisured class. Even in England an unpaid magistracy had proved inadequate for the Metropolitan area, and although New Zealand towns were small in comparison, they presented similar problems, and at this time the population for which any form of government could be provided was concentrated in ports and around the main towns. Instead of an unpaid magistracy the General Government relied on a few stipendiary magistrates on whom, after 1853, it piled a host of miscellaneous duties which had not been delegated to the provincial governments. The Resident Magistrate was one of the most important officials in the country and was the most important General Government agent in a district.

However dilapidated and inadequate they might be,¹ the buildings used by the Resident Magistrate were the symbol of General Government. Where there was no Resident Magistrate there was no General Government. The main communications in the colony were by sea, and the 25 odd Resident Magistrates' courts in 1860 were almost

¹ cf NZPD 1858-60 p 2.
exclusively situated at the ports and in inlets round the coast of the country. In the years since the introduction of responsible government there had been an increase in the number of Resident Magistrates in the South Island but almost no change in the North Island. In 1860 there were about 21 Resident Magistrates in European settlements, a further four who were in primarily Maori districts, and two on circuit in Maori areas. There were Resident Magistrates at Russell and Whangarei in the North, Auckland and the Pensioner Settlements, Waiuku and Raglan, New Plymouth, Wanganui, Wellington and Napier in the North Island, and in the South, Nelson, the Collingwood goldfields, Wairau, Christchurch, Lyttelton, Akaroa, Timaru, Dunedin and Invercargill, and even a Resident Magistrate at the Chatham Islands (or perhaps he should be described as a government agent empowered to act as Resident Magistrate).

In addition, apart from two Resident Magistrates who had for years been stationed at Mangonui and Hokianga in the far North, there were four further Resident Magistrates working for the Native Department. To greater or lesser extent they covered the Waikato, the East Cape, and the Wairarapa. The extent of their work depended on the individual concerned, and the circumstances of the moment. Fenton, for example, in 1857 and 1858 went on circuit in the Waikato but returned each time to permanent residence at Auckland. In mid 1861 the Resident Magistrate for the Waikato was acting as Resident Magistrate at Waiuku, and H. H. Turton, a circuit Resident Magistrate, was engaged at Auckland in editing the Maori Messenger, as the editor was employed subdividing Native Reserves at Canterbury. Thus, the nominal services provided for the Maoris by Native
Department Magistrates might be much more impressive, or at the least very different from, the actual administrative arrangements made. It could be said in 1860, as Grey said in 1847, that the Resident Magistrates were performing a useful service for the Maoris. But this was because many Maoris lived in the vicinity of European towns. Primarily the Resident Magistrates were dispensing justice for the Europeans. Very little advance had been made in taking European institutions to the Maoris - rather, European institutions were made available to Maoris who came into town for them.¹

From the first days of government in New Zealand stipendiary magistrates had been expected to perform various administrative duties. As the work of Government expanded, further responsibilities were placed on the Resident Magistrate, so that in addition to being appointed to such posts as local treasurer, customs collector, harbour master and sheriff, a Resident Magistrate might be the Registrar of Births, Deaths and Marriages, Inspector of Police, a Land Claims Commissioner, local returning officer, member of various trust boards, etc. Resident Magistrates were commissioners under the Imperial Passengers act of 1852, responsible for enlisting soldiers, and so forth. At Wellington the Resident Magistrate was for a time manager of the Colonial Bank of Issue, at New Plymouth he was also an Inspector of Schools, in the Waikato he was local Colonial

¹ The number of Resident Magistrates is based on the public accounts of the colony, AJHR, 1861 B-1, collated with appointments listed in the N.Z.Gazette and with Chapman's New Zealand Almanac for 1860; Native Department Resident Magistrates are listed in AJHR 1861 E-5; for one of several examples of Grey's gratification at the value of Resident Magistrates for the Maoris, ref Governor Grey/Earl Grey 25/1/47, GBPP 1847 xxxviii 837 (no 31).
Surgeon and at Mongonui, the district surveyor.¹

Under the responsible government the role of the Resident Magistrate changed little — except that as well as General Government functions he might have various provincial government offices. Some Resident Magistrates engaged vigorously in the first elections, but after 1858 they were disqualified from being elected to either General or provincial posts. Hence it became common to make the Resident Magistrate the local election registration officer and often also the returning officer. Under the 1858 Census Act Resident Magistrates were appointed enumerators, and they were made licensing officers under various Arms regulations and acts. In the 1860's, some were appointed officers in the militia or volunteer corps.¹

A typical example of the work of a Resident Magistrate in one of the smaller settlements is provided by Lieutenant Belfield Woollcombe, who was Resident Magistrate at Timaru from 1857. Woollcombe's duties included those of pilot, sub-collector of customs, coroner, sub-treasurer, postmaster, Registrar of Births, Death and Marriages, returning officer, district overseer of public works and beachmaster. He was thus responsible both to provincial government and to several General Government departments.²

In addition to his administrative duties the Resident Magistrate was the most important officer of justice in a district. His powers derived from the Commission of Peace and in particular from Grey's

¹ rf N.Z.Gazette passim
² rf O.A.Gillespie, South Canterbury a record of settlement, pp 148, 174, 226; Southern Provinces Almanac ... 1861; N.Z. Gazette passim correspondence with Woollcombe in the Canterbury Provincial Secretary's Letter Registers. Dr. Stephen Mueller at Wairau is another notable example of an official performing almost all government duties in his district.
Resident Magistrates Courts Ordinance of 1846. This Ordinance had three important features.

Hobson had brought with him from New South Wales the institution of Police Magistrate, the stipendiary magistrate which New South Wales in turn had adopted from London. The law of England applied in New Zealand from the date that it became British territory and the most important clause of the New Zealand Police Magistrates Ordinance of 1842 was that granting the Police Magistrate all the powers of two Justices of the Peace in dealing summarily with cases of assault and in admitting to bail persons charged with felony. By the 1846 Ordinance the clause was widened to give the Resident Magistrate also such powers as any local ordinance gave to two Justices of the Peace.

Secondly, a Resident Magistrate or two Justices of the Peace had powers similar to those of a Commissioner of the Court of Requests under an Ordinance of 1844. Under the Court of Requests Ordinance a Commissioner might summarily determine cases involving £20 or less, and his decision was final on all questions both of fact and of law. After 1846 the Requests Courts were closed down in favour of the Resident Magistrates' Courts. A Commissioner of the Court of Requests had to be a barrister or solicitor. A Resident Magistrate or an ordinary Justice of the Peace did not. By granting magistrates' courts a civil jurisdiction Grey took the most important step towards the eventual development of the modern New Zealand Stipendiary Magistrates. At the time the most significant feature of the change was that henceforth laymen could preside over courts of civil jurisdiction.
Thirdly, Resident Magistrates were given special powers in cases affecting Maoris. Sitting with one or more Justices of the Peace a Resident Magistrate could determine civil cases between a European and a Maori when the sum in question did not exceed £100. As with other civil cases no appeal was allowed from the Resident Magistrate's judgement. In addition, sitting with two Native Assessors appointed by the Governor, the Resident Magistrate could arbitrate between Maoris in all types of civil disputes.  

In the next few years Assessors were appointed in the localities of the various Resident Magistrates' courts and a steady number of cases involving Maoris came before the Resident Magistrate. Nevertheless the Resident Magistrates were still well-nigh restricted to the towns - as they had been as Police Magistrates in the first years of Crown colony government - and the overwhelming majority of the cases they heard concerned Europeans.  

By granting a limited civil jurisdiction to Resident Magistrates Grey had made the most successful attempt to date to meet the problem of providing a cheap and quick means of settling small debts in a trading community. In 1851 the Wellington Resident Magistrate reported cases of parties to a suit reducing the sum at issue 'rather than encounter the expense, risk, and delay of trying those questions

---

1 cf Governor Grey/Gladstone 14/11/46, GBPP 1847 xxxviii 837 (no 29).
2 rf N.Z.Gazette passim for appointments of Assessors and returns of court cases (e.g. returns in New Ulster Gazette 1848 p 11). Returns were also published as enclosures to Grey's despatches, GBPP loc cit.
in the Supreme Court." 1 There remained, however, parties to a suit who were not prepared to reduce the sum at issue.

The need for further provision became increasingly apparent in the 1850's as settlement spread up country from the towns and as the towns of New Plymouth, Christchurch and Dunedin expanded. Since 1844 there had been two Supreme Court judges in the colony. By the mid 1850's it had become necessary either to appoint more judges who could hold more frequent Supreme Court sessions or to establish some intermediate court system to handle some of the less serious cases, particularly civil cases involving sums of more than £20.

One answer was to extend the jurisdiction of the Resident Magistrates. But this was contrary to English legal traditions. Even New South Wales, from which New Zealand had inherited the stipendiary magistrates, had not given them civil jurisdiction and was now reverting to the traditional unpaid magistrates for criminal cases. Like the ordinary Justice of the Peace most Resident Magistrates had no legal training. The duties are quite beyond a layman, C.C. Bowen wrote shortly after he was appointed a Resident Magistrate, and "my only consolation is that some layman must blunder on." 2 Some Resident Magistrates were retired soldiers and dated from crown colony days when military personnel had provided the core of the administration. Others were old settlers, officials of long standing, traders, farmers - anyone in short who could apply a form of rough justice. Outside the main

1 Report of the Wellington Resident Magistrate, 30/1/51, encl to Governor Grey/Earl Grey 6/2/51, GBPP 1851 xxxv 1420.
the Resident Magistrate had to manage as best he could without a legally trained clerk or the presence of local solicitors. A perpetual problem was that the copies of statutes could not keep up with demand and even in the late 1850's there were complaints that magistrates had to apply laws of which they could obtain no copies.¹

In such circumstances, therefore, the Resident Magistrates clearly were not the right men to sit as presidents of local courts with extended jurisdiction. In the 1856 session of the General Assembly, Dudley Ward, a barrister representing the Wellington Country District, introduced a bill to establish District Courts. "However efficient that justice may be which we receive from the Supreme Court", he argued, "it is neither speedy in reaching us nor cheap in its attainment." He was not in favour of extending the "present arbitrary and unchecked jurisdiction" of the Resident Magistrates: their disregard for the strict letter of the law in favour of abstract principles of justice, however necessary for native areas, was unlikely to prove popular if further applied to Europeans. He proposed the establishment of District Courts consisting of a Recorder, the local Resident Magistrate and Justices of the Peace summoned in rotation ("and their attendance enforced by a heavy fine"). The Court would sit with four jurors and, following "the precedent of the ancient Saxon County Courts" would have both civil and criminal jurisdiction: a civil jurisdiction

¹ cf NZPD 1856 p 266; A.J. Johnston, The New Zealand Justice of the Peace; a treatise on the powers, duties and liabilities of Magistrates, Coroners & Peace Officers in the colony ... p 2.
up to £100 and a criminal jurisdiction in cases where not more
than two years of imprisonment might be adjudged.¹

The bill was accepted readily by the lower house, but towards
the close of the session was thrown out by the upper house.²

A temporary measure, the Resident Magistrates' Extension of Jurisdiction
Act, was then pushed through General Assembly giving Resident
Magistrates sitting with a jury of four an extended civil
jurisdiction up to £100.

By mid 1857 the Act had been brought into effect in all the
provinces. At the same time a Sessions Courts Ordinance of 1846
was brought into effect at Lyttelton and in the upcountry districts
in the Wellington Province (including Hawke's Bay). The two
chairmen appointed, H. B. Gresson and Dudley Ward, were both
qualified lawyers. In effect these two districts received similar
court facilities to those which would have been provided by Ward's
District Courts.

These were temporary measures, however, and when General Assembly
met in 1858 the Stafford Government had prepared a new District Courts
Bill. The District Courts were to be presided over by judges
who had a civil jurisdiction in cases involving sums between £20 and
£100. Either party to a case might require a jury to be summoned.
In addition, if the judge were a barrister or solicitor, the Governor
might empower him to exercise a criminal jurisdiction when sitting
with a jury of twelve. The Court's criminal jurisdiction would be
similar to that of short-lived County Courts which existed between

¹ NZPD 1856 p 153-4. Judge Stephen helped Ward draw up his
bill (rf NZPD 1860 p 435).
² cf above p33-4.
1842 and 1844. It would have cognizance of crimes and offences punishable by fine and/or imprisonment, by transportation not exceeding seven years, or by penal servitude not exceeding four years. Unlike Ward's proposed courts, the District Courts, although financed by the provinces were to be under General Government control - a centralising measure in line with the other legislation promoted by the Government in this session.

The Bill readily passed both houses, and at the same time the Resident Magistrates' Extension of Jurisdiction Act and the 1846 Sessions Courts Ordinances were repealed. The new Act was quickly brought into effect. Its greatest benefits were to Nelson, New Plymouth and Dunedin. Christchurch, instead of having a District Court, gained a resident Supreme Court Judge. The larger towns of Auckland and Wellington had both a Supreme Court and a District Court, but in the case of Auckland, the local Resident Magistrate kept his former extended jurisdiction, although now as a District Court judge. In Wellington the main result was not provision of better court facilities but the sacking of Ward and his replacement by a friend of the Government.¹

W. T. L. Travers, "an utterly unscrupulous fellow" but a sharp lawyer, ² was appointed District Court judge at Nelson. He was one of the two late arrivals to the 1856 General Assembly who had voted out the Fox Government. Shortly after his appointment as judge Travers was involved in two libel cases, one against Alfred Saunders who accused him of tampering with evidence in his court, and the other against the publishers of the Nelson Colonist for insinuating that Travers'

¹ cf NZPD 1860 p 435 f.
appointment was a reward for "political profligacy." ¹

The other District Court judges were less open to criticism although all had been active in politics. In Dunedin J. H. Harris was appointed both Resident Magistrate and District Court judge, which was rather hard treatment of the previous Resident Magistrate, A. C. Strode, who shortly afterwards returned to Dunedin having had leave of absence since 1857. ²

The limited benefits gained from the District Courts Act and objections to the centralism of the measure and to some of the men appointed judges, probably contributed to the lack of popular support for the new courts. Moreover by the end of 1858 the colony had three Supreme Court judges and there was therefore less need for District Courts.

In the 1860 session of the General Assembly, on the motion of T. B. Gilles from Otago, the House resolved:

That the administration of Justice may be efficiently provided without the establishment of District Courts as at present constituted.

That while those Courts involve a very considerable expenditure, they provide to a very limited extent only, the objects to be aimed at by the establishment of Local jurisdictions.

¹ cf Southern Provinces Almanac ... 1861 p 87-8.
² cf Otago Colonist 23/9/59.
That the machinery of the Supreme Court ... of Sessions of the Peace, of Resident Magistrates and the ordinary Justices of the Peace, are capable of efficiently disposing of all the Judicial business of the Colony...

That the Government should make the necessary regulations, or, if necessary, prepare Legislative measures to be laid before the General Assembly in the ensuing Session thereof.¹

Apart from informing District Court judges of the probable abolition of their office the Government took no action during the recess. It did not appoint a new judge for Nelson when Travers resigned, but it had no regulations or legislative measures to suggest to General Assembly when it met in 1861.²

Fox, however, was keen to carry out the resolution of 1860. Shortly after he became premier in 1861 he introduced a bill to revive the 1856 Resident Magistrates' Extension of Jurisdiction Act. But that Act had been hastily drawn and was "full of flaws and blunders", and with an uncertain mastery of the House Fox eventually abandoned his bill.³ Instead, during the 1861-62 recess District Court judges were no longer empowered to exercise a criminal jurisdiction. In civil cases, as already stated, their powers were the same as the Resident Magistrates' extended powers under the repealed Act of 1856.

¹ JHR 1860 p 203-4, cf Lyttelton Times 25/7/60 on "those monstrous and unhealthy excesses of our legal codes, the 'District Courts' ", reprinted in Otago Witness 11/8/60.
² cf Justice Department Archives, J 16/3; NZPD 1861 p 29; Report of the judges on the Supreme Court Establishment, AJHR 1861 D-2A.
³ NZPD 1861 pp 232,248,297,
Legislation was prepared by the Fox Government for the 1862 session of the Assembly. Although the more centralist Domett succeeded Fox as premier the new Government took up the legislation. By the Supreme Court Amendment Act "a kind of minor jurisdiction of the Supreme Court" was established whereby it might deal "with cases of smaller amount in a more summary way than by the ordinary practice of the Court".\(^1\) A new Resident Magistrates' Extension of Jurisdiction Act was also passed.

Under the new Act, the Governor in Council might extend Resident Magistrates' jurisdiction from £20 to either £50 or £100. By mid 1863 eight Resident Magistrates' courts exercised the extended jurisdiction of either £50 or £100, and by the end of 1864 a further twelve courts had been added. Meantime, despite further political changes which had brought back as premier Frederick Whitaker, the original sponsor of the District Courts Act, all District Courts had been abolished.

Since 1860 when the House passed its resolution against District Courts, however, there had been a revolutionary change in the country. The gold rushes in the South imposed completely new demands on the administration, which resulted in the development of a different type of Resident Magistrate, and before the end of 1864, in the establishment of a new District Court under the 1858 Act.

As a result of earlier small gold rushes in Nelson, General Assembly

---

in 1858 had passed a Gold Fields Act for the administration of districts which the Governor proclaimed to be gold fields. This Act, based on Victorian legislation and Nelson provincial adaptation of that legislation, provided for Wardens' Courts to determine complaints arising from breaches of gold fields rules and regulations, disputes between miners and so forth. In December 1860 the first Warden's Court was constituted under this Act. The Massacre Bay Gold Field had been proclaimed in October 1859 and James Mackay junior, the Assistant Native Secretary in the South Island, had been appointed Resident Magistrate and empowered to issue Miner's rights and to licence persons to sell liquor on the gold field. Now, in December 1860, he was appointed judge of the new Warden's Court.¹

General Government control of the small Nelson gold field was one thing. Control of gold fields in Otago was a quite different matter. Moreover, the three short-lived governments between 1861 and 1864 were more sympathetic to provincial administrations than had been the Stafford Government. By the Gold Fields Act the Governor was empowered to delegate many of the powers invested in Governor or in Governor in Council. In August 1861, almost as soon as news of Read's discovery reached Auckland, on the advice of the new Fox Government the Governor delegated his powers to the Superintendent of Otago, and shortly afterwards powers were also delegated to the Superintendent of Nelson. Henceforth it was customary for the provinces to have control of gold fields administration, including the constitution of Wardens' Courts and the appointment of Wardens. As General Government normally made a Warden the district Resident

¹ rf N.Z.Gazette.
Magistrate, the provinces had effective control of the administration of justice in gold fields. There was thus a new category of Resident Magistrates. There were a few Resident Magistrates who were responsible to the Native Minister, the majority of Resident Magistrates who were responsible to the Attorney-General (or the Colonial Secretary when the Attorney-General was not a cabinet minister), and there were Wardens who were responsible to the provincial government or to the provincial Commissioner of Gold Fields.  

In addition, despite the appointment of two additional judges to cope with the increased population in Otago and Southland, in June 1864, less than six months after it had abolished the last District Courts, the Whitaker-Fox Government established a District Court for the Otago gold fields. After Stafford returned to power in late 1865 there was a full-scale revival of District Courts. By early 1867 there were Courts at Wanganui, Nelson, Marlborough, Auckland, Hawke's Bay and Westland. Under the consolidating Resident Magistrates Act of 1867, however, the Resident Magistrate retained the extended jurisdiction which had been revived in 1862. By the late 1860's, then, when the various statutes relating to inferior courts were consolidated, after various experiments the judicial system had settled down to a three tier system of courts: Supreme Court, District Courts, and Magistrates' Courts under one Resident Magistrate or two unpaid magistrates. If the gold rushes  

had resulted in the revival of District Courts, they had even more served to create a further area of responsibility where the Resident Magistrate was indispensable.

The Resident Magistrates Courts' importance as courts of civil jurisdiction was directly related to the decline or revival of District Courts. Throughout all the changes, the Resident Magistrate's criminal jurisdiction remained almost unaltered. Since the day of the Police Magistrates, the stipendiary magistrate had been able to act with the powers of two ordinary Justices of the Peace.

The Justice of the Peace

The Resident Magistrates and District Courts gave a distinctive quality to New Zealand's judicial system. New Zealand was forced to modify English institutions to meet colonial conditions. Much of English law and custom, however, was transplanted to become as much a part of the colony as English trees, birds and animals. Some of the best examples are found in the office of the Justice of the Peace and in the other traditional offices of Sheriff, Coroner, and Constable. The lay magistracy was adopted in toto. While the social structure made it impossible to retain the class distinction behind the office of Justice of the Peace - as too, class distinction could not be maintained for another ancient institution, the jury - the functions of the Justice of the Peace were almost unaltered.

While New Zealand was a dependency of New South Wales appointments on behalf of the Crown were made by the Governor of New South Wales, and Hobson was handicapped by inability to appoint
sufficient officers for law enforcement. On the day Hobson proclaimed his assumption of powers as Governor of a separate colony he doubled the number of Justices making a total of 21 of whom six were Police Magistrates. Within a few months he issued a new Commission of Peace increasing the number of Justices to 47, included among whom were senior officials (Police Magistrates and others), New Zealand Company officials, senior military officers and at the head of the Commission of Peace, the three unofficial members of the Legislative Council. As new districts were settled the Governor appointed further batches of magistrates. By 1844 there were 56 Justices, although far more had been appointed during the preceding years. Men went travelling, soldiers were returned to England or to other posts, and were not included in new Commissions of the Peace. Despite such continuous wastage there were 76 on the Commission in 1846 and 92 in 1848. The rapidity with which Hobson exercised his new powers and the continuing growth of the Commission of Peace, are evidence of the importance Government attached to having a sufficient number of magistrates.

By 1853 there were 170 magistrates, including 38 for the new settlements in Canterbury and Otago. By 1860 the number had risen to 301. In 1859, when the Commission of Peace (then totalling 282) had distinguished between magistrates for New Zealand and magistrates for individual provinces, the number of magistrates per province ranged from 15 to 20 in the smallest provinces, to 51 for Auckland which also had the lion's share of senior officials and odd soldiers who were magistrates for New Zealand. As in the past, particularly amongst magistrates for New Zealand or for Auckland, there was a large number
of officials or retired officials who were on the Commission of Peace, probably more as a matter of courtesy than to perform magisterial duties. In addition there were magistrates in the various districts in which Europeans had settled, as well as Resident Magistrates in ports and towns.¹

The best outline of the powers and duties of the Justice of Peace in early New Zealand is given in Judge Johnston's *The New Zealand Justice of the Peace*, prepared at the request of the New Zealand Government and published in 1864.² There were also English handbooks which a Justice of the Peace might obtain in order to learn his traditional powers and duties. For example, Shaw and Sons of Fetter Lane, London, published a series of law books including Stone's Justices' Manual, a volume of the Jervis' Acts, Archbold's Justice of the Peace, and Parish Officer, and Snowden's Police Officer and Constable's Guide, and Magistrate's Assistant.³ It is unlikely, however, that many magistrates were prepared to pay several pounds to obtain such books, or that they were much interested in the ancient statutes on which their powers were grounded.

Johnston divided the duties of the Justice of the Peace according to the laws he applied. The first, and probably major, body of law was the common law and statutes of England up to 14 January 1840 when Governor Gipps by proclamation extended the boundaries of New South Wales

---

¹ New Commissions of the Peace were issued & published in the N.Z. Gazette in 1841, 1844, 1845, 1846, 1848, 1853, 1856, 1859, 1860, 1861, 1864, etc. On the doubtful validity of some magistrates' appointments, rf NZPD 1856 pp 96-7, 157, and V & P, HR, 1856 C-11.
² Cited above p 315 n 1.
³ Cf publishers' advertisement in the 6th (1866) edition of Snowden's Guide.
to include the Queen's dominions in New Zealand. Traditionally the
Justice of the Peace was a "Conservator of the Peace": he had the
right and duty of "reading the Riot Act", binding over to keep the peace,
putting the oath of allegiance to anyone suspected of disaffection, and
of swearing in special constables. There were certain offences
recognised both by common law and statutes with which a Justice of the
Peace could deal - for example the holding of seditious meetings, "riding
or going armed with dangerous or unusual weapons", "challenging to fight",
"spreading of false news in order to make discord between the Sovereign
and nobility, or concerning any great men of the realm", or making
"pretended prophesies with intent to disturb the peace". For the benefit
of the Justices Johnston cited acts of 2 Ed 111 c 3, 5 Eliz (1) c.15, etc. 2

From the first days of British occupation of the colony, New Zealand
had a constabulary or police force on whom the main peace keeping duties
lay. The organisation of an armed constabulary was set on a formal
basis by an ordinance of 1846. After 1853, the control of the
constabulary was taken over by the provinces. In 1846, for the Auckland
district alone, there was an inspector, a sub-inspector, a sergeant-major,
four sergeants, four corporals and forty privates. In a distinctive
uniform of blue cloth trousers, blue serge shirt, forage cap and grey
soldier's great coat, they provided a fair-sized peace force for the towns. 3
By 1860 Otago, still at that date one of the least populous provinces, had

1 cf the Chief Justice's charge to the Grand Jury, Daily Southern
Cross 2/9/63.
2 Johnston, N.Z.Justice of the Peace, Part II - the Conservation of
the Peace.
3 N.Z.Gazette 22/4/47, 31/5/46, 9/7/46, 16/12/46, 15/12/46 28/9/47.
a chief constable and eight constables at Dunedin, two constables at
Port Chalmers, and a constable at Invercargill, at Campbelltown (Bluff)
and at Riverton. After gold was found the Otago police force was greatly
increased and a contingent of constables was imported from Melbourne.
The constabulary was not free from criticism, of course, but as riots
and seditious meetings were rare, the Justice of the Peace could
probably rely on the constables, guided by the local Resident Magistrate,
to keep the peace.

A host of offences came within the summary jurisdiction of the
Justices: some, such as Nuisances were recognised at common law and
were of little importance, others, which were also within the
jurisdiction of Justices of the Peace throughout the Empire, were of
greater significance. Various Imperial statutes passed after 1840
applied to New Zealand. Between 1852 and 1865, 26 Imperial acts were
quoted in part or in full in the New Zealand Gazette. Many of these
acts applied specifically to New Zealand (an act concerning the
bishopric of Christchurch, the Loan Guarantee Act, an act validating
the New Provinces Act, a New Zealand Boundaries Act, etc.) In
addition, however, there were a number of Imperial acts with general

1 Otago Colonist 25/5/60, Otago Witness 21/7/60, 1/9/60, Southern
Provinces Almanac for 1860 p 179; C.W.Richmond/Maria Richmond
15/12/61, Richmond-Atkinson Papers Vol 1 p 734.
2 rf Johnston op cit p 351 et seq. In a foot note on p 351 Johnston
states that "A common scold is a nuisance at Common Law, and is
liable to indictment; but it seems unnecessary to detail the special
provisions of the law for the punishment of this species of nuisance,
viz. by trebuchet or cucking stool, an engine of correction the use
of which may probably be deemed to have been obsolete in England on
the 14th January, 1840, and therefore not applicable in New Zealand. No doubt,
on conviction, fine and imprisonment could still be awarded, but it
has not been deemed necessary to insert any form of information in
such cases adapted to the Colony".
application, concerning colonial bishops, naval defence, colonial marriages, and a group of acts concerning desertion which were published during the Maori wars. In the Hocken Library there are two large private volumes of British statutes relating to New Zealand, most of which are legal acts covering wills, trustees, evidence, forgery, offences relating to coin etc. Some of these acts were of general application, others were intended for England and Wales or for the United Kingdom, but were adopted by the New Zealand General Assembly. For the Justice of the Peace, the most important of the post 1840 Imperial Acts were acts relating to desertion from Her Majesty's armed forces, the Merchant Shipping and Passenger Acts, and a group of acts concerning the duties, liabilities and protection of Justices of the Peace (the Sir J. Jervis' acts of 1848) which were adopted by the New Zealand General Assembly in 1858. Two of the three Jervis' acts were consolidating acts and related to the Justices' duties "with respect to parsons charged with indictable offences" and "in respect of... summary convictions and orders", and the third act was to protect Justices of the Peace "from vexatious Actions for acts done by them in execution of their Office." The Jervis' acts were in force in New Zealand from 1858 to 1869 in the case of the first act and to 1866 in the case of the latter two acts. They were then replaced by New Zealand acts - or perhaps amended and re-enacted as New Zealand acts would be a more accurate statement. For seven or more years

1 Imperial Acts since 1840 applying to New Zealand, presented by Sir F. R. Chapman, a son of H. S. Chapman (mentioned below pp336,340,348) & Statutes relating to New Zealand and the Colonies generally, originally the property of J. L. Macassey, an early Dunedin lawyer.
the main statutes concerning the exercise of the criminal jurisdiction of Justices of the Peace were those passed by the British Parliament to apply to Justices of the Peace in England and Wales. This not only illustrates the fact that the New Zealand magistracy was an attempted replica of the English magistracy, but is a reminder of the difficulties of the New Zealand Justice of the Peace, since in the years immediately after the adoption of the Jervis' acts it does not appear that the text of the acts was printed in New Zealand. Eventually they were incorporated in Johnston's manual. 1

Some of the Imperial acts relating to Merchant Shipping and Passengers were published in the New Zealand Gazette. The 1855 Passengers Act laid down a series of rules and regulations covering passenger ships including those on "colonial voyages". The several Merchant Shipping Acts were to be applied by New Zealand magistrates to all British ships registered at, trading with, or at any place within the jurisdiction of the colony of New Zealand, and to the Owners, Masters and crews of such ships. Judge Johnston noted that " Resident Magistrates, and Magistrates' Clerks, especially at Sea-ports, ought to be furnished" with copies of these various Acts. 2

These Acts are a reminder of the significance of the Imperial connection and the continued enactment by the Imperial Parliament of laws which covered all parts of the Empire. Realising the extent of pre-1840 law which affected the duties of the Justices of the Peace, and

---

1 In 1855 the Secretary of State rejected a request from the New Zealand Government that he forward 200 copies of the Jervis' Acts (V & P, HR, 1856 p 14, message 11; cf V & P, HR 1854 12/9/54, 13/9/54, evening sittings).

2 Johnston op cit, notes on pp 338 & 359.
the many Imperial acts passed after 1840 which were adopted by New Zealand or applied to the colony, we need not be surprised to find that a magistrate's duties were extensive and complex or that the Justices of the Peace tended to leave the work to the Resident Magistrate.

In addition to the duties of the English Justice of the Peace, the New Zealand Justice of the Peace had duties which were imposed by acts of the New Zealand legislature— including, after 1853, provincial ordinances. The most important local act was the Resident Magistrates Ordinance of 1846 by which two Justices of the Peace could exercise a civil jurisdiction in cases involving sums of £20 or less. It should be noted however, that although by the 1846 ordinance a Resident Magistrate had the powers of two ordinary Justices of the Peace, the reverse did not apply. Justices of the Peace could not exercise the Resident Magistrate's special powers in civil and criminal cases involving Maoris, nor could they exercise the Resident Magistrate's extended civil jurisdiction under the 1856 Act.1

For the rest, Justices of the Peace had various administrative or quasi-administrative duties. For example, under the Destitute Persons Relief Ordinance of 1846, two Justices of the Peace might determine paternity of bastards and make an order for maintenance, they could order a deserting husband to pay the support of his wife and family, and they could order relatives to support any destitute person who was unable to work. Annual meetings of magistrates were called to grant and transfer licences for liquor sales and to

1 For the special powers of Resident Magistrates of Johnston pp 381,391,393,394.
draw up jury lists. Before 1858 magistrates' meetings drew up
electoral rolls, and until 1860 they were responsible for militia lists.
Under a Slaughter House Ordinance of 1847 - except where it had been
repealed by a provincial ordinance - the magistrates' meeting might grant
licences to slaughter cattle. As two Justices of the Peace, one of whom
might be the Resident Magistrate, appear to have sufficed to constitute
a "meeting", these various duties were not too onerous. Finally, it
may be noted that in the absence of a coroner, a Justice of the Peace might
hold inquests (sitting with a jury), and under the 1860 Arms act a Justice
of the Peace might "rummage" a ship for arms. 1

Various odd tasks then might fall to a Justice of the Peace. But
an individual Justice of the Peace might do as little or as much as he
chose, and Government appears to have been powerless to force the Justices
of the Peace to be more conscientious.

Sufficient has been said to show how essential the magistracy was
to the administration of the country. If, however, most of the
magistrates' duties were performed by the Resident Magistrate, why did
the Government take such pains to ensure that so many magistrates were
appointed? The answer is twofold. No-one at that stage would have
agreed that if the Justices of the Peace left the work to Resident
Magistrates this was an argument for reducing the number of Justices
or abolishing the traditional office of Justice of the Peace altogether -
although there was undoubtedly a case for purging the Commission of the
Peace. The Resident Magistrate combined the worst features of both
"English" and "foreign" judicial institutions. 2 He was an untrained

1 rf Johnston Part VII - Miscellaneous Duties; & notifications of
magistrates' meetings in the N. Z. Gazette.
2 cf NZPD 1858-60 p 424.
amateur and sitting alone he had extensive powers. If New Zealand were to develop an efficient system it would have to use professionals. But this was not the solution sought in the mid-nineteenth century. If the Justices of the Peace were inactive then they should be persuaded to be more active. As well as passing the District Courts Act in 1858, the Stafford Government that year also sponsored a Petty Sessions Act, making formal provision for Justices of the Peace to exercise the civil powers which they had already under the Resident Magistrates' Ordinance. After the House resolved to abolish District Courts Stafford considered Government should extend the Supreme Court and should put the Petty Sessions Act into effect. In short, as long as there were Justices of the Peace it was possible that the English system might develop. In addition they could impose a check on the Resident Magistrates. When in 1841 the citizens of Wellington considered that the local Police Magistrate was acting in an arbitrary fashion, one of the town's Justices of the Peace was persuaded to sit on the bench with the Police Magistrate. When an issue aroused the local community several Justices might join the Resident Magistrate on the bench. For example, in 1858, the Rev. Arthur Baker, the controversial vicar of St. Paul's, Wellington, was brought before the Resident Magistrate's court on a charge of indecently assaulting a young girl. Baker was involved in the bitter party

---

1 Memorandum of the Colonial Secretary of 20/12/60, Justice Department Archives J 16/3; cf notice to Justices in N.Z. Gazette 23/1/61 p.9. A number of petty sessions districts were created in December 1862.

strife of the day, and Justices from both parties joined the Resident Magistrate on the bench.¹

Most important of all - and this is still true today - as well as trying offences summarily, in the case of indictable offences, Justices of the Peace were responsible for committing the accused for trial in the Supreme Court, or the District Court if one were in existence. Thus magistrates were an important check on unjustifiable arrest and by granting bail could avoid unnecessary imprisonment pending trial.

¹ cf Wellington Independent 8/9/58, 15/9/58, 6/10/58; also NZPD 1861 p 31-2 for allegations of a "packed" bench of magistrates at Wanganui in January 1861.
CHAPTER 15

THE SUPREME COURT

The magistrates handled the many petty offences which constituted the bulk of criminal judicial work, and they could also deal with petty civil cases. More important cases might be determined in a District Court, if there was one, but all major cases had to go before the Supreme Court. The Supreme Court judges were the powerful judicial officers on whom depended in the last resort the effectiveness and the impartiality of the justice dispensed in the colony.

By the late 1850's the Supreme Court was well established and adequate for the needs of the day. In the years immediately after the establishment of representative institutions, however, this had not been the case, and even by 1858 no satisfactory arrangements had been made for the appointment of Supreme Court judges, nor for appeals from their decisions.

New Zealand's first Supreme Court judge, William Martin, arrived in New Zealand in 1841. Aged about 34, he had been called to the Bar only four years previously and was but a "briefless barrister" who had never entered law chambers having practised as an equity draughtsman and conveyancer. But he was an enthusiastic campaigner for freeing the new courts from the heavy weight of English legal tradition. Together with Thomas Outhwaite, who became Registrar of the Supreme Court at Auckland, he had sailed

1 Carleton, NZPD 1856 p 297; Dictionary of New Zealand Biography; C.G. Lennard, Sir William Martin. The Life of the First Chief Justice of New Zealand.
in the same ship as William Swainson who had been appointed Attorney-General. All three were in their thirties and comparatively inexperienced in the practice of law. They employed the long voyage out to draw up a series of ordinances quite daring in their simplicity. As a result Hobson's second session of the Legislative Council saw a flood of measures to establish a complete judicial system. By the Supreme Court Ordinance of 1842 a Supreme Court was set up and invested with the "powers usually given by the Charter of Justice in other colonies." It had the jurisdiction of the common law courts in England as well as equitable and ecclesiastical jurisdiction in relation to wills, and the power to appoint and control guardians of infants and lunatics. The court might not take cognizance of any crime committed before 14 January 1840. As in New South Wales, the small number of court cases necessitated one unified supreme court performing all the functions of the various superior English courts. New Zealand in fact went further than New South Wales in empowering one judge sitting alone to act with the full powers of the Supreme Court. Even when further judges were added, the dispersed nature of the country made it necessary to continue this arrangement.

These features of the Supreme Court in 1842 are not in themselves significant as they were necessitated by the nature of the colonial population and clearly the legislators drew on New South Wales experience. What is significant is that the simplicity of the Court, originally based on necessity, has remained and, as in the case of inferior courts, New Zealand did not show the same readiness

---

1 encl to Hobson/Stanley no 28 29/3/42, Archives of the Governor-General G 30/2.
as its parent colony to revert to more traditional English institutions. The reforming zeal of men like Martin and Swainson was partly responsible, but the main difference between New Zealand and New South Wales was that the former colony was of much later foundation and at no stage did one pre-eminent town emerge on which administration and justice could be centred. The later date at which New Zealand formed its judicial institutions gave the colony more opportunity to benefit from English reforms.

For various technical reasons the Colonial Office disallowed the 1841 Supreme Court Ordinance and a new Ordinance was passed in 1844. In late 1843 H. S. Chapman had arrived to act as a second Supreme Court judge. The 1844 ordinance therefore made provision for the division of the colony into Supreme Court districts, to each of which a judge or judges might be assigned, and this has remained the basis of the organisation of the Supreme Court. The 1844 ordinance also provided for the admission of people trained in New Zealand as barristers and solicitors. It had already been provided by the 1841 ordinance that qualified barristers, solicitors or proctors of the United Kingdom might be admitted to law practice in New Zealand, and, as a temporary measure, barristers might practice as solicitors and vice versa - a provision which has been retained to this day.

The 1844 Ordinance was repealed by an Act of 1860 which, with certain exceptions, adopted the jurisdiction contained in the earlier ordinance "but in fuller and more precise manner." "In the main the Act of 1860 describes the basis of the Supreme Court's jurisdiction as it exists today." 2

---

1 rf Stanley/Hobson no 10 31/1/43, Archives of the Governor-General G 1/7.
2 J.L.Robson (ed), New Zealand. The Development of its Laws and Constitution p 60-1.
The basis of the Supreme Court thus was laid very early in New Zealand's history.

But there was no security of tenure for judges, procedure needed to be reformed, and there was no adequate provision for appeals from Supreme Court decisions.

In November 1849 on the recommendation of Chief Justice Martin the two judges were constituted a commission "to enquire into the course of proceeding in actions and other civil remedies now in use in the several Superior Courts in England" and in the New Zealand Supreme Court. Their second and final report was presented in 1854. Its aim was to institute a "uniform, simple and efficacious system of procedure" sweeping away the traditional prolix and fictitious pleadings of the superior courts of law and abolishing in the practice of the New Zealand Supreme Court the distinction between actions at law and suits in equity. Drawing substantially on reports of English law commissioners and on experiments in Scotland, Bengal and New South Wales, the judges presented a complete code of civil procedure amounting to 104 printed foolscap pages. This, they believed, would be the first attempt within the British Empire to have all rules, "collected in one volume and promulgated by authority." 1

---

1 Report of the Commissioners appointed ... to inquire and report concerning a system of procedure suited to the Supreme Court of New Zealand, Auckland 1854, p 108; cf Supreme Court of New Zealand, Supplement to the Reports of the Commissioners, Auckland 1855. By 1854 many of the Commissioners' comments in their first report, published in 1852, had been rendered obsolete by reforms proposed or effected in England. In 1852 Chapman was replaced as a commissioner by Judge Stephen.
After a select committee of the House of Representatives had enthusiastically endorsed the rules, they were adopted by the New Zealand General Assembly in 1856: a monument to New Zealand's first two judges which continued, with modifications, until it was replaced by the Code of Civil Procedure of 1882.¹

Under crown colony government judges held office durante beneplacito and appointments were made by the Queen.² An early task of the New Zealand General Assembly was to provide for local appointment of judges and to give them permanent tenure of office. On 24 July 1856, the House of Representatives resolved that "the tenure of Judges of the Supreme Court ought to be assimilated as nearly as may be to that of Judges in England" and that they should be removable only after addresses of both houses of the legislature. It was also resolved that appointments should be made by the Queen on the recommendation of an English judge designated for that purpose by the colonial government. After requests made in London by the Canterbury Association, and a more recent petition of the Canterbury Provincial Council to the General Assembly, it was resolved that a judge should be appointed for Canterbury. Finally, it was resolved that the salary of the Chief Justice should be raised from £1,000 p.a. to £1,400 and that of puisne judges from £800 to £1,000.

¹ rf report of select committee, V & P, HR, 1856 D-7; Supreme Court Procedure Act 1856; Hight & Bamford, The Constitutional History of New Zealand p 359.
² One of the Secretary of State's objections to the 1842 Supreme Court Ordinance was that it did not state explicitly that judges were to be appointed by the Queen and were to hold office during the Queen's pleasure (Stanley/Hobson 31/1/43 loc cit).
Similar resolutions were later adopted by the Legislative Council on the motion of the Attorney-General.¹

The resolution on judges' salaries was implemented immediately by the Governor sending down supplementary estimates. But the Government did not realise that the requisite legislation was also a matter for the colonial legislature. The resolutions were therefore sent to England with the suggestion that they be incorporated in the proposed Imperial act to amend the New Zealand Constitution.² There was no apparent need for speed. With extended civil jurisdiction given this year to the Resident Magistrates, an adequate if temporary lower court system was available. Although it was desirable to have a third Supreme Court judge it was possible to manage with two. Members of the House still assumed that a New Zealand judge would be an English lawyer chosen in England. Even if it was realised that the Imperial Government would no longer send out judges without consulting the colonial ministers, it was not considered that appointments to the top judicial positions could or should be made by New Zealand politicians. Hence a delay of many months before a judge could be appointed and travel to New Zealand was taken for granted.

In 1857, however, the situation changed markedly. In 1850 a third judge had been appointed - Sidney Stephen, a member of one of England's most distinguished legal families, although one of its less

² Browne/Labouchere 2/10/56 & encl, GBPP xlvi 2719, (also in AJHR 1858 D-5); on the New Zealand Constitution Act Amendment Act cf above p 12-13.
outstanding members. He was sent to the new settlement of Otago where, finding no cases to try, he became embroiled in undignified personal quarrels.¹ In late 1852 Judge Chapman was appointed Colonial Secretary of Van Diemen's Land and Stephen moved to Wellington to cover not only the old Cook Straits settlements but also Christchurch and Dunedin. In late 1855 Martin left New Zealand on eighteen months sick leave, and Stephen, who apparently also was not well, moved to the warmer climate of Auckland as acting Chief Justice.² At Wellington he was succeeded by Daniel Wakefield, a brother of Edward Gibbon Wakefield, who was appointed temporary puisne judge in October 1855.

In March 1857 Daniel Wakefield fell ill and Judge Stephen had to act as sole judge for the whole colony. It was not until December of that year that H. B. Gresson was appointed temporary judge in Wakefield's stead. Gresson was a mild, well-educated and conscientious lawyer in his late forties who at one time had been a member of the Irish Chancery bar.³ Within a fortnight of Gresson's appointment not only did Daniel Wakefield die, but Stephen died also.

Doubtless the New Zealand Government delayed making arrangements to fill Wakefield's place until it knew when and if Chief Justice Martin would return to the colony. Instead of returning however, Martin forwarded his resignation to the British Government. The Secretary of State for the Colonies had already

¹ cf McLintock, The History of Otago p 261-3
² cf Justice Department Archives J 1/1 58/1 (Martin/Colonial Secretary 18/10/55, etc).
³ rf Dictionary of New Zealand Biography; NZPD 1861 p 280.
informed the New Zealand Government that while he approved of
the spirit of the 1856 resolutions he thought the colony should itself
pass the appropriate legislation. If local ministers wished to
seek the advice of an English judge that was an excellent idea but
he could not approve binding the Queen to act upon the advice of an
English judge. This was impracticable and unconstitutional.
For colonies with responsible government it was the policy of the
Colonial Office, as much as practicable, to act on the advice of the
local responsible advisers of the Crown.¹

Since it was clear that the colony wished to have an English
judge, however, when faced with Martin's resignation Labouchere, the
Secretary of State, decided to act without awaiting formal
recommendation from the New Zealand Government. Labouchere was
able to confer with Henry Sewell then negotiating the half million
loan in London. (Doubtless Labouchere was not aware that despite
the resolutions, Sewell himself had been angling for a New Zealand
judgeship.) On the recommendation of Mr. Justice Coleridge, one
of the backers of the Canterbury Association, George Alfred Arney
of the English common law bar, was in 1857 appointed Martin's
successor as Chief Justice of New Zealand.² Aged about 47 Arney had
previously been recorder at Winchester and had had many years
experience on the Western Circuit. "A pleasant, gentlemanlike
man", he lacked William Martin's deep interest and authority in

¹ Labouchere/Browne 19/12/56, AJHR 1858 D-5.
² Labouchere/Browne 18/8/57, AJHR 1858 D-5; Sewell/Stafford
10/7/57, Sewell/Browne 31/8/57, Stafford MSS folder. 43.
On Sewell's hopes of a judgeship of Lyttelton/Stafford
5/6/57, Stafford MSS folder 43.
native affairs, but was probably a better lawyer and perhaps more lenient on the bench.¹

It was after receiving word of Arney's appointment that the New Zealand ministers appointed Gresson a temporary judge, and Arney was already on the seas when Stephen died on 13 January 1858. Hence although the colony was again reduced to one Supreme Court judge the situation was not as bad as it might have been. Chief Justice Arney arrived a few weeks later and on the 1st March 1858 assumed his new duties. In the meantime, still guided by the resolutions of 1856, the New Zealand Government had requested the Imperial authorities to choose a replacement for Stephen.²

Not since Chief Justice Martin held his first courts in early 1842 had the Supreme Court been as inadequately staffed as it was in 1857/8. When General Assembly met in April 1858 the colony again had two judges - even if one was but a temporary judge - with the expectation of a permanent puisne judge arriving shortly to join the new Chief Justice, but it was evident that arrangements would have to be made to prevent such difficulties arising in the future. It was equally obvious that under responsible government New Zealand ministers themselves would have to accept responsibility for Supreme Court appointments. Eventually it would be realised that however closely New Zealand remained tied to English law, judges would have to be

¹ Bowen/H.S. Selse 13/3/63, Selse MSS; The Colonial Law Journal Nov 1875 Part II p 19 f; Sewell/Browne 31/8/57, Stafford MSS loc cit. Chief Justice Arney's brother, Major C.A. Arney, had earlier been in New Zealand with the 58th regiment.

² rf ministerial memorandum, 23/1/58, AJHR 1858 D-5.
appointed from the local bar, but even by 1858 it does not appear
that this was appreciated.

The main reforms put through General Assembly in 1858 to
remedy deficiencies in law administration were the centralisation
of control of the lower courts, the passage of the Petty Sessions
Act, the adoption of the Jervis' Acts, the establishment of
District Courts, which as well as replacing Resident Magistrates
with extended civil jurisdiction could relieve the Supreme Court
of some of its criminal work, and the passage of a Supreme Court
Judges Act.¹

The Supreme Court Judges Act stated that henceforth judges
should hold office during good behaviour, with the usual safeguard
that the Governor could remove a judge upon the address of both houses
of the General Assembly. The salaries of judges were secured, and
provision was made for superannuation for judges who retired for
health reasons after reaching the age of sixty.² By the second
section of the Act appointments were to be made by the Governor on
behalf of the Queen. As far as ministerial responsibility is
concerned, or the method of choosing a judge, the significance
of this section is not what it stated but what it omitted. It did
not bind the Governor to appoint on the recommendation of an
English judge. Unlike temporary judges permanent judges were not
even to be appointed by Governor-in-council, but by Governor alone.

¹ For a useful, if rather flippant, summary of these measures
rf Wellington Independent 18/9/58.
² of Civil List Act 1858. By a separate act Sir William Martin
was granted an annuity for life of £333 6s 8d, and in 1860
the widow of Judge Stephen was voted the sum of £500 (NZPD 1860
p 799).
Apparently the Government intended that the intentions of the 1856 resolutions should be fulfilled and did not realise the extent to which the power to make appointments could now be exercised without restriction by the ministry of the day.¹ However the Stafford Government may have intended that the new powers should be exercised, in practice New Zealand governments thenceforth appointed local men to be judges.² The Stafford Government itself set the precedent by retaining Gresson on the bench, although it apparently failed formally to appoint him a permanent judge.³ In subsequent years governments used their powers to appoint leading politicians to the bench although there is no evidence to suggest that the Supreme Court suffered from the three most notable examples: the appointments of C. W. Richmond in 1862, T. B. Gillies in 1875 and Sir Robert Stout in 1899.

With one New Zealand judge able to exercise the powers of an English bench it was clearly desirable that there should be further provision for appeal apart from the expensive, slow and limited opportunity of appealing to the Judicial Committee of the Privy Council.

By the Supreme Court Amendment Ordinance of 1846 it was enacted that until there should be sufficient judges to constitute a Court of Appeals, the Governor and Executive Council should be a "Court of

¹ cf Stafford, NZPD 1862 p 591 f: Arney, NZPD 1861 p 278 f.
² The one exception was H.S. Chapman who was re-appointed in 1864 (cf below p 348).
³ cf NZPD 1861 p 280; AJHR 1862A-7 & A-7A.
Appeals" in civil cases where the matter in issue amounted to £100 or more in value. The Appeals Court was only to reverse a Supreme Court verdict based on the verdict of a jury "for error of law apparent on the record". The ordinance was never proclaimed nor did it receive the Queen's assent. (The Secretary of State considered that the Ordinance was rendered obsolete by the New Zealand Government Act of 1846). Moreover, as the judges pointed out in 1861, to commence proceedings in error it was necessary to obtain a Writ of Error which in England was issued from the common law side of the Court of Chancery, but until 1860 there was no legislation granting to the New Zealand Supreme Court the common law jurisdiction of the Court of Chancery. The 1846 Ordinance was never invoked for local appeals and it was exceedingly doubtful whether Governor and Council could have acted as a Court of Appeals. It was repealed in 1860.

This only left appeals to the Judicial Committee of the Privy Council. Such appeals involved, as a preliminary step, "a Petition to the Queen, with its expense and grievous delay", and it was not surprising that few suitors availed themselves of this right.

---

1 cf NZPD 1858-60 p 64.
2 Report of the judges upon the constitution of a Court of Appeal, AJHR 1861 D-2 #41.
3 enl to Governor FitzRoy (N.S.W.)/Earl Grey 24/8/47, H.R.A., ser 1, Vol XXV p 75. Various reforms were introduced by the Privy Council in this period, cf Orders in Council (U.K.) of 11/8/42, 13/6/53 & 10/5/60, in N.Z. Gazette 29/3/43, 20/1/54 & 3/10/60; also Stanley's circular despatch of 26/8/42, H.R.A., ser 1, Vol XXII p 225. Membership of the Judicial Committee was determined by 3 & 4 Will IV cap 41 and 7 & 8 Vic cap 59 (cf Wood's Royal Southern Kalendar, Tasmanian Register... of 1850 p 49. Wood's Kalendar of 1849 p 59-60 lists the Judicial Committee's fees).
It was customary for the judges to have regular conferences to discuss new rules of procedure and these conferences provided an opportunity for them to make recommendations for improvements in the administration of justice, either on their own initiative or at the request of the Governor. At their conference of 1861 the judges were requested to consider the constitution and jurisdiction of a Court of Appeal. An Act based on the judges' report\(^1\) was passed in 1862 and remained in force until 1882.

By the 1862 Act a local Court of Appeal was created. It consisted of all the Supreme Court judges and was a general court of error and appeal in both civil and criminal matters - although the criminal jurisdiction of the New Zealand Court of Appeal was very limited until 1945.\(^2\) The Court of Appeal sat for the first time in February 1863 at Christchurch and thereafter regular sittings were held in the various centres.\(^3\)

Other reforms arising from judges' conferences may be mentioned briefly. The judges were responsible for various technical improvements to the Supreme Court Ordinance 1844 made by the Supreme Court Act 1860, for improvements in the jury system, and for the Government requesting Judge Johnston to produce his invaluable manual for Justices of the Peace.\(^4\) The judges were less successful in their attempts to promote prison reform. In 1861 for example, they

\(^1\) AJHR 1861 D-2.
\(^2\) cf Robson (ed), op cit p 68. Robson p 260 is slightly misleading on the judges' report and the Court of Appeal Act.
\(^3\) rf N.Z. Gazette passim; on the Court's first sitting rf E.W. Stafforf/C.W. Richmond 27/1/63 and C.W. Richmond/Maria Richmond 15/2/63, Richmond-Atkinson Papers Vol 2 pp 22 & 23.
\(^4\) Reports of the judges AJHR 1860 A-2, 1861 D-2 A no 3, 1860 A-3.
presented a scathing memorandum on the condition of gaols and Chief Justice Arney wrote a detailed criticism of the Auckland gaol in which he commented that the destruction of the buildings "would be a blessing to the community". In 1861 a Law Practitioners Act was passed after the judges had pointed out the "defective" law relating to the qualification and admission of law practitioners in the Supreme Court, although, despite provisions in that Act, the judges did not achieve their wish to have the professions of solicitor and barrister separated. Shortly afterwards, in 1863, the judges issued Regulae Generales governing the admission of barristers and solicitors and prescribing an extensive examination.

After the arrival of A.J. Johnston in late 1858 there were three Supreme Court judges in the colony. Johnston was the replacement requested by New Zealand ministers in January 1858 for Judge Stephen and was chosen by the British Government on the advice of Mr. Baron Bramwell. In his late thirties, Johnston was "a fat little jovial,

---

1 Letter from the Chief Justice 21/5/61, AJHR 1861 D-2A no 6 p 12; cf Ibid no 5, & a further extract from Arney's letter in Robson op cit p 261 .

2 Report of the judges AJHR 1860 A-1; NZPD 1861 p 12; Regulae Generales of 9/11/63, N.Z.Gazette 1864, p 62-64. By rule 12 the examination in law for admission as a barrister was to comprise, "the theory and practice of the Civil and Criminal Law of England, and of the Colony of New Zealand, the Law of Nations and Conflict of Laws". By rule 13 the examination in general knowledge was to include "Ancient and Modern History, the Feudal System, the British Constitution, the Latin Classics, and the Greek, French, or German Language, the Etymology of the English Language and English Composition, and some portion of Euclid's Elements and Algebra".
sharp, hard-working Judge."\(^1\). For some years he had practised on the Northern Circuit. As a result of the gold rushes, first C. W. Richmond was appointed judge for Otago and Southland in 1862, and then in 1864 H. S. Chapman returned to New Zealand as a second judge for the district. These five judges together served the colony until 1875 when three of them retired.

In the late 1850's the Supreme Court was a more conservative body than it had been in the 1840's. Arney, Gresson and Johnston could not compare with either Martin or Chapman. Under them the same reforming zeal could not be expected, nor after Martin's retirement was there anyone on the bench to speak with understanding and deep concern on racial problems. Nevertheless the judges cannot be criticised for their lack of knowledge of the Maoris or for the fact that they were soaked in the conservative traditions of the English and Irish bar.

In 1863 Chief Justice Arney in his charge to the Grand Jury at Auckland gave a long account of the attempts to provide justice for the Maoris, pointing out how governments in their legislation had departed from strict principles of English law to meet the needs of Maoris. If Government had erred in its legislation it had been in being too lenient. Having thus shown little conception of the practical problems involved, the Chief Justice continued by saying: "We have reasons to suppose that there is a certain number of Natives within the jurisdiction of the Supreme Court, who being in custody are not charged with any offence, and have not been brought before this Court." It was his duty to note this fact, and it was the

---
1 C.C.Bowen/H.S.Selfe 13/3/63, Selfe MSS; cf W.Martin/Browne 11/9/58, Gore Browne MSS 1/2 18; C.W.Richmond/Emily Richmond 22/2/63, Richmond-Atkinson Papers Vol 2 p 24; NZPD 1861 p 280.
duty of grand jurors, as Justices of the Peace, if they came across such imprisonments to enquire into them and see if they ought to take any steps. At the moment, however, the Chief Justice had no fear of the Military overstepping their power. In conclusion the judge enjoined magistrates to be impartial to both races and to "consider no question but that of what is most consistent with the law of England."

In this address Chief Justice Arney showed both the limitations and the strength of the judges' application of law in a complicated and tragic situation.

Within the limits of their profession the judges were not unaware of the need for improvement and reform. They were both humane and practical in their suggestions, and provided a community watchdog on the administration of justice.

In the field of law an example is provided of the mixture of veneration for English traditions, humanitarianism, desire for reform, and practical expediency, which underlay the measures taken in the first years of responsible government to provide order and efficiency in the new state of New Zealand.

---

1 Daily Southern Cross 2/9/63 (I am indebted to Professor Morrell for drawing my attention to this address).
CONCLUSION

For a colony with self government - even limited self-government - New Zealand was tiny and dependent. An assembly of 40 odd elected members represented the whole European community and determined the policies of Government and the fate of ministries. The executive was minute - central government was carried on by four or five ministers, a handful of permanent heads of departments and eleven or twelve clerks, aided by a small number of district officers in the various settlements. With no standing army under its orders, without a police force, with a very small paid bureaucracy, General Government relied on lay magistrates and a few provincial constables to maintain order.

In their literature and thought they were not "New Zealanders" but British people, avidly keeping in touch with the home country. Through local libraries, book clubs and booksellers - as well as direct from Great Britain - settlers could obtain both all the latest English literature and well known classics. More important was the wide range of newspapers and periodicals which were imported. Each mail brought bundles of all the leading English papers. In this way New Zealand colonists kept abreast of English thinking and writing.

New Zealand was not a dependent and separate colony but a part of an extended English community. "You will gather from many indications," C. C. Bowen wrote to Selve in 1863, "that the wave of thought that is

---

1 cf FitzGerald/Selve 21/5/64; Selve MSS, and overseas journals quoted in New Zealand papers, e.g. nine journals were quoted in the Otago Witness of 10/11/55; cf book catalogues in New Zealander 5/5/60 & Mackay's Otago Almanacs of 1860's.
spreading in England has reached New Zealand, \*slightly\* newspapers in their own way reflect the questions of the day.\*1\*

The European community numbered about 110,000 in 1861. But the population was not so small that the forces of law and order could have maintained the peace without the consent of the governed. City populations were not given in the 1861 census returns but it may be estimated that there were 3,000 to 9,000 inhabitants in the larger towns. Of all the traditions which the colonists brought with them, the most important was respect for the law, aided by the automatic assumption of leadership by those whose social and economic standing gave them pre-eminence. It was not the narrow franchise, nor their own economic security which resulted in merchants, landowners and professional men representing the people in the House of Representatives. It was their standing as the leading men in the community. These men gave a solid support to the peace-keeping forces.

64 of the 123 men elected members of the House of Representatives between 1856 and 1865 were Justices of the Peace before their election. By the end of 1864, 94 of the 123 had been appointed to the Commission of Peace. They could assist in the law courts, and more important, they were conscious of their duty to help keep the peace. The great prestige of the superior law courts and of the English judges was carried over into the colony.

The misery and temptations of poverty were hardly known in the

---

1 Bowen/H.S. Selfe 14/10/63, Selfe MSS.
SELECTED BIBLIOGRAPHY

A. Reference works

B. Primary sources

1. Printed. Official publications
   Newspapers
   Almanacs
   Collections of statutes and papers

2. Unpublished. Official papers
   Collections of private papers.

C. Secondary authorities

Books and pamphlets
   Articles
   Unpublished theses

A. Reference works


Index to the Appendices to the Journals of the Legislative Council and House of Representatives of New Zealand 1854 to 1913. Wellington, 1915.


- (ed.) A Dictionary of New Zealand Biography. Wellington, 1940.


Statistics of New Zealand. 1858 ff.


B. Primary Sources

1. Published

Official publications

Appendices to the Journals of the House of Representatives of New Zealand. 1858 ff.


The Constitution and Government of New Zealand: being a compilation of acts and instruments relating to the General Assembly and the office of Governor of the colony. Wellington, 1896.

Great Britain. Parliamentary Papers relative to New Zealand.

Journals of the House of Representatives of New Zealand. 1858, ff.

Journals of the Legislative Council of New Zealand. 1860 ff.

New Zealand Gazette (New Zealand Government Gazette) 1841-1847, 1853 ff; New Ulster Gazette (1848-1853); New Munster Gazette (1847-1853).


The Ordinances of the Legislative Council of New Zealand and of the Legislative Council of the Province of New Munster 1841 to 1853. Wellington, 1871.

Provincial Government Gazettes, of the provinces of Auckland, Nelson, and Otago.
Reports of the Commissioners appointed by His Excellency the Governor-in-Chief to inquire and report concerning a system of procedure suited to the Supreme Court of New Zealand. Auckland, 1854;

Supreme Court of New Zealand, Supplement to the Reports of the Commissioners. Auckland, 1855.

Standing Orders of the House of Representatives of New Zealand, 1854, 1856, 1863. (The 1854 Standing Orders are bound with the Votes and Proceedings of 1854.)

Standing Orders of the Legislative Council of New Zealand, 1854, 1860.

Statutes of New Zealand. 1858 ff.

Statutes of the General Assembly of New Zealand passed during the first and second parliaments. Wellington, 1871.


Votes and Proceedings of the Legislative Council of New Zealand. 1854-1858.

Newspapers

The New Zealander. Auckland.

The Southern Cross. Auckland.

The New Zealand Spectator and Cooks Straits Guardian. Wellington.

The Wellington Independent.

Otago Colonist. Dunedin.

Otago Witness. Dunedin.

The New Zealand Advertiser and Bay of Islands Gazette, 1840.

The Bay of Islands Observer, 1842.

The New Zealand Gazette and Wellington Spectator, 1840-1.

Almanacs

The Auckland Almanack and Directory for 1856.
The Royal New Zealand Almanack and Commercial and General Directory for 1864.

Chapman's New Zealand Almanac for 1860, 1861, and 1862.

The New Zealand Almanack and Commercial Calendar for 1859.

The Canterbury Almanack for the year of our Lord 1853.
The Wellington and Canterbury Almanack for the year of our Lord 1855.
The New Zealand Almanack for the year of our Lord 1856.

The Otago Almanack and Directory for the years 1858, 1859.
Mackays Otago Provincial and Gold-fields' Almanac, Directory and Yearly repository of Useful Information for 1864.

Collections of statutes and papers

Badger, Wilfred 1842-1884. The Statutes of New Zealand; being the whole law of New Zealand Public and General ... in force on January 1st, 1885. Christchurch, 1885.

Imperial Acts since 1840 applying to New Zealand. Compilation in the Hocken library, Dunedin.

The New Zealand Constitution Act; together with correspondence between the Secretary of State for the Colonies and the Governor-in-chief of New Zealand in explanation thereof. Wellington, 1853.


Select Documents relative to the Development of Responsible Government in New Zealand 1839-1865. Prepared for the use of the History Honours students in the University of New Zealand, 1949. (Cyclostyled).

Statutes relating to New Zealand and the Colonies generally. Compilation in the Hocken Library.
Primary Sources

2. Unpublished

Official Papers

In the National Archives, Wellington:

Archives of the Governor-General.
Despatches to the Secretary of State 1857-1859, G 25/7
Duplicate despatches 1840, 1841, G 30/1, 30/2
Archives of the Maori Affairs Department 1861, 1/2
Archives of the Justice Department, J1/1; J16/3; J 1 11
Minutes of the Executive Council 1840 ff.

In the State Archives of New South Wales:
Minutes of the Executive Council 1820 ff.

In the Canterbury Museum, Christchurch:

Superintendent of Canterbury's Letter Book
Provincial Secretary of Canterbury's Letter Register, and
inwards correspondence.

Collections of Private Papers

Catchpool, Edward  Papers in the Alexander Turnbull Library.
FitzGerald, J.E.  Papers in the Turnbull library; also photostat
copies of FitzGerald's letters to W.E. Gladstone
from the Gladstone Papers in the British Museum.
Browne, Thomas Gore  Papers in the National Archives, Wellington.
Godley, J.R.  Correspondence of John Robert Godley. Copied
from the originals in the Kilbracken Collection
in the Canterbury Museum. Typescript in the
Hocken library.
Selfe, H.S.  Papers in the Hocken library.
Typescript in the Canterbury University Library.
(All page references in footnotes are to this
copy).
Stafford, E.W. Papers in the Turnbull library; also two volumes of typescript.

Weld, F.A. Correspondence. Microfilm in the Turnbull library.

C. Secondary Authorities

Books and pamphlets


Campbell, A.E. Educating New Zealand. Wellington, 1941.


Chapman, H.S. The New Zealand portfolio; a series of papers on subjects of importance to the colonists. London, 1843.


<table>
<thead>
<tr>
<th>Author</th>
<th>Title</th>
<th>Location and Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gisborne, William</td>
<td>New Zealand Rulers and Statesmen From 1840 to 1897.</td>
<td>London, 1897.</td>
</tr>
<tr>
<td>Johnston, A.J.</td>
<td>The New Zealand Justice of the Peace: a treatise on the powers, duties and liabilities of Magistrates, Coroners, &amp; Peace Officers, in the Colony; ... Wellington, 1864.</td>
<td></td>
</tr>
<tr>
<td>Keith, A.B.</td>
<td>The Dominions as Sovereign States; their constitutions and governments.</td>
<td>London, 1938.</td>
</tr>
<tr>
<td>Lambert, Thomas</td>
<td>The Story of Old Wairoa and the East Coast District, North Island New Zealand or; Past, Present, and Future: a record of over fifty years progress.</td>
<td>Dunedin, 1925.</td>
</tr>
<tr>
<td>Author</td>
<td>Title</td>
<td>Location and Year</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------------------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Manson, Cecil and Celia</td>
<td>Curtain Raiser to a Colony: sidelights on the founding of New Zealand</td>
<td>1962.</td>
</tr>
<tr>
<td>May, P.R.</td>
<td>The West Coast Gold Rushes</td>
<td>Christchurch, 1962.</td>
</tr>
<tr>
<td>Merivale, Herman</td>
<td>Lectures on Colonization and Colonies</td>
<td>London, 1861.</td>
</tr>
<tr>
<td></td>
<td>1st ed.</td>
<td>(All page references in footnotes are to this edition).</td>
</tr>
<tr>
<td>Mulgan, Alan</td>
<td>The City of the Strait: Wellington and its province, a centennial history</td>
<td>Wellington, 1939.</td>
</tr>
<tr>
<td>National Archives.</td>
<td>Archives of the Old Land Claims Commission.</td>
<td></td>
</tr>
<tr>
<td>Reeves, W.P.</td>
<td>New Zealand</td>
<td>London, 1898.</td>
</tr>
</tbody>
</table>
Robinson, Howard


Robson, J.L. (ed)


Rusden, G.W.


Rutherford, J.


Saunders, Alfred


Salmon, J.H.M.


Scott, K.J.


Sinclair, K.


Smith, Norman


Thomson, A.S.


Todd, Alpheus


Wakelin, Richard

History and Politics; containing the political recollections and leaves from the writings of a New Zealand journalist, 1851-1861, 1862-1877. Wellington, 1877.

Ward, L.E. (comp)

Early Wellington. Auckland, 1927.

Webb, Leicester

Government in New Zealand. Wellington, 1940

Wynyard, R.H.

... Brief Narrative ... relating to my career and personal history in New Zealand ...

Auckland, 1859-1862.

Articles

Fletcher, R.M.

Herron, D.G.  
Alsatia or Utopia New Zealand Society and Politics in the eighteen-fifties, Landfall, December 1959.

Knox, B.A.  
The Franchise and New Zealand Politics, 1853-1858, Political Science, March 1960.

Unpublished theses

Aim, E.J.  
Dual Control of Native Policy - a phase of responsible government in New Zealand. V.U.W., 1957.

Bate, T.W.  
The Administration of Sir Thomas Gore Browne, Governor of New Zealand 1855-1861. V.U.W., 1947.

Baunton, R.W.  

Beaglehole, T.H.  

Boraman, W.J.  

Boyd, R.S.  
Imperial Troops in the Maori Wars 1860-66. V.U.W., 1957.

Campbell, A.F.  

Cumming, J.P.  

Cunningham, J.K.  

Fargher, R.W.S.  
Donald McLean, Chief Land Purchase Agent (1846-1861) and Native Secretary (1856-1861). A.U., 1947.
<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Institution and Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slaney, E.S.</td>
<td>The Development of New Zealand's Steamship Services 1854-1868, with special reference to the Panama mail service.</td>
<td>A.U., 1935.</td>
</tr>
</tbody>
</table>
Swain, David
Self government for the Anglican Church in New Zealand 1837-1865. A study of the changing status of the Church of England in New Zealand and the origins and intentions of its constitution for synodical government by bishops, clergy and laity in the years 1837-1865. V.U.W., 1965. (Read in draft by kind permission of the author.)

Wood, G.A.

Wylie, D.M.
Representation and the franchise in New Zealand 1852-1879: a political history. O.U., 1951.

Zohrab, B.D.
A history of the New Zealand Civil Service 1840-1866. V.U.W., 1936.
colony, although those who succumbed were harshly treated. In
1860 Anthony Wood, aged 51, was sentenced to six months' hard labour
for stealing a coat and shirt off a clothes line. But most court
convictions were for drunkenness and assault. Talk of brawls and
disorder should not mislead us into supposing that this was not a
society in which the Law was respected. In 1860 it was reported
that the prisoners at the Dunedin gaol were "habitually sent to the
town for their own rations, without any guard". "As the gaoler very
quaintly observed, he was compelled to treat his prisoners well, in
order to prevail upon them to remain."¹

The life of the labouring classes and of the poor appears but
occasionally in the official records, and little has been written
about these classes. John Miller, in Early Victorian New Zealand
shows the inability of New Zealand Company Agents to resist demands
of the workers because they lacked the support of soldiery.² If
the workers did not push their demands further it was partly because
increasingly they acquired a passable standard of living, but more
because they appear to have been imbued with a respect for authority.
Despite talk of Jack being as good as his master, social class
undoubtedly counted, particularly in political life.

A second important tradition brought from Great Britain was
that of decentralisation and of self government. Empire, colony,

¹ cf report of select committee on secondary punishment, V & P,
HR, 1854, Otago Witness 14/4/60, Herron thesis p 41-2, letter in
Witness 1/9/60, Otago Colonist 29/7/59, 5/8/59, & Witness 30/7/59.
² Miller, Chapt 9, e.g. p. 124.
province, municipality or hundred: at each level there was the principle of self government, and at each level there was resistance to control from above. The settler leaders were staunchly British in outlook, reacting against the centralism which they saw in France, or Russia, or China.¹

Belief in decentralisation was as strong amongst "centralists" as amongst "provincialists". The "centralists" did not want to centralise government: they wished to prevent an unbalanced constitution developing in which the provinces had too much power at the expense of the legitimate functions of the General Government.

Political differences did not hinge on the question of whether the state should be decentralised but on how it should be decentralised. "Provincialists" attacked the New Provinces Act for breaking up and weakening the provinces; "centralists" supported the Act because it provided self-government for outlying districts. It was by asserting this latter principle that Weld was able to prevent the passage in 1861 of the New Provinces Amendment Bill.

The strength of English political ideas and the fact that the educated and upper classes dominated politics explains the conception of the role of the state in mid-nineteenth century New Zealand. When he stated that "the first political right was security for life and property" C. W. Richmond was expounding a Lockeian concept which had many adherents in early New Zealand politics.² The failure

¹ cf Featherston, NZPD 1856 p 51, Fox, ibid p 347, C. W. Richmond, quoted in New Zealander 30/4/59, T. E. Gillies, reported in Otago Colonist 11/6/58.
² NZPD 1860 p 478.
of Government to pass a Native Offenders Bill in both 1856 and 1860 was a result of such sentiments. The state had the power to invade private rights. None doubted this view of the sovereignty of parliament. But such legal power was exercisable only when unavoidable - not as a part of a policy of economic adjustment or of nationalisation. Land was taken for public works, mostly roads - as in England land was taken to permit railway construction. ¹ Provision of roads, the opening of land to settlement and the provision of sea communications were major functions of Government.

Nevertheless protection of life and property was the essential function of the state. Hence a considerable proportion of statutes passed related to the courts, to debtors and creditors, and to the rights and privileges of private corporations. Even seizure of Maori lands in the mid 1860's was in accord with this view of the function of the state. Rebels' lands were taken - in theory at least - as a punitive measure against attacks on life and property. Moreover, Maori land was not the Maoris' "property" in a European sense until it had been ceded to the crown and brought under European land law.

It is a common assertion today that New Zealanders tend to rely too much on state activity to remedy communal ills. This is seen both as a cause and a product of the welfare state. One hundred years ago it would have been less easy to make such an assertion. Most of today's state activities were absent, most notably in social welfare.

¹ cf NZPD 1856-1858 (1858) p 516, 520, 1858-1860 p 1-2.
Towards Maoris state obligations were recognised: in assistance in the law courts and leniency in punishments, provision of hospitals and of hostelries in the towns, state aid for education, and restrictions on liquor distribution.¹

Towards Europeans, however, humanitarianism was tempered by laissez-faire attitudes. The state’s obligation to help the poor was recognised - but only at the subsistence level. The state provided hospital care for paupers and buried them. For the rest it went little further than forcing relatives of destitute persons to support them.² In part a laissez-faire policy was forced on government. When General Government and provincial governments drew on the same revenues, General Government was under constant pressure from representatives of provincial administrations to economise. Stafford was keen to establish a lunatic asylum (instead of locking lunatics up in the prisons) but provincialist desire to restrict General Government activities and expenditure was a factor in the rejection of a vote of £30,000 for an asylum proposed by Government in 1860.³

The amount of revenue which could be raised was limited. In 1844 Governor Fitzroy had tried unsuccessfully to impose an income tax.


³ cf NZPD 1860 p 451; cf Otago Colonist 26/11/58, 31/8/60.
His move was in part a recognition that New Zealand depended on trade for survival, and in part a result of Government's inability to prevent smuggling. (Recognition of these factors does not derogate from the more important factors of a drop in customs revenue and Maori resentment at paying excise duties.) Income tax, however, meant an invasion of privacy and required a large bureaucracy for collection. Except for the arms trade with Maoris smuggling decreased as a problem as the country became more settled. Whether for these or for other reasons, there was no suggestion in the late 1850's and early 1860's that Fitzroy's experiment should be repeated and that New Zealand should depart from standard colonial practice of financing government from customs revenue. In the 1850's customs duties were rationalised and the policy was to raise the necessary revenues from selected "luxury" items. Government could not be too harsh in its customs taxes. Trading interests were powerful and organised. Moreover New Zealand at this time was one of the very few societies in which Social Contract theory had any validity. Men had the choice as to whether they would become and whether they would remain members of the community. As was shown in particular by problems over militia service, Government action was probably as much limited by the fact that dissatisfied settlers could re-migrate as by any other single factor.

Not only were General Government's resources limited, but members

---

of Government adhered to laissez-faire beliefs. These beliefs were both the strength and the weakness of New Zealand's political life. They were strengths because they were allied to a politically healthy tiered system of representative institutions - so that at each level of administration citizens were involved in political activity. Laissez-faire implied decentralisation. Laissez-faire also implied a democratic, open society. After 1856 books could be imported free of duty and an extensive literature circulated in the colony. Newspapers could be sent free in the post. Except at Taranaki when it was under martial law, there was no censorship. The modern New Zealander might well admire, not only his ancestor's freedom of speech, but - at a more mundane level - his freedom to import goods from all parts of the globe. Government did little to control trade and industry. It neither attempted to keep wages in check nor, in the 1850's, assisted local industry by tariff protection. At this time New Zealand was not seeking economic self-sufficiency, but was a part of an Imperial free trade area, with a common currency.

The major defect of laissez-faire beliefs was the acceptance of social ills. No positive measures were taken to prevent poverty. As working people were better off in New Zealand than in the home country it is not surprising that there was no great consciousness of the problems of poverty. Although affected by trade fluctuations, labourers at most times could find work and usually obtained good pay.

1 cf Boraman p 203 f.
Those out of work, however, and widows and orphans may have been worse off in New Zealand than in Great Britain because the cost of living was higher.¹

Social security was provided by charity or individual thrift. The better off could take out expensive insurance policies and friendly societies flourished. The settlers brought their good works with them. Various benevolent and charitable societies were formed in the towns, and members of the upper classes were generous in their donations to worthy causes both local and overseas. They supported appeals for suffering Jews in Morocco, for distressed persons in Lancashire, and for the Church of England Mission Funds, as well as maintaining local benevolent societies and orphanages and contributing to the Taranaki Settlers Relief Fund. In addition, homoeopathic societies provided free medicine, Mechanics' Institutes provided lectures and libraries, there were Biblical Societies and the YMCA, and Total Abstinence Societies urged - without success - the cause of prohibition.

Particularly as the settlements were dispersed and isolated from each other, local community spirit was important - far more important than today. On the whole each town had to fend for itself. If citizens wanted a water supply a water company was formed, if a fire brigade, a volunteer fire brigade was formed, if library, they established an Athenaeum or Mechanics Institute, if defence, a volunteer rifle corps. The established churches of

¹ cf Appendix VII below p 382.
Great Britain, although assisted by land endowments, particularly in Canterbury and Otago, had to rely on voluntary contributions to an extent unknown in the home country. Although many of the New Zealand Presbyterians adhered to the Free Church of Scotland, as the Disruption had only occurred in 1843, they had had little experience of being members of a disestablished church by the time they emigrated. Education was something which it was recognised should be provided by government - in this case the provincial government - but much depended on the initiative and activity of the citizens. In their entertainments, also, the settlers were thrown onto their own resources. A treat like Klaer's Cani and Equi Drome in 1859-60, was rare - and expensive. (In Dunedin tickets sold at three to five shillings each). Otherwise there were lectures, musical concerts (by local music teachers, or perhaps by the local Choral or Harmonic Society), balls (accompanied by a military band in the case of Aucklanders) and, inevitably, cricket and horse races. It is from this period that the Agricultural and Horticultural shows derive.¹

The role of national organisations whether private or public was less important than it is today. National politics did not reach into the local communities with their provincial legislatures and executives. In elections for the House of Representatives personalities counted rather than parties. If, as in Auckland and Wellington, parties did count they were provincial parties whose differences had little bearing on national politics. Parliamentary

parties had little relation with movements outside the General Assembly. To retain office a Government had to campaign inside, not outside, the House of Representatives. Hence there was little concept of responsibility to the people. Only a portion of the people had chosen the members of the House who in turn chose - or had the power to oust - ministers. There was no conception of a "mandate" to carry out certain policies. Cabinet cohesion was weak. Ministers were not professional politicians supported by extra-parliamentary organisations but amateur politicians who were prepared to give up private affairs to carry on central administration. They tended each to run his own department only working together on a few specific issues - such as war measures - and in the House of Representatives. Even there, when they could not agree, they merely announced a free vote.

It was stated in the Introduction that the aim of this study was to see how the New Zealand political system worked, how the various parts fitted together, and whether the system was efficient and adequate for the needs of the colony in the period 1858 to 1861. It was assumed by the very nature of the enquiry that there was an ordered structure holding the polity together. In this thesis it is not only claimed that there was an effective political structure. It is also claimed that that structure was adequate to meet the demands made on it by the settlers.

Neither the men nor the institutions were adequate to cope with the gravest problem facing the colony, the establishment of a united multi-racial community. As far as the Maoris were concerned the
political system was completely defective. But the settlers were able to provide government for themselves. With its small government establishment, amateur politicians, and occasional meetings of parliament, New Zealand's political system of the late 1850's was adequate for the settlers because the role of government was limited and because the community was law-abiding. The settlements were too small to raise grave social problems. Private charity and meagre government assistance kept them in check. Moreover the colony was so recently established and so clearly expanding and progressing that men could not but feel that they were moving in the right direction. Discontented citizens, if able, had wide opportunities for self betterment, and once bettered, ample scope to express their grievances in the press and in the several representative institutions. This is not a climate in which social discontent wells up and is organised into a popular movement. There were no voices raised to question the limited range of government activities - and until that happened a few men at the capital could give the settlers the kind of central government which they wished to have.
APPENDICES

I. Occupations of members of the House of Representatives, 1856-1865

II. Superintendents in the General Assembly, 1853-1876

III. Members of the House of Representatives, 1856-1865: Age on first election to the House; Justices of the Peace.

IV. Members of the House of Representatives, 1856-1865: length of residence in New Zealand when first elected.

V. Divisions in the House of Representatives, 1860.

VI. Durations of ministries, 1856-1891; Ministers with portfolio, 1856-1864; Ministers in the Fox, Domett and Whitaker-Fox Governments, 1861-1864.

VII. Prices and wages.
Appendix I

Table D: Members of the House of Representatives in the second and third parliaments 1856-1865 *

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Province</th>
<th>totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land: sheep, stock, &amp;c., runs</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 5 1 6 1 11 9</td>
<td>North Isl 7</td>
</tr>
<tr>
<td></td>
<td>(1) (1)</td>
<td>South Isl 27</td>
</tr>
<tr>
<td>Farm</td>
<td>6 6 2 1</td>
<td>North Isl 12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>South Isl 3</td>
</tr>
<tr>
<td>Business &amp; commerce</td>
<td>4 1</td>
<td>Auck. 4 (1)</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Storekeeper, merchant, draper, auctioneer</td>
<td>7 2 4 1</td>
<td>Auck. 7 (1)</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Trading</td>
<td>2 1</td>
<td>Auck 13 (2)</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>Otago 6 (1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cant'y 4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Wn 4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ta 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Others 27</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1)</td>
</tr>
</tbody>
</table>

N.B. Figures in brackets relate to individuals who are counted under a differing category.

* cf above p 72 n /.
To enable a check to be made of the validity of the above Table, a list of the 123 members with the occupations assigned them is given below. Where possible the occupation given is that at time of first election. Inevitably some occupations are arbitrarily determined. Preference has been given to self-styled occupation (e.g. in jury lists) despite the distortions this involves. On the whole accuracy based on sources cited p72 n1 has been preferred to precision. Hence there are such vague descriptions as "landowner". As a general analysis of the composition of the House - as opposed to a biographical description of each member - the table gives a fair indication of the overall effect.

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Official</th>
<th>Doctor</th>
<th>Architect, surveyor, engineer</th>
<th>Law</th>
<th>Printing, books, newspaper, journalist</th>
<th>Army, ex-army, Royal Navy, ex-Indian service</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2</td>
<td>-</td>
<td>2 (1) 1 (1)</td>
<td>2</td>
<td>3 (1) 1* 1 2 2</td>
<td>2 (4)</td>
<td>1</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>1</td>
<td>- 1 - 1</td>
<td>4</td>
<td>2 1 1 1* 1 2 2</td>
<td>(4) (1) (9)</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>1*</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>1* 1 2 2</td>
<td>2 Auck. (4)</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1* 1 2 2</td>
<td>2 Otago (4)</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>32</td>
<td>11</td>
<td>18</td>
<td>4</td>
<td>14 1 22 21</td>
<td>123 123</td>
<td>123</td>
<td>123</td>
</tr>
</tbody>
</table>

* A former printer, probably now a sheep-farmer.  * Occupation unknown.

Note: To enable a check to be made of the validity of the above Table, a list of the 123 members with the occupations assigned them is given below. Where possible the occupation given is that at time of first election. Inevitably some occupations are arbitrarily determined. Preference has been given to self-styled occupation (e.g. in jury lists) despite the distortions this involves. On the whole accuracy based on sources cited p72 n1 has been preferred to precision. Hence there are such vague descriptions as "landowner". As a general analysis of the composition of the House - as opposed to a biographical description of each member - the table gives a fair indication of the overall effect.
### Table E: Occupations of Members of the House of Representatives in the Second and Third New Zealand Parliaments (1856-65)

#### Auckland Province

<table>
<thead>
<tr>
<th>Name</th>
<th>Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beckham, Thomas</td>
<td>Government official; ex-army</td>
</tr>
<tr>
<td>Brodie, Walter</td>
<td>merchant</td>
</tr>
<tr>
<td>Buckland, William</td>
<td>grazier and auctioneer</td>
</tr>
<tr>
<td>Butler, William</td>
<td>trader</td>
</tr>
<tr>
<td>Campbell, John Logan (Dr)</td>
<td>merchant and auctioneer</td>
</tr>
<tr>
<td>Carleton, Hugh</td>
<td>journalist</td>
</tr>
<tr>
<td>Clark, Archibald</td>
<td>draper</td>
</tr>
<tr>
<td>Creighton, Robert James</td>
<td>newspaper publication</td>
</tr>
<tr>
<td>Dalry, William Crush</td>
<td>trader</td>
</tr>
<tr>
<td>Farmer, James</td>
<td>farmer (with commercial interests)</td>
</tr>
<tr>
<td>Firth, Josiah Clifton</td>
<td>businessman</td>
</tr>
<tr>
<td>Forsaith, Thomas Spencer</td>
<td>draper</td>
</tr>
<tr>
<td>Graham, George</td>
<td>farmer (formerly of the Royal Engineers)</td>
</tr>
<tr>
<td>Graham, Robert</td>
<td>draper</td>
</tr>
<tr>
<td>Greenwood, Joseph</td>
<td>soldier</td>
</tr>
<tr>
<td>Hargreaves, Joseph</td>
<td>farmer</td>
</tr>
<tr>
<td>Haultain, Theodore Minet</td>
<td>surveyor (?)</td>
</tr>
<tr>
<td>Heale, Theophilus</td>
<td>merchant</td>
</tr>
<tr>
<td>Henderson, Thomas</td>
<td>saw-miller</td>
</tr>
<tr>
<td>Lee, Walter (Dr)</td>
<td>farmer</td>
</tr>
<tr>
<td>Mason, William</td>
<td>solicitor</td>
</tr>
<tr>
<td>Merriman, Frederick Ward</td>
<td>businessman (?)</td>
</tr>
<tr>
<td>Munro, John</td>
<td>former soldier, landowner</td>
</tr>
<tr>
<td>Nixon, Marmaduke George</td>
<td>apothecary, businessman</td>
</tr>
<tr>
<td>O'Neill, James</td>
<td>provincial official, farmer</td>
</tr>
<tr>
<td>O'Rourke, George Maurice</td>
<td>solicitor, businessman</td>
</tr>
<tr>
<td>Russell, Thomas</td>
<td>official; ex-army</td>
</tr>
<tr>
<td>Symonds, John Jermyn</td>
<td>former provincial official; businessman (?)</td>
</tr>
<tr>
<td>Taylor, Charles John</td>
<td>merchant</td>
</tr>
</tbody>
</table>

#### Taranaki Province

<table>
<thead>
<tr>
<th>Name</th>
<th>Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atkinson, Harry Albert</td>
<td>landowner</td>
</tr>
<tr>
<td>Brown, Charles</td>
<td>engineer,...</td>
</tr>
<tr>
<td>East, Alfred William</td>
<td>farmer</td>
</tr>
<tr>
<td>Gledhill, Francis Ullathorne</td>
<td>merchant and auctioneer</td>
</tr>
<tr>
<td>King, Thomas</td>
<td>farmer</td>
</tr>
<tr>
<td>King, William Cutfield</td>
<td>landowner</td>
</tr>
<tr>
<td>Lewthwaite, John</td>
<td>businessman</td>
</tr>
<tr>
<td>Richmond, Christopher William</td>
<td>barrister, farmer</td>
</tr>
<tr>
<td>Richmond, James Crowe</td>
<td>civil engineer; farmer</td>
</tr>
</tbody>
</table>
Turton, Henry Hanson
Watt, Isaac Newton

Wellington Province

Bell, Francis Dillon
Brandon, Alfred de Bathe
Bunny, Henry
Carter, Charles Rooking
Clifford, Charles
Featherston, Isaac Earl
Ferguson, James Burne
Fitzherbert, William (Dr)
Fox, William

Harrison, Henry Shafto
Ludlam, Alfred
Pharazyn, Robert
Renall, Alfred William
Revans, Samuel
Rhodes, William Barnard
Smith, John Valentine
Ward, Charles Dudley Robert
Taylor, William Waring

ex-minister of religion, official merchant

official (later Southland)
solicitor
solicitor
builder
runholder
doctor
merchant
merchant
barrister, landowner (New Zealand Company and provincial official)
provincial official, sheriff
landowner
landowner
miller
runholder (printer)
merchant
stockowner
barrister
merchant

Hawke's Bay Province

Colenso, William
Fitzgerald, Thomas Henry
Ormond, John Davies
Stark, Henry Powning

provincial official (?), ex-printer and catechist
surveyor (official)
sheepfarmer (former official)
merchant

Nelson Province

Curtis, Herbert Evelyn
Domett, Alfred
Elliott, Charles
Kelling, John Fedor Augustus
Miles, John George
Monro, David
Parker, Charles
Richmond, Andrew James
Saunders, Alfred
Stafford, Edward William
Travers, William Thomas Locke
Weld, Frederick Aloysius
Wells, William
Wemyss, James Balfour

trader
provincial official (barrister)
printer, newspaper publisher, bookseller
runholder
-
doctor, runholder (later a Marlborough member)
carpenter
station manager (former official)
farmer
landowner
solicitor
runholder (later a Canterbury member)
farmer
runholder
Marlborough Province

Eyes, William Henry
Monro, David

station manager
refer above, Nelson Province

Canterbury Province

Brittin, Dingley Askham
Brown, Charles Hunter
Cookson, Isaac Thomas
Cox, Alfred
Creyke, Alfred Richard
Cuff, John
FitzGerald, James Edward
Hall, George Williamson
Hall, John
Jollie, Edward
Jollie, Francis
Moorhouse, William Sefton
Ollivier, John
Packer, Richard
Rowley, Thomas
Sewell, Henry
Thomson, William
Walker, Lancelot
Ward, Crosbie
Weld, Frederick Aloysius
White, Augustus Edward
Wilkin, Robert
Wilson, John Cracroft

landowner (solicitor)
runholder
merchant
runholder
runholder
-
landowner (solicitor)
landowner (former English official)
surveyor (former N.Z. Company official)
lawyer (former N.Z. Company official)
barrister
farmer
storekeeper
landowner
solicitor (Canterbury Association official)
accountant and auctioneer
runholder, ex-army
newspaper writer, landowner
refer above, Nelson Province
merchant
landowner
landowner (former Indian official)

Otago Province

Baldwin, William
Brodie, George
Burns, Arthur John
Cargill, Edward Bowes
Cargill, John
Cargill, William Walter
DICK, Thomas
Fraser, Thomas
Gillies, Thomas Bannatyne
Haughton, Charles Edward Mallard
Jones, John Richard
Kettle, Charles Henry

runholder; ex-army
newspaper writer/proprietor; miner
landowner
trader
trader; runholder; ex-Royal Navy
retired soldier; (former Otago Association official)
merchant
runholder; ex-Indian army
lawyer (farmer)

Macandrew, James
McGlashan, Edward
Paterson, James
Reynolds, William Hunter

merchant
merchant
Richardson, John Larkins Cheese runholder; ex-Indian army
Taylor, John Parkin runholder
Vogel, Julius newspaper writer
Wayne, Frederick runholder

Southland Province

Bell, Francis Dillon refer above, Wellington province
Mantell, Walter Baldock Durant former official; landowner (?)
### Appendix II

#### Table F: Superintendents in the General Assembly 1853-76

<table>
<thead>
<tr>
<th>Region</th>
<th>Period</th>
<th>Superintendent</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auckland</td>
<td>1853-55</td>
<td>Wynyard</td>
<td>Officer Administering the Government</td>
</tr>
<tr>
<td></td>
<td>1855</td>
<td>Brown</td>
<td>MHR (member of the House of Representatives)*</td>
</tr>
<tr>
<td></td>
<td>1855-56</td>
<td>Campbell</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>1856-62</td>
<td>Williamson</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>1862-65</td>
<td>Graham</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>1865-67</td>
<td>Whitaker</td>
<td>became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1867-69</td>
<td>Williamson</td>
<td>MHR</td>
</tr>
<tr>
<td></td>
<td>1869-73</td>
<td>Gillies</td>
<td>became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1873-75</td>
<td>Williamson</td>
<td>MHR</td>
</tr>
<tr>
<td></td>
<td>1875-76</td>
<td>Grey</td>
<td>&quot;</td>
</tr>
<tr>
<td>Canterbury</td>
<td>1853-57</td>
<td>FitzGerald</td>
<td>MHR</td>
</tr>
<tr>
<td></td>
<td>1857-63</td>
<td>Moorhouse</td>
<td>ex-MHR; became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1863-66</td>
<td>Bealey</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>1866-68</td>
<td>Moorhouse</td>
<td>MHR</td>
</tr>
<tr>
<td></td>
<td>1868-76</td>
<td>Rolleston</td>
<td>became MHR while Superintendent</td>
</tr>
<tr>
<td>Nelson</td>
<td>1853-56</td>
<td>Stafford</td>
<td>became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1856-65</td>
<td>Robinson</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>1865-67</td>
<td>Saunders</td>
<td>- (ex-MHR)</td>
</tr>
<tr>
<td></td>
<td>1867-76</td>
<td>Curtis</td>
<td>MHR</td>
</tr>
<tr>
<td>Otago</td>
<td>1853-59</td>
<td>Cargill</td>
<td>Became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1859-61</td>
<td>Macandrew</td>
<td>MHR (until November 1860)</td>
</tr>
<tr>
<td></td>
<td>1861-63</td>
<td>Richardson</td>
<td>Became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1863-65</td>
<td>Harris</td>
<td>MLC (member of the Legislative Council) (until December 1864)</td>
</tr>
<tr>
<td></td>
<td>1865-67</td>
<td>Dick</td>
<td>ex-MHR; became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1867-76</td>
<td>Macandrew</td>
<td>MHR</td>
</tr>
<tr>
<td>Taranaki</td>
<td>1853-56</td>
<td>Brown</td>
<td>became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1857-61</td>
<td>Cutfield</td>
<td>ex-MLC; became MLC while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1861-65</td>
<td>Brown</td>
<td>ex-MHR; became MHR while Superintendent</td>
</tr>
<tr>
<td></td>
<td>1865-69</td>
<td>Richmond</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>1869-76</td>
<td>Carrington</td>
<td>became MHR while Superintendent</td>
</tr>
</tbody>
</table>

* Superintendents are described as MHR if they were elected to the House at the same time as or shortly after becoming Superintendent.
Wellington
- 1853-71 Featherston MHR
1871-76 Fitzherbert MHR

THE NEW PROVINCES:

Hawke's Bay
1859-61 Fitzgerald became MHR while Superintendent
1861-62 Carter -
1863-69 McLean became MHR while Superintendent
1869-76 Crmond MHR

Marlborough
1860-61 Adams -
1861-62 Baillie MLC
1863-64 Carter -
1864-65 Seymour - (appointed MLC one month before ceased being Superintendent)
1865-70 Eyes MHR
1870-76 Seymour MLC; became MHR while Superintendent

Southland
1861-64 Neinzies MLC
1865-69 Taylor -; ex-MHR
1869-70 Wood MHR

Westland
Of the five Chairmen of the Westland County, two, Bonar and Lahmann, were Legislative Councillors, and one, Hall, was a MHR; Bonar was also the first and only Superintendent of the Westland Province.
### Table G: Members of the House of Representatives in the Second and Third New Zealand Parliaments, 1856-65

#### Age on first election to the House:

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Members</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-25</td>
<td>x</td>
<td>1</td>
</tr>
<tr>
<td>26-30</td>
<td>xxxxxxx</td>
<td>11</td>
</tr>
<tr>
<td>31-35</td>
<td>xxxxxxx</td>
<td>26</td>
</tr>
<tr>
<td>36-40</td>
<td>xxxxxxx</td>
<td>22</td>
</tr>
<tr>
<td>41-45</td>
<td>xxxxxxx</td>
<td>31</td>
</tr>
<tr>
<td>46-50</td>
<td>xxxxxxx</td>
<td>11</td>
</tr>
<tr>
<td>51-55</td>
<td>xxxxxxx</td>
<td>7</td>
</tr>
<tr>
<td>71</td>
<td>x</td>
<td>1</td>
</tr>
<tr>
<td>unknown</td>
<td>xxxxxxx</td>
<td>13</td>
</tr>
</tbody>
</table>

Total: 123
### Table H

Justices of the Peace

<table>
<thead>
<tr>
<th>Province</th>
<th>Members who were J.P's when they became J.P's</th>
<th>Members who had not been appointed J.P's by the close of 1865</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auckland</td>
<td>xxxxxxxxxx</td>
<td>xxxxxxxxxx</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>xxxxxxxx</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taranaki</td>
<td>xxxx</td>
<td>xxx</td>
<td>11</td>
</tr>
<tr>
<td>Wellington</td>
<td>xxxxxxxxxx</td>
<td>xxx</td>
<td>18</td>
</tr>
<tr>
<td>Hawke's Bay</td>
<td>x</td>
<td>x</td>
<td>4</td>
</tr>
<tr>
<td>Nelson</td>
<td>xxxxxxxx</td>
<td>x</td>
<td>14</td>
</tr>
<tr>
<td>Marlborough</td>
<td>x</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Canterbury</td>
<td>xxxxxxxxxx</td>
<td>xxx</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>xxxxxx</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Otago</td>
<td>xxxxxxxxxx</td>
<td>xxxxxxxx</td>
<td>20</td>
</tr>
<tr>
<td>Southland</td>
<td>x</td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

|                  | 64 | 30 | 29 | 123 |
Appendix IV

Table J: Members of the House of Representatives in the Second and Third New Zealand Parliaments, 1856 to 1865

Length of Residence in New Zealand

The number of years members had resided in the colony when they were first elected to the House of Representatives. (N.B. This table is based on the date of arrival in New Zealand and does not take into account absences from the colony in the years before election.)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5 &amp; under</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>7</td>
<td>9</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>10 &quot;</td>
<td>8</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>9</td>
<td>7</td>
<td>0</td>
<td>32</td>
</tr>
<tr>
<td>15 &quot;</td>
<td>10</td>
<td>4</td>
<td>9</td>
<td>1</td>
<td>5</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>31</td>
</tr>
<tr>
<td>20 &quot;</td>
<td>7</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>25 &quot;</td>
<td>5</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>118</td>
</tr>
<tr>
<td>above 25</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>unknown</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
</tbody>
</table>

* Where members represented several provinces they are each time grouped under that province from which they were first returned. This explains the smallness of the numbers for Marlborough and Southland.
Appendix V

Divisions in the House of Representatives, 1860

Note: The divisions are numbered as they occurred in the Parliamentary Debates; nos 13, 16, 34 and 54 were in the Legislative Council.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Date and Voting Figures</th>
<th>Majority for Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Native Affairs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Taranaki</td>
<td>7.8.60.</td>
<td>-</td>
</tr>
<tr>
<td>2) war</td>
<td>16.8.60. 19:4*</td>
<td>15 (most of oppn abstained)</td>
</tr>
<tr>
<td>3) inquiry</td>
<td>16.8.60. 16:2 (no hse)</td>
<td>14</td>
</tr>
<tr>
<td>4) Taranaki War</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 ) &quot; &quot;</td>
<td>17.8.60. 11:14</td>
<td>-3</td>
</tr>
<tr>
<td>6) Native Affairs resolutions (committee)</td>
<td>26:6</td>
<td>20</td>
</tr>
<tr>
<td>9 )</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10) Administration of Native affairs</td>
<td>22.8.60. 22:10</td>
<td>12</td>
</tr>
<tr>
<td>11)</td>
<td>20:6</td>
<td>14 (abstentions)</td>
</tr>
<tr>
<td>14) Select Committee on Native Offenders Bill</td>
<td>28.8.60. 18:17*</td>
<td>1</td>
</tr>
<tr>
<td>17) Native Affairs Resolutions</td>
<td>7.9.60. 12:14</td>
<td>-2</td>
</tr>
<tr>
<td>18) Native Offenders Bill (ministerial question)</td>
<td>11.9.60. 19:17*</td>
<td>2</td>
</tr>
<tr>
<td>19) Native Affairs resolutions</td>
<td>12.9.60. 20:11</td>
<td>9</td>
</tr>
<tr>
<td>22) Native Offenders Bill, committal</td>
<td>25.9.60. 18:18</td>
<td>0</td>
</tr>
<tr>
<td>49) Arms Bill</td>
<td>25.10.60. 20:15*</td>
<td>5</td>
</tr>
<tr>
<td>53) Native Council Bill</td>
<td>31.10.60.</td>
<td>-</td>
</tr>
</tbody>
</table>

Land Purchase Department:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>2.8.60.</td>
</tr>
<tr>
<td>52</td>
<td>30.10.60. 19:10*</td>
</tr>
<tr>
<td>57</td>
<td>3.11.60.</td>
</tr>
</tbody>
</table>

TOTAL: 19
<table>
<thead>
<tr>
<th>Resolution</th>
<th>Date</th>
<th>Time</th>
<th>Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provincialism</td>
<td>21.8.60</td>
<td>17:17</td>
<td>0</td>
</tr>
<tr>
<td>7 Native Affairs resolutions (a question of provincial administration)</td>
<td>20 Land orders for Taranaki emigrants (similar question)</td>
<td>18.9.60</td>
<td>14:15</td>
</tr>
<tr>
<td>20 Land orders for Taranaki emigrants (similar question)</td>
<td>21 Surplus revenues for provinces</td>
<td>20.9.60</td>
<td>17:19</td>
</tr>
<tr>
<td>21 Surplus revenues for provinces</td>
<td>23 North Island land fund one-sixths</td>
<td>26.9.60</td>
<td>13:21</td>
</tr>
<tr>
<td>23 North Island land fund one-sixths</td>
<td>30 &quot; &quot; &quot; &quot;</td>
<td>28.9.60</td>
<td>1:11</td>
</tr>
<tr>
<td>30 &quot; &quot; &quot; &quot;</td>
<td>31 &quot; &quot; &quot; &quot;</td>
<td>28.9.60</td>
<td>10:21</td>
</tr>
<tr>
<td>31 &quot; &quot; &quot; &quot;</td>
<td>33 Appointment of district land registrar</td>
<td>2.10.60</td>
<td>20:6</td>
</tr>
<tr>
<td>33 Appointment of district land registrar</td>
<td>45 New Provinces Act Amendment Bill second reading</td>
<td>18.10.60</td>
<td>17:16*</td>
</tr>
<tr>
<td>45 New Provinces Act Amendment Bill second reading</td>
<td>45 Land Fund one-sixths</td>
<td>23.10.60</td>
<td>12:20</td>
</tr>
<tr>
<td>46 Land Fund one-sixths</td>
<td>Apportionment of Provincial debts:</td>
<td>9.10.60</td>
<td>19:13*</td>
</tr>
<tr>
<td>41 Wellington and Hawke's Bay ...</td>
<td>9.10.60</td>
<td>18:13</td>
<td>5</td>
</tr>
<tr>
<td>42 Ditto</td>
<td>42 Ditto</td>
<td>9.10.60</td>
<td>18:13</td>
</tr>
<tr>
<td>Representation and Franchise</td>
<td>24 to 29 inc. Representation Bill, in committee</td>
<td>27.9.60</td>
<td>-</td>
</tr>
<tr>
<td>24 to 29 inc. Representation Bill, in committee</td>
<td>32 ditto</td>
<td>2.10.60</td>
<td>-</td>
</tr>
<tr>
<td>32 ditto</td>
<td>50 Miners' Franchise Bill, second reading</td>
<td>26.10.60</td>
<td>21:3</td>
</tr>
<tr>
<td>50 Miners' Franchise Bill, second reading</td>
<td>TOTAL: 12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL: 12</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL: 8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economy</td>
<td>Committee of Supply</td>
<td>4.10.60.</td>
<td>18:15</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------</td>
<td>----------</td>
<td>-------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>22:10</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>21:13</td>
<td>8</td>
</tr>
<tr>
<td>38 The same</td>
<td></td>
<td>5.10.60</td>
<td>12:7</td>
</tr>
<tr>
<td>39 &quot; &quot;</td>
<td></td>
<td>&quot;</td>
<td></td>
</tr>
<tr>
<td>56 Pension for Judge Stephen's widow</td>
<td></td>
<td>2.11.60</td>
<td></td>
</tr>
<tr>
<td>TOTAL:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Miscellaneous</th>
<th>Flax Patent Bill</th>
<th>23.8.60.</th>
<th>-</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 Petition of Davis &amp; Yates</td>
<td></td>
<td>28.8.60.</td>
<td>-</td>
</tr>
<tr>
<td>43 Order of business</td>
<td></td>
<td>10.10.60.</td>
<td>26:7</td>
</tr>
<tr>
<td>(this division is interesting as it was held on the motion of Fox)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>44 Order of business</td>
<td></td>
<td>11.10.60.</td>
<td>17:11*</td>
</tr>
<tr>
<td>47 Mail route</td>
<td></td>
<td>24.10.60.</td>
<td>-</td>
</tr>
<tr>
<td>48 Taranaki Settlers Relief Bill in committee</td>
<td></td>
<td>25.10.60.</td>
<td>13:10</td>
</tr>
<tr>
<td>55 Adjournment</td>
<td></td>
<td>1.11.60.</td>
<td>-</td>
</tr>
<tr>
<td>TOTAL:</td>
<td></td>
<td>7</td>
<td></td>
</tr>
</tbody>
</table>

TOTAL number of divisions in the House: 52
Government defeats noted: 7

N.B. Divisions which best show party combinations are marked with an asterisk. Divisions left blank are atypical, as they cut across normal party affiliations or because there was a combination of wings of the two parties against moderates.
### Table K: Duration of ministries, 1856-1891

<table>
<thead>
<tr>
<th>Years</th>
<th>Months</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>1856</td>
<td>Sewell</td>
<td>13</td>
</tr>
<tr>
<td>1856</td>
<td>Fox</td>
<td>13</td>
</tr>
<tr>
<td>1856-61</td>
<td>Stafford</td>
<td>5</td>
</tr>
<tr>
<td>1856-62</td>
<td>Fox</td>
<td>1</td>
</tr>
<tr>
<td>1862-63</td>
<td>Domett</td>
<td>3</td>
</tr>
<tr>
<td>1863-64</td>
<td>Whitaker-Fox</td>
<td>3</td>
</tr>
<tr>
<td>1864-65</td>
<td>Weld</td>
<td>3</td>
</tr>
<tr>
<td>1865-69</td>
<td>Stafford</td>
<td>3</td>
</tr>
<tr>
<td>1869-72</td>
<td>Fox</td>
<td>3</td>
</tr>
<tr>
<td>1872</td>
<td>Stafford</td>
<td>1</td>
</tr>
<tr>
<td>1872-73</td>
<td>Waterhouse</td>
<td>5</td>
</tr>
<tr>
<td>1873</td>
<td>Fox</td>
<td>5</td>
</tr>
<tr>
<td>1875-76</td>
<td>Vogel</td>
<td>5</td>
</tr>
<tr>
<td>1876</td>
<td>Vogel</td>
<td>2</td>
</tr>
<tr>
<td>1876-77</td>
<td>Atkinson</td>
<td>2</td>
</tr>
<tr>
<td>1877-79</td>
<td>Grey</td>
<td>1</td>
</tr>
<tr>
<td>1879-82</td>
<td>Hall</td>
<td>1</td>
</tr>
<tr>
<td>1882-83</td>
<td>Whitaker-1</td>
<td>4</td>
</tr>
<tr>
<td>1883-84</td>
<td>Atkinson</td>
<td>4</td>
</tr>
<tr>
<td>1884</td>
<td>Stout-Vogel</td>
<td>3</td>
</tr>
<tr>
<td>1884</td>
<td>Atkinson</td>
<td>3</td>
</tr>
<tr>
<td>1884-87</td>
<td>Stout-Vogel</td>
<td>3</td>
</tr>
<tr>
<td>1887-91</td>
<td>Atkinson</td>
<td>3</td>
</tr>
</tbody>
</table>
## Appendix VI

### Table L: Ministers with portfolio, 1856-1864

<table>
<thead>
<tr>
<th>Name</th>
<th>Ministry</th>
<th>Total period in office</th>
<th>Minister with portfolio</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Years</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>months</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>days</td>
<td></td>
</tr>
<tr>
<td>SEWELL</td>
<td>FitzGerald 1854</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sewell 1856</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stafford 1856</td>
<td>5 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1859</td>
<td>2 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fox 1861-62</td>
<td>1 0 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Weld 1864-65</td>
<td>10 22</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fox 1870-71</td>
<td>1 4 7</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stafford 1872</td>
<td>1 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 11 20 4 1 28</td>
<td></td>
</tr>
<tr>
<td>STAFFORD</td>
<td>Stafford 1856</td>
<td>4 8 8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stafford 1865-66</td>
<td>10 8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1866-69</td>
<td>2 10 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stafford 1872</td>
<td>1 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>8 5 21 8 10 23</td>
<td></td>
</tr>
<tr>
<td>FOX</td>
<td>Fox 1856</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fox 1861-62</td>
<td>1 0 25</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Whitaker-Fox 1863-64</td>
<td>1 0 24</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fox 1869-72</td>
<td>3 2 13</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fox 1873</td>
<td>1 5</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 5 20 5 5 20</td>
<td></td>
</tr>
<tr>
<td>WELD</td>
<td>FitzGerald 1854</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stafford 1860</td>
<td>8 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Weld 1864</td>
<td>10 22</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 6 24 1 11 26</td>
<td></td>
</tr>
<tr>
<td>WHITAKER</td>
<td>Sewell 1856</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stafford 1856-61</td>
<td>5 1 10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Whitaker-Fox 1863-4</td>
<td>1 0 24</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Atkinson 1876-77</td>
<td>1 1 12</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hall &amp; Whitaker 1879-83</td>
<td>3 11 17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Atkinson 1887-91</td>
<td>3 3 13</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>14 6 16 14 7 18</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Office Years</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>C.W. Richmond</td>
<td>Stafford 1856-61</td>
<td>5 1 10 5 1 10</td>
<td></td>
</tr>
<tr>
<td>Tancred</td>
<td>Sewell 1856, Stafford 1858-61</td>
<td>2 10 23 3 6 25</td>
<td></td>
</tr>
<tr>
<td>Domett</td>
<td>Domett 1862-63</td>
<td>1 2 24 1 2 24</td>
<td></td>
</tr>
<tr>
<td>Bell</td>
<td>FitzGerald 1854, Sewell 1856, Domett 1862-63</td>
<td>1 2 24</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 3 7 3 5 19</td>
<td></td>
</tr>
<tr>
<td>Mantell</td>
<td>Fox 1861, Domett 1862, Weld 1864-65</td>
<td>5 6 15 7 11</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 1 2 2 4 6</td>
<td></td>
</tr>
<tr>
<td>Wood</td>
<td>Fox 1861, Domett 1862, Whitaker-Fox 1863-64</td>
<td>1 0 25 1 2 9 1 0 24</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 3 28 3 3 28</td>
<td></td>
</tr>
<tr>
<td>Ward</td>
<td>Fox 1861-62, Domett 1862-63</td>
<td>1 0 4 1 2 9</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 2 13 2 2 13</td>
<td></td>
</tr>
<tr>
<td>Gillies</td>
<td>Domett 1862</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Whitaker-Fox 1863-64, Stafford 1872</td>
<td>1 0 24 1 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 2 12 1 2 12</td>
<td></td>
</tr>
<tr>
<td>Russell</td>
<td>Domett 1862-63</td>
<td>3 8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Whitaker-Fox 1863-64</td>
<td>1 0 24</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 4 2 2 3 18</td>
<td></td>
</tr>
<tr>
<td>Fitzherbert</td>
<td>Weld 1864-65</td>
<td>10 22</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stafford 1866-69</td>
<td>2 10 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stafford 1872</td>
<td>1 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 9 27 3 9 27</td>
<td></td>
</tr>
<tr>
<td>Richardson</td>
<td>Weld 1864-65</td>
<td>10 22 3 8 26</td>
<td></td>
</tr>
<tr>
<td>ATKINSON</td>
<td>Weld 1864-65</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>--------------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>Vogel et seq 1873-77</td>
<td>3</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Hall et seq 1879-84</td>
<td>4</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>Atkinson 1879-91</td>
<td>3</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>1</td>
<td>23</td>
</tr>
</tbody>
</table>

380
Appendix VI

Table M: Ministers in the Fox, Domett and Whitaker-Fox Governments, 1861-1864

<table>
<thead>
<tr>
<th>Previous ministerial experience</th>
<th>Subsequent ministerial experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>with portfolio</td>
<td>without portfolio</td>
</tr>
</tbody>
</table>

**Ministers with portfolio**

<table>
<thead>
<tr>
<th>Name</th>
<th>Previous Experience</th>
<th>Subsequent Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>H. Sewell</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>F. Whitaker</td>
<td></td>
<td></td>
</tr>
<tr>
<td>W. Fox</td>
<td></td>
<td></td>
</tr>
<tr>
<td>F.D. Bell</td>
<td>13 days</td>
<td>2 years</td>
</tr>
<tr>
<td>R.G. Wood</td>
<td></td>
<td></td>
</tr>
<tr>
<td>W.B.D. Mantell</td>
<td></td>
<td>7 months</td>
</tr>
<tr>
<td>C. Ward</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Domett</td>
<td></td>
<td></td>
</tr>
<tr>
<td>T.B. Gillies</td>
<td></td>
<td>1 month</td>
</tr>
<tr>
<td>T. Russell</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Ministers without portfolio**

<table>
<thead>
<tr>
<th>Name</th>
<th>Previous Experience</th>
<th>Subsequent Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. Williamson</td>
<td></td>
<td></td>
</tr>
<tr>
<td>T. Henderson</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. Pollen MLC</td>
<td></td>
<td>6½ years</td>
</tr>
<tr>
<td>H.J. Tancred MLC</td>
<td>2 years</td>
<td>1 month</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10 months</td>
</tr>
</tbody>
</table>
Appendix VII

Wages and prices

In 1861 labourers made up about 40% of the working population. There were occasional examples of meetings to protest at the inadequacy of wages paid, but on the whole conditions appear to have been satisfactory for most workers. At this time there were no organised unions of workers except craft guilds. No evidence has been found in the course of this study to support Professor Sinclair's assertion that "combinations" of workers were regarded as secret, violent, illegal or wicked. (The Maori Land League p 40.) The settler leaders themselves had formed combinations and supported Chartist views in the early 1850's.

There were not infrequent press references to New Zealand being a poor man's country and to the high wages being paid (e.g. Otago Witness 15/5/58, 26/6/58), but wages fluctuated in accordance with supply and demand. Labourers were paid between five shillings and seven shillings per day for a six day week. As was the case with labourers sent by the New Zealand Company to its first settlements, the glowing statements of emigration agents sometimes led to discontent when workers reached the colony. J.E. Fitzgerald, Canterbury's agent in England in the late 1850's, was very unpopular in Christchurch in 1860 for having promised men ten shillings a day. In December 1860 they received only five shillings. (Fitzgerald/H.S.Selfe 7/12/60, Selfe MSS.) At a meeting of immigrants in Dunedin in July 1858, it
was stated that they had been promised seven shillings per day by the Otago agent. The wage had been reduced to six shillings and now was five shillings. It was quite impossible, the immigrants claimed, to support themselves and families on five shillings a day. (Otago Witness 31/7/58.) On the other hand, in September 1858 the Otago Colonist reported that a road contractor was unable to obtain sufficient labour at six shillings and sixpence per day. (Colonist 10/9/58.) In May 1859 the Otago Witness reported that after a temporary reduction in wages due to an influx of immigrants, wages were back to their old rates of six shillings a day. (Witness 21/5/59; cf ibid 16/7/59, 16/6/60, Colonist 21/6/60.) In 1860 the Marlborough provincial government announced that it would pay labourers five shillings a day. The same rate was then being paid in Dunedin. (Colonist 13/7/60, Witness 13/10/60.)

Farm servants received £40 to £50 a year plus rations. Mechanics were paid ten to twelve shillings a day. Apart from mechanics' wages, it was claimed that wage rates were higher in New Zealand than in Australia. (Richmond-Atkinson Papers Vol 1 p 487, Otago Witness 21/5/59 & 17/9/59.)

The value of the wages paid was a matter of dispute. It was generally agreed that prices in New Zealand were exceptionally high. (Canterbury report) (cf Nelson Examiner 15/9/63, Otago Witness 31/7/58.) In 1865 J.E. Fitzgerald informed H.S. Selfe that Christchurch was "the most expensive town in the whole world." (Fitzgerald/Selfe 15/1/65, Selfe MSS.) Such statements, however, should be treated with
caution. Rents for a fair-sized house were high, and to obtain servants a gentleman had to pay high wages. (cf W.J. Hamilton/ H.S. Selfe 20/7/66, Selfe MSS.) Such costs of course did not affect labourers.

From the rations given to hospital attendants, paupers or Maoris on road parties, it appears that a basic diet consisted of bread, meat, sugar, tea, potatoes or rice. (cf New Munster Gazette 9/10/47, New Ulster Gazette 16/6/48 & 24/3/48.) Prices varied. In an advertisement in the Otago Colonist of 14 January 1859, tea was quoted at three shillings a pound, and sugar at fivepence halfpenny to eightpence a pound. At Auckland at the same time, bread at the market was selling at sixpence for a two pound loaf, butter for one shilling and sixpence a pound, and eggs at one shilling and ninepence a dozen. The Otago Witness of 3 November 1860 quoted slightly higher prices for the Dunedin market. It also quoted beef and mutton at sixpence to eightpence a pound, and new potatoes at ten shillings to fourteen shillings a hundredweight, and rice at fourpence a pound. Milk was not readily obtainable in Dunedin. At Auckland it cost fivepence a quart (New Zealander 7/1/60).

Clothes, particularly boots, were more expensive than in England. In October 1860 a Dunedin firm advertised at "unheard of low prices": Bedford cord trousers at £1/1/0 to £1/7/6 a pair, suits at £3 to £4/10/0, Gentlemen's Regatta shirts at 3/6 to 5/6, and shoes ranged from leather shoes with double soles at 5/6 to 6/9 a pair to calf Wellingtons at £1/1/0 to £1/7/6 a pair. (Otago Colonist 5/10/60.)
Despite customs duties liquor appears comparatively cheap, particularly spirits. The Union Hotel Auckland advertised in the *New Zealander* of 9 May 1860 that it was selling ale and stout at 10d a bottle and whisky, gin, port wine, golden sherry and pale brandy at 3s a bottle. One final incidental point may be noted. Postage on mail overseas by ship, if more efficiently handled than today, was absolutely more expensive, and coastal sea fares were also more expensive.

It is readily apparent that there is no easy method of determining the comparative value of wages a hundred years ago and today. In particular it would appear unwise to multiply prices and wages by some arbitrary figure and expect to obtain a result which has any validity.