

THE COUNCIL OF ADVICE AT THE CAPE OF GOOD HOPE,
1825 - 1834

A STUDY IN COLONIAL GOVERNMENT

by

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Preface

The Council of Advice first emerged as a constitutional device for colonial rule in colonies captured by Britain during the wars against France between 1793 and 1814. The search for some new form of government for colonies of conquest had been necessitated by the difficulty generally experienced in assimilating formerly foreign colonies into the traditional British pattern of representation. Experience in Quebec between 1764 and 1791 had led to the gradual recognition of conciliar government as a workable substitute to bridge the gap between military rule and the grant of representative institutions. Between 1794 when a Council of Advice was first introduced in the island of San Domingo, and 1825, when the Cape of Good Hope was granted a council of this type, the composition, function and scope of such councils was gradually defined and elaborated. There was a continual interplay of precedent and example from one colony to another, facilitated by the growth of the Colonial Office in London during the early decades of the 19th Century. Councils of Advice were also introduced into some atypical colonies of settlement, notably New South Wales, where the particular circumstances of the colony gave rise to the further development of the conciliar pattern of government, influenced by the practical experience in Quebec prior to 1791.

Thus the Council of Advice at the Cape of Good Hope from 1825-1834 was but one example of an instrument of government which was being widely used in the British empire, and which was still developing in form and function during the period under consideration. The Council of Advice at the Cape reflects this fluidity. The composition of the council was altered on several occasions during the nine years of its existence; the degree of independence allowed to council members was a question which arose on several occasions,

especially in relation to discussion of policy decisions taken in London; moreover, the council met at the discretion of the governor and four different men held this office during the period 1825-34, each with his own individual idea of the function and value of a council of advice.

It was intended by the secretary of state in London that all matters of government should be discussed by the governor with his council of advice, although executive and legislative authority were still vested solely in him. Council business therefore covered a very wide range of problems and concerns. These can be divided broadly into matters which arose as a result of British imperial policy, which was moving in the direction of uniformity on many important issues during the period under consideration, and those matters which arose from local situations. The two were not entirely separate, for the implementation of British policy gave rise on occasion to unexpected developments in the colony, and even to protest and resistance, which in turn had to be handled by the Council. While at the same time local concerns and the measures that were passed in response to them came under the scrutiny of the Colonial Office and on occasion had to be amended in conformity with current trends of political thought in Britain itself. Further, the British government had appointed a Commission of Inquiry in 1823 to visit the colony and conduct a thorough examination of its affairs. The Council of Advice then became instrumental in implementing recommendations made by the commissioners of inquiry.

Apart from an M.A. Thesis presented to the University of Stellenbosch in 1936, research on the Council of Advice at the Cape of Good Hope has tended to be subordinate, or even peripheral, to research on other topics of a general or particular theme. This investigation concentrates on the Council of Advice itself, as an instrument of government

at the Cape during the period 1825-34. In this study three broad areas of concern have been examined.

Firstly, an attempt has been made to place the establishment of the Council of Advice at the Cape of Good Hope into the wider context of constitutional developments in British colonies of conquest between 1760 and 1830. For this purpose an examination has been made of the constitutional anomalies in Quebec during the period 1760 to 1791, when a legitimate but atypical form of conciliar government first developed in a colony of conquest. This is followed by an account of the establishment of councils of advice in the West Indies and other colonies captured by Britain between 1793 and 1814, with particular reference to the immediate background to the establishment of such a council at the Cape of Good Hope in 1825. A description is also given of the way in which the conciliar pattern was modified in the atypical colony of settlement in New South Wales during the period 1823-1828. This led to the two-tier conciliar system of legislative and executive councils which was subsequently found to be applicable elsewhere.

Secondly, an analysis has been made of the structure and activity of the Council of Advice at the Cape. Special emphasis has been placed on the part played by each successive governor in shaping and directing the role of the council in ways which made it a more effective instrument of government than its narrow political base might seem to imply. But the work of the Council of Advice was determined not only by the influence of its respective members, notably the governor, but also by the complexity and diversity of the problems encountered in the colony during this time. These had also been the particular concern of the Commission of Inquiry which had arrived at Cape Town in 1823. There was indeed some overlap of function between the council of Advice and the Commission of Inquiry and it has been considered

necessary to examine the relationship between these two bodies in further illustration of the structure and activity of the Council itself.

Thirdly, an attempt has been made to examine in detail some of the crucial issues considered by the Council of Advice between 1825 and 1834, and to see the effect within the colony of measures passed with the advice of the council. For this purpose two aspects of change have been selected which were founded upon imperial policy emanating from London, namely the introduction of a British sterling currency into the colony and the implementation at the Cape of the British policy of slave amelioration and emancipation. Three aspects of change have been selected which reflect questions that arose mainly, though not exclusively, out of local events and circumstances, namely; (i) general matters of trade within the colony; (ii) the introduction of new labour regulations which made provision for the first time for the legal employment of tribesmen from beyond the colony's boundaries and which controlled the relationship between white employers and the existing labour force of Hottentots and other free persons of colour; and (iii) the local demand for a free press.

Agitation for a free press had begun in 1823 prior to the establishment of a Council of Advice at the Cape. Indeed, events connected with the press had provided the immediate reason for granting a council in 1825. The two issues of a free press and the form of government were thus closely inter-related. In the concluding chapter of this study the link between the demand for a free press and the demand for further constitutional reform has been examined, and it is shown that the independent newspapers of the colony did not contribute to the credibility or good reputation of the Council of Advice within the colony. On the contrary the tendency was for the press to criticise and condemn both the structure and the activity of the council, and to encourage the growth of a local movement which demanded representative

government. In the event however, the Colonial Office in London decided in 1833 to introduce the dual conciliar pattern, which superseded the Council of Advice in January 1834. In this decision the pace and direction of constitutional change were determined by the broad patterns of imperial development emerging through the experience and experiments of a number of other colonies, rather than by the demands of the local inhabitants for representative government, which were considered in London to be premature.

Abbreviations Used in Footnotes

- A.C. - Papers of the Council of Advice in the Cape Archives.
- A.G. - Papers of the attorney general's office in the Cape Archives.
- Arndt, Banking and Currency - Banking and Currency Development in South Africa, 1652-1927 (Cape Town, 1928).
- A.Y. - Papers received from the district of Albany in the Cape Archives.
- A.Y.B. - Archives Year Book for South African History.
- Bird, Cape, 1822 - State of the Cape of Good Hope in 1822 (London, 1823 : Facsimile Reprint, Cape Town, 1966).
- Blue Book - Blue Book for the colony of the Cape of Good Hope.
- C.A. - Cape Archives, Queen Victoria Street, Cape Town.
- C.O. - Colonial Office Papers in the Public Records Office, London, except when preceded by 'C.A.' in which case it refers to the Colonial Office Papers in the Cape Archives.
- Chalmers, History of Currency - A History of Currency in the British Colonies (London, 1893).
- C.H.B.E. - The Cambridge History of the British Empire.
- Gazette - Cape Town Gazette and African Advertiser August 1800 to July 1826.
Cape of Good Hope Government Gazette, 1826 to 1854.
- Govt. Advt. - Government Advertisement.
- Govt. Proc. - Government Proclamation.
- G.H. - Government House papers in the Cape Archives.
- G.R. - Graaff Reinet papers in the Cape Archives.

- Hockly, British Settlers - The Story of the British Settlers of 1820 in South Africa, 2nd Ed. (Cape Town, 1966).
- H.S.A.N.Z. - Historical Studies, Australia and New Zealand.
- J.S.A.A.A.S. - Journal of the South African Association for the Advancement of Science.
- Keith, First British Empire - Constitutional History of the First British Empire (Oxford, 1930).
- L.G. - Papers of the commissioner general in the Cape Archives.
- Manning, British Colonial Government - British Colonial Government After the American Revolution, 1782-1820 (Yale, 1933).
- Murray, West Indies - The West Indies and the Development of Colonial Government, 1801-1834 (Oxford, 1965).
- Neatby, Quebec - Quebec, The Revolutionary Age (London, 1966).
- N.S.W. - New South Wales.
- O.H.S.A. - The Oxford History of South Africa, Eds. M. Wilson and L. Thompson (Oxford, 1969).
- Ord. - Ordinance.
- P.P. - Parliamentary Papers.
- Proclamations - Proclamations, Advertisements, and Other Official Notices published by the Government of the Cape of Good Hope. 10th January to 2nd May 1825.
- Q.B.S.A.L. - Quarterly Bulletin of the South African Library.
- R.C.C. - Records of the Cape Colony by G.M. Theal (London, 1904).
- S.A. - South Africa.
- S.A.C.A. - The South African Commercial Advertiser.
- Shortt and Doughty, Documents - Documents relating to the Constitutional History of Canada, 1759-1791 (Ottawa, 1918).

S.O. - Papers of the Slave Protector's Office
in the Cape Archives.

Thompson, African Societies - African Societies in
Southern Africa, Ed. L. Thompson (London,
1969).

Walker, History - A History of Southern Africa 3rd Ed.
(London, 1964).

Wight, Legislative Council - The Development of the
Legislative Council, 1606-1945 (London,
1946).

Young, Colonial Office - The Colonial Office in the Early Nineteenth Century (London, 1961).

Chapter 1

The Establishment of Councils of Advice within the British Empire

At first encounter the term council of advice appears simple to define, as a committee appointed to advise the governor of a colony. But closer examination reveals considerable variation in the origin and operation of the councils of this type established in a number of colonies during the period 1760 - 1830.

Initially the advisory council was devised as a temporary wartime expedient for conquered colonies, to bridge the gap between military occupation and the granting of the traditional forms of representative government. ^A The grouping of heads of departments into a committee authorised to advise the governor, as representing the crown, may be likened to a colonial version of the early Privy Council, whose function was "to advise the king upon every exercise of the royal power".¹ Although the result of wartime improvisation, conciliar government was subsequently found to be applicable also in peacetime and was extended, in special cases, to colonies of settlement. In this way the device of conciliar government proved in practice to be a beginning not an end, and by the enlargement and specialisation of both function and form, led generally to the eventual establishment of representative government. Originally neither the transitional nature of the council of advice, nor ^B the next stage of development were clearly envisaged. The progression from conciliar to representative government does not appear to have been formulated in advance, but rather to have emerged from a pragmatic approach to local and immediate problems. Flexibility and improvisation characterised change rather than conformity to any stereotype.²

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1. F.W. Maitland, The Constitutional History of England (Cambridge, 1961), p. 199.
 2. Cf. the view of M. Perham, general editor of the series of Studies in Colonial Legislation, that change came about in the colonies, "within a set constitutional pattern which might be compared to a stately quadrille if a quadrille were always, however imperceptibly, moving forward." M. Wight, The Development of the Legislative Council, 1606 - 1945 (London, 1946), p. 13.

The way a council operated and the pattern of reform depended to some extent on the circumstances of the colony. Constitutional change was related not only to existing institutions but also to local demand and experience.¹ But experiments in one colony provided examples and precedents which were duly noted by the Colonial Office in London and then adapted and applied to other situations.² The Council of Advice at the Cape of Good Hope was then but one example of a flexible instrument of government, in part shaped by events and decisions elsewhere, in part self-evolving. It is necessary therefore to consider the origin and early development of conciliar government before examining the Council of Advice that existed at the Cape between 1825 and 1834.

The interplay of precedent and adaptation from one colony to another was facilitated by the establishment of the Colonial Office in London at the beginning of the 19th century. During the 18th century colonial affairs had been the responsibility of the Board of Trade and Plantations and, from 1768, of the secretary of state for colonies.³ Both the Board and the secretaryship had been abolished in the economical reforms of 1782, and thereafter the review of colonial legislation had been undertaken by a standing Committee of the Privy Council - a "ghost" of the former Board of Trade and Plantations.⁴ Other imperial concerns were handled by the secretary of state for the Home Department. But in 1794 a secretary of state for war was appointed and in 1801 responsibility for the colonies was transferred to this new department, probably for reasons of strategy⁵ and because of the great increase in overseas territories resulting directly from the war.⁶

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1. D. J. Murray, The West Indies and the Development of Colonial Government, 1801 - 1834 (Oxford, 1965), p. 84.
 2. J. J. Eddy, Britain and the Australian Colonies, 1818 - 1831 (Oxford, 1969), pp. 3-4.
 3. J. C. Beaglehole, The Colonial Office, 1782 - 1854, H. S. A. N. Z. Vol. VI (1941), p. 171.
 4. *Ibid.*, p. 173.
 5. H. T. Manning, British Colonial Government after the American Revolution, 1782 - 1820 (New Haven, 1933), p. 475.
 6. C. H. B. E., Vol. II, p. 128.

From its insignificant beginning as an appendage to the War Department, the Colonial Office had soon assumed considerable importance in its own right. In the post-war years of financial stringency there was an attempt to abolish the new office and with it the third secretaryship. Both were retained because,

"a special secretary of state was indispensable to represent the colonies in England, and to superintend the conquered colonies, which did not have representative institutions and over which the control of 'the colonial secretary had been augmented to a degree wholly unprecedented' ".¹

Not only were there more conquered colonies and a greater measure of control, but the Colonial Office had also become the channel through which "consistent expedients" might be applied from one colony to another.²

The formative years of the Colonial Office were influenced by three notable persons within its ranks.³ These were Lord Bathurst, secretary of state, 1812 - 1827;⁴ Henry Goulburn, political under secretary, 1812 - 21;⁵ and James Stephen legal adviser, 1813 - 36 and permanent under secretary, 1836 - 47.⁶ The creation of the post of permanent under secretary in 1825 was itself a turning point, reflecting the increased load of work and the need for continuity in the higher echelons of the

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1. Beaglehole, The Colonial Office, 1782 - 1854, H. S. A. N. Z. Vol. VI (1941), p. 179.
 2. Eddy, Britain and the Australian Colonies, 1818 - 1831, p. 4.
 3. D. M. Young, The Colonial Office in the early Nineteenth Century (London, 1961), Chs. 1 and 2 passim. D. B. Swinfen, Imperial Control of Colonial Legislation, 1813 - 1865 (Oxford, 1970), Ch. 2. P. Knaplund, James Stephen and the British Colonial System, 1813 - 1847 (Madison, 1953), Chs. 1 and 2.
 4. Henry Bathurst (1762 - 1834), third earl; master of the mint, 1804; acting foreign secretary, 1809; president of the Board of Trade; secretary of state for war and colonies, 1812 - 27; lord president of the privy seal, 1828 - 30.
 5. Henry Goulburn (1784 - 1856), political under secretary for colonies, 1812 - 21; chief secretary for Ireland, 1821 - 7; subsequently held office as chancellor of the exchequer and secretary of state for the Home Department.
 6. Sir James Stephen (1789 - 1859), part-time legal adviser to the Colonial Office from 1813; permanent legal adviser, to Colonial Office and Board of Trade from 1825; permanent under secretary for colonies, 1836 - 47: Professor of Modern History, Cambridge University, 1849-59.

establishment.¹ The first incumbent was R. W. Hay.²

The appointment of James Stephen as permanent under secretary in 1836 brought to this post an orderliness and efficiency that had previously been lacking in the department and was in line with a development taking place simultaneously in other departments³ where a trained lawyer had become the most senior official.⁴

On almost every subject affecting the colonies cross-reference had to be made to other government departments, of which the two most important were the Treasury Board and the Office of Colonial Audit, established in 1814.⁵ Inter departmental consultation frequently resulted in delay and procrastination in dealing with colonial business.⁶

The concentration of colonial affairs in a new government department at the beginning of the 19th century underlined a shift in imperial administration that had been taking place since the 1760s. The trend was away from the use of the royal prerogative in favour of regulation by statute or by order-in-council. Parliament itself assumed a new role as an agent for constituting colonial government,⁷

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1. Young, Colonial Office, pp. 80-6. H. Parris, Constitutional Bureaucracy (London, 1969), pp. 42-49, passim.
 2. Robert William Hay (1786-1861), permanent under secretary of Colonial Office, 1825-36.
 3. Young, Colonial Office, p. 94. E. T. Williams, The Colonial Office in the Thirties, H.S.A.N.Z., Vol. II (1943), pp. 148-9.
 4. E.g. In the Home Department and Treasury Board, J. R. Torrance, Sir George Harrison and the growth of bureaucracy in the early nineteenth century, English Historical Review Vol. LXXXIII (1968), p. 73.
 5. P. Knaplund, Mr Oversecretary Stephen, Journal of Modern History, Vol. I (1929), pp. 45-6. Young, Colonial Office, pp. 185-6. The Office of Colonial Audit was merged with the Audit Office of the United Kingdom in 1832.
 6. *Infra*, Chs. 4 and 5 passim.
 7. E.g. 4 Geo. III, c. 20 and 5 Geo. III, c. 44, concerning the establishment of government in Senegal and Gambia respectively, Wight, Legislative Council, p. 35.

and thus became an arena for debate on constitutional change in the colonies. At the same time parliament was seen as an alternative court of appeal for dissident colonists seeking redress for local grievances and impatient of the normal delays in Colonial Office procedure.¹ Parliament was also in the 1820s and 1830s the stamping ground of the humanitarians, whose protracted campaigns on behalf of slaves, and later of indigenous peoples throughout the empire, focussed attention on other aspects of colonial administration.^{1a} Prior to 1765 parliamentary concern with the empire had been mainly confined to economic matters.² But in the early 19th century interest was broadening to include many other issues, although parliament was reluctant to intervene directly in the internal affairs of the colonies.³ Notwithstanding the fact that debates on colonial affairs were usually ill attended in the House of Commons, there was clearly governmental concern. One result of this was the increased use of the commission of inquiry as a tool of parliamentary investigation, a development which provided "a further apparatus for criticism and control."⁴ In the development of conciliar government in the early 19th century the work of several such commissions was of considerable importance.

Advisory councils first emerged as a regular feature of government in colonies captured during the wars against France from 1793 - 1815, when the number of British overseas territories increased from 26 to 43.⁵ But this was not the first appearance of some form

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1. E. g. Complaints brought against Lord Charles Somerset, governor of the Cape of Good Hope, A. K. Millar, Plantagenet in South Africa (Cape Town, 1965), pp. 200 and 244-50. Petitions from Cape for representative government, infra, Ch. 10 passim.
 - 1a. Infra, Ch. 6 passim.
 2. C.H.B.E., Vol. I, p. 410.
 3. It has been pointed out that between the Constitutional Act of 1791 and the emancipation of slaves in 1833 "no great measure bearing on the internal affairs of the colonies was accepted by the House of Commons." H. T. Manning, Who ran the British Empire, 1830-1850?, Journal of British Studies, Vol. V (1965), p. 90.
 4. A. K. Fryer, The Government of the Cape of Good Hope, The Age of Imperial Reform, A. Y. B. Vol. I (1964), p. 112. Wight, Legislative Council, p. 56. K. S. Hunt, Sir Lowry Cole (Durban, 1974), pp. 24-5.
 5. C.H.B.E. Vol. II, p. 128. It has been noted that in sixteen territories acquired by cession or occupation at the beginning of the 19th century the norm in colonial government, namely a legislative assembly, was not introduced. H. E. Egerton, A Short History of British Colonial Policy, 1606 - 1909, 9th Ed., (London, 1932), p. 224.

of conciliar government. Between 1764 and 1791 the ceded colony of Quebec was ruled by governor and council alone.¹ This experience of conciliar government in Quebec was atypical, because the council there had been intended to work in conjunction with a legislative assembly, according to the traditional form of colonial government, with its three-fold structure of governor, council and assembly. In this system the council was nominated and exercised legislative, executive and judicial authority.² This was the norm in colonies of settlement, and had generally been extended to colonies of conquest and cession as well. But there were particular problems in assimilating formerly foreign colonies to this typically British pattern. In Jamaica there had been legal wrangling over legislative rights for well over a century.³ In Nova Scotia the practical difficulty of summoning an assembly from a widely-scattered and predominantly French-speaking population had led successive governors to rule with only the help of a council for well over forty years. In 1758 this form of government by "the forelegs without the hindlegs" was declared to have been illegal, because an assembly had been promised as early as 1727.⁴ The same problem occurred in Cape Breton between 1784 and 1820.⁵

In Quebec, which was captured from the French in 1759 the situation was more complex. From 1764-74 the colony was ruled by governor and council alone, but with the curious anomaly that in this instance the situation had been made legal by virtue of the governor's instructions.

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1. There had also been a brief trial of conciliar government in Virginia between 1612 and 1618. A. Berriedale Keith, Constitutional History of the First British Empire (Oxford, 1930), p. 24.
 2. D. L. Keir, The Constitutional History of Modern Britain (London, 1938), pp. 349-53, *passim*. Keith, First British Empire, p. 193. C.H.B.E., Vol. I, p. 420. A. Mills, Colonial Constitutions (London, 1856), p. 29.
 3. Keith, First British Empire, pp. 11-14.
 4. Wight, Legislative Council, p. 29. Keith, First British Empire, pp. 168-9. The promise of an assembly was sufficient to deprive the crown of its legislative rights, as was clearly enunciated in the case of Campbell vs. Hall in 1774, *infra*, p. 11.
 5. Manning, British Colonial Government, p. 57. W. S. MacNutt, The Atlantic Provinces, The Emergence of Colonial Society, 1712 - 1857 (Toronto, 1965), pp. 181-2.

Quebec was ceded to Britain by the Treaty of Paris in 1763, together with East and West Florida and Grenada. In October 1763 the boundaries of the four territories were defined by proclamation and provision was made to introduce English law, and government by governor, council and assembly.¹ It has been suggested that the inclusion of Quebec in this proclamation was a last-minute error, and, indeed, a blunder.² The administrative confusion during the ensuing years would appear to vindicate this point of view.

The French, Roman Catholic population of Quebec, numbering some 70 000, was widely scattered over a vast territory, and mainly engaged in agriculture or fur-trading, while the English inhabitants were nearly all military or official personnel and numbered only 300 in 1764.³ Under these circumstances both English law and a representative assembly appear to have been untimely. Nevertheless, plans were made to substitute civil government for military rule in Quebec as well as in the two Floridas and Grenada. In December 1763 a commission was prepared for the governor of Quebec in fulfilment of the proclamation of the previous October. The document was, as usual, copied from previous governors' commissions, and included instructions for summoning a legislative assembly.⁴ Additional instructions were, however, sent with the commission and included an important modification,

"as it may be impracticable for the present to form such an Establishment [i. e. of a General Assembly of the Freeholders] You are in the meantime to make such Rules and Regulations by the Advice of our said Council, as shall appear necessary for the Peace, Order and good Government of Our said Province."⁵

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1. W.P.M. Kennedy, Documents of the Canadian Constitution, 1759-1915 (Toronto, 1918), pp. 19-21, Royal Proclamation, 17/10/1763.
 2. C.W. Alvord, The Mississippi Valley in British Politics, 2 Vols. (Cleveland, 1917), Vol. I, p. 207.
 3. J.A. Williamson, A Short History of British Expansion, 2 Vols. (London, 1964) pp. 58-9.
 4. Alvord, The Mississippi Valley in British Politics, Vol. I, p. 208. A. Shortt and A.G. Doughty, Documents relating to the Constitutional History of Canada, 1759-1917, 2 Vols. (Ontario, 1918), Vol. I, p. 185, Commission to Murray, 7/12/1763.
 5. Shortt and Doughty, *Ibid.*

The governor was thus given discretion to postpone the election of an assembly and to exercise both legislative and executive authority with the aid of the nominated council.¹ Legislative authority was, however, limited to exclude matters of "life, Limb or Liberty of the Subject, or to the imposing any duties or taxes."² This prohibition was in accordance with the existing limitation on the power of the council to amend or initiate money bills,³ and also meant that the governor was dependent on the continuation of former fiscal dues. This situation later proved to be an embarrassment to the government.⁴

The first civil governor of Quebec was James Murray⁵ who had been in command of the colony since its capture in 1759, and was thus familiar with its problems. He decided to stay the summoning of an assembly, in terms of the discretion granted him.⁶ Murray's decision delayed for 30 years the introduction of a representative assembly in Quebec and initiated the long search for some alternative form of government for colonies of conquest.

It is easy, however, to exaggerate the significance of 1764 as a turning point.⁷ The council at Quebec was not an advisory council

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1. It was left within the competence of the governor to call an assembly when he considered it expedient - "when ... in your Discretion [you] shall think most proper, or as shall be hereafter directed and appointed." Ibid., p. 185.
 2. Ibid.
 3. Mills, Colonial Constitutions, p. 29. Keith, First British Empire, pp. 231-2.
 4. C.H.B.E., Vol. VI, pp. 163-4. D.M. Clark, The Rise of the British Treasury (New Haven, 1960), p. 163.
 5. James Murray (1721-1794), took part in the campaign against Quebec 1759; military governor of Quebec, 1760-63; governor of Canada, 1763-8; governor of Minorca, 1774.
 6. Supra, n. 1.
 7. E.g. "...an advisory council, the earliest example of an institution that was to be the predominant form of the colonial council..." Wight, Legislative Council, p. 36. Italics in original. "[Murray] inaugurated what came to be called crown colony government..." H. Neatby, Quebec, The Revolutionary Age, 1760-91 (London, 1966), p. 33.

in form although in function it may have been; it was a council of the old style, i. e. the nominated council of the traditional system of government by governor, council and assembly. As such it held executive, legislative and judicial authority.¹ What was significant was the recognition that in a conquered colony the immediate introduction of typical English institutions was inexpedient. Some interim stage of constitutional development was necessary. Because no practical alternative was available in 1764 the secretary of state² resorted to the legalisation by prerogative instrument of a truncated form of government which had been declared illegal for a neighbouring colony just 6 years previously.³ This gave time for a more effective form of government to be devised.

The problems were practical rather than theoretical. The proximity of the older American settlements with which the British parliament was currently engaged in a mounting struggle for supremacy heightened the tension. With the increased strategic importance of Quebec the need for stable and secure government became more pressing.⁴ For two years Murray attempted to implement the commission and instructions of 1764. There were many difficulties. The Quebec council was composed of twelve members, only four of whom were officials. There was therefore an heavy weighting of the influence of those members who, by definition, did not hold office from the crown. Moreover, the French were confused by the introduction of English law, the English enraged at the postponement of an assembly, and Murray himself dismayed at the separation

1. Supra, p. 6, n. 2.

2. George Montagu Dunk (1716 - 1771), second earl of Halifax; president of the Board of Trade, 1748-61; Lord Lieutenant of Ireland, 1761-3; secretary of state, 1763. His predecessor in office, Sir Charles Wyndham (1710-1763), earl of Egremont, secretary of state, 1761-3, had recommended to the Board of Trade that government in Quebec should be by governor and council alone. Shortt and Doughty, Documents, Vol. I, pp. 127-50 passim, Egremont to Lords of Trade, 5/5/1763.

3. Supra, p. 6.

4. Keith, First British Empire, p. 387.

of military and civil authority which had been effected in 1764. In 1766 Murray took leave to negotiate in London for a revision of the constitution. It was 7 years before agreement was reached on a new form of government. Events in the intervening years helped to shape the new system.

Murray's period of office in Quebec ended in 1766. He was succeeded by Carleton,¹ first as lieutenant governor and in 1768 as governor. The form of government remained unchanged,² but in practice the new governor chose to consult a select inner group of the council for urgent business. These meetings, though irregular, were minuted as meetings of the full council.³ Carleton was reprimanded for this practice, but persisted in it in defiance of his instructions.⁴ His successor, Haldemand,⁵ followed the same procedure, and was likewise reprimanded.⁶ The unauthorised use of an inner council seemed to indicate the need for some kind of differentiation between executive and legislative. The amended constitution, achieved finally in 1774,⁷ provided for a separation of function but not of personnel. Although intended to obviate the difficulties of the previous 10 years, this distinction of function did

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1. Sir Guy Carleton (1724-1808), lieutenant governor of Quebec, 1766-8; governor of Quebec, 1768-78; advocated Quebec Act, 1774, and Constitutional Act, 1791; commander-in-chief in America, 1782-3; governor of Quebec and all Canada, 1786-96.
 2. Shortt and Doughty, Documents, Vol. I, p. 301 f, Instructions to Carleton, 1768.
 3. Neatby, Quebec, p. 89.
 4. W.P.M. Kennedy, The Constitution of Canada 2nd Ed., (Oxford, 1938), p. 53.
 5. Sir Frederick Haldemand (1718-1791), Military Commander, Florida, 1766-78; Governor and Commander-in-Chief, Canada, 1778-85.
 6. Kennedy, The Constitution of Canada, p. 53.
 7. The delay was probably due to the weakness of successive British ministries, as well as the intractable nature of the problem. Neatby, Quebec, p. 89.

not remove the confusion and ambiguity.

The Quebec Act of 1774¹ was devised by North's government which had also planned the Regulating Act of 1773² altering the form of government in British India. The Quebec Act revoked the provisions of the Proclamation of October 1763 in so far as it applied to Quebec. French law was to be re-instated in the colony and the promise of an assembly was withdrawn. This could only be done by statutory enactment since the promise of an assembly, once given, deprived the crown of its prerogative right to legislate for a conquered colony. This principle had been recognised by the end of the 17th century, and was clearly enunciated by Mansfield in the case of *Campbell vs. Hall* in November 1774.³

The Quebec Act modified rather than replaced the existing machinery of government. Conciliar government would continue, but the council was increased in size to a maximum of 23 nominated members. For legislation a quorum of more than half was necessary. Other important new features were the toleration of the Roman Catholic faith and the admission to office of those adhering to it, by means of modified oaths of allegiance and supremacy. The legislative competence of the enlarged council was limited to exclude matters of religion, taxation, serious punishments and the judiciary. Revenue was assured to the colony by a separate Act.⁴ Additional instructions to the governor filled in details on the implementation of the Act. In particular it was declared that,

"any five of the said council shall constitute a board of council for transacting all business in which their advice and consent may be requisite, acts of legislation only excepted."⁵

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1. 14 Geo. III, c. 83.
 2. 13 Geo. III, c. 63 For influence of India on colonial government, *infra*, p.23.
 3. Keith, First British Empire, pp. 13-7. D.C. Douglas, English Historical Documents, 12 Vols. (London, 1957) Vol. X, pp. 744-6. The Quebec Act had antedated Mansfield's judgement by six months.
 4. 14 Geo. III, c.88. Clark, The Rise of the British Treasury, pp. 173 and 194.
 5. Additional Instructions to Carleton, 7/1/1775, quoted by Kennedy, The Constitution of Canada, p. 53.

This provision for an executive quorum of any five members was understood by Carleton to confirm the existing practice of consulting the same five members as a select inner group. But this had not been the intention. The governor's interpretation was challenged by the chief justice, Peter Livius,¹ and as a result, specific instructions on the point were issued to Carleton's successor, Haldemand.² He in turn questioned

"whether every measure of government ought to be exposed and laid open to the mixture of people which compose our council."³

Meanwhile, he continued to work with a select inner executive, until further reprimanded in 1781.⁴ The point is significant for it indicates that what was taking place was a series of improvisations which the man on the spot interpreted ad hoc so as to make them workable from his point of view, whereas the government in Britain was fumbling towards a differentiation of function that would reconcile local with imperial interests.

The Quebec Act of 1774 served to placate the French-speaking majority of the colony during the ensuing crisis of the American war, although the English minority resented the withdrawal of the promise of an assembly. But the influx of some 20 000 Empire Loyalists after the American war made the continuation of the existing situation impossible. Once again there were prolonged deliberations. It was not easy to work out an equitable solution.

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1. Peter Livius (1727? - 1795), chief justice of New Hampshire, 1774; chief justice of Quebec, 1777-86.
 2. Shortt and Doughty, Documents Vol. I, pp. 704-5, Additional Instructions to Haldemand, 29/3/1779.
 3. Haldemand to Germain, 14/9/1779, quoted by Kennedy. The Constitution of Canada, p. 53.
 4. Shortt and Doughty, Documents Vol. I, p. 724, Lords of Trade and Plantations to Haldemand, 10/4/1781.

"When the Loyalists came it became necessary to grant British laws and institutions without doing injustice to the Canadians."¹

Questions of revenue also carried considerable weight. Quebec was expensive to Britain, but if the power to levy taxes locally were to be granted, this would mean the granting also of representative institutions, to French as well as English.² The solution was found in the division of the colony. The Constitutional Act of 1791³ provided for two provinces, Upper and Lower Canada, each with its own law and institutions. Government was to be along traditional lines with governor, council and assembly. Local variations catered for the different traditions of the English and French populations respectively.⁴

Changed circumstances had brought about constitutional change and the government of Quebec had been brought into line with the older type of representative government. But the experience of administering this colony from 1759 had given British ministers new insights into the problems of conquered colonies as well as incipient new constitutional forms that were open to further development and definition. This was timeous, for by the last decade of the 18th century there was increased need for a different style of government in conquered colonies, as a result of the war against France. The clearcut principle enunciated by Mansfield in 1774, that, once an assembly had been promised, the king lost his prerogative rights (though the sovereignty of the King-in-Parliament remained) had led to a reluctance to grant representative government prematurely in a conquered colony, as well as to the practice of reserving specific powers to parliament or the king.⁵

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1. W. L. Morton, *The Local Executive in the British Empire, 1763-1828*, English Historical Review, Vol. LXXIII (1963), p. 449.
 2. J. Ehrman, *The Younger Pitt* (London, 1969), pp. 364-5.
 3. 31 Geo. III, c. 31.
 4. Kennedy, *The Constitution of Canada*, pp. 81-7.
 5. E. C. S. Wade and A. W. Bradley, *Constitutional Law*, 7th Ed. (London, 1965), pp. 418-9.

In addition, experience in some of the West Indian islands ceded to Britain in 1763 had shown the risks of introducing the traditional pattern of British colonial government into conquered colonies too soon.¹ Clearly an alternative form of government was required. Although beset with difficulties and ambiguities the experience in Quebec between 1764 and 1791 provided some pointers for new developments. Gropingly at first, but later with more skill and confidence, the British government devised new expedients to bridge the gap between arbitrary military rule and representative government. This was particularly necessary in the West Indian colonies captured from 1793, where civil government had already been undermined by revolutionary activity or slave risings. The appointment of a secretary of state for war in 1794, who also assumed responsibility for the colonies in 1801, provided the necessary administrative machinery for introducing and improving experimental forms of government in these colonies.²

War was declared between Britain and France in February 1793 and within a year five West Indian islands had fallen into British hands. Normally military rule was imposed for the duration of a war while existing institutions were retained as far as possible.³ But in the islands of Martinique, St Lucia, Guadeloupe and San Domingo the situation was without precedent.⁴ Disorders had already occurred and even before the formal declaration of war representatives from the islands had appealed for British help to suppress insurgent slaves and to resist revolutionary France.⁵

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1. E.g. Grenada, Dominica, and St. Vincent where nearly all the laws passed in 5 years were disallowed by the British government, Manning, British Colonial Government, p. 53.
 2. Supra, p. 3.
 3. Mills, Colonial Constitutions, pp. 18-21.
 4. Tobago, the fifth island captured early in the war had previously been a British possession, and the traditional form of colonial government was re-introduced. Murray, West Indies, p. 49 n. 10.
 5. San Domingo had been in a state of violence since 1791, when slave disorders had broken out after news of the emancipation of all slaves by the Paris National Assembly.

Hence when Britain took over the islands the existing administration had already been overthrown. In these circumstances the commanding officer urged the early introduction of civil government.¹

The problem of government in Quebec was still a live issue at this time, with the Constitutional Act only two years old. The cautious experiment in conciliar government, even with its confusion and uncertainties, may have provided a rough working model. Moreover, in appealing to Britain, V.P. Malouet, one of the proprietors of San Domingo, had suggested that,

"No Assembly shall be called till order is established in every part of the colony, and till that period His Britannic Majesty's governor shall be assisted in all the details of Administration and Police by a Committee of Six Persons to be chosen by the governor."²

This proposal was adopted and incorporated into the terms of capitulation for the island, thereby providing an alternative form of civil government for captured colonies. The advisory council that was set up in San Domingo, and elsewhere later, was transformed in time into an inner executive council analogous to that which Carleton and Haldemand had relied on in Quebec, albeit illegally.

Civil government was introduced into San Domingo in 1794 with the arrival of Williamson as governor.³ Existing laws and institutions were to be retained and all executive power both civil and military was vested in the governor.⁴ However, as soon as convenient he was to

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1. Murray, West Indies, p. 49.
 2. Quoted by Murray, West Indies, p. 50. Malouet also recommended that the Roman Catholic faith be tolerated and that French law be retained.
 3. Sir Adam Williamson (1736-1798), served in America and West Indies from 1760; lieutenant governor, Jamaica, 1790-4; governor, San Domingo, 1794.
 4. Cf. Quebec where in 1764 English law had superseded French and the governor had been divested of his military authority, *supra*, p. 9.

"choose from amongst the proprietors ... a committee of Six Persons, ... to assist in all details of administration and Police."¹

Roman Catholics became eligible for office by taking the modified oaths previously prepared for Quebec.²

The commission and instructions sent to Williamson differed in several respects from those sent to Murray in 1764. Firstly they had been placed before the cabinet, and regulation of the trade, law and government of San Domingo had been worked out by the ministers themselves, within the framework provided by the terms of capitulation.³ The cabinet's preparation of the documents emphasises the trend away from the independent use of the royal prerogative and from the indiscriminate copying of old forms.⁴ Prerogative instruments themselves came under the scrutiny of ministers, and the crown was exercising its prerogative on the advice of the cabinet. Behind the pragmatic solution that evolved in San Domingo there lay the cabinet's experience with Quebec, as well as in older West Indian colonies.⁵ Williamson was further instructed,

"... in cases of importance and where you shall judge that Our interests may require it, you are hereby authorised to act contrary to their opinion, calling upon them in such cases to state their opinion in writing, with their reasons for the same, and you are to transmit to one of Our Principal Secretaries of State the opinions of the said Commissaries, together with your own opinion and your and their reasons on every such occasion for Our information."

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1. V. Harlow and F. Madden, Compilers, British Colonial Developments, 1774-1834, Select Documents, (Oxford, 1953), p. 83, Instructions to Williamson, 7/10/1794.
 2. *Supra*, p. 11.
 3. Murray, West Indies, pp. 51-6.
 4. Cf. Quebec in 1764, when Murray's commission was copied from previous commissions "without study ... to see if they would suit the extraordinary conditions of Quebec," Alvord, The Mississippi Valley in British Politics, Vol. I, p. 208.
 5. *Supra*, *passim*.
 6. Harlow and Madden, British Colonial Developments, 1774-1834, Select Documents, pp. 83-4, Instructions to Murray, 7/10/1794.

In this clause the limitations of a council of advice were clearly set out. Their function was to advise, and no more; for members there was no means of coercion except to record their dissent and the reasons thereof. Such a council might act as a brake on the arbitrary action of a governor only in so far as its record of dissent was heeded by the British government. In the interim the governor could act in despite of its advice - and sometimes did so. It is arguable that this restriction of function is essential to the definition of a council of advice, and that where no such restriction exists and the council can enforce its will on the governor, executive and legislative authority has involuntarily been assumed and shared. It is also in respect of this restriction of function that the council of 1794 differs most clearly from that of 1764. Whereas Murray's council in 1764 had shared the legislative and executive authority by virtue of its constitution,¹ Williamson in 1794 held sole legislative and executive authority. Nevertheless, in practice the distinction between "advising" and "authorising" was to prove very fine, and the function of a council of advice frequently assumed the character of shared legislative authority.²

It is not possible to establish whether the cabinet which prepared Williamson's commission and instructions were directly influenced on this point by recent events in India. The Regulating Act of 1773³ had provided for the governor of Bengal to be governor general in India and to be assisted by a council of four members. Practical difficulties had led Pitt⁴ to reduce the number of councillors to three and to curtail their powers in 1784;⁵ and, 2 years later, to grant the governor general authority to override the council.⁶

1. Supra, pp. 6-8.

2. Infra, pp. 74-88.

3. 13 Geo. III, c. 63.

4. William Pitt (1759-1806), prime minister 1783 - 1801 and 1804 - 6.

5. 24 Geo. III, c. 25. R.C. Majumdar, H.C. Rauchauduri and K. Dalta, An Advanced History of India (London, 1963), p. 785.

6. 26 Geo. III, c. 16.

Although the Board of Trade had no official oversight of Indian affairs the Cabinet of 1794 included Dundas, who was both secretary of state and president of the Board of Control.¹ There is therefore a high degree of probability that the Indian analogy indirectly influenced the San Domingo pattern.²

The government provided for San Domingo in 1794 did not last long. The British evacuated the colony four years later and it was reoccupied by the French. But the instructions prepared for Williamson in 1794 became, nonetheless, the prototype of instructions for several other colonies captured during the war years, especially when civil government was introduced at once.³ The provision for a council of advice was not always included. In some cases the advisory council was introduced once a colony had been formally ceded at the peace. The new type of council was also introduced into a-typical colonies of settlement, like New South Wales which was established for transported convicts and Sierra Leone, for emancipated slaves.⁴

For convenience the colonies acquired by Britain at the Treaty of Amiens in 1802 and the Treaty of Paris in 1815 may be divided into two groups, namely, the West Indian colonies of Trinidad, St. Lucia and Tobago, together with the mainland territories of Berbice and Demerara; and the eastern colonies of Ceylon, the Cape of Good Hope and Mauritius. With the exception of Tobago,⁵ each of these new British colonies had a council of advice at one time. Apart from these two groups of captured colonies, Britain also acquired a number of islands in the Mediterranean and here, too, there was a brief experience of an advisory council. Malta was captured by Britain

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1. Henry Dundas (1742-1811), first viscount Melville, secretary of state for war, 1794-1801; president of the Board of Control, 1793-1801.
 2. In 1801 the Indian example was specifically quoted, with reference to Ceylon, *Infra*, p. 23.
 3. E.g. In Curacoa, 1801; Guadaloupe, 1810; Martinique, 1809; Surinam, 1809; Murray, West Indies, p. 56, n. 45.
 4. *Infra*, *passim*.
 5. *Supra* p. 14, n. 4.

in 1800 and retained at the Treaty of Amiens. For some years there was wrangling over the form of government because of the traditional power of an ancient elective body, the Consiglio Popolare.¹ In 1812 a Commission of Inquiry visited the island, and upon its recommendation a council of advice was formed in 1813, with the governor holding sole right to initiate discussion.² There was also a fleeting experience of an advisory council in the Ionian islands after their capture in 1809.³

In the former Dutch colonies of Demerara and Berbice, captured in 1796, the existing governmental institutions were retained during the war years. In each colony there was an advisory body, known as the Court of Policy composed of four official and four unofficial members, chosen by an electoral college every 8 years.⁴ Under British rule the councils continued in their old form and initially exercised their original function as "adviser of the governor in political and financial matters."⁵ But in both colonies legislative powers were gradually assumed by the councils, and, once conceded, proved difficult to revoke. The novel feature of having both nominated and elected members on the same council originated in these two colonies, and it has been suggested that this provided the prototype for the mixed legislative councils of later years.⁶ The point is significant for it illustrates the way in which government was often

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1. W. Hardman, A History of Malta, during the period of the French and British Occupations, 1798-1815, (London, 1909). pp. 498-9; 509-11; 517-20.
 2. C.H.B.E. Vol. II, pp. 172-82. Wight, Legislative Council, p. 52. Harlow and Madden, British Colonial Developments, 1774-1834, Select Documents, pp. 130-3, Report of the Commissioners of Inquiry, August, 1812; pp. 133-4, Bathurst to Maitland, 28/7/1813.
 3. C.H.B.E. Vol. II, p. 183.
 4. Murray, West Indies, pp. 59-60. Wight, Legislative Council, p. 50.
 5. L.H. Penson, The Making of a Crown Colony, T.R.H.S. Vol. IX (1926), p. 113.
 6. Wight, Legislative Council, p. 67.

modified or even shaped by institutions and practices observed in conquered colonies. A stereotype pattern was not imposed. The point is further underlined by the failure of a scheme suggested in 1831 by Horace Twiss¹ when he was political under secretary in the Colonial Office. The difficulty of implementing the policy of slave amelioration and the resistance within slave owning colonies to plans devised in Britain had led to a proposal that all existing political institutions, (executive, legislative and quasi-representative as in Berbice-Demerara) should be abolished and a new uniform pattern of crown colony government be set up in the slave owning colonies of Trinidad, St. Lucia, Mauritius, the Cape of Good Hope, Ceylon, Demerara and Berbice.² The constitution would be worked out in Britain and introduced in the respective colonies, regardless of any guarantees previously given for the continuation of existing institutions. Twiss proposed that legislative authority should be vested in a council composed of equal numbers of official members and members elected by an electoral college. But they would be competent only to enact measures already recommended by the King in Council. However, this scheme was not approved in toto by James Stephen, although he recognised the need for some measure of uniformity particularly in regard to the procedures of legislation. Stephen agreed that the executive and legislative function should be differentiated and favoured the introduction of non official members alongside official members on a legislative council. He considered that the idea of an electoral college would be acceptable in Demerara - Berbice, where it had long been practised, but he feared that the extension of an electoral system throughout the crown colonies would lead to "incessant controversy and confusion" particularly

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1. Horace Twiss (1787-1849), political under secretary for colonies 1828-30.
 2. Penson, The Making of a Crown Colony, T.R.H.S. Vol. IX (1926), p. 129. Murray, West Indies, pp. 161-2.

"in St. Lucia and Mauritius, where French minds would misunderstand, and French fervour would pervert the privilege - and in the Cape, which is a country of wastes and impervious tracts, and dispersed occupancies - and in Ceylon, which is a different world altogether"¹

Accordingly the new arrangements made for Demerara-Berbice were based in part on the suggestions of Horace Twiss, but in the other colonies Stephen's plans were followed.² The two colonies of Demerara-Berbice were united to form British Guiana and the Court of Policy or advisory council was enlarged and was granted legislative power, although the Crown still reserved the right to legislate by Order in Council.³

The assumption of legislative power by an advisory council was not always condoned, as in the case of Berbice and Demerara. In Trinidad there were problems of greater complexity, on account of the mixed white population of Spanish, French and English origin, the slave population, and the earlier existence of a local popular body exercising legislative authority.⁴ Perhaps it was for these reasons that the Colonial Office exerted a rigorous control to curb local political aspirations.

Trinidad had been captured in 1797, and was regarded as one of the most valuable acquisitions of the war, "the best calculated for confirming and securing our ancient territories."⁵ Civil government on the San Domingo model was introduced in 1801, and included an advisory council. Following the formal cession of the colony in 1802 a commission of inquiry was sent to investigate local difficulties. The commission itself "dissolved in dissension",

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1. Quoted by Murray, West Indies, p. 162.
 2. Infra, pp. 52-4.
 3. Penson 'The Making of a Crown Colony, T.R.H.S. Vol. IX (1926), p. 131. Murray, West Indies, pp. 162-3; 169-72.
 4. Manning, British Colonial Government, pp. 347-51.
 5. Pitt, quoted in C.H.B.E., Vol. II, p. 78.

reflecting the divisions within the colony and foreshadowing the constitutional tussle of the next 10 years.¹ In 1810 the Colonial Office was still dealing with political defiance in the colony. It was therefore determined that "the crown should not divest itself of its power of legislation ... and ... that it is not advisable to establish within the island of Trinidad, any independent internal legislature."²

Nevertheless the degree of control required by the British government was not achieved until Bathurst's appointment as Secretary of State for colonies in 1812. Bathurst viewed the problem of Trinidad not simply as a question of devising a satisfactory form of government, but also of finding the right individuals to govern.³ The turning point came in 1812 with the appointment of Sir Ralph Woodford as governor, and J. T. Bigge⁴ as chief justice. The new council summoned by Woodford was restricted to its legitimate function of advising the governor.⁵

This limitation of function was significant for it was in Trinidad (and in Ceylon) that the new style of colonial government was carried over into the period of peace. If during the War the colonists had succeeded in broadening the function and authority of the council to include legislative and executive powers, then the advisory council might have become nothing more than a war-time expedient. Trinidad

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1. Murray, West Indies, pp. 68-84.
 2. Harlow and Madden, British Colonial Developments, 1774-1834, Select Documents, p. 95, Liverpool to Hislop 27/11/1810.
 3. Murray, West Indies, p. 82.
 4. John Thomas Bigge (1780-1843), chief justice of Trinidad, 1814; led Commission of Inquiry to N. S. W., 1819; led Commission of Inquiry to the Cape of Good Hope, Mauritius and Ceylon, 1823, but was forced through ill-health to retire before the investigation was completed.
 5. Murray, West Indies, p. 83.

established the precedent for the council of advice as a feature of post-war government in ceded colonies. It was also in Trinidad that the advisory council was first superseded by executive and legislative councils, in 1831, marking yet another stage in the development of the conciliar pattern. Events in New South Wales from 1823 had provided a second working model on which the new system could be based.¹

Other crown colonies developed along similar lines in the 1830s,² among them the island of Ceylon - "the most valuable possession on the globe," according to Pitt.³ Like Trinidad, Ceylon was ceded to Britain in 1802. It had been captured in 1796 by forces of the East India company, and for 2 years was ruled as part of the Presidency of Madras. From 1798 an attempt was made to govern the island jointly from London and Madras, but in 1801 the experiment of joint government was terminated with the assumption of direct control by the crown.⁴ A council of advice was introduced at the same time. The revised instructions of 1801 were modelled on those which had been issued to Macartney at the Cape of Good Hope in 1796, which in turn had been copied from the San Domingo instructions of 1794.⁵ But in the case of Ceylon the influence of India had a direct bearing,⁶

"it was far from being proposed to assimilate [Ceylon] or its Government to our colonies in the West Indies. But on the contrary whatever experience has shown to be politically wise in the government of the British Territory on the continent in India and appears, as is the case in this instance, applicable to the situation of Ceylon, it is the inclination of His Majesty's government to preserve or to adopt."⁷

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1. *Infra*, p. 41f.
 2. E.g. St. Lucia, Murray, *West Indies*, p. 169.
 3. Quoted by E. F. C. Ludowyk, *The Modern History of Ceylon*, (London, 1966), p. 19.
 4. *C.H.B.E.*, Vol. II, p. 77
 5. *Supra*, p. 16.
 6. *Supra*, p. 17.
 7. G. C. Mendis, *The Colebrooke Cameron Papers*, 2 Vols., (Oxford, 1956), Vol. II, p. 113, Instructions, Dundas to North, 13/3/1801. Cf. The statement that in 1801 Ceylon was "assimilated to the Cape," Wight, *Legislative Council*, p. 49.

The objectives outlined to parliament in 1822 by Wilmot Horton¹ suggest that the origins of the Inquiry lay in the broad questions of colonial administration and costs.² Several years later it was stated that the Commission of Inquiry had been inspired by the need to bring about a gradual change in the Dutch laws and customs of the Cape of Good Hope and to initiate a policy of anglicization.³

In 1823 the governor of Ceylon learned with surprise that his colony was to be visited by the commissioners of inquiry.⁴ The inclusion of Ceylon may have been a matter of routine rather than necessity. In the House of Commons Wilmot Horton had stated,

"Such a commission might indeed be less necessary in the island of Ceylon: but government had no hesitation to extend it to that island likewise, in order to satisfy the public regarding the manner in which its resources were managed."⁵

The Commission of Inquiry to the three eastern colonies⁶ was one of the largest undertakings of its kind in the early 19th century. Work began in 1823 and lasted until 1832. The original commissioners,

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1. Sir Robert Wilmot Horton (1784-1841), political under secretary for colonies, 1821-8; governor of Ceylon, 1831-7.
 2. Hansard, Parliamentary Debates, New Series, Vol. VII, c. 1801-2.
 3. C.O. 324/87, Hay to Horton, 4/2/1833, cited by H. King, Richard Bourke (Melbourne, 1971), pp. 63-4, and 264, n. 5.
 4. Ludowyk, The Modern History of Ceylon, pp. 24-5. Mendis, The Colebrooke, Cameron Papers, Vol. II, p. 24, objections of Sir Edward Baines to the Commission of Inquiry 2/10/1825.
 5. Hansard, Parliamentary Debates, New Series, Vol. VII, c. 1802. This modifies the view that the Commission of Inquiry was planned originally for Mauritius and Ceylon and that the Cape was subsequently included because of complaints from the 1820 British Settlers and pressure from the humanitarians, E.g. Walker, History, p. 157. C.H.B.E., Vol. XIII, p. 251.
 6. The only other colony in the east was New South Wales, which had been visited by a commission of inquiry in 1819. *Infra*, p. 45.

J. T. Bigge¹ and W. M. G. Colebrooke² were both men of wide experience in colonial affairs. They were subsequently assisted by three other commissioners.³ As a result of the investigation, far reaching changes were recommended for each of the colonies concerned. Not all the proposed reforms were adopted, but in Ceylon the introduction in 1833 of legislative and executive councils similar to those recently established in New South Wales, Trinidad, Mauritius and St. Lucia may be seen as a direct outcome.⁴

The Commission of Inquiry instituted in 1823 was particularly directed to investigate problems of government. Of the three colonies to be visited only Ceylon already had an advisory council. Its effectiveness was to be assessed, with a view to the introduction of similar councils at the Cape and Mauritius,

"In reporting upon the manner in which the Executive and Legislative functions are discharged, you will, therefore, state what degree of assistance may have been afforded, and whether any control may have been exercised by the Council in one case, and the immediate effects and tendency of such an Institution; and in the other whether it might be advantageously introduced, under any and what modifications."⁵

But Ceylon was the last colony to be visited. Before the commissioners had arrived there, advisory councils had already been introduced into the other two colonies. Events at the Cape had precipitated this.

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1. Supra, p. 22.
 2. Sir William Macbean George Colebrooke (1787-1870), served in the army in India and various other eastern territories, 1805-21; commissioner of eastern inquiry, 1823-32; governor of various West Indian colonies, 1834-56.
 3. William Blair (1799-1873), Scottish lawyer, served on Commission of Inquiry to the Cape of Good Hope; later served as a member of the Supreme Court of Justice on Ionian islands.
Charles Hay Cameron (1795-1880), Scottish lawyer, Commissioner of Inquiry to Ceylon; later assisted Macaulay in preparation of Indian Penal Code and in 1843 became a member of Supreme Council of Bengal.
Campbell Drummond Riddell (1796-1858), Scottish lawyer, served on Commission of Inquiry in Ceylon; left to become colonial treasurer of North South Wales, 1830.
 4. Infra, pp. 52-4. Mendis, The Colebrooke Cameron Papers, Vol. I, p. 303f. Commission and Instructions, Goderich to Horton, 19/3/1833 and 20/3/1833.
 5. Mendis, The Colebrooke Cameron Papers, Vol. I, p. 5, Instructions to Commissioners of Inquiry, 18/1/1823.

The Cape of Good Hope and Mauritius were captured in 1806 and 1810 respectively and were ceded to Britain in 1814.¹ Both were of strategic importance in securing naval supremacy in the Indian Ocean, and were retained by Britain for this reason.² The Cape was also to prove useful as a refreshment station and as a base from which to launch anti-slavery patrols.³ It had originally been a refreshment station of the Dutch East India Company and had previously been occupied by Britain for 6 years, from 1795 to 1803.

During the first British occupation, government at the Cape had been modelled on the San Domingo pattern, but without provision for a council of advice. Instructions for the first governor, Macartney,⁴ had been copied from those issued in 1794 for the West Indies.⁵ This precedent was again followed in 1806.⁶ All civil and military power was vested in the governor, who held sole executive and legislative authority.

Under the administration of the Dutch East India Company the governor of the Cape had also exercised considerable power.⁷ But his legislative, executive and judicial authority had been shared by the Council of Policy, a local body consisting usually of 9 members, some of whom were officials and some representatives of the free burgers.⁸ All local decisions of government had required the written

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1. As early as 1810 it had been intended to introduce in Mauritius a form of government similar to that of Ceylon. Murray, West Indies, p. 81.
 2. C.J. Bartlett, Great Britain and Sea Power, 1815-1853, (Oxford, 1963), p.60. G.S. Graham, Great Britain in the Indian Ocean, (Oxford, 1967), pp. 5-7 and 24-40.
 3. G.S. Graham, Great Britain in the Indian Ocean, p. 40.
 4. George Macartney (1737-1806), first earl. governor of the Cape of Good Hope, 1796-8.
 5. Supra, p.16. Harlow and Madden, British Colonial Developments, 1774-1834, Select Documents, p. 83, n.1. R.C.C. Vol. II, pp. 3-19. Instructions to Macartney, 30/12/1796.
 6. R.C.C. Vol. VI, pp. 6-19, Instructions to Caledon, 1/8/1806.
 7. "Isolation ensured that the powers of the local government at the Cape were very great." Walker, History, p. 32.
 8. R. Kilpin. The Romance of a Colonial Parliament, (London, 1930), Ch. 1, passim. O.H.S.A. Vol. I, pp. 213-9. Walker, History, p. 32.

order or agreement of the Council of Policy, although proclamation was made in the governor's name alone.¹ At the time of the first British occupation of the Cape most of the existing laws and institutions were retained, except for the Council of Policy. As had been the case in some West Indian islands, local disturbances had preceded the British occupation, and there was a clear need for reforms of several kinds.² Civil government was introduced as soon as possible and the governor's instructions drawn up in such a way as to prevent any abridgement of the prerogative powers of the government, and to provide "opportunity to make improvements in the government of [the] colony instead of binding [the governor] hand and foot to follow precedent."³ It was necessary in such a situation to abolish any council which had previously shared the executive and legislative authority of the governor.⁴

In 1803 the Cape was retroceded to the Dutch and came under the administration of the new Batavian Republic. Once again a local council was established to share in the government of the colony,⁵ but this experiment was short-lived for when the British resumed control in 1806 the newly established council was again abolished, and all authority was held by the governor. This situation still obtained in 1823 when the Commission of Inquiry arrived at Cape Town. Although the commissioners' began work at once, their first reports on the government of the colony did not reach London until 1826.⁶ Meanwhile events in the colony had forced the pace of change.

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1. O. F. Mentzel, A Geographical and Topographical Description of the Cape of Good Hope (Cape Town, 1921), Part I, p. 145.
 2. Between 1791 and 1795 the interior of the colony had been subject to disturbances between the indigenous peoples and the white colonists, as well as an attempted republican rebellion. Walker, History, pp. 117-20. E.H. Burrows, Overberg Outspan (Cape Town, 1952), Ch. 2.
 3. Manning, British Colonial Government, p. 400.
 4. Cf. Trinidad, *supra*, p. 21.
 5. J.P. van der Merwe, Die Kaap onder die Bataafse-Republiek, 1803-1806, (Amsterdam, 1926), pp. 71-5.
 6. *Infra*, Ch. 3.

The governor of the Cape at the time of the Commission of Inquiry was Lord Charles Somerset, second son of the Duke of Beaufort.¹ His haughty manner and apparent lack of sympathy with some of the colonists in their difficulties had led to his growing unpopularity, especially among the British inhabitants who had settled in the colony in 1820 under a government-sponsored emigration scheme.² In 1824 Somerset over-reached himself on a matter involving some of the liberties most cherished by Englishmen and in consequence the secretary of state, Bathurst, decided to jump the gun on the question of constitutional reform, without waiting for the report of the commissioners of inquiry.

In 1823 a move had begun at the Cape for the establishment of a free and independent press, mainly under the instigation of Thomas Pringle³ and George Greig.⁴ Application had to be made in the first instance to the governor, who referred the question to London. When authorisation had been received from the secretary of state, Somerset allowed a weekly newspaper and a monthly journal to start.⁵ The first issue of the newspaper, The South African Commercial Advertiser appeared on 7 January 1824.

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1. Lord Charles Henry Somerset (1767-1831), combined a military and political career during the 1790s and early years of the 19th century; paymaster general of the forces, 1804-6 and again 1807-13; governor of the Cape of Good Hope, 1813-27; he was on leave from January 1820 - December 1821, so was not in the colony at the time that the British Settlers arrived in 1820; he was on leave again from March 1826 and it was at this time that he tendered his resignation as governor of the colony.
 2. H. E. Hockly, The Story of the British Settlers of 1820 in South Africa, (Cape Town), pp. 83-7.
 3. Thomas Pringle (1789-1834), arrived at the Cape with the Scots party in 1820; librarian in Cape Town, 1822-4; started a monthly journal, The South African Journal 1824; returned to Britain, 1826.
 4. George Greig (1800-1863), printer, arrived in Cape Town in 1823; campaigned for a free press from 1824 when he began publication of The South African Commercial Advertiser (hereafter referred to as S.A.C.A.)
 5. *Infra*, Ch. 10, *passim*.

Reports of criminal proceedings were regularly printed in this paper and in May 1824 coverage was given to a case which had been instituted by the government against one William Edwards,¹ a notary public of Cape Town. The story of Edwards is complex and need not be related in detail here.² Suffice to say that the charge of libel had been brought against him because of his alleged part in drawing up a memorial addressed by his client, Launcelot Cooke, a Cape Town merchant, to the Treasury Lords, complaining of abuses in the allocation of prize negroes by the Customs Office at Cape Town.³ This memorial had not been forwarded to London by the governor, as requested, but instead Cooke and Edwards had both been charged with libel. They were acquitted although Edwards served a month in gaol for contempt of court.⁴ He was subsequently again charged with libel because of 2 letters allegedly written by him, in which a scurrilous attack was made on the governor, Somerset. This time Edwards was found guilty and condemned to a 7-year term of banishment. The S.A.C.A. not only reported the legal proceedings, but offered editorial comment on the state of justice at the Cape. As a result the governor planned to introduce a censorship of the the paper and demanded a large sum of money as security. The proprietor, Greig, and the editor, John Fairbairn,⁵ preferred to halt the publication and made provision accordingly. A confrontation with the authorities followed, as a result of which Greig's presses were sealed by government officials and he himself was served with a summary order of banishment, in terms of which he was required to leave the colony within one month. There had been no trial and when Greig left Cape Town he proceeded to England determined not only to bring the matter to the attention of the Colonial Office, but

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1. William Edwards (1783-1828), alias Alexander Lockaye, an escaped convict from New South Wales, who practised as a notary public in Cape Town.
 2. G.E. Cory, The Rise of South Africa, 6 Vols. (Facsimile reprint, Cape Town, 1965; first published 1913), Vol. II, pp. 255-81.
 3. Prize negroes were persons captured from slave ships after 1808; they were apprenticed for fourteen years and then set at liberty.
 4. R.C.C. Vol. XVII, p. 110. Somerset to Bathurst, 27/2/1824. Cory, The Rise of S.A., Vol. II, p. 263.
 5. John Fairbairn (1794-1864), editor of S.A.C.A. 1824-59; member of the Legislative Council, 1850; member of the Legislative Assembly, 1854-64.

also before Parliament.

The cases of Edwards and Greig caused considerable embarrassment to the secretary of state, when he learned of them from Somerset.¹ Bathurst was already aware of the hostility between the British Settlers and the governor of the colony and he was sensitive to the risks, both local and imperial, of arbitrary and high-handed action on the part of the governor. He found it difficult to justify Somerset's behaviour towards either of the banished men. Moreover, the news of these events reached London at a very inopportune time, when questions concerning the freedom of the press and the arbitrary powers of government in other colonies were already under discussion in parliament.²

Bathurst acknowledged the information from Somerset in three separate official despatches.³ In all of them he expressed only cautious approval of the governor's actions, reserving judgement until more adequate reports were available. Bathurst admitted privately that he was being deliberately evasive, so that he would not be compromised should the papers be called for by parliament.⁴ He expected both cases to come before the House of Commons, as Edwards had submitted a petition directly to the Commons and Greig, together with a number of others, had appealed to the King in Council for the establishment of a free press in the colony.⁵

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1. R.C.C. Vol. XVII, pp. 108-10, Somerset to Bathurst, 27/2/1824; pp. 306-7, Somerset to Bathurst, 10/5/1824; pp. 350-1, Somerset to Bathurst, 21/5/1824. R.C.C. Vol. XVIII, pp. 56-9, Somerset to Bathurst, 3/7/1824; pp. 322-4, Bathurst to Somerset, 28/9/1824.
 2. Hansard, Parliamentary Debates, New Series, Vol. XI, c.858-890, debate on a free press in India; c.796-804, debate on banishment of persons from Jamaica; c. 961-1078 and 1206-1316, debate on administration of justice in Demerara.
 3. R.C.C. Vol. XVIII, pp. 322-4, Bathurst to Somerset, 28/9/1824. Ibid., pp. 324-5 Bathurst to Somerset, 29/9/1824. R.C.C. Vol. XIX, pp. 42-3, Bathurst to Somerset, 25/10/1824.
 4. British Museum, Loan 57, Bathurst Papers, Vol. 65, Bathurst to Somerset, Pte. and Conf'l. 29/10/1824. *Infra*, Appendix B.
 5. R.C.C. Vol. XVII, p. 350, Somerset to Bathurst, 21/5/1824. R.C.C. Vol. XVIII, pp. 58-9, Somerset to Bathurst, 3/7/1824.

The secretary of state also wrote a long private letter to Somerset, in which the full implications of the governor's arbitrary behaviour towards both Edwards and Greig¹ were exposed. Bathurst pulled no punches. He stated that neither affair had been satisfactorily explained and that more information was necessary before "either will be in a defensible state."² He reprimanded the governor for having intercepted a memorial legitimately addressed by a local inhabitant to the Treasury Lords, and he condemned the harsh sentence of seven years' banishment imposed on Edwards for his libel of the governor.³

But the case of Greig was a "much graver question," and the repercussions were likely to be more serious. In this matter Somerset had,

"stirred two most delicate questions to which every English feeling is most likely to be alive. The one, the freedom of the Press, the second, the power of expulsion without trial, without conviction, by your own individual authority."⁴

Bathurst expected parliament to give a sympathetic hearing to the appeal for a free press, not so much on the merits of the case, but because Somerset had,

"unfortunately surrounded the agitation of this question with every possible degree of unpopularity by the seizure of the press of the individual and the expulsion of him from the colony."⁵

The latter act had been declared illegal and unconstitutional by the legal counsel of the Colonial Office, James Stephen,⁶ and was regarded in such a serious light by Bathurst himself that he even considered terminating Somerset's governorship.⁷ He realised that

1. Supra, p. 30.

2. Infra, Appendix B.

3. Supra, pp. 30-1.

4. Infra, Appendix B.

5. Infra, Appendix B.

6. King, Richard Bourke, p. 70.

7. C.O. 324/75, Minute by Bathurst, 12/11/1824.

as an alternative to this it might be necessary to recall him to Britain to explain his conduct.

It was acknowledged by the secretary of state that in terms of his instructions, the governor had the right to banish without trial, but only "in some extreme case of danger where the ordinary Administration of the Law will not admit of timely assistance." Bathurst doubted whether Greig's presence in the colony had constituted such a danger. He warned Somerset that the crown's right to invest its governing officers with such an amplitude of power was already being questioned, and he feared that even one example of the imprudent use of such authority would "go a great way to deprive our Foreign Governments of this valuable, if not necessary, Instrument of Authority."

"I will confess to you that I am very much afraid that what has passed lately at the Cape will bring on a jealous enquiry and revision of the powers vested in the Governors of the Ceded Possessions, and unless precautions are taken, it will end in their being curtailed in a manner very prejudicial to their real interests. There has been indeed a strong disposition to question their powers, on other occasions, in other colonies;¹ and I have for some time intended to protect them by giving to each of those Governors a Council, under certain restrictions, similar to those which it has long been thought prudent to establish in the East Indies. I have been willing to wait for the Report of the Commission at the Cape before I established a Council there, thinking that probably they would recommend it. But if the arrival of their Report should be deferred to the meeting of Parliament I shall think it most prudent to establish it at once, as I am sure that it will be of great use in the discussion which will take place if such a system is already adopted."²

This statement is of considerable significance. It indicates not only the origin of the Council of Advice at the Cape, but also the very important interplay of forces operating between one colony and another.³

1. Supra, p. 31 n. 2.

2. Infra, Appendix B. Bathurst to Somerset, Pte. and Conf'l, 29/10/1824. Parliament was due to meet again the following 3 February. In the event Bathurst made timely arrangements, and the Additional Instructions creating a Council of Advice at the Cape were signed on 9 February 1825, Infra, p. 36.

3. Infra, p. 48.

It highlights too the influence of the precedent of India and Ceylon, as well as the crucial factor of parliamentary opinion in the development of colonies. The need to remove the sting from parliamentary criticism provided the main reason for the introduction of a council of advice into the Cape of Good Hope in 1825.

This factor has not always been recognised, and the establishment of an advisory council at the Cape has generally been attributed to an attempt to revive the old Council of Policy of Dutch East India Company days. It has been suggested, for instance, that the Council of Advice arose "on the ashes of the Council of Policy" and also that the Council of Policy "reappeared under another name."¹ Such a view ignores not only the connection between Greig's case and the introduction of the Council of Advice, but also the fact that the former Council of Policy had shared the executive and legislative authority of the governor.² The suggestion that it was possible to trace continuity in the conciliar institutions of the Cape, first under Dutch and then under British rule, was put forward in 1930 by Kilpin, and subsequently accepted by others.³ Recent research has brought to light the various factors that influenced the decision to establish a council in 1825,⁴ and has provided the clues that were not available to Kilpin when he wrote that it "was not known who first recommended" the establishment of such a council. Kilpin mentioned a suggestion made to the Colonial office in 1822 by one Andries Muller, formerly a member of the Council at the Cape during the Batavian administration. Muller had written from Switzerland to recommend that the governor of the Cape "should have a council given him to assist him and discuss everything that may concern the colony..."⁵ Like Malouet's suggestion

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1. Kilpin, The Romance of a Colonial Parliament, pp. 35 and 31.
 2. *Supra*, p. 27.
 3. Kilpin, The Romance of a Colonial Parliament, pp. 35-7. Fryer, The Government of the Cape of Good Hope, A.Y.B., (1964), Vol. I, p. 29. W.P.M. Kennedy and H.J. Schlosberg, The Law and Custom of the South African Constitution (London, 1935), pp.9-11.
 4. King, Richard Bourke, pp. 67-73.
 5. R.C.C. Vol. XIV, pp. 432-3, Enclosure with Muller to Wilmot, 30/6/1822. Kilpin, The Romance of a Colonial Parliament, p.36.

to the Colonial office in 1794 for a council at San Domingo,¹ this proposal may have carried some weight, but it is likely that the events of 1824 would have led to the introduction of a council, even without the hint from Muller.

The Council of Advice was created in 1825 partly as a smokescreen for parliament and partly as a genuine attempt to lessen the risk of hasty and precipitate action on the part of the governor. Bathurst explained this to Somerset,

"Command of temper is the most serviceable of all qualities in men vested with authority and one of the great advantages of a Council is, that it comes in aid of a Governor by giving him time to reflect when, from human infirmity, he may lose that command of which they who are opposed to him vainly try, by provocation, to deprive him and Parliament will more willingly trust Authority to a Governor when they know this security against its abuse."²

Greig's case in 1824 had occasioned the timing of the introduction of a council of advice at the Cape, but the intention to provide such a council had already existed. The need for the responsibility of government to be shared in some measure with a local body in ceded colonies had already become clear to Bathurst. Greig's case gave him cause to act more quickly in this matter at the Cape than he might otherwise have done. By the end of 1824 it was apparent that reports from the commissioners of inquiry would not be available before the opening of the parliamentary session the following February. Therefore

1. Supra, p. 15.

2. Infra, Appendix B. Bathurst to Somerset, Pte. and Conf'l., 29/10/1824. Cf. The view that the creation of a council of advice actually increased the autocratic power of the governor, "Uit die instruksies is dit baie duidelik dat die lede van die Raad van Advies alleen 'n adviseriende mag besit het, maar geen wetgewende mag nie. Die mees kenmerkende eienskap van die Raad van Advies is dus die uitgebreide mag wat aan die Goeweneur toegeken word." H.J. Lochner, Raad van Advies, 1825-1834, (M. A. Thesis of the University of Stellenbosch, 1936), p. 72.

In accordance with the plan he had outlined to Somerset the previous October¹ Bathurst requested the legal adviser of the Colonial Office to draft additional instructions for the governor of the Cape, directing him to establish a council of advice for the colony. Stephen's draft was ready by 12 January 1825, and was submitted for comment, together with the draft of two letters that would accompany the additional instructions.² These were returned to him for amendment, and were finally ready by the end of January.³ In the meantime it had been decided that an identical council should be established at the same time in Mauritius, the other colony still to be visited by the Commission of Inquiry and for which they were likely to recommend the establishment of a council similar to that already active in Ceylon. This move was likely to distract attention from the direct causal link between Greig's banishment and the introduction of an advisory council at the Cape. Additional Instructions for the two colonies were prepared and signed on 9 February 1825, together with despatches which gave further explanation of the new constitutional arrangements.⁴ It was intended at the same time to reform the councils already existing in the West Indian islands, but in the event these changes took several years to implement.⁵

The councils provided for Mauritius and the Cape of Good Hope were almost identical in composition and scope. In each the governor was to be the president of the council, with the chief justice, colonial

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1. Supra, p. 33.
 2. C.O. 48/73, Stephen to Horton, 12/1/1825.
 3. C.O. 48/73, Stephen to Horton, 28/1/1825.
 4. C.O. 49/16, Additional Instructions, enclosed with Bathurst to Somerset, 9/2/1825. (R.C.C. Vol. XX, pp. 7-11). C.O. 168/8 Additional Instructions, enclosed with Bathurst to Cole, 9/2/1825. K.S. Hunt, Sir Lowry Cole (Durban, 1974), p. 39.
 5. C.O. 324/98, Horton to Woodford, 12/10/1825. C.O. 320/1, Minute by Bathurst, 1825. Cited by Murray, West Indies, p. 159, n.83. *Infra*, p.53.

secretary and officer-next-in-command as members, in that order of precedence. In Mauritius the collector of customs, A. W. Blane, was named in the Additional Instructions as a member, while at the Cape three extra members were nominated, namely John Bell, Walter Bentinck and J. W. Stoll.¹ They held office as deputy quarter master general, auditor general and receiver general respectively, but their appointment as council members was not ex-officio.

The powers granted to the councils for the Cape and Mauritius were purely advisory and the relationship between governor and council was closely defined. The governor was to summon meetings at his discretion; to initiate discussion on any subject; to suspend or dismiss members if in his opinion there was cause for such a step; to nominate additional members to replace any deceased, dismissed or suspended, or if it was found for any reason impossible to form a quorum; to over-ride the views of the council on occasions when, in the governor's opinion, necessity required immediate action; and to act without consulting the council in cases of emergency, provided he reported his actions to the council at the earliest opportunity.² Council members were to enjoy freedom of debate and vote; they might request in writing the discussion of any topic; and they had the right to record their opinions in the minutes, when the governor acted contrary to their advice. A quorum was to consist

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1. Sir John Bell (1782-1876), son of a mercantile family in Fife, Scotland; served in the Peninsular War; deputy quarter master general at the Cape of Good Hope, 1822-8; government secretary at the Cape, 1828-42; he was later lieutenant governor of the island of Guernsey. Bell was married to a daughter of the earl of Malmesbury, and was thus a brother-in-law of Sir Lowry Cole, governor of the Cape, 1828-33.
Barend Hendrik Wolter Jan, Baron Bentinck of Diepenheim (1781-1849), auditor general of Cape of Good Hope, 1808-27; member of the Court of Justice 1814-27.
Joachim Willem Stoll (1786-1834), director of the Lombard Bank at the Cape, 1811; assistant colonial secretary, 1813-14; landdrost of Cape district; 1814-26; receiver general, 1819-34. After his death in 1834 it was found that Stoll had died insolvent, and also that he had embezzled public money to the extent of £15 000.
 2. In practice the question of legislative authority was to prove a problem to the governor. *Infra*, Ch. 2, *passim*.

of two members together with the presiding officer.¹

Only two questions were left without exact definition. These were the regularity of council meetings, and the precise nature of the business within the competence of the council. It is arguable that a certain degree of ambiguity existed in contrasting statements of the Additional Instructions and the accompanying despatch. The Instructions specified that,

"in the execution of the several Powers and authorities granted and committed to you by your Commission and General Instructions aforesaid you do in all things consult and advise with Our said Council and that you do not exercise the powers and authorities aforesaid or any of them except by and with the concurrence and advice of Our said Council..."²

But in the despatch the governor was assured,

"It is not the intention of the enclosed Instructions to impose on you the necessity of resorting to the Council for advice upon all the ordinary and less important details of public business. The general rules which the Instructions have laid down for your guidance upon this head, you will in your discretion apply to particular cases as they arise."³

The governor's discretion to summon the council as needed and to consult with them on subjects of his selection led to a dispute in Mauritius, which resulted in further Instructions to the governor, confirming his view that the advice of the council was not necessary for the exercise of "the several powers and authorities granted and committed to you by your general Instructions."⁴ This would appear to be a direct contradiction of the extract quoted above from the Additional Instructions of 9th February 1825. The disagreement

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1. C.O. 49/16, Additional Instructions enclosed with Bathurst to Somerset, 9/2/1825. (R.C.C. Vol. XX, p. 6f) C.O. 168/8. Additional Instructions enclosed with Bathurst to Cole, 9/2/1825.
 2. C.O. 49/16, Additional Instructions to Somerset, 9/2/1825, (R.C.C. Vol. XX, p. 10)
 3. C.O. 49/16, Bathurst to Somerset, 9/2/1825 (R.C.C. Vol, XX, p. 6).
 4. Hunt, Sir Lowry Cole, pp. 42-3, and p. 47, n. 106.

over this question appears to have arisen in Mauritius at least in part because the governor Sir Lowry Cole,¹ did not favour the establishment of a council. The outcome provides another illustration of the way in which the Colonial Office in Britain allowed flexibility and adaptation according to local circumstances rather than the imposition of rigidity and uniformity, even where the basic system of government planned for different colonies was similar.

At the Cape of Good Hope the governor, Somerset, found the council a useful arena for dealing with difficulties of many kinds, both personal and general. Between June and December 1825 several questions directly concerned with charges levelled against the governor were brought to the council's attention. These were subsequently referred by the Colonial Office to the Commission of Inquiry for investigation and were thus removed from the competence of the council.² But a number of questions of general importance also came before the council during their first 6 months' activity and for Somerset himself the sharing of responsibility, particularly on the crucial issues of currency, and slavery, must have brought a certain measure of relief.³ He appears to have accepted a council willingly, while at the same time maintaining firm control over its business and discussion. His successor, Bourke,⁴ was even more favourably disposed towards the conciliar system and during his term of office as acting governor he began to mould the council into an efficient and well-ordered instrument of government.⁵ Bourke was succeeded in

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1. Sir Galbraith Lowry Cole (1772-1842), younger son of the first earl of Inniskillin; served with army in the West Indies in 1794 and later in Egypt and in the Peninsular War; governor of Mauritius, 1823-8; governor of the Cape of Good Hope, 1828-33. Cole was a brother-in-law of Sir John Bell, government secretary at the Cape, 1828-42.
 2. *Infra*, p. 95.
 3. *Infra*, Chs. 4, 5, 6. Cf. The view that the council "became entirely subordinate to the will of the governor, who did not refer questions of any importance to the Council for their consideration and in the legislative sphere, in particular, few subjects but those of "trifling import", were submitted to it." I. E. Edwards, The 1820 Settlers in South Africa, (London, 1934), p. 126.
 4. Sir Richard Bourke (1777-1855), educated for bar; served in wars against France; lieutenant governor of eastern Cape of Good Hope, 1825-8; acting governor of the Cape, 1826-8; governor of New South Wales; 1831-7.
 5. *Infra*, Ch. 7, *passim*.

1328 by Cole, formerly governor of Mauritius, who brought with him his prejudice against the conciliar system. During Cole's years the good organisation of the council at the Cape declined to some extent.¹

The Council of Advice at the Cape was superseded in 1834, when an Executive Council and a Legislative Council similar to those set up in the West Indies and Ceylon were introduced.² The Report of the Commissioners of Inquiry on Ceylon was influential as far as the Cape was concerned, but not in the way originally intended. They had been asked to consider the suitability of establishing a council of advice there, but this council had already come into existence before their reports on the Cape or Ceylon had reached London. Instead, the constitutional reforms which they recommended for Ceylon were applied also to the Cape.

Although the device of an advisory council had been improvised originally for conquered colonies, it was found also to be applicable in a-typical colonies of settlement. In the experimental colony of Sierra Leone established as a refuge for the slaves emancipated in England after Mansfield's judgement in the Somerset Case³ the conciliar pattern was adopted in 1811.⁴ The council set up there came in time to assume a legislative authority, although in size and scope it had originally resembled an advisory council. In 1847 it was decided in London to allow the council to continue de jure the exercise of those powers which it had de facto assumed.⁵

1. *Infra*, pp. 69-70.

2. *Infra*, p. 54.

3. G. R. Mellor, British Imperial Trusteeship, 1783-1850 (London, 1951), pp. 37-8.

4. C. W. Newbury, British Policy Towards West Africa, Select Documents 1786-1874 (Oxford, 1965), p. 481, Royal Instructions to Maxwell, 15/6/1811.

5. *Ibid.*, pp. 517-20, Macdonald to Grey, 11/2/1847; Minute by Stephen, 12/4/1847.

The colony of New South Wales was another which had developed in unique circumstances. From the 16th century English courts had imposed the sentence of transportation on some criminal offenders, who had then been removed to the North American colonies for a period of penal servitude.¹ With the loss of the American colonies in 1782 this was no longer possible and some other outlet had to be found for what had by then become a regular form of punishment. In 1784 an act was passed giving the King authority to appoint places "in or out of his dominions" to which criminals might be sent.² In fulfilment of this, the penal settlement of New South Wales was established by statutory enactment in 1787.³ Because the colony was atypical in character, the traditional form of colonial government was inapplicable. All authority, executive, judicial and military, was vested in the governor⁴ and obedience was to be "according to the rules and discipline of war."⁵ It was not, however, a system of military government, for the first governor, Phillip,⁶ received both a military and a civil commission.⁷ Legislative authority was not expressly granted but was, of necessity, assumed by early governors of the colony. The governor's powers "were almost those of an absolute ruler and were designed to enable him not only to found the colony, but also to deal promptly with any question of administration which might arise."⁸

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1. G. L. Shaw, Convicts and the Colonies, (London, 1966), Ch. 1, *passim*.
 2. 24 Geo. III, c. 56.
 3. 27 Geo. III, c. 2.
 4. A. C. V. Melbourne, Early Constitutional Developments in Australia, 2nd Ed. (St. Lucia, 1963), pp. 8-10.
 5. *Ibid.*, p. 8
 6. Arthur Phillip (1738-1814), Governor of New South Wales 1788-1792.
 7. E. Campbell, Prerogative Rule in New South Wales, 1788-1823, Royal Australian Historical Society, Vol. L (1964), p. 167.
 8. E. Sweetman, Australian Constitutional Development, (Melbourne, 1925), p. 3.

In addition to convicts and official or military personnel, free settlers began to arrive in the colony from 1793.¹ By 1810 there were four distinct groups in the population, namely, convicts, ex-convicts, free settlers and those associated with the government, both soldiers and officials.² By 1817 the free inhabitants considerably outnumbered the convicts. As a penal settlement alone New South Wales would have been difficult to administer; but with the growth of the free immigrant population as well as the increasing number of released prisoners who remained in the colony, and those born locally, the whole character of the colony had changed from its earliest years. Yet for thirty years there was little change in the form of government, despite the complexities of the situation and the turbulence of those years. The commission and instructions issued to the first governor, in 1787 were repeated, for his successors, virtually unchanged, until the introduction of a conciliar system in 1823.³

From 1804 colonists themselves had begun to demand representative government.⁴ But frequent unrest in the colony and bitter hostility between the different social groups in the population gave justification for continuing strong gubernatorial rule. Nevertheless, parliament, who had been responsible for establishing the colony of New South Wales exercised vigilance over its development. In 1812 a committee was appointed by the House of Commons to investigate the convict settlement. In their report they warned that the governor's power was too extensive, and was liable to abuse, they recommended the introduction of a council, "for the purpose of sharing with him in the responsibility of the measures ... necessary for the security or prosperity of the colony."⁵

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1. R.B. Madgwick, Immigration into Eastern Australia, 1788-1851, (Sydney, 1969), pp. 11-13.
 2. Melbourne, Early Constitutional Developments in Australia, p. 59.
 3. Ibid., p. 9.
 4. Sweetman, Australian Constitutional Development, p. 11.
 5. D.M. Clark, Ed., Select Documents in Australian History 1788-1850, 2 Vols. (Sydney, 1950), Vol. I, p. 307, Report of the Select Committee on Transportation.

The committee's proposals were not adopted by the secretary of state, who was understandably reluctant to diminish the governor's authority in a colony disturbed by a military rebellion as recently as 1809.¹ Other problems had also presented themselves to Bathurst's mind,

"The difficulty of selecting proper persons for the Situation of Members of the Council; the dissension and dispute to which their opposition to the Governor or their protest against his conduct, must give rise; the parties which would thence arise in the colony, the length of time during which the public tranquility would be interrupted before a Communication could be received from home; the danger of weakening the higher authorities in a Society composed of such discordant materials... are all causes which have more or less influenced the determination of H.M.G. to leave the Governor unshackled by a Council."²

Bathurst proposed instead a three-fold plan of "strong but fair administration by the Governor, promotion of education, and the fostering of religion" to reduce the difficulties and tensions within the colony.³

Apart from the inexpediency of granting extensive authority to the governor and the complex nature of the colony itself, serious legal questions arose concerning the government of New South Wales. Although established as a convict station, the colony was also an overseas territory of settlement. In all other such colonies Englishmen had carried with them the privileges and rights customarily enjoyed in England, notably taxation by representatives and trial by jury. As early as 1803 the governor's assumed legislative authority had been challenged by the legalist, Bentham,⁴ who,

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1. C.H.B.E. Vol. VII, Part I, Ch. 4, passim.
 2. Bathurst to Macquarie, 23/11/1812, quoted by T.P. Woods, Lord Bathurst's policy at the Colonial Office, 1812-1821, with particular reference to New South Wales and the Cape Colony, (Oxford University D. Phil. Thesis, 1971), p. 181, n. 2.
 3. Woods, *Ibid.*, pp. 181-2.
 4. Jeremy Bentham (1748-1832), barrister and writer.

"denied that the King had power to confer a legislative authority upon the Governor. Even in America, he said, the Crown had never enjoyed the right to legislate without Parliament... He challenged the validity of the Governor's proclamations."¹

In the colony itself the same question was repeatedly raised by judicial officers. In 1815 the deputy judge advocate² refused to formulate new port regulations at the request of the governor because he would not recognise a legislative authority superior to that of parliament.³ Other judges faced the same dilemma.⁴

In 1819 the question was submitted to the law officers in England, who declared that,

"New South Wales not having been acquired by conquest or cession, 'His Majesty by His Royal Prerogative has not the right either by Himself or through the medium of a Governor, to make laws for the levying of taxes in such a Colony ... but that such taxes can only, under the present circumstances, be imposed by the Parliament of the United Kingdom'"⁵

Accordingly, an Act was passed in 1819 validating the proceedings of the governor in New South Wales,⁶ and annual Acts renewed the

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1. Melbourne, Early Constitutional Development in Australia, p. 47. Campbell, Prerogative Rule in New South Wales, Royal Australian Historical Society, Vol. L (1964), pp. 162-3.
 2. Ellis Bent (1783-1815), judge-advocate, New South Wales, 1809-1815.
 3. Melbourne, Early Constitutional Development in Australia, p. 33.
 4. E.g. Jeffrey Hart Bent (1780-1852), chief justice, New South Wales, 1814-17, challenged the validity of the governor's orders in 1815, "I am required to admit that to be legal... which I know to be otherwise." Barron Field (1786-1846), judge, New South Wales, pointed out that American colonies had rebelled because they were being taxed by parliament, but New South Wales was being taxed by the King alone. Melbourne, Early Constitutional Development in Australia, pp. 33-4.
 5. Manning, British Colonial Government, p. 535. Clark, Select Documents in Australian History, 1788-1850, Vol. I, pp. 314-5, Memorandum by James Stephen on the legislative power of governors.
 6. 59 Geo. III, c. 114.

provision until 1823.¹

By 1819 the "government of the United Kingdom had been forced to realise that the changing circumstances of the Colony demanded a reconstruction in the form of government."² Parliamentary investigations into the state of prisons, in 1812 and 1819, had included New South Wales and its government and on both occasions reference had been made to the demand for some form of council.³ Bathurst subsequently saw the need for further enquiries to be made in the colony itself. In 1819 J. T. Bigge, former chief justice of Trinidad, was commissioned to visit the colony and report on the system of transportation and, more discreetly, the conduct of government.⁴ Bigge submitted three reports - on transportation (January 1822); the judicial establishment (February 1823); and agriculture and trade (March 1823). Although he did not report explicitly on the crucial constitutional questions, he proposed reforms that would affect the government of the colony.

In July 1823 the New South Wales Judicature Act was passed, implementing some of Bigge's recommendations.⁵ It was from the start a temporary measure only and was to be operative until July 1827. Farreaching changes were made in the judicial system of

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1. 1 Geo. IV, c. 62; 1 and 2 Geo. IV, c. 8; 3 Geo. IV, c. 96; 4 Geo. IV, c. 96.
 2. Melbourne, Early Constitutional Development in Australia, p. 29.
 3. Supra, p. 43. Sweetman, Australian Constitutional Development, p. 20.
 4. Bathurst had begun to negotiate with the Treasury Board for a commission of inquiry as early as 1817. Woods, Lord Bathurst's policy at the Colonial Office, p. 237, n. 1.
 5. 4 Geo. IV, c. 96.

the colony, and at the last-minute, constitutional changes were also introduced.

"In the beginning the government had no intention to provide for the creation of a Legislative Council, but, harassed by the difficulties of the situation, it suddenly decided to establish a colonial legislative which would have the power to devise its own solutions for the various (local) problems. It cannot be doubted that the decision was made merely for purposes of administrative convenience."¹

The Act provided for a council of 5 - 7 members to be appointed, and for the governor to make laws for the colony with their advice. Whether this was an advisory council or a legislative council was not specified and subsequently both terms have been used to describe it.² It was introduced because of the the need,

"to make Laws and Ordinances for the Welfare and Good Government of the said Colony ... the Occasions of which cannot be foreseen, nor without much Delay and Inconvenience be provided for, without entrusting that Authority for a certain Time and under proper Restrictions, to Persons resident there ... With the Advice of the Council to be appointed ... or a major part of them the Governor ... shall have Power and Authority to make Laws, and Ordiances, for the Peace, Welfare and Good Government of the said Colony."³

It is significant that this wording is identical to that of the Quebec Act, passed in 1774 after ten years of uncertainty and ambiguity in government.⁴ The council established in Quebec in 1774 was to share the legislative and executive authority of the governor, and marked the beginning of the recognition of differentiation between executive and legislative in personnel and function.⁵ It seems clear from the almost

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1. Melbourne, Early Constitutional Development in Australia, p. 96.
 2. E. g. Sweetman calls it an Advisory Council, Australian Constitutional Development, Ch. V, passim; while Melbourne calls it a legislative council, Early Constitutional Development in Australia, pp. 112-21, passim.
 3. Clark, Select Documents in Australian History, 1788-1850, Vol. I pp. 318-9, 4 Geo. IV, c. 96.
 4. Shortt and Doughty, Documents, Vol. I, p. 570, 14 Geo. III, c.83.
 5. Supra, p. 10.

identical wording of many clauses in the two acts that the Quebec Act of 1774 provided the model for the New South Wales Judicature Act of 1823.¹ The further development of the conciliar system as a process leading towards representative, and then responsible, government has also been attributed in part to the constitutional precedents of Canada.²

In New South Wales there were new limits placed upon the council. In the case of the council's opposition to a proposed law their reasons were to be recorded and the King reserved the right of enactment despite the council's opposition. The governor had emergency powers to legislate with the support of only one council member, and in times of open rebellion or definite apprehension of rebellion, he might over-rule the entire council. Laws were to be submitted to the chief justice for a certificate of non-repugnancy to the laws of Britain before being passed by the council and had also to be laid before the British parliament after being passed in the colony. The power of disallowance might be exercised by the King at any point within three years of enactment in the colony.³ Thus the legislative authority of the governor, while openly acknowledged for the first time, was limited by safeguards far more numerous than those in most colonies where an advisory council assisted the governor. Nowhere else was the governor made so dependent on a council which did not, explicitly, share his legislative authority.

The officials appointed to the council initially were the lieutenant-governor, the chief justice, the colonial secretary and the principal surgeon. It is of interest to note that when the secretary of state informed the governor of these nominations he also asked for a list

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1. W. Smith, *Canada and Constitutional Development in New South Wales*, Canadian Historical Review, Vol. VII (1926), pp. 99-100.
 2. *Ibid.*, *passim*.
 3. Clark, Select Documents in Australian History, 1788-1850, Vol. I, pp. 318-21, 4 Geo. IV, c. 96.

of ten principal merchants and land holders.¹ It would appear that from the start there was the intention to introduce a number of non-official members into the council. This was done in 1825, when other changes were also introduced.²

The act of 1823 had not clearly defined the role of the council in New South Wales. In size and composition it resembled other advisory councils, but in function it was more akin to the legislative council established at Quebec in 1774.³ The creation of an inner executive council in 1825 and the enlargement of the other council accentuated the similarity. This change came about almost fortuitously. In 1825 a new governor was appointed to New South Wales,⁴ and occasion was taken to prepare an entirely new commission and instructions. For the first time these were not based on the instructions provided in 1787 for the first governor of the colony. The change was suggested by the Colonial Office's legal adviser, Stephen, and was supported by Bathurst. The recent introduction of councils at the Cape of Good Hope and Mauritius⁵ had some bearing on the decision, for Stephen recommended that in New South Wales the governor should come under the control of a council 'like those found in the empire 'in former times, and ... recently in the Cape of Good Hope and Mauritius' ".⁶ The comparison is significant for it underlines the importance of precedents and models established in one colony and followed in another. It highlights too, the intention behind the introduction of the councils in the Cape and Mauritius in 1825, and provides a clue to the direction of Stephen's own thinking on the conciliar pattern generally.⁷

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1. Sweetman, Australian Constitutional Development, p. 51.
 2. *Infra*, p. 49-50.
 3. *Supra*, p. 11.
 4. Sir Ralph Darling (1775-1858), governor of New South Wales, 1825-31.
 5. *Supra*, p. 36.
 6. Stephen to Horton, 25/3/1825, quoted by Eddy, Britain and the Australian Colonies, 1818-1831, p. 29, n. 1.
 7. *Supra*, p. 21.

The instructions for New South Wales in 1825 provided for an executive council, to be consulted "in all things," except emergencies.¹ The lieutenant governor, chief justice, archdeacon and colonial secretary served on the council, under the presidency of the governor, who had sole right of initiation.² Members, however, might make written application for the discussion of any topic. If the governor acted against the opinion of the council he was to report the matter fully to the secretary of state. The introduction of an executive council in 1825 by prerogative instrument complemented the Act of 1823, which had provided new legislative and judicial arrangements. "The Instructions dealt primarily with the executive authority, but, as they involved no breach of law, it had not been necessary to obtain for them a parliamentary sanction."³ The appointment of new officials in the colony, for example a colonial secretary in 1821 and a treasurer in 1823, had further limited the executive discretion of the governor.⁴ In 1823 the appointment of a colonial agent in London brought New South Wales into line with other colonies, and at the same time provided an additional channel for liason between London and Sydney.⁵

Darling's commission and instructions of 1825 also added three non-official members to the previous council which was now for the first time officially described as a legislative council.⁶ Both in terms

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1. Melbourne, Early Constitutional Development in Australia, p. 108.
 2. The surveyer general and principal surgeon were no longer to be members. The nomination of the archdeacon would seem to be due to the suitability of the incumbent rather than the importance of the office. Thomas Scott Hobbes (1783-1860), archdeacon of New South Wales, 1824-28 had been secretary to J. T. Bigge during the Commission of Inquiry to New South Wales in 1819.
 3. Melbourne, Early Constitutional Development in Australia, p. 114.
 4. Melbourne, Early Constitutional Development in Australia, p. 104.
 5. Young, Colonial Office, p. 24.
 6. The three new members were John Macarthur (1767-1834), wool farmer; Robert Campbell (1769-1846), merchant; Charles Thoresby (1771-1828), surgeon, explorer, road-builder. M. Steven, Merchant Campbell, 1769-1846, (Melbourne, 1965), pp. 286-8.

of function and of personnel the executive and legislative authorities had now been differentiated. Another important innovation in 1825 was the separation of New South Wales and Van Diemen's Land. Previously the island had been administered as part of the mainland colony. But in 1825 the governor received separate but identical commissions in respect of the two areas. Thereafter Van Diemens Land developed quite separately from New South Wales, although along parallel lines.¹

When the time came for the 1823 Act to be revised in 1827² the basic structure of the constitution was retained, but modifications were introduced, further limiting the power of the governor. The division into two colonies was confirmed by statutory enactment, and in each a legislative council of 10 - 15 members was established.³ The governor lost his power to legislate with the support of only one member of the council, and also his sole right of initiation. The new act also abolished the oath of secrecy formerly imposed on council members, and provided for publication in the local press of proposed legislation. The act of 1828 "definitely placed the Legislative Council above the governor in legislative matters."⁴ As far as his executive authority was concerned the governor was still bound by his commission and instructions of 1825.

The new arrangements came into operation in the colony in August 1829, when fifteen members were appointed to the legislative council, eight of whom were government officials. This constitution lasted in New South Wales until 1842.⁵ Thus by 1829 the constitutional changes which had begun in 1823 had reached a clearly defined point of development, with executive and legislative authority vested in separate councils and the sovereign power of the governor

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1. Melbourne, Early Constitutional Development in Australia, p. 108. The governor's authority was effective only when he was present in person in Van Diemen's Land. In his absence the lieutenant governor exercised full authority.
 2. *Supra*, p. 45.
 3. 9 Geo. IV, c. 83.
 4. Melbourne, Early Constitutional Development in Australia, p. 155. L.N. Rose, The Administration of Governor Darling. Royal Australian Historical Society, Vol. VIII (1922), pp. 322-6.
 5. In 1842 in terms of the act 5 and 6 Vic., c. 76 New South Wales was granted a new constitution creating an enlarged legislative council of 36 members, 24 of whom were to be elected.

decisively curtailed. New South Wales in 1829 was very different from the convict station established at Botany Bay in 1788. But it had taken 30 years before changes had been initiated. Many factors had served to prevent reform. The colony was a great distance from Britain and delays in communication had made it necessary for power to be centralised in the person of the governor.¹ As a penal settlement, the colony had come under the jurisdiction of the Home Department in Britain, so that it was not drawn within the orbit of regular colonial administration. Britain's preoccupation with the long war against France had necessitated the temporary shelving of many other questions. Confusion over the legitimate rights of the governor to legislate for the colony had led finally to the Commission of Inquiry in 1819. But even when change was introduced the approach, initially, was tentative and lacking in clear definition. Policy making was slow; implementation was rapid, and, in part, hastily-devised. Whether consciously modelled on the Quebec system or not, the pattern that emerged in New South Wales between 1823 and 1829, showed many similarities to that which had developed in Canada between 1764 and 1774. New South Wales in its turn was to provide another model for the development of the conciliar pattern.

Commenting on the constitution of 1828 Murray,² who had become secretary of state for colonies in May 1828, stated,

"By adding to the number of the members of the Council, fairly selected from among the more intelligent, wealthy and respectable members of the commercial, agriculture and professional bodies, it has been hoped that a

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1. Some of the practical difficulties of this isolation are described by G. Blainey, The Tyranny of Distance, (Melbourne, 1968).
 2. Sir George Murray (1772-1846), served in army during wars against France; lieutenant general and governor of Canada, 1814; secretary of state for war and colonies, 1828-30.



Legislature might be found adequate for representing the various interests of the Colonial Society, likely at once to receive a salutary influence from public opinion and to exercise a wholesome control over it."¹

Four years later another secretary of state, Goderich,² wrote "The object of such a constitution is mainly to secure to the inhabitants the proper degree of influence over the measures of the local government, more especially in all matters relating to taxation and expenditure."³

The purpose of the Legislative Council in New South Wales may thus be seen as two fold : - to provide a measure of influence and control over both the governor and the local population. The point underlines once more the usefulness of the conciliar system where a colony was not yet ready for full representation. By 1828 it was already apparent that this type of constitution marked a step towards the traditional form of representation of colonies of settlement. Introducing the New South Wales Act in 1828 Huskisson⁴ had taken for granted " 'the eventual establishment of institutions in these colonies similar to those of the people from whom the colonists have sprung. ' " ⁵

In the colonies of conquest and cession there was also an obvious need for some transitional stage before the granting of representative institutions should remove entirely the legislative and executive authority of the King, or his representative the governor. Most crown colonies,

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1. Murray to Darling, 31/7/1828, quoted by Sweetman, Australian Constitutional Development, p. 71.
 2. Frederick John Robinson (1782-1859), Viscount Goderich, first earl of Ripon; Under-secretary for colonies, 1809; chancellor of the exchequer, 1823-7; secretary of state for colonies, 1827; prime minister, 1827-8; secretary of state for colonies, 1830-33.
 3. Goderich to Bourke, 4/3/1832. Sweetman, Australian Constitutional Development, p. 72.
 4. William Huskisson (1770-1830), president of Board of Trade, 1823-7; secretary of state for colonies, 1827-8.
 5. Quoted by Eddy, Britain and the Australian Colonies, p. XIII.

as they were now called, were slave-owning colonies and on the issue of slave amelioration alone it had become necessary to assert the crown's prerogative to legislate by Order-in-Council.¹ At the same time constitutional reform had been intended since the introduction of advisory councils in the Cape of Good Hope and Mauritius in 1825.² In London the reports of the Legal Commission to the West Indies were received from 1828 to 1830.³ Although primarily an investigation into the judicial system of the West Indian colonies, these reports also influenced constitutional change. By 1830 reports on Mauritius had also been received from the Commission of Eastern Inquiry, as well as most of their reports on the Cape of Good Hope. Plans were therefore made for the introduction of Executive and Legislative Councils in the three colonies of Trinidad, St. Lucia and Mauritius, simultaneously with the planning of reforms for Demerara-Berbice.⁴ In each of the three former colonies there was to be an Executive Council consisting of the governor and three officials. The governor retained the right of initiation, but members might submit a written request for discussion of any topic. If the governor disagreed with the council he was to refer to London for guidance. The Legislative Council was to consist of an equal number of official and non-official members, and the governor was to exercise a double vote. The non-official members were to be nominated as in New South Wales⁵ rather than chosen by an electoral College as in Berbice-Demerara.⁶

When these reforms were planned in 1830 it was intended to implement them by Order-in-Council. Draft orders, together with

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1. Murray, West Indies, Ch. 9, passim.
 2. Supra, p. 36. n. 5.
 3. Murray, The West Indies and the Development of Colonial Government, 1801-1834, pp. 104-5; 160f. Supra, p. 24, n. 4.
 4. Supra, p. 21. The reason for excluding the Cape of Good Hope at this stage is not clear. Ceylon, the other crown colony omitted, was still under investigation by the Commission of Inquiry.
 5. Supra, p. 49.
 6. Supra, pp. 19-21.

explanatory letters, were ready by December 1830, but were shelved when the Wellington ministry went out of office, and Goderich replaced Murray as secretary of state for colonies. Although the proposed changes were still adopted, it was decided by the new secretary of state to effect them by means of new commissions and instructions for the respective governors, rather than by Orders-in-Council.¹ Accordingly in 1831 the colonies of Trinidad and Mauritius were granted the new constitution, and in 1832 St. Lucia was brought into line. Following the reports of the Commission of Inquiry, Ceylon was granted an Executive and Legislative council in 1833,² and in the same year the Commission and Instructions for the new governor of the Cape of Good Hope, Sir Benjamin D'Urban,³ made similar provision for that colony.⁴ The new councils came into being at the Cape in January 1834, superseding the existing Council of Advice.

The council of advice had emerged at a time when a great many new territories were being added to the British empire, mainly through conquest and cession; and when broad changes were taking place in imperial supervision and control; when parliamentary statute had begun to replace prerogative instruments for the regulation of colonial affairs; and when the creation of a third Secretaryship made possible the closer scrutiny of colonial affairs as well as the cross-pollination of ideas and institutions from one colony to another. The council of advice had begun as an ad hoc solution to a wartime crisis. After the war it was found to be a constitutional device capable of many permutations in structure and function, and suitable for general use in colonies not yet ready for representative institutions. Experiments

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1. Stephen had preferred this procedure from the start, Murray, West Indies, pp. 169-70.
 2. Mendis, The Colebrooke Cameron Papers, Vol. I, pp. 53 and 56. Colebrooke to Goderich, 24/12/1831, and Report on the Administration of Ceylon. The introduction of such a council was specifically recommended by the Commissioners, Ludowyk, The Modern History of Ceylon, pp. 54-5.
 3. Sir Benjamin D'Urban (1774-1849), governor of British Guiana, 1821-5; governor of Barbados, 1825-9; Governor of Cape of Good Hope, 1834-8.
 4. C.O. 49/25, Commission and Instructions to D'Urban, 8/11/1833.

were the result of improvisation rather than a theoretical approach. As they varied in composition and function, so also councils varied in efficacy.

The council of advice came to be superseded in many colonies by the dual conciliar pattern of executive and legislative councils that had developed, in contrasting circumstances and over a long period of time, in the colonies of Quebec and New South Wales. In the latter colony this constitution was itself to be developed one stage further in 1842 when a mixed council with a majority of elected members was to replace the nominated legislative council. This transformation marked the beginning of representative government for New South Wales, and pointed the way once more to the next step in the process of moving forward from conciliar to representative government. The council of advice marked the beginning, not the end, of change.

Chapter 2

The Structure and Activity of the Council of Advice at the Cape of Good Hope, 1825 - 1834.

Among the many reasons for creating a council of advice at the Cape of Good Hope were the complexity and diversity of local problems and the fact that these had been ever more forcibly brought home to the Colonial Office by the protests of British settlers in the colony. The commissioners of inquiry were to expose even further the local difficulties as seen from the point of view of the colonists, while the Council of Advice itself was to become yet another channel through which officials in London could be kept informed of local needs and developments.

The Council of Advice was no mere cypher. It was diligent in the pursuit of its duties and its members appear to have exercised their responsibilities conscientiously and with a broad grasp of the problems of the colony as a whole. Although uncertain initially of the extent of their discretion and independence as an advisory body,¹ they appear to have been frank and fearless in expressing their opinions, even when these entailed disagreeing with the British government, the commissioners of inquiry or the governor himself. To a large extent the activity and efficacy of the council were influenced by the attitude and temperament of the governor in his capacity as president of the council. Four men held this office during the period under consideration, namely Somerset, 1825-6; Bourke, 1826-8; Cole, 1828-33; and Sir Thomas Wade, 1833-4.² The operation of the Council of Advice was influenced by each in turn. It is proposed therefore to examine what may be called the mechanics of conciliar

1. Infra, Chs. 4 and 5 passim.

2. Sir Thomas Francis Wade (? - 1846), in military service from 1805 in Italy and then in the Peninsular War where he served on the military staff of Sir Lowry Cole; accompanied Cole to Mauritius as military secretary in 1823, and again to the Cape in 1828; became officer next in command in 1832, with a seat on the Council of Advice; acting governor, 1833-4; returned to England 1835, and gave evidence to Aborigines Committee in 1836; assistant poor law commissioner for Haverford Union, 1835-46.

government during this period and then to consider the relationship between the commissioners of inquiry and the council, with particular reference to some of the recommendations made by the Commission of Inquiry and referred to the Council of Advice for implementation.

The Council of Advice met for the first time at government house in Cape Town at 1 p.m. on 4 May 1825,¹ and in a public ceremony the members named in the Additional Instructions of 9 February 1825 took the oaths of office.² Thereafter council members took their seats in order of precedence, while a royal salute was fired from the nearby castle. The spectators then retired and the council doors were closed. The rest of the meeting was held in camera, as were all future meetings of the council.³ Other formalities took up the remainder of the time, namely the reading of two despatches that had accompanied the Additional Instructions, and the swearing-in of the acting clerk of the Council, P.G. Brink,⁴ and his assistant, Thomas Miller.⁵ The secretary of state had informed Somerset that provision was to be made from the colonial revenue for the appointment of a clerk to the council,

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1. C.O. 51/1, Minutes, 4/5/1825. Kilpin, The Romance of a Colonial Parliament, p. 39.
 2. Supra, p. 36-7.
 3. Infra, pp. 75-7.
 4. Peter Gerhard Brink (1791-1852), clerk in colonial secretary's office, 1809; assistant secretary, 1819; acting clerk to Council of Advice, 1825; accompanied Somerset to England as private secretary, 1826; appointed sheriff of the Cape, 1827; auditor general, 1829-49; ex officio seat on Council of Advice, 1831; ex officio seat on Legislative Council, 1834; retired 1849.
 5. Thomas Miller, assistant to the clerk of the Council of Advice from 1825; acting clerk of the council, 1828-9 and 1830-1; colonial aide-de-camp to Sir Lowry Cole; author of a pamphlet on slavery at the Cape, 1831.

and that the office would be filled by someone from England.¹ In the meantime Somerset was to make temporary arrangements. In November 1825 Dudley Perceval² arrived in the colony to assume duty as clerk of the Council of Advice. He was the son of a former British prime minister³ and was on familiar terms with Bathurst and other high-ranking officials at the Colonial Office. His private correspondence with them provides a rare personal insight into the working of the Council of Advice at the Cape, and into some of the tensions operative in official circles at Cape Town.⁴ Perceval returned to England in February 1828 and the clerk's duties were temporarily performed by the assistant clerk, Miller. The new clerk of the council, Ker Baillie Hamilton,⁵ arrived in 1829. Later when he went on leave Miller resumed the clerk's duties for a further eighteen months and at the end of that period was warmly commended for the ability and industry which he had shown on the different occasions when he had served as acting clerk.⁶ This was the only time a personal vote of thanks was recorded in the minutes of the Council of Advice.

Following the formal opening of the Council of Advice in May 1825 two further meetings were held at government house. From 13 June 1825 the Council met at a venue described as "the council room" and thought to be located in a cottage in the grounds of government house.⁷ From November 1827 meetings took place in a

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1. C.O. 49/16, Bathurst to Somerset, 9/2/1825. (R.C.C. Vol. XX, p. 5.)
 2. Dudley Montagu Perceval (1800-1856), studied law at Oxford; clerk to the Council of Advice at the Cape, 1825-28; deputy teller of the Exchequer, London, 1828; married Mary Jane, eldest daughter of the lieutenant governor, Bourke, in 1827.
 3. Spencer Perceval (1762-1812), prime minister, 1809-12; assassinated in the House of Commons, 1812.
 4. Mss. Letterbook of Dudley Perceval, 1825-28; Parliamentary Library, Cape Town, passim. C.O. 48/127, Letters from Perceval to Hay, passim.
 5. Ker Baillie Hamilton, clerk of the Council of Advice, 1829-34; clerk of the Executive and Legislative Councils, 1834-46.
 6. C.O. 51/24, Minutes, 10/9/1831.
 7. Kilpin, Romance of a Colonial Parliament, p. 39.

committee room of the Court of Justice. On one occasion the council met in the office of the colonial secretary, in order to examine documents relative to the business under discussion.¹

Members of the Council of Advice were given the designation Honorable and were provided with an official uniform.² Of the six persons appointed to the council in 1825 three held office ex officio, namely the chief justice, Sir John Truter,³ the colonial secretary, Sir Richard Plasket,⁴ and the officer next in command, Lieutenant Colonel John Daniell.⁵ The other three members were personally nominated, namely Sir John Bell, deputy quarter master general, J. W. Stoll who held the two offices of receiver general and landdrost of the Cape district,⁶ and Walter Bentinck, the auditor general.⁷ Three of the original members of the council were to serve on it for the full nine years of its existence, namely Truter, Bell and Stoll. Truter and Stoll had both been born in the colony and might be considered to represent Dutch interests, although each had

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1. C.O. 51/5, Minutes, 1/12/1826. For no apparent reason the council met again at government house for one meeting in August 1833, C.O. 51/32, Minutes, 10/8/1833.
 2. C.O. 51/1, Minutes, 7/11/1825. (R.C.C. Vol. XXIV, p. 329.) C.O. 51/3, Minutes, 28/3/1826. (R.C.C. Vol. XXIX, p. 265.)
 3. Sir John Truter (1763-1845), doctor of laws, Leyden University, 1787; returned to the Cape, 1789, and worked for Dutch East India Company; secretary of the Court of Justice, 1793-1803; secretary to the Council of Policy, 1803-6; private legal practice, 1806-9; fiscal, 1809-12; chief justice, 1812-27; served on the Council of Advice ex officio, 1825-28; and as a colonial member, 1828-34.
 4. Sir Richard Plasket (1782-1847), clerk in the Colonial Office, London, 1801-2; colonial secretary in Ceylon, 1808; colonial secretary in Malta, 1814; acting governor of Malta, 1818-24; colonial secretary of Cape of Good Hope, 1824-8; government commissioner of the island of St. Helena.
 5. Lieutenant Colonel John Daniell, commissioned 1812; joined 49th regiment of foot, 1823; served at Cape Town as commander of the castle and officer next in command, 1823-28.
 6. The landdrost was a local official exercising both administrative and judicial functions. *Infra*, p. 111.
 7. Some confusion appears to have arisen later, as instructions were sent to the colony to say that the auditor general was no longer to serve ex officio on the council. *Infra*, p. 60. From the Additional Instructions of February 1825 it would seem that the seat was not held ex officio in the first instance.

government office.¹ They were described by Perceval in 1828 as very useful members of the council,

"At this moment Mr Stoll, the Treasurer, is perhaps the most useful member in the Council, and would be more so were he not often restrained by diffidence from advancing his opinion among so many ... (Sir John Truter) is very useful from his experience in the Dutch Laws and Practice, and although somewhat backward in expressing a decided opinion, yet, on the other hand, a most safe and well disposed person."²

Truter and Stoll both gained confidence with their increasing experience on the council, so that continuity of service brought also the benefit of more mature and positive participation.³

Changes of personnel on the council came about mainly as a result of changes in office. In May 1826 Bentinck returned to London on leave and subsequently resigned from the position of auditor general. His successor, P. G. Brink was admitted to the council only in 1831 following the reversal of a decision of 1827 that neither the colonial secretary nor the auditor general should be ex officio members of the council.⁴ At the end of 1827 the colonial secretary, Plasket resigned, and was succeeded by Bell, already a member of the council.

Plasket's resignation came ostensibly as the result of a disagreement that he had had with the lieutenant governor, Bourke, in December 1827. The quarrel however seems to have provided the pretext rather than the cause for resignation, as Plasket had been negotiating for leave of absence, or retiral, since January 1827.⁵

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1. Truter continued to serve as a member of the council after his resignation as chief justice in 1828, being one of two members appointed to represent colonial interests. *Infra*, p.64. Cf. *New South Wales*, *Supra*, p.49, n.6.
 2. C.O. 48/127, Remarks upon some questions relating to the Constitution and Proceedings of the Council at the Cape of Good Hope, by D. Perceval for Mr Stephen, June 1828. *Infra*, Appendix D.
 3. *Infra*, Chs. 4 and 5 *passim*.
 4. C.O. 49/19, Goderich to Bourke, 14/6/1827 (*R.C.C.* Vol. XXXII, p. 6) C.O. 51/24, Minutes, 10/9/1831.
 5. *R.C.C.* Vol. XXX, p. 112, Plasket to Hay, 21/1/1827.

He had been granted two years leave of absence, but had written in October 1827 to say that he intended to resign from office with effect from 1 January 1828, "not wishing to interfere with the arrangements of Lord Goderich and the formation of the New Council"¹ He had also made arrangements early in December 1827 for the sale of his furniture and effects, which would seem to indicate that he was planning to leave the colony permanently.²

The immediate controversy arose in the discussion of an ordinance for creating the office of resident magistrate in the country districts, as recommended by the commissioners of inquiry.³ Plasket considered that the jurisdiction intended for magistrates was too limited. He requested a judicial opinion, but when this was received it was found that the judges did not favour an extension of magisterial jurisdiction, and the Council of Advice therefore proceeded to pass the relevant ordinance.⁴ Plasket was still not satisfied and requested a further delay. When this was refused he asked permission to leave the council chamber in order to write out the grounds of his opinion for insertion in the minutes. Permission was given but when Plasket's written statement was received two days later it was found to be unsigned and written in the third person, and the council refused to accept it.⁵ Meanwhile on the previous day, i. e. 20 December, Plasket had resigned from office.⁶ He later

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1. R.C.C. Vol. XXXIV, p. 38, Plasket to Hay, 20/10/1827. The "New Arrangements" refer to changes that were to be introduced following the report of the commissioners of inquiry. The colonial secretary was no longer to be an ex officio member of the Council of Advice. *Infra*, p. 64.
 2. The sale of furniture was to take place on 20 December, 1827. P. W. Laidler, The Pre-Victorian Products of the Cape Press, 1796-1837 (Johannesburg, 1935), p. 44, catalogue of furniture to be sold.
 3. C.O. 51/8, Minutes, 18/12/1827. (R.C.C. Vol. XXXIV, p. 522.)
 4. C.O. 51/8, Minutes, 19/12/1827. (R.C.C. Vol. XXXIV, p. 525.)
 5. C.O. 51/8, Minutes, 21/12/1827. (R.C.C. Vol. XXXIV, p. 528.)
 6. R.C.C. Vol. XXXIV, p. 253, Plasket to Bourke, 20/12/1827.

submitted to the council another statement of his views, duly signed; he also requested copies of certain items from the minutes of the last council meeting he had attended, namely that held on 19 December 1827.¹ This created a new problem. Minutes of council meetings were confidential. Having resigned from office Plasket was no longer a member of the council and therefore no longer entitled to see the minutes. Yet he had requested extracts from them. The matter was put to the vote but the council was evenly divided, and it required the casting vote of the lieutenant governor, to reach a decision to withhold the requested copy of the minutes.² At the following meeting a further application was received from Plasket, for the minutes and also for a copy of certain resolutions discussed at the meeting of 19 December. Once again the council refused, this time on the grounds that the request had been made through the clerk of the council, whereas only the lieutenant governor could initiate council business. Application would have to be made to him in the first instance.³

As it is revealed through the pages of the minute book this quarrel between the lieutenant governor and the colonial secretary appears to be trivial and almost vindictive. It is exceptional in so far as relationships within the council were generally cordial and harmonious. But the disagreement that flared up in 1827 probably owed much to external factors. Plasket's health had not been good.⁴ He had worked extremely hard since his arrival in the colony three years previously and had tried to improve the efficiency of the office under his direction in spite of a reduction in the number of clerks.⁵ He had also been responsible for

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1. C.O. 51/8, Minutes, 24/12/1827. (R.C.C. Vol. XXXIV, p.532.)
 2. C.O. 51/8, Minutes, 24/12/1827. (R.C.C. Vol. XXXIV, p.532.)
 3. C.O. 51/8, Minutes, 26/12/1827 and 31/12/1827, (R.C.C. Vol. XXXIV, pp.537-45, passim)
 4. R.C.C. Vol. XXX, p.112, Plasket to Hay, 21/1/1827. C.O. 48/127, various letters from Plasket to Hay, 1828.
 5. R.C.C. Vol. XXII, p.384, Plasket to Somerset, 20/6/1825.
R.C.C. Vol. XXIII, p. 176, Plasket to Horton, 28/9/1825.
C.A. G.H. 34/3, Plasket to Bourke, 21/12/1827.

compiling a volume of all government enactments and notices issued in the colony between 1806 and 1825.¹ He had been burdened with financial cares throughout his stay at the Cape and was likely to suffer further loss and embarrassment, whether he retired or took the proffered two years' leave.² Moreover Plasket had been accustomed to wielding authority in his own right during a six year period as acting governor in Malta. He may have found it difficult at the Cape to serve as a subordinate to the acting governor, Bourke, who was himself a forceful and energetic official. Plasket had on occasion criticised Bourke's policies, and there had been a strained relationship between them for several months.³ All of these factors probably lay behind the quarrel which erupted in the council in December 1827 and which precipitated Plasket's resignation. He left the colony shortly afterwards, as already arranged in terms of his leave of absence, and in February 1829 Bell formally succeeded Plasket as colonial secretary.⁴

There were probably other occasions when personal factors operating outside the council chamber influenced decisions and activities within it. They are not usually easy to trace and would not often be of the same significance. It is likely too that the personal relationships outside would tend normally to enhance mutual respect and co-operation rather than diminish it. Those who met for deliberation as a council of advice also met frequently in social situations and in other official and semi-official capacities.

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1. *Infra*, p. 73.
 2. C.O. 48/127, Memorandum by Plasket concerning his application for a pension and Plasket to Hay, 11/9/1828.
 3. *R.C.C.* Vol. XXXIV, pp. 255-9, Plasket to Hay, 22/12/1827.
 4. *Gazette*, 6/2/1829, Govt. Notice.

and the conviviality of such contact would be to the general benefit of the Council of Advice.¹

In 1828 the composition of the council was changed as a result of the recommendations of the commissioners of inquiry. Two new members were to be added to represent colonial interests and to compensate in part for the abolition of the Burger Senate, a quasi-representative municipal body in Cape Town.² The secretary of state had suggested that the seats be given to the retiring chief justice, Truter, and to Plasket, should he decide not to avail himself of the leave of absence that he had been granted.³ The final selection was left to the lieutenant governor. Bourke did not make the appointments at once, perhaps because of the difficulties already existing in his relationship with Plasket. Once that situation had clarified he made the appointments, choosing Truter and another colonial-born official, Sir Andries Stockenstrom,⁴ whom he had also nominated to the newly-created

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1. E.g. Cole and Bell were brothers-in-law and would have frequent occasion to meet socially. Other veterans of the Peninsular War, e.g. Wade and Smith, would be likely companions at social gatherings. All members of the council served on one or other local committee in Cape Town. E.g. Truter and Stoll both served on the committee of the South African College; Wylde, Plasket and Bell were all trustees of St George's church in 1828; Bell and Stoll were president and vice-president respectively of the South African Institution in 1832.
 2. *Infra*, p. 112.
 3. C.O. 49/19, Goderich to Bourke, 15/6/1827 and Goderich to Bourke, Conf'l., 16/6/1827. (R.C.C. Vol XXXII, pp. 16 and 25.)
 4. Sir Andries Stockenstrom (1792-1864), deputy landdrost of Graaff Reinet, 1812; landdrost of Graaff Reinet, 1815; commissioner general for eastern division of the colony, 1828-34; lieutenant governor of the eastern division, 1836-9; member of the Legislative Council, 1850-53 and again under the new Cape constitution, 1854-6.

post of commissioner general for the eastern districts.¹ Neither Truter nor Stockenstrom could be regarded as non-official or independent members of the council as one received a government pension and the other held government office. Nevertheless the appointments were upheld by the Colonial Office. The new chief justice, Sir John Wylde,² also joined the council in 1828 but was relieved of this responsibility within a year.³

The appointment of Stockenstrom to the Council of Advice has sometimes been described as meaningless in view of the fact that the council met at Cape Town while his office of commissioner general involved residence near the eastern frontier of the colony.⁴ But during the period that he served on the council Stockenstrom missed only 32 meetings out of a possible 131. During the same period Truter who lived at Cape Town and who no longer had judicial duties missed 34 meetings.⁵

Five persons served successively on the council as officer next in command during the period 1825-34. They were Lieutenant Colonel John Daniell, May 1825-February 1826 and March 1826 - November 1828; Sir Richard Bourke, for three meetings only in February and March 1826; Lieutenant Colonel Cary, November 1828 - March 1829;⁶

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1. C.O. 48/124, Bourke to Huskisson, 26/1/1828.
 2. Sir John Wylde (1780-1859), trained in law at Cambridge University; judge advocate of N.S.W., 1815; judge of the Supreme Court, N.S.W., 1824-5; doctor of laws of Cambridge University, 1827; chief justice at the Cape of Good Hope 1827-55.
 3. *Infra*, p. 78.
 4. E.g. Fryer, *The Government of the Cape of Good Hope*, A.Y.B., 1964, Vol. I, p. 3.
 5. *Infra*, Appendix F, Summary of attendance at council meetings.
 6. W.R. Cary, of the Royal Artillery; commanding officer of the artillery at the Cape of Good Hope; army commission, 1821; regimental commission, 1823.

Sir Harry Smith, March 1829 - January 1832 and August 1833 - January 1834;¹ and Sir Thomas Wade, January 1832 - August 1833. Of these Daniell and Wade both proved to be useful members of the council who did not flinch from disagreeing with the governor on occasion. Cary's tenure of office was too short to be significant and Smith, although known for his verve and audacity as a soldier and sportsman,² appears to have been an acquiescent member of the council. Bourke's main contribution to the Council of Advice came, naturally, during the two and a half years that he was acting governor. It is of interest to note that Perceval suggested in 1828 that it was not in the best interests of the council to include the officer next in command because "this was an arrangement by which the council may constantly be changing Members, for no reason but the date of a commission".³

The most important change in the personnel of the council came with the change of governors. Somerset who had inaugurated the Council of Advice in May 1825 left the colony on leave of absence in March 1826 to be available in London to answer personally charges that were being levelled against his administration. Bourke became acting governor in his stead although he had been sent to the colony ostensibly to fill the post of lieutenant-governor of the eastern districts, an appointment recommended by the commissioners of inquiry in correspondence with Bathurst before they had submitted their first official report.⁴ Their plan was to divide the colony into an eastern and western

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1. Sir Harry George Wakelyn Smith (1787-1860), served in South America and in the Peninsular War; deputy quarter master general at the Cape of Good Hope, 1828-40; notable military service in India, 1840-46; governor of the Cape of Good Hope, 1847-52.
 2. G.C. Moore Smith, Ed., The Autobiography of Sir Harry Smith (London, 1903), passim.
 3. C.O. 48/127, Remarks upon some questions relating to the constitution and Proceedings of the Council at the Cape of Good Hope, by D. Perceval for Mr Stephen, June 1828.
 4. C.O. 49/16, Bathurst to Somerset, 20/8/1825. (R.C.C. Vol. XXII, pp. 495-6.) C.O. 48/71, Memorandum on the division of the colony, 11/10/1825.

division and to provide an entirely separate administration for each half, with a new lieutenant-governor, council, civil establishment and judiciary for the newly-created eastern division, following the precedent of, firstly, Quebec, and then Van Diemen's Land.¹ The adoption of this scheme for the Cape in 1825 had made it possible for the Colonial Office to allow Somerset to take leave and face his parliamentary critics, without creating a governmental vacuum at the Cape.² Although the threatened impeachment was abandoned, Somerset decided while in England to resign from office.³ He was given the opportunity of returning to the colony first, as a face-saving move, but declined to do so, and formally tendered his resignation in June 1827.⁴

As early as March 1826 the governor of the neighbouring colony of Mauritius, Sir Lowry Cole, had been approached with a view to succeeding Somerset at the Cape. Formalities of various kinds as well as negotiation over the salary attached to the post, had delayed the official appointment until March 1828.⁵

Bourke served as acting governor from March 1826 until September 1828, when Cole arrived in the colony. Meanwhile it had been decided in London not to proceed with the plan to introduce separate administrations in the two divisions of the colony, and the office of lieutenant governor for the eastern districts had therefore fallen away.⁶ Bourke left the Cape soon after Cole's arrival in September 1828, having steered the colony through some very difficult situations and having borne responsibility for the major enactments implementing the recommendations of the Commission of Inquiry.⁷ Cole's term of office ended in August 1833, although his resignation had been accepted the

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1. Supra, Ch. 1, passim. C.O. 48/71, Memorandum on the division of the colony, 11/10/1825. King, Richard Bourke, p. 58 and pp. 263-4, n. 20.
 2. C.O. 48/71, Bourke to Hay, 23/8/1825.
 3. Millar, Plantagenet in S.A., pp. 240-50. M. Roberts, Lord Charles Somerset and the Beaufort Influence, A.Y.B., 1952, Vol. II.
 4. Hunt, Sir Lowry Cole, p. 89.
 5. Ibid. C.O. 49/21, Huskisson to Cole, 20/3/1828.
 6. C.O. 49/19, Goderich to Bourke, 14/6/1827. (R.C.C. Vol. XXXII, p. 5.)
 7. Infra, Ch. 3.

previous December. After his departure Wade officiated as acting governor until the arrival of Cole's successor, D'Urban, in January 1834. The new governor brought with him Letters Patent creating an Executive Council and a Legislative Council of the kind already introduced in New South Wales, Trinidad, St Lucia and Ceylon.¹ Without ceremony or formal closure the Council of Advice ceased to exist.

Meetings of the Council of Advice were held at the summons of the governor and were largely under his guidance and direction. The number of meetings held and the extent of their business therefore depended to a large degree on the attitude of the governor towards the council. The regularity of meetings varied considerably under the chairmanship of the four men who held office as governor or acting governor from 1825 to 1834. Notwithstanding the allegations of autocracy and even tyranny levelled against him by many colonists, the first president of the council, Somerset, called frequent meetings and seems to have attempted to make good use of this body of advisers, although several of the matters brought forward for discussion were of a personal nature and involved acrimonious disputes in which the governor himself was embroiled.² Between 4 May 1825 and 2 March 1826 Somerset called 45 council meetings, establishing a rough pattern of weekly meetings.³

Somerset's successor, Bourke, held meetings more frequently and seems to have regarded once a week as the essential minimum and two or more meetings a week to be necessary as soon as there was important or urgent business on hand. During his two and a half year term of office the council had its most active months, sometimes meeting two or three times a week, as was noted somewhat peevishly by the colonial secretary. Plasket, who complained of the time taken up by the council, "particularly since general Bourke's arrival, as we have usually devoted two days in the week to it".⁴ This was due in part

1. Supra, p. 53.

2. C.O. 51/1, Minutes, May 1825 to March 1826, *passim*.

3. *Infra*, Appendix E, Calendar of council meetings

4. R.C.C. Vol. XXXI, pp. 59-60, Plasket to Hay, 26/2/1827.

to the need for extra meetings at the end of 1827 and beginning of 1828 when the recommendations of the Commission of Inquiry were under discussion. Not only was the business important and weighty, but the points of division within the council were at their deepest over some of these controversial matters.¹ After five extremely busy and gruelling months of legislative business, Bourke wrote,

"It would indeed have been very agreeable to me to have been recalled at the time when it was determined that the government I came out to fill should not be established, as you must be sensible how much the difficulties in conducting the duties I have lately been called upon to discharge have been enhanced by the knowledge on the part of the public, that my situation was merely temporary." ²

When Cole arrived in the colony in September 1828 the pattern of council meetings changed at once. Cole's dislike of the conciliar system has already been noted.³ This was reflected in the infrequency of meetings. In 1828 the council was summoned to meet fifty-three times altogether. Fifty of these meetings had been called by Bourke in the first eight months of the year, and the remaining three were held at the behest of Cole during the last four months of the year. This pattern was to be typical during Cole's governorship, with meetings held usually once a month unless pressing need necessitated greater frequency. During the whole of Cole's governorship of fifty-nine months there were fifteen months when no meeting was held at all, and twenty months when the council met only once. The busiest time during Cole's presidency of the council was in the month of June 1832, when nine meetings were held. This was when a critical situation arose in which the governor acted without waiting for the concurrence of the council, and on his own initiative promulgated an ordinance "for the Prevention and Suppression of Meetings whereby the peace and good order of the Colony may be endangered", although the council had asked for more time in which to consider this serious question.⁴ Only the first two meetings in June were concerned with this matter; during the remaining seven meetings routine business, some of it not at all pressing or urgent, occupied the attention of the council. Two meetings were given entirely to the matter

1. *Infra*, Chs. 3 and 6 *passim*.

2. C.O. 48/124, Bourke to Hay, Pte., 30/4/1828.

3. *Supra*, p. 39.

4. *Infra*, Ch. 10.

of a local ordinance to provide for the building of a village church by means of the issue of subscription shares.¹ It would seem that the governor was trying at this critical juncture to retain the confidence of his council by keeping in close touch with them even for the conduct of somewhat mundane business. Mere frequency of meetings, then, does not necessarily indicate that urgent and pressing matters were on the agenda of the council. A wise governor could use the power of summoning meetings as a convenient way of keeping in touch with his councillors when a relationship of trust and confidence with them was of importance to him.

The acting governor, Wade, called ten meetings during the last five months of 1833, and summoned the council to meet at the end of the first week of January, 1834. This proved to be the last meeting held by the council, which was superseded two weeks later.²

All the governors brought before the council those matters with which they had to deal in the day to day administration of the colony. Legislative measures, memorials received from individuals or committees, despatches from the secretary of state, letters from the frontier and from the districts - these provided the substance of the council's business. Yet there were marked differences in the approach and the procedures followed by the respective governors. During Somerset's presidency of the council the minutes provide little evidence of lively debate or freedom of opinion. With only one occasion when individual opinions were recorded and only one occasion when a dissentient vote was minuted, the impression is gained that council decisions reflect the forceful and authoritarian leadership of the governor. Somerset was not an easy man to cross and this in itself seems to have influenced discussion within the council.

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1. C.O. 51/26, Minutes, 13/6/1832 and 14/6/1832. Gazette, 22/6/1832, Ord. No. 5 Local.
 2. Gazette, 17/1/1834, Govt. Proc. announcing that the new governor had taken office. Gazette, 24/1/1834, Govt. Proc. announcing the creation of a Legislative Council and an Executive Council.

When Bourke became acting governor in March 1826 the council became a more open and effective instrument of government. Discussion appears to have been more lively and there was greater initiative shown both by Bourke himself and by other members of the council.¹ Bourke was a man of action and his usual method of initiating business was to introduce a draft ordinance already prepared. Sometimes he varied this approach and gave prior notice of his intention to introduce a question, in the expectation that council members would come to the next meeting ready for discussion on the subject.² Before he had been in office a month Bourke had introduced a new procedure to enable council members to be better equipped for their task of advising the governor, by seeing the agenda of council meetings in advance.

"The Lieutenant Governor being of opinion that considerable facility in the despatch of public business before the Council will be created by previously exhibiting to Members an abstract of the subjects intended to be brought under their consideration has directed the Clerk of the Council to be in attendance at his office on Fridays from twelve to three o'clock, when such documents as relate to the business to be brought forward at the next meeting, which it may have been possible to prepare for inspection, will be shown to any member of Council who may require it."³

Bourke's successor, Cole, allowed this practice to lapse,⁴ and in turn, his successor, Wade, appears to have revived it after Cole had departed from the colony.⁵

Bourke also made arrangements for the more orderly keeping of council minutes. The Additional Instructions of 1825 had

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1. E.g. *Infra*, Ch. 7, on question of corn laws.
 2. E.g. Ordinance No. 50. *Infra*, Ch. 8, *passim*.
 3. C.O. 51/3, Minutes, 28/3/1826. (*R.C.C.* Vol. XXIX, p. 265)
 4. *Infra*, Ch. 10. C.O. 51/26, Minutes, 9/6/1832.
 5. C.O. 51/32, Minutes, July to December 1833, *passim*.

stipulated that a full copy of the minutes of council meetings was to be transmitted to the Colonial Office twice a year.¹ The council had begun to meet in May 1825 and the first volume of minutes ran continuously from that date until March 1826 when Bourke took office. The second volume covered the period March to October 1826, and a third volume was begun in the latter month. Early in 1827 it was suggested by the clerk of the council that the transmission of duplicate minutes to London should take place regularly at the end of June and December each year rather than haphazardly. Bourke agreed and advised that the third volume of minutes should have been terminated at the end of December 1826, and a new volume begun as from January 1827.² Thereafter copies of the minutes were sent systematically in January and July each year. There is however no evidence to suggest that the minutes were scrutinised on their arrival at the Colonial Office in London. Arrangements were also made by Bourke for documents required by the council to be copied and bound with the minutes so that the originals might be returned to the respective offices from which they had been obtained.³ Originally copies of such documents had been inserted into the minutes themselves, following the practice established during the years of the Dutch Council of Policy. This had been changed when Perceval had become clerk of the council but the original documents had been separately bound in appendices.⁴

Although Bourke's successor, Cole, held meetings only irregularly he does appear to have sought the advice of the council in an open and sincere manner, frequently working out with members the substance of an ordinance before referring it to the attorney general for official drafting.⁵

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1. C.O. 49/16, Additional Instructions, enclosed with Bathurst to Somerset, 9/2/1825. (R.C.C. Vol. XX, p. 11.)
 2. C.A. A.C. 12, Plasket to the Clerk of the Council, 26/3/1827.
 3. C.A. A.C. 12, Bell to the Clerk of the Council, 16/2/1828.
 4. C.O. 48/86, Perceval to Hay, 4/3/1826. C.A. Inventory 1/45, p. 3.
 5. E.g. The ordinance to amend the regulations for frontier trade. *Infra*, Ch. 7.

The procedures to be adopted for the drafting, enactment and promulgation of laws in the colony had been outlined in a despatch written on the same day as the Additional Instructions in February 1825. Ordinances, public orders and proclamations were to be promulgated and passed in a uniform manner and with "greater solemnity" than had hitherto been observed. Ordinances were to be drawn up with a short preamble, and divided into clauses of convenient length, with marginal abbreviations, following the model of an act of parliament. The first draft was to be prepared by the fiscal and submitted to the chief justice for confirmation that the proposed enactment was consistent with the fundamental law of the colony.² Any material amendments suggested by the council were to be submitted again to the fiscal for re-drafting in technical language, and again to the chief justice for a certificate of non-repugnancy. The ordinance when duly passed was to be styled "an ordinance of the Governor-In-Council," and the final draft was to be signed by the governor and sealed with the seal of his government and counter-signed by the colonial secretary and the clerk of the council.³ The secretary of state also requested that an orderly compilation of all acts and notices of government issued between 1806 and 1825 should be drawn up. This laborious task was undertaken by the colonial secretary, Plasket, assisted by Thomas Miller, the assistant clerk of the council. It took nearly two years to complete and was available for transmission in March 1827.⁴ Copies were issued to all members of the Council of Advice.⁵

The lieutenant governor, Bourke, had himself been a student of law. Perhaps for this reason he was particularly conscious of the inadequacy of local officials as legal advisors and frequently

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1. C.O. 49/16, Bathurst to Somerset, 9/2/1825 (R.C.C. Vol. XX, pp. 13-15.)
 2. On at least two occasions the chief justice declared a proposed ordinance to be contrary to the fundamental law. *Infra*, p.87 and p. 118.
 3. C.O. 49/16, Bathurst to Somerset, 9/2/1825. (R.C.C. Vol. XX, p. 13-14.)
 4. C.O. 48/107, Bourke to Bathurst, 16/3/1827. (R.C.C. Vol. XXI, p. 89.)
 5. C.A. C.O. 4885, p. 91, Plasket to members of the Council of Advice, 4/8/1827.

complained to the Colonial Office of the want of sound legal advice. He stated confidentially that the fiscal had "not the least notion of drawing up an ordinance with anything like the precision of our Statutes"¹ and feared that the imprecision of ordinances and proclamations would subsequently lead to unnecessary litigation. He urged that competent English lawyers be sent to the colony.²

The practical difficulty of having legal advisers insufficiently trained in law was not the only problem to arise in relation to the technical language of legislation. A constitutional question also arose from the styling of an enactment as "an ordinance of the Governor-in-Council." Both Bourke and Cole raised with the Colonial Office the question as to whether this meant that the consent of the council was necessary prior to the enactment.³ The ruling finally given on the question was that the phrase implied that the governor had consulted the council, but had not necessarily followed its advice.⁴ An interesting observation on this matter was made by Perceval, the first clerk of the council. On his return to England in 1828 he was questioned about the composition and effectiveness of the council, with particular reference to the constitutional issues that had been raised earlier in 1828 by Bourke.⁵

Perceval suggested that at the Cape the council needed to be reminded that their task was "merely to advise the governor and in no degree to participate in the legislative power delegated to him by the Crown."⁶ He suggested that the council had been led to assume that their consent was necessary before an ordinance could be promulgated because of the phrase "by order of the Council" which

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1. Quoted by King, Richard Bourke, p. 75.
 2. Ibid., p. 76.
 3. C.O. 48/124, Bourke to Huskisson, Pte. and Conf'l., 7/3/1828. *Infra*, p. 80. C.O. 48/130, Cole to Murray, 30/3/1829. *Infra*, p. 84.
 4. *Infra*, *passim*. Hunt, Sir Lowry Cole, pp. 142-5.
 5. C.O. 48/127, Remarks upon some questions relating to the Constitution and Proceedings of the Council at the Cape of Good Hope, by D. Perceval for Mr Stephen, June 1828. *Infra*, Appendix D.
 6. Ibid.

preceded the clerk's signature on the text of an ordinance. This carried the implication that unless the council had given their support to it, an ordinance could not be passed. The matter was of considerable importance because it concerned not only the governor's right to legislate contrary to the advice of the council, but also the independence of council members in tendering their advice. There were several occasions when advice was given in favour of a measure in spite of the council member's personal opinion that the proposed enactment was inexpedient. This was particularly true in the early years of the council's activity¹ and on matters where the council and the local governor were being required to administer and implement policy decisions made in Britain.²

Other questions of both a practical and constitutional nature were also to arise from the operation of the Council of Advice, and were directly linked with the matters raised by Perceval in 1828. The two main points at issue were the form of oath taken by the council members and the right of initiation of council business.³ The first meeting of the council was held on 4 May 1825 and took the form of a public swearing-in ceremony.⁴ In addition to the usual oaths of supremacy and allegiance, the governor, Somerset, on his own initiative, added an oath of secrecy.

"I . . . do swear that I will not upon any account at any time whatever disclose or discover any matter brought before this Council, nor the vote or opinion of any member thereof unless to His Majesty's Government or when required to give evidence as a Witness by a Court of Justice, in due course of Law."⁵

Somerset subsequently explained to the secretary of state that he had taken it upon himself to include an oath of secrecy and that he hoped that the procedure would be approved,

"when you take into consideration the constitution of this Council, and the probability of frequent changes taking place

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1. E. g. *Infra*, Ch. 4, *passim*.
 2. E. g. On questions of slavery and currency.
 3. *Supra*, p. 37.
 4. *Supra*, p. 57.
 5. C.O. 51/1, Minutes, 4/5/1825. (*R.C.C.* Vol. XXIV, pp. 254-9.)

among the members thereof, particularly in the Person of the Second in Command of His Majesty's Forces in this Colony".¹

No comment was forthcoming from the Colonial Office so that the oath of secrecy appears to have been given the consent of silence.² The point is significant for in 1828 the new chief justice, Wylde, refused at first to subscribe to such an oath, claiming that this would prevent him from discussing with his fellow judges legal points arising during the preparation of ordinances. On the grounds that the secretary of state had confirmed the oath by the "general approbation of the measures taken by His Excellence to carry His Majesty's Instructions into effect" Wylde's application to omit the oath of secrecy was refused.³ He then asked to be allowed to take the oath of a privy councillor.⁴ The question was deferred, and Wylde was still not admitted to the council. At a subsequent meeting a letter explaining Wylde's views was received, but the council "regretted that they could not accede to his request".⁵ Wylde took the necessary oaths at the following meeting of the council, but not without further protest. Two weeks later he submitted his views in writing and they were inserted in the minute book - covering some fifty pages! Wylde ended his statement with these words,

" . . . most especially it will be my duty to make an immediate appeal to His Majesty's government to be released - as my hope thus very soon to be released from an obligation tending unduly to restrain me in my judicial office, to diminish the efficacy of my official services, and for no sufficient reason to impose upon my conscience an unnecessary and therefore unjustifiable obligation."⁶

Wylde was released - and very soon - but not in the way he had anticipated! In July 1828 instructions were sent to Cape Town for his

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1. C.O. 48/69, Somerset to Bathurst, 14/5/1825. (R.C.C. Vol. XXI, p. 240.)
 2. The secrecy of the Council of Advice was strongly criticised by the press in Cape Town. *Infra*, Ch. 10, *passim*.
 3. C.O. 51/10, Minutes, 2/1/1828. C.O. 49/16, Bathurst to Somerset, 2/8/1825. (R.C.C. Vol. XXII, p. 443.)
 4. This in itself carried an obligation of secrecy. G. Wilson, Cases and Materials on Constitutional and Administrative Law (Cambridge, 1966), p. 44, n. 1.
 5. C.O. 51/10, Minutes, 5/1/1828.
 6. C.O. 51/10, Protest of Chief Justice Wylde, p. 123.

removal from the Council of Advice. During the first months of 1828 he had proved to be a most volatile and loquacious member of the council. Twice, in March and May respectively, the lieutenant governor, Bourke, had written privately to the Colonial Office about the difficulty of having Wylde as a member of the council.¹ Bourke had recommended that the newly-appointed attorney general² should replace the chief justice as an ex officio member of the council.

The difficulties were due not only to Wylde's self-assertiveness within the council but also to a number of constitutional points that had arisen during the discussion of tax proposals made by the commissioners of inquiry.³ The council had considered two draft ordinances implementing tax proposals received from London and based upon the reports of the commissioners, but not favoured by members of the Council of Advice. Wylde had suggested that proceedings be suspended until further reference to London had been made. The suggestion had precipitated a division in the council, which led finally to the submission of an alternative scheme of taxation.⁴ This had raised the issue of the council's independence in relation to the Colonial Office in London, and also the question of the governor's right to legislate in his own name. Wylde himself had also requested the right of any individual member to introduce a topic for discussion by the council, and had queried the procedures followed in London for the allowance and disallowance of ordinances.⁵ When Bourke's despatches, both public and private, were received in London the various questions raised were referred by the Colonial Office for legal opinion. Stephen recommended that the chief justice, who "was named a member of the council in opposition to the

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1. C.O. 48/124, Bourke to Huskisson, Pte., 7/3/1828. C.O. 48/124, Bourke to Huskisson, Pte., 16/5/1828. This letter is missing from the volume but is listed in the index.
 2. *Infra*, p. 110.
 3. *Infra*, p. 80.
 4. C.O. 51/10, Minutes, 4/3/1828. *Infra*, pp. 247-50.
 5. C.O. 48/124, Bourke to Huskisson, 7/3/1828 and Bourke to Huskisson, Pte. and Conf'l., 7/3/1828. C.O. 51/10 Minutes, February and March 1828, *passim*.

advice of the Commissioners of Inquiry", should no longer serve on the council.¹ Accordingly in July 1828 directions were sent to the new governor of the colony, Cole, to "acquaint (Wylde) that His Majesty is graciously pleased to dispense with his services as a Councillor of Your Government".² Provision was made for any members of the bench to be admitted to the council at the summons of the governor should their advice be particularly required. This facility was never used at the Cape. In a private despatch the "absurd conduct" of the chief justice was roundly condemned by the permanent under secretary, Hay.

"It is impossible for anyone to have shewn more gross ignorance than Sir J. Wylde has done, of some points upon which he ought to have been better informed, as well as of his own situation as the Head of the Law in the Colony, and I cannot but feel extreme regret and disappointment at finding that he is, to all appearance, so little calculated to execute judiciously the important duties which are assigned to him."³

It is of interest to note that the commissioner general for the eastern districts, who was appointed to the council at the same time as chief justice Wylde, and who also proved to be a difficult and verbose member, much given to inserting lengthy opinions in the minutes, was also removed from the council at the earliest opportunity. In this instance it was at the insistence of the governor, Cole, who demanded Stockenstrom's resignation from the council prior to his departure for England on leave of absence. Stockenstrom's indignant protest against his enforced resignation was recorded.⁴ There was no precedent for the action taken by Cole, as the auditor general, Bentinck, had been on leave from May 1826 and had not been required to resign before he left the Cape. Nor did Cole demand the resignation of the colonial secretary, Bell, who went on leave at the same time as Stockenstrom in 1833.⁵

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1. C.O. 48/126, Stephen to Leveson Gower, 22/5/1828. Hunt, Sir Lowry Cole, p. 145.
 2. C.O. 49/21, Murray to Cole, Sep., 12/7/1828. Hunt, Sir Lowry Cole, p. 145.
 3. C.O. 324/80, Hay to Cole, Pte., 19/6/1828.
 4. C.O. 51/16, Minutes, 21/3/1833, and letter of complaint from Stockenstrom.
 5. *Infra*, Appendix F, Summary of attendance at council meetings.

Most, though not all, of the business in which the Council of Advice was required to aid and assist the governor was of a legislative nature. Enactments had previously been made in the form of proclamations issued by the governor, but from 1825 most legislative acts were to be published as ordinances of the governor in council.¹ These were not to be put into operation until they had been transmitted to Britain and had received the king's approval, except where the

"necessity of making immediate provision for unexpected exigencies in so remote a part of His Majesty's Dominions, renders it necessary indeed that the power of Legislation should be exercised without the delay of a reference to this Country on urgent occasions." 2

In practice such a delay would have proved cumbersome and most ordinances were put into operation at once in the colony, although still subject to the king's allowance or disallowance. Occasionally a measure which had been fully implemented in the colony had to be withdrawn because it had been disallowed by the king, on the advice of his ministers.³ The procedure of referring a draft ordinance to London before promulgating it in the colony was however followed in the case of new measures which marked a definite break with time-honoured practice or tradition in the colony, notably during the period of Bourke's acting governorship.⁴

The establishment of the Council of Advice in 1825 had not deprived the governor of his power to legislate by proclamation.⁵ Yet there was uncertainty and confusion over this procedure during the nine

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1. Supra, p. 73.
 2. C.O. 49/16, Bathurst to Somerset, 9/2/1825. (R.C.C. Vol. XX, p. 14.)
 3. E.g. Ord. No. 9, for the more effectual apprehension of deserted convicts, had come into operation on 1 October 1825, but was disallowed by the king in October 1827 because its terms were considered inconsistent with humanity and the spirit of the Law of England. Gazette, 2/9/1825, Ord. No. 9. R.C.C. Vol. XXXIV, pp. 44-5. Huskisson to Bourke, 21/10/1827. C.O. 51/10, Minutes, 15/2/1828.
 4. E.g. On the question of altering the corn laws of the colony, *infra*, Ch. 7, and on the question of admitting native foreigners into the colony as labourers, *infra*, Ch. 8, *passim*.
 5. C.O. 49/16, Bathurst to Somerset, 9/2/1825. (R.C.C. Vol. XX, p. 13.)

years of the council's existence. In 1828, for instance, it was decided that the withdrawal and destruction of worn paper currency, and its replacement with a new issue, should be effected by proclamation rather than by ordinance of the governor in council, as had been done since 1825.¹ In this case the justification was made that the state of the worn currency constituted an emergency and the governor was therefore entitled to use the emergency powers reserved to him. On another occasion in December 1826 it had been suggested that the governor should enact by proclamation taxation measures which had been proposed by the secretary of state, on the recommendation of the commissioners of inquiry. The proposal for enactment by proclamation had been made because members of the council considered that enactment by ordinance "must be supposed to include their approval thereof", whereas they were strongly opposed to an intended tax on slave property.² In the event the lieutenant governor, Bourke, had decided to postpone the introduction of the new taxes and refer the question to London.³ A year later the Council of Advice was again asked to agree to draft ordinances implementing the same tax proposals. Once again the form of enactment came under discussion and the question of the legality of legislation by proclamation was raised.⁴ Meanwhile the whole situation had become more complex. In August 1827 a Charter of Justice had been provided for the colony in which it was directed that the courts should apply, judge and determine all existing laws and all other laws made by the king in parliament, the king in council or the governor of the colony "with the advice of the Council of Government".⁵ This appeared to deprive the governor of his right to legislate by proclamation. Bourke appealed privately to London for clarification on the question, which had been raised in the council by the new chief justice.⁶ The same issue had been brought separately to the attention of the colonial secretary.

1. C.O. 51/10, Minutes, 6/2/1828. *Infra*, p. 186.

2. R.C.C. Vol. XXXIV, p. 243, Plasket to Hay, 16/12/1827.

3. C.O. 51/5, Minutes, 16/12/1826. *Infra*, pp. 241-3.

4. C.O. 51/10, Minutes, January to June 1828, *passim*.

5. Hunt, Sir Lowry Cole, p. 144.

6. C.O. 48/124, Bourke to Huskisson, Pte. and Conf'l., 7/3/1828.

Plasket, with reference to a decision to abolish the Burger Senate.¹

In London the whole question of the form and legality of enactments made on the sole authority of the governor was referred to the legal adviser of the Colonial Office. Stephen attempted to remove the ambiguities from the situation. Two issues were involved, firstly, the right of the governor to legislate by ordinance of the governor in council in spite of the opposition of council members to a proposed measure, and, secondly, the right of the governor to legislate by proclamation either in the face of opposition from the council or in the case of an unexpected emergency. Stephen ruled that the governor was entitled to promulgate a law as an ordinance of the governor in council, even though every member of the council had opposed it. He claimed that the words "with their advice" would in such a case mean nothing more than the words "having received or taken their advice", and that the style and form of regular enactments should be invariable.² On the other hand, Stephen acknowledged the right of the governor to legislate by proclamation in cases of emergency, without prior consultation with the council, but such circumstances would be exceptional rather than regular or normal.

"The very object of instituting the Council was to relieve the governor from the odium and responsibility of legislating alone. If the Council . . . delegate to the Governor a portion of the very authority thus taken from him, it seems to me that they are counteracting the object of their own institution. Of course one might conceive cases in which such a delegation of power might be necessary. Emergencies might arise in which the immediate action of a single authority would be essential to the peace and good government of the Colony. Such cases form exceptions to the general rule as they arise."³

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1. R.C.C. Vol. XXXIV, pp. 241-4, Plasket to Hay, 16/12/1827. The Burger Senate was a municipal body in Cape Town exercising both judicial and administrative functions. *Infra*, p. 117f.
 2. C.O. 48/126, Stephen to Leveson Gower, 22/5/1828. Hunt, Sir Lowry Cole, p. 144.
 3. C.O. 48/112, Stephen to Hay, 2/3/1828.

Stephen's comment on this difficulty is of interest not only because of the interpretation given on the role of the council and the governor's relationship to it, but also because it highlights the fine edge between an advisory council and a legislative council. An advisory council did not share the legislative authority of the governor, yet was introduced in order to relieve the governor from the responsibility of legislating alone. The point is significant because council members themselves tried on occasion to repudiate this shared responsibility by advising that the governor legislate in his own name and by proclamation rather than by ordinance of the governor in council. The governor in turn tried to repudiate the responsibility of legislating in his name alone, by suggesting that enactment be undertaken by the British government.¹ The anomaly of the council's shared responsibility without shared authority was also revealed in other ways. There were occasions when council members recommended an enactment against which they themselves were later, and in another capacity, to protest.² There was even an occasion when the chief justice recommended the passing of an ordinance which he had declared to be inconsistent with the fundamental law of the colony.³

The bold statements made by Stephen in March and May 1828 had clarified the position of the governor's legislative authority. Clearly the governor was entitled to enact by ordinance of the governor in council once he had heard the views of the council, and regardless of whether council members supported the proposed ordinance or not. Further, in cases of unexpected emergency the governor might promulgate a law by proclamation in his own name, without prior consultation with the Council of Advice. This should have set the matter at rest, but unfortunately the opinion of Stephen was not conveyed to the governor of the colony! The question of the governor's legislative authority had been raised by Bourke in a private despatch to Huskisson, dated 7 March 1828.⁴ Three other constitutional issues had been raised by Bourke in

1. *Infra*, p. 84.

2. *Infra*, Ch. 4, *passim*.

3. *Infra*, Ch. 3, *passim*.

4. C.O. 48/124, Bourke to Huskisson. Pte. and Conf'l., 7/3/1828.

the same letter, namely the possibility of removing the chief justice from the council and offering an ex officio seat to the attorney general instead,¹ the question of the procedure followed in expressing the king's allowance or disallowance of ordinances and the right of initiation of business to be discussed by the council. By the time a reply was sent to the colony on these questions, Cole had been appointed governor of the Cape, and Murray had become secretary of state. In July 1828 Murray informed Cole that the chief justice was no longer required to serve as a member of the Council of Advice.² Referring to the other issues raised by Bourke, Murray stated,

"There are some other points to which I should have thought it necessary to advert in detail, were it not in contemplation to take measures for entirely remodelling the instructions of the Council of Government in the Colony generally. I shall for the same reason postpone the consideration of Major General Bourke's proposal for admitting the Attorney General into Council, in lieu of the Chief Justice".³

1828

Thus the crucial question of legislative authority was glossed over, because of impending changes in the conciliar pattern. But these changes were not to come into operation at the Cape for another six years. Many factors contributed to the delay.⁴ One aspect under consideration in 1828 was the possibility of admitting Roman Catholics to office in the colonies.⁵ The Catholic Emancipation Act of the following year provided for Roman Catholics to enter government service in Britain, and similar acts were passed in the colonies.⁶ But while this and other constitutional difficulties were being ironed out in Britain, the old problems, including the uncertainties of the governor's legislative discretion, continued to hamper the man on the spot at the Cape.⁷ From

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1. Supra, p. 77.
 2. Supra, p. 78.
 3. C.O. 49/21, Murray to Cole, 12/7/1828.
 4. Supra, pp. 36, n. 5; pp. 21-2; pp. 52-4.
 5. C.O. 324/80, Hay to Cole, Pte. and Conf'l., 19/6/1828.
 6. 10 Geo. IV, c. 7. C.O. 51/18, Minutes, 13/1/1830. Gazette, 15/1/1830, Ord. No. 68.
 7. Cf. The statement that, "The problems were submitted to James Stephen whose opinion formed the basis of subsequent communications with the governor", and "... the resolution of the problems raised in council settled the legal constitutional issues ...", Hunt, Sir Lowry Cole, pp. 143 and 145. This view appears to overlook the fact that Stephen's explanation of the legislative authority of the governor was not conveyed to the governor in 1828, as a result of which the whole issue arose again the following year.

Cole's point of view it was particularly unfortunate that Stephen's views had not been communicated to him in 1828 as the whole problem arose again in March the following year, when the Council of Advice rejected an ordinance modifying slave regulations for the colony.¹ Cole had considered issuing the new regulations in the form of a proclamation, but was concerned at the attitude of the judges of the Supreme Court. He feared that they would not uphold such legislation in a court of law because of the discrepancy between the Additional Instructions of 1825 and the Charter of Justice of 1827.² Had Cole been aware of Stephen's ruling that the governor might promulgate an ordinance, notwithstanding the opposition of the council, he would have had a way out of his difficulty. Instead he postponed the introduction of the amended slave regulations and referred the matter once more to London, appealing for an early decision to "set at rest" the vexed question of the governor's legislative authority in the light of the powers of the courts, as defined in the Charter of Justice. Cole also suggested that the modifications to the slave regulations, which had been required by the Colonial Office in the first instance, should be enacted in Britain and transmitted for promulgation in the colony. Such a procedure would circumvent the opposition of the council as well as the constitutional difficulty of enactment in the name of the governor alone.³

Cole's suggestion for an order in council or statute to be passed in London for the Cape alone was rendered unnecessary by the introduction a year later of uniform regulations, applicable throughout the empire and issued as an order of the king in council.⁴ Unfortunately this deviation from Cole's proposal meant also that his urgent request for clarification and definition of the governor's legislative powers was once again disregarded. For Cole the result of this was to be yet further

1. *Infra*, p. 256.

2. *Supra*, p. 80.

3. C.O. 48/130, Cole to Murray, 30/3/1829.

4. C.O. 49/23, Goderich to Cole, 19/3/1830 and Goderich to Cole, Sep., 20/3/1830. *Infra*, p. 255. Hunt, Sir Lowry Cole, pp. 114-6.

embarrassment over the uncertainty of his discretion to legislate on his own authority. The order in council of February 1830 required that local regulations should be issued specifying the food and clothing to be provided for slaves. Cole planned to enact these by proclamation without reference to the council, but was prevented from doing so by the judges of the Supreme Court, who denied the governor's right to enact such a measure without first consulting the Council of Advice.¹ Cole was therefore forced to bring the proposed enactment before the council to be passed as an ordinance, although he had to advise council members that they had no discretion whatsoever to prevent or delay the implementation of the new regulations. Once again the problem of the governor's authority, as well as that of the council's independence had arisen.²

Cole explained all this when he reported to the secretary of state that the order in council of February 1830 had been promulgated in the colony.³ He explained, too, the practical difficulties that had arisen as a result of the terms of the Charter of Justice, and the lack of explicit definition of the governor's legislative powers in relation to the Council of Advice. The Additional Instructions of 1825 had provided that the governor might act against the expressed opinion of the Council of Advice if he saw sufficient cause, in which case a full explanation was to be transmitted to London at the earliest opportunity. This seemed to carry the implication that such a step should be taken only in a situation of extreme necessity, and that it should not become normal or regular practice - a view subsequently endorsed by the secretary of state when eventually he gave a ruling on the question.⁴

The question did not depend only on the interpretation given to the Additional Instructions and the Charter of Justice. There were also

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1. *Infra*, Ch. 6. Hunt, Sir Lowry Cole, p. 146.
 2. The question of the independence of the council was a corollary of the question of the governor's right to legislate despite the council's opposition to a measure. *Infra*, p. 89 and Ch. 4, *passim*.
 3. C.O. 48/136, Cole to Murray, 28/8/1830.
 4. *Infra*, p. 88.

practical considerations to be taken into account. In theory the judges of the colony were correct. Their ruling was in accordance with the terms of the Charter of Justice, and was in keeping with the opinion expressed by Stephen in 1828, but not transmitted to the Cape.¹ The judges maintained that the governor could only exercise his legislative authority in consultation with the Council of Advice, but that the consent of the council to proposed enactments was not necessary. Here lay the crux of the matter. It was clearly not in the interests of the harmonious conduct of council business for the governor to engage in conflict with his council, particularly over a measure which he was bound to enforce locally in terms of an order in council received from Britain. Cole had tried to obviate any possible confrontation, knowing that the council were susceptible on the question of slavery and that they had already, the previous year, stood their ground in spite of directions from the secretary of state for the implementation of new slave regulations. Cole had been sensitive to the potential difficulties of the situation. In contrast the attitude of the judges appears to have been narrow and legalistic.

As on previous occasions Cole was disappointed in his hope for guidance and clarification from the Colonial Office on this important question, for once more the matter was overlooked. This was regrettable as later in 1830 Cole again came into conflict with the judges of the Supreme Court over his legislative authority.² He had been directed by the secretary of state to enact a law to extend the jurisdiction of the Supreme Court so that cognizance might be taken of crimes committed

1. Supra, p. 82 and p. 84.

2. It is of interest to note that in 1828 Hay had written "It is very material that there should be no interruption of a friendly intercourse between you [and the chief justice] and that the sort of Collision which has taken place between General Darling and Mr Forbes in New South Wales should not be repeated at the Cape of Good Hope". C.O. 324/80, Hay to Cole, 19/6/1828. Such a collision was made all the more likely by the failure of the Colonial Office to define beyond all doubt the legislative authority of the governor.

beyond the boundaries of the colony.¹ In compliance with the instructions he had received Cole had prepared a draft ordinance, but the chief justice had declared that such an ordinance would be inconsistent with the fundamental law of the colony, and would be beyond the legislative competence of the governor. There had been a lengthy correspondence on the matter between August 1830 and January 1831, and finally in June 1831 the question was referred to London. Cole asked that it might be given immediate attention, not only because of the frequency of crimes committed beyond the colony, but also in order to prevent any further collision between the "Executive Government and the Judicial Authority". He suggested, as he had on the question of slave regulations,

"the propriety of some legislative enactment being prepared at home and sent out to the Colony for the above-mentioned purpose, the legality of which cannot be called in question by the Court".²

Cole also took occasion to solicit once again a clear definition of the governor's legislative power. He referred to the difficulty he had experienced in promulgating the slave order in council the previous year, unobtrusively reminding the secretary of state that he had received no answer to the questions raised at that time. He explained the view of the judges and also the difficulty of conforming to that view.

"their opinion[is that] although as Governor I am not competent to issue any legislative enactment without the intervention of the Council, I am fully competent to issue such enactment, although contrary to the opinion of the whole or of a majority of the Council, and that the Court is bound to recognise the same as law, provided it be issued in the form of an Ordinance of the Governor in Council.

From the correctness of this opinion, I have reason to believe, that the members of the Council generally dissent, for although they have no doubt of the power vested in the Governor to issue any Proclamation in his own name alone, they consider it unjust that an Ordinance of which they have previously disapproved, should be published as if sanctioned by them.

I beg therefore to refer it for Your Lordship's

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1. C.O. 49/23, Murray to Cole, 29/11/1829, Hunt, Sir Lowry Cole, pp. 162-3.
 2. C.O. 48/143, Cole to Goderich, 1/6/1831.

decision as circumstances may hereafter occur to render any doubt on the subject a matter of serious inconvenience."¹

In December 1831 the secretary of state at last conveyed to the colony a clear statement of the governor's legislative authority in relation to the Council of Advice. Goderich confirmed the view of the judges.

"The opinion of the Judges . . . appears to me strictly correct, and unexceptionable. They maintain that you have no legislative Power, excepting that which you are required to exercise with the advice of the Legislative Council (sic), that consequently a Legislative Proclamation which should not purport to be sanctioned by the Council would be invalid; but that to meet any extraordinary emergency, you are authorised to promulgate any law, as an ordinance made in Council, even though the majority, or the whole part of the Council should dissent from it."²

But Goderich also upheld the view that this was an emergency power to be used with great caution, "justified by nothing but some exigency of vital importance to the safety or welfare of the Colony". He also maintained that the governor was entitled to promulgate by proclamation those measures which had already been passed in Britain as orders in council or statutes. In the case of these the legislative authority emanated from the original enactment, and the Supreme Court of the colony could therefore have no grounds for refusing to uphold such laws.³

Goderich's despatch was received in the middle of 1832, some four and a half years after the question had first been referred to the Colonial Office for clarification. Default in this instance appears to have lain with the Colonial Office itself, where little thought seems to have been spared for the frustration and anxiety of the governor on the spot, faced with defiance from the court, the risk of opposition in the council, and the threat of censure from the Colonial Office itself

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1. C.O. 48/143, Cole to Goderich, 1/6/1831.
 2. C.O. 49/25, Goderich to Cole, 3/12/1831.
 3. Ibid. Hunt, Sir Lowry Cole, p. 146.

if orders were not carried out. The reply which was sent from the Colonial Office at the end of 1831 was itself timely, for in June 1832, just at the time when he acknowledged receipt of this long-awaited statement,¹ Cole had occasion to enact an ordinance without first obtaining the full consent of the Council of Advice.² This was the only time during the nine years of the council's existence at the Cape that a governor availed himself of this prerogative.

Occasion had not been wanting when such a step might have been taken. But both Bourke and Cole were reluctant to adopt a strong line in opposition to the council. They appear to have been influenced in part by a genuine uncertainty about the constitutional niceties of the situation, but even more by a sympathetic understanding of the ambivalence created for council members should such a procedure become regular practice. Members of the Council of Advice frequently came under the fire of public criticism, particularly from the local press.³ Because of the oath of secrecy they were unable to vindicate themselves, and it was clearly not known in Cape Town how strenuously members of the council fought to uphold the interests of local inhabitants when these appeared to be threatened by policies devised in Britain. A great deal of the legislative business discussed by the council had emanated from Britain and required only local measures of adaptation and implementation. The crucial question in this situation was whether council members were expected to acquiesce without comment if they sincerely believed that the proposed measures were inexpedient for the colony. Just as the governor was under a disadvantage because there had been no clear definition of his authority, so too other members of the council were hampered because they were unsure of their true obligations or the limits, if any, imposed upon their independence. In 1828 when Bourke had first raised the question of the governor's legislative authority in relation to the Council of Advice and the Supreme Court, he had, by implication, also raised the question of the independence of the council.

1. C.O. 48/14, Cole to Goderich, 20/6/1832.

2. *Infra*, Ch. 6 and Ch. 10, *passim*.

3. *Infra*, Ch. 10, *passim*.

Stephen had realised this and had made the position plain in his comment to the Colonial Office.

"I am very clearly of opinion that the members of the Council are not only free but are bound to vote and act according to their own deliberate judgement, even with reference to Laws recommended by His Majesty's Government . . . the local authorities are supposed to possess better opportunities of estimating the policy of such Laws, and a more familiar acquaintance with those local circumstances by which the details of every Enactment must be regulated. If they were intended to consider merely the details without any reference to the principle, the reference to them would be at once unnecessary and improper . . .

Were it not open to the Governor and his Council to discuss the principles of measures thus referred to them, the reference itself would scarcely be just. It would throw upon the local authorities a responsibility which, upon this supposition, ought to be borne exclusively by the Government at Home.

Further, the Members of the Council could not, I think, consistently with the terms of their Oath, vote for any Law which they might conscientiously deem it unwise to pass." 1

Unfortunately, this opinion, like that given on the legislative authority of the governor, had not been transmitted to the colony in 1828.² Council members were thus unaware of the degree of independence expected of them, and only gradually gained the confidence and experience necessary to oppose measures planned in Britain for the colony.

By definition a council of advice did not share the legislative authority of the governor. Yet at the Cape it was expected to share the "odium and responsibility" for legislation, while at the same time its meetings were held in camera and its members were bound by an oath of secrecy. These factors reflect some of the practical difficulties of the Council of Advice which operated at the Cape of Good Hope between 1825 and 1834. As an instrument of government its efficacy cannot be judged on mere frequency of meetings or diligence in attendance. It was affected too by the attitude and temperament of the governor presiding and by the mutual understanding, or lack of understanding, of the respective roles of governor and council members. The efficacy of the

1. C.O. 48/126, Stephen to Leveson Gower, 22/5/1828.

2. Supra, p. 83.

Council of Advice has also to be assessed in relation to the specific problems with which the council was engaged during the period under consideration. In 1825 the nature of the colony and its problems, which were both diverse and complex in character, were already under the scrutiny of the Commission of Inquiry appointed in Britain in 1823.¹ In structure and in activity the Council of Advice was to be influenced by the presence of the commissioners of inquiry in the colony. Moreover the range of business brought to the attention of the council was to be broadened as the recommendations made by the commissioners were forwarded to the Council of Advice for implementation.

1. Supra, pp. 24 - 6.

Chapter 3

The Council of Advice and The Commission of Inquiry

When the Council of Advice was established at the Cape of Good Hope in 1825 the colony had been under British administration for nearly twenty years and it was just over ten years since it had been ceded to Britain in terms of the London Convention of 1814 and the Supplementary Convention of 1815.¹ Experience during the 17th and 18th centuries had led the British government to the view that it was inexpedient to attempt too rapid an anglicization of existing practices and institutions in colonies of conquest.² Yet at the Cape some important changes had been made, even prior to the formal cession of the colony in 1814. Internal trade had been freed at once in 1806 from the former restrictions which had to a large extent fettered the economic development of the colony.³ In 1809 the governor, Lord Caledon,⁴ had introduced significant changes in the regulations controlling the relationship between white employers and Hottentot labourers, establishing what came to be known as the Caledon code or Hottentot code.⁵ Two years later provision had been made for circuit courts to tour the colony annually, thus ensuring not only more efficient judicial proceedings but also some means of supervising the enforcement of the Caledon code.⁶ In 1813 Caledon's successor, Sir John Cradock,⁷ had ruled that all courts should be held with open doors, for the furtherance of

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1. C.H.B.E. Vol. XIII, pp.214-6. G.W. Eybers, Select Constitutional Documents illustrating South African History (London, 1918), p.19. Convention between Great Britain and the United Netherlands, 13/8/1814.
 2. Supra, p. 14. Walker, History, pp.140-1.
 3. S.D. Neumark, Economic Influences on the South African Frontier (Stanford, 1957), p.13. M.H. de Kock, Selected Subjects in the Economic History of South Africa (Cape Town, 1924), p. 87.
 4. Du Pré Alexander, Earl of Caledon (1778-1839), governor of the Cape of Good Hope, 1807-11.
 5. J.S. Marais, The Cape Coloured People (Johannesburg, 1962), pp.109-31, passim. *Infra*, pp.376-7.
 6. Proclamations, p. 153, Govt. Proc., 16/5/1811. Walker, History, pp. 141 and 149-50.
 7. Sir John Francis Cradock (1762-1839), first Baron Howden; military service in West Indies, in India and against France; governor of the Cape of Good Hope, 1811-14; changed his name in 1820 to Caradoc.

equitable judicial proceedings.¹ Cradock had also been responsible for initiating changes in the system of land tenure in the colony, encouraging perpetual quitrent tenure in place of the various forms of landholding that had come into operation during the years of Dutch administration.² In 1814 the office of land inspector had been created to facilitate the transition and to handle the backlog of some 3 000 land claims that were awaiting official recognition. Unfortunately the incumbent, Charles D'Escury,³ had proved to be neither qualified nor personally suited for the work, with the result that a state of near-paralysis existed in the administration of land by 1825.⁴

In spite of these significant reforms at the Cape the colony was still predominantly Dutch both in character and institutions when the Council of Advice was created in 1825. One and a half centuries of monopolistic company rule in a settlement originally intended only as a naval refreshment station had created many economic difficulties, as well as a wide range of social and administrative problems associated with a heterogeneous population and a remote and restless frontier. These had formed the legacy of the Dutch administration in 1806 and still in large measure constituted the problems of the colony in 1825.

The appointment of the Commission of Inquiry in 1823 had made provision for a thorough investigation into all aspects of the administration of the colony, "for the purpose of prospective regulation and practical improvement."⁵ The reduction of expenditure in all government departments was one improvement greatly desired by the Colonial Office. At the Cape the judicial administration and the

1. Proclamations, p. 259, Govt. Proc. 25/9/1813.

2. C.Duly, British Land Policy at the Cape, 1795-1844, (Durham, 1968), pp. 13-18, *passim*.

3. Charles D'Escury (? - 1827), left the Netherlands with the Prince of Orange in 1795 and became a British subject in 1799; land inspector of the Cape of Good Hope, 1814-27.

4. Duly, British Land Policy at the Cape, 1795-1844, Chs. 4, 5 and 6.

5. R.C.C. Vol. XV, p. 239, Instructions of the Commissioners of Inquiry, 18/1/1823.

means of "introducing a gradual assimilation to the forms and principles of English jurisprudence" were to be particularly considered. Questions of slavery, the relations between the colonial government and the native tribes, the state of the Hottentot population and problems of land tenure were directed to the attention of the commissioners.¹ When the Council of Advice was established in 1825 the commissioners were still collecting evidence and had not yet submitted any of their official reports, so that there were as yet no tangible results of their work. To a certain extent the functions of the two bodies overlapped. There is a sense in which an advisory council might be likened to a local and permanent Commission of Inquiry, entrusted with the duty of maintaining a constant vigilance over the state of the colony and recommending suitable reforms to the governor and, through him, the British government. The task of a colonial Commission of Inquiry in the early 19th century was to exercise a similar responsibility at a given point in time. For the Council of Advice there was the added responsibility of translating recommendation into reality, by implementing and enforcing proposed new measures, whereas the commissioners' task ended with the submission of their reports and recommendations. Where two such bodies acted side by side and contemporaneously it was likely that there would be some areas of disagreement in their views and difficulty in their inter-action, the one with the other. This proved to be the case at the Cape.

The Commission of Inquiry began its work at Cape Town in July 1823, and its final report was submitted to the Colonial Office in April 1831. Thus for seven years the commissioners were actively engaged in the task committed to them of investigating the state of the colony and reporting upon it to the secretary of state, although they were not in the Cape all that time.² The Council of Advice at the Cape had

1. Ibid., pp. 240 - 1.

2. The commissioners Colebrooke and Blair sailed from the Cape for Mauritius in September 1826 and Bigge left the Cape to join them in June 1827. Their later reports were prepared on the evidence taken during their stay at the Cape.

an effective life of eight and a half years, from May 1825 to January 1834, and there was thus an overlap of some six years in the activity of the two bodies. The point is significant not only because the establishment of the Council of Advice had in several respects cut the ground from under the feet of the commissioners of inquiry,¹ but also because some of the fiercest discussions and deepest divisions within the council occurred over changes recommended in the first instance by the commissioners of inquiry.

The commissioners of inquiry had arrived at the Cape in July 1823 and had set to work at once. They were distracted from the main business of their inquiry by frequent requests emanating from the Colonial Office in London and from private individuals locally to investigate personal grievances and complaints against the Cape government.² These generally required detailed investigation and led to considerable correspondence as well as the presentation of lengthy reports.³ The commissioners were also required by the secretary of state to submit interim reports on the state of the colony or on some unexpected crises.⁴ Such digression, although useful to the Colonial Office, particularly for defending the Cape administration in parliament, served mainly to delay the official reports which were the main purpose of the commissioners' visit to the colony. The first report, on the administration and finance of the colony, was sent

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1. E.g. On the original question of constitutional reform, namely the question whether a Council of Advice similar to that operative in Ceylon should be introduced at the Cape. *Supra*, p. 26.
 2. E.g. *R.C.C.* Vol. XVIII, pp. 239f and 440f; Vol. XX, pp. 374-9, letters concerned with the case of William Edwards. *R.C.C.* Vol. XVII, pp. 54, 72 and 134, letters concerned with the character and conduct of the Rev. Mr. Geary.
 3. E.g. C.O. 48/88, Report and papers on Mr. D'Escury's case. C.O. 48/87, Mr. Parker's complaint against the colonial government and Colonel Bird. C.O. 48/92, Case of Messrs. Francis and Wilmot, Albany settlers.
 4. E.g. *R.C.C.* Vol. XXI, pp. 279-326, Report of the Commissioners of Inquiry upon the Address of the Principal Settlers in the Albany District, 25/5/1825, P.P. 1826, Vol. XXIII, (438), pp. 14-35, Bigge and Colebrooke to Bathurst, reporting on the currency situation, and enclosures, 5/7/1825.

to London in September 1826. Others followed each year until by 1831 a comprehensive account of the colony had been presented to the Colonial Office under the following headings and dates:

Government and Finance - September 1826¹
 Courts of Justice - September 1826²
 Criminal Law and Jurisprudence - August 1827³
 Police - May 1828⁴
 Trade, Navigation and Harbours - October 1828⁵
 Native Tribes and Missionary Institutions - January 1830⁶
 Slaves and the State of Slavery - April 1831⁷

The fact that the commissioners of inquiry took so long to complete their reports had some curious repercussions. They were reporting on a situation which was constantly changing: hence by the time that their reports were received, they were in part obsolete. Reforms were taking place throughout the years that the commissioners were investigating and reporting, and in some respects the original purpose of the commission had been undermined before they had completed their inquiry. The most obvious illustration of this was in the creation of the Council of Advice itself, but there were other examples. It was true for instance in the case of the regulations controlling the lives of Hottentots and other free persons of colour within the colony. In their report on the native tribes of the colony the commissioners described these regulations in some detail and indicated where they tended towards the disadvantage of the native peoples. But before their report was submitted to London important changes had taken place in the conditions of labour and in the status of Hottentots, in terms of

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1. P.F. 1826-7, Vol. XXI (282). (R.C.C. Vol. XXVII, pp. 342-504.)
 2. R.C.C. Vol. XXVIII, pp. 1-111.
 3. R.C.C. Vol. XXXIII, pp. 1-130.
 4. R.C.C. Vol. XXXV, pp. 121-200.
 5. P.F. 1829, Vol. X (300). (R.C.C. Vol. XXXV, pp. 229-88)
 6. P.F. 1830, Vol. XXI (584). (R.C.C. Vol. XXXV, pp. 306-51.)
 7. R.C.C. Vol. XXXV, pp. 352-79.

Ordinance 50, passed in 1828.¹ This measure had removed many of the previous restrictions on Hottentots and provided for new liberties. The commissioners mentioned the new regulations in passing, but because their report had been based on evidence collected before 1828² they could not comment in detail on the effects of the new legislation.

The same situation applied on the question of slavery, where important changes were already taking place while the Commission of Inquiry was at work in the colony. Improvement in the condition of slaves at the Cape was begun by Somerset on his own initiative in 1823.³ Subsequent changes were introduced on the instruction of the imperial government, so that by the time the Commission of Inquiry reported on slavery at the Cape in April 1831 the amelioration programme was well under way. The tardiness of their report was not without effect on the Council of Advice. Slavery at the Cape differed in many respects from slavery in the plantation colonies of the West Indies.⁴ Yet the amelioration measures devised in Britain were to be indiscriminately applied in all slave-owning colonies. For some time the Council of Advice was able to plead successfully for local adaptation,⁵ but in 1830 it became necessary to comply with the terms of an order in council, and measures were introduced which in many respects were not suited to the circumstances of the colony. There was local protest, and even resistance. The governor Cole sympathised with the colonists, and was in agreement with them concerning the inappropriateness of the new regulations. But officially he was bound to uphold the law.⁶ Two years later when further regulations were enforced, again by order in council, an ugly situation arose which threatened to erupt into open rebellion.

1. *Infra*, Ch. 8, *passim*.

2. *R.C.C.* Vol. XXXV, p. 306-7, Report upon Hottentot and Bushman Population.

3. *Infra*, p. 215.

4. *C.H.B.E.* Vol. XIII, Ch. 11, *passim*.

5. *Infra*, Ch. 6, *passim*.

6. Hunt, *Sir Lowry Cole*, pp. 117-9. *Infra*, pp. 253f.

Cole acted swiftly to crush the movement, and in so doing engaged in open confrontation with the Council of Advice.¹ The timely arrival of a new order in council, applicable only to the Cape, averted further trouble. But for several years both governor and council had been faced with a critical dilemma over the implementation of slave policy devised in Britain. It is arguable that this situation might have been avoided had the commissioners of inquiry submitted an early report on slavery, stressing the need for the local modification of measures designed initially for the plantation colonies of the West Indies. In the event their report on slavery had little influence on the development of the policy of amelioration and once more reflected a situation that was undergoing rapid change, due in this case to decisions made in Britain rather than in the colony. Furthermore the willingness of the Colonial Office to remove the anomalies from slave regulations applicable to the Cape was the result of persuasion by the governor and Council of Advice rather than by the Commission of Inquiry. Once again the Council of Advice had, in effect, ^{dis}replaced the Commission of Inquiry.

The pace of change was itself accelerated by the introduction of the Council of Advice in 1825 and the accompanying changes in the government, particularly the appointment of Bourke as lieutenant governor in 1826. Many new ideas emanated from Bourke himself, and the Council of Advice became the agency through which these could be formulated into policy and legislation.² Other reforms came about as the council responded to specific events or circumstances in the local scene, and as they implemented policy decisions made in London. Thus in a variety of ways significant changes were taking place irrespective of the work of the Commission of Inquiry. More than that, the effectiveness of the Council of Advice served in some ways to undermine and "set at nought" the work of the Commission of Inquiry. This was very clearly illustrated in the case of the proposal of the commissioners for introducing a slave tax in the colony.³

1. Infra, p. 259. Hunt, Sir Lowry Cole, pp. 119-21.

2. E.g. Infra, Chs. 7 and 8, passim.

3. Infra, Ch. 6, passim.

When the suggestion came before the Council of Advice it was most strenuously opposed. This opposition was sustained in the council for three years, from 1826 to 29, and resulted ultimately in the acceptance in London of alternative tax proposals.¹ Such a situation created a dilemma for the Colonial Office, as described by the under secretary, Hay,

"We are placed in somewhat of a dilemma by the remonstrance which has been made by certain members of the Council against the scheme of taxation recommended by the Commissioners of Enquiry, and the substitution of a different scheme - I have no doubt that the latter will not only be the more palatable, but the more productive measure, and that, therefore, you should be instructed to carry it into execution; but then the Commissioners' recommendations must be set at nought, and their labours to a certain extent declared to be useless - If, however the remonstrance of the Council should lead to the adoption of a different measure ... their independence will at least be satisfactorily manifested..."²

The long and often tedious investigations undertaken by the Commission of Inquiry meant further that the Colonial Office in London had two sources of official advice, namely the Council of Advice and the reports of the commissioners. There was another intrusion, for it became almost regular practice for the secretary of state to refer questions of importance to anyone in Britain with first hand knowledge and experience of the colony. The number of such persons increased during the years when the Colonial Office was awaiting the full complement of the commissioners' reports. The governor, Somerset, was on hand in London from 1826³ and his opinion was frequently sought, and was also sometimes offered, unsolicited, to the Colonial Office.⁴ He had been consulted on the matter of the slave tax in 1826 and again in 1827 and had not favoured the proposal. This may

1. *Infra*, p. 251.

2. C.O. 324/80, Hay to Cole, Pte., 19/6/1828.

3. *Supra*, p. 67.

4. E.g. On the question of employing tribesmen from beyond the colony's boundaries. C.O. 48/81, Somerset to Hay, 27/7/1826. (*R.C.C.* Vol. XXVII, p. 160.) *Infra*, pp. 357f.

have influenced the Colonial Office in their decision to adopt the tax proposals put forward by the Council of Advice rather than those of the Commission of Inquiry.¹ In 1828 Plasket, Bourke and Perceval, formerly at the Cape as colonial secretary, lieutenant governor and clerk of the council respectively, all returned to Britain and each in turn supplied the Colonial Office with his views on various aspects of the colonial administration. Plasket and Bourke, for instance, were jointly responsible for proffering advice on currency questions that was subsequently to prove detrimental to the interests of the colony rather than beneficial.² The opinion of Plasket was sought by the Colonial Office, amongst other matters, on the important ordinance number 50, extending liberties to Hottentots³ and on the subject of permitting distilling from grain in the eastern part of the colony.⁴ Dudley's views were solicited on the matter of transferring a number of slaves from Mauritius to the Cape, as apprenticed labourers,⁵ and also on the composition and efficacy of the Council of Advice.⁶

As well as a number of retired officials from the Cape providing first hand information for the Colonial Office there were from time to time private individuals who had returned to Britain and were only too eager to offer their advice and views to the secretary of state, or to press for particular reforms. Some, like Dr. John Philip,⁷ acted in an official capacity;⁸ others, like John Fairbairn

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1. C.O. 49/19, Hay to Somerset, 21/2/1827. C.O. 48/81, Somerset to Hay, 17/6/1826. (R.C.C. Vol. XXVI, p. 463) C.O. 48/110, Somerset to Hay, 13/3/1827. (R.C.C. Vol. XXVII, p. 82.) *Infra*, pp. 237-40.
 2. C.O. 48/124, Bourke to Huskisson, 24/6/1827 - at this stage Bourke was still lieutenant governor of the colony. C.O. 48/132, Memorandum on Sterling Currency, initialled R.P. *Infra*, Ch. 5, *passim*. Plasket and Bourke had also both been in the habit of writing private letters to the permanent under secretary, Hay, while they were still in office at the Cape.
 3. C.O. 48/127, Memorandum re Hottentots. *Infra*, p. 397.
 4. C.O. 48/127, Plasket to Hay, 7/6/1828. *Infra*, p. 284.
 5. C.O. 48/127, Perceval to Huskisson, 1/5/1828. *Infra*, p. 334, n. 4.
 6. C.O. 48/127, Remarks upon some questions relating to the Constitution and Proceedings of the Council at the Cape of Good Hope, by D. Perceval for Mr. Stephen, June 1828. *Supra*, p. 74.
 7. John Philip (1775-1851), superintendent of London Mission Society work in Southern Africa, published Researches in South Africa, 1828.
 8. E.g. C.O. 48/127, Strictures on Ordinance 50, by John Philip, 3/12/1828.

or John Ebden¹ sought to promote a particular cause of general public interest;² yet others pleaded for their own private or personal rights, as in the case of the Erith family;³ or for a local project of personal interest and concern, as in the application made by Thomas Pringle for the appointment of a Presbyterian minister to serve the Scottish party of British settlers.⁴ In addition there were several of the 1820 settlers of the Cape in London in 1826 who were able to give evidence before the Select Committee on Emigration which met that year.⁵ All served to increase the sources of information available to the Colonial Office, and as these grew in number and range, so the value of the reports of the Commission of Inquiry was to a certain extent diminished.

The first official reports of the Commission of Inquiry together with recommendations based upon them were received by the Council of Advice in November 1827, but interaction between the two bodies had begun much earlier than that. It is proposed to discuss three different aspects of such interaction, namely, the direct interest shown by the commissioners in the proceedings of the Council of Advice; the indirect effect upon the council of the presence of the commissioners in the colony and of their protracted investigations; and finally, the direct relationship between the work of the council and that of the commission as the former embarked on the task of implementing proposals founded upon the reports of the commissioners.

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1. John Bardwell Ebden (1787-1873), merchant and banker; member of the Legislative Council, 1834-49; member of Legislative Council under the new constitution, 1853-8.
 2. E.g. The establishment of a free press, C.O. 48/96, case of Greig and Fairbairn, Papers on the Censorship of the Press. *Infra*, Ch. 10, *passim*. The promotion of trade and banking, R. F.M. Immelman, Men of Good Hope (Cape Town, 1955), Chs. 5 and 9. Ebden was active in both these fields of commercial activity.
 3. T.P. Woods, The Case of James Erith, 1820 Settler and his Struggle for Compensation (M. A. Thesis, Rhodes University, 1968), *passim*.
 4. C.O. 48/86, Pringle to Hay, 28/9/1826.
 5. P.P. 1826, Vol. IV (404), *passim*.

Even before the establishment of the Council of Advice at the Cape in May 1825 the shadow of the Commission of Inquiry was cast upon it inasmuch as the commissioners had been specifically instructed to investigate the existing advisory council in Ceylon and report upon the suitability of such an institution at the Cape.¹ It was in the light of this instruction and because he anticipated that the commissioners would report in favour of extending the conciliar system to the Cape, that the secretary of state, Bathurst, had acted in advance of their recommendations and had made provision for the creation of the Council of Advice in 1825.² The commissioners of inquiry were then further required to report on the activity and effectiveness of the Council of Advice at the Cape. For this purpose they requested copies of the minutes of the council in January 1826 and apprized council members of their "intention to call upon them for such explanations of the mode of proceeding in Council as may be necessary to elucidate the subject of their enquiries."³ When the commissioners reported on the government of the colony later in 1826 they gave an assessment of the Council of Advice which in many respects has proved prejudicial to the image of the council. The commissioners considered that inadequate reference was being made to the council on legislative questions, and they criticised the fact that the state of finance and expenditure of the colony had not been brought to the attention of the council.⁴ Yet they conceded that the apparent inertia might indeed have been due to their own presence in the colony and the reluctance to introduce significant changes before the outcome of their investigations was made known.⁵ To a certain extent their criticisms were true, but as their judgement was based only on the first seven months of the council's activity, during which time no less than sixteen legislative enactments had been passed in the form of ordinances, the criticism seems a little severe. It has, unfortunately, tended to create the impression that for the entire period of its existence the council

1. Supra, p. 26.

2. Supra, p. 33.

3. C.O. 51/1, Minutes, 23/1/1826. (R.C.C. Vol.XXIX, p. 237.)

4. R.C.C. Vol. XXVII, pp. 365-6, Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826.

5. Cf. Bourke's comments on the same difficulty, *infra*, p. 104.

considered "only few subjects of a legislative nature, and those but of trifling import."¹ In view of the broad range of business undertaken by the council and the many far-reaching reforms enacted in the nine years of its existence this confusion has been regrettable.

There were other occasions of direct contact between the Council of Advice and the Commission of Inquiry. In November 1825 the commissioners requested copies of all correspondence received by the council on the question of the medical inspectorship.² The council complied, but pointed out that this matter was not one on which any legislative enactments had been issued on their advice. The question had been under their consideration because the governor had sought their opinion on a plan that he had in mind for abolishing the office of medical inspector and re-instating a medical committee in Cape Town. This had been done at the beginning of November in terms of the governor's executive authority.³ The Commission of Inquiry also asked in November 1825 to be furnished with documentary material relevant to the amendments that had recently been made by the council to the regulations for the frontier trade of the colony.⁴ Another interesting point of contact between the two bodies arose when the Council of Advice invited the commissioners to be present at Council meetings where evidence was being taken on the important and controversial matter of the proposed tax on slave property.⁵ Reference was also sometimes made by the Council of Advice to the commissioners of inquiry for guidance or clarification on matters under discussion. This occurred, for instance, in April 1826 when the council was discussing a petition that had been received from the district of Albany for an extension of the powers of the landdrost's court so that cases of £60 would be cognizable.⁶ The commissioners agreed and an ordinance

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1. E.g. Edwards, The 1820 Settlers in South Africa, p. 126. Lochner, Raad van Advies, p. 141.
 2. C.C. 51/1, Minutes, 21/11/1825. (R.C.C. Vol. XXIV, p. 334.)
 3. C.C. 51/1, Minutes, 17/10/1825; 28/10/1825; 21/11/1825. (R.C.C. Vol. XXIV, pp. 323-334, *passim*.) Gazette, 4/11/1825, Government Minute.
 4. C.C. 51/1, Minutes, 21/11/1825. (R.C.C. Vol. XXIV, p. 334.) *Infra*, pp. 315-6.
 5. C.O. 51/5, Minutes, November and December 1826, *passim*.
 6. C.O. 51/3, Minutes, 22/5/1826 and 29/5/1826. (R.C.C. Vol. XXIX, pp. 297-303, *passim*.)

to this effect was duly passed, but was subsequently disallowed by the crown because the whole field of central and local jurisdiction was to be altered in terms of the recommendations of the commissioners of inquiry.¹

As well as the occasions of direct contact between the Commission of Inquiry and the Council of Advice there was an indirect undercurrent of inter-action, more subtle and elusive of definition, but nonetheless real. In part this was represented by a reluctance on the part of the government to introduce innovations at a time when a major overhaul of the entire state of the colony was already under consideration. This factor had been noted by the commissioners themselves, and was commented upon in their report on the council.² It was also observed by the lieutenant governor, Bourke, who found himself hampered to some degree by the local government which felt "no inclination to introduce or suggest improvements in a system which it is supposed have already been revised by another hand."³ The practical consequence of this was delay in legislation which might well have been introduced at an earlier date in the colony. The disallowance of a draft ordinance to extend the jurisdiction of local courts has already been noted.⁴ Moreover, several ordinances which had been introduced in 1825 and 1826 modifying the procedures of judicial administration were similarly disallowed because of the impending changes in the judiciary, dependent upon the recommendations of the commissioners of inquiry.⁵ Legislation on other subjects was also affected. In 1828 when Bourke gave notice of his intention to introduce an ordinance to improve the condition of Hottentots and other free persons of colour in the colony he stated that,

"the situation of the Hottentots had engaged his attention soon after his arrival in the Colony, and he would have proposed at an earlier period some remedial measure ...

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1. C.C. 48/112, Stephen to Hay, 8/3/1827. C.O. 49/19, Bathurst to Bourke, 4/3/1827.
 2. *Supra*, p. 102.
 3. R.C.C. Vol. XXXI, p. 58, Bourke to Hay, 26/2/1827.
 4. *Supra*, n. 1.
 5. C.O. 49/21, Huskisson to Bourke, 21/10/1827.

but that he conceived His Majesty's Commissioners of Inquiry had taken the subject into their consideration and intended to report upon it. Not finding anything to have come from them he would no longer delay proposing what he hoped would prove beneficial to the free coloured population of the Colony."¹

The effect on council business of the presence of the commissioners in the colony lay not only in such obvious practical difficulties but also in the less easily defined factor of atmosphere and attitude within the colony towards the council. The presence of the commissioners created in the colony an atmosphere of tension and expectancy, at once hopeful and yet fearful.² This affected the attitude of colonists towards the existing government and laws, so that Bourke was led to complain, "People lend an unwilling obedience to what they have been told is erroneous and is not likely to last."³ It affected also, in the long run, the attitude of local inhabitants, as expressed through the press, to the Council of Advice itself. This came about in a curious way, as comment in the press reflected at first optimism and then dismay at the reforms likely to be recommended by the Commission of Inquiry. Initially the commissioners' work was hailed locally with enthusiasm. But as the inquiry dragged on, seemingly interminably, the enthusiasm waned to be replaced by doubt and disillusionment. The English colonists, in particular, who had hoped for much, became sceptical about the eventual benefits.⁴ Moreover, as the English section of the community grew more self-confident and vociferous in its political awareness, especially through the channel of the partially free press, so the issue of constitutional reform came to be pre-judged. As a result the credibility of both the Council of Advice and the Commission of Inquiry were brought into question. In January 1826 for example, the editor of the South African Commercial Advertiser wrote,

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1. C.O. 51/12, Minutes, 3/7/1828. *Infra*, p. 376. Bourke had arrived in the colony in February 1826, and had therefore waited more than two years to propose this legislation.
 2. King, Richard Bourke, p. 74.
 3. R.C.C. Vol. XXXI, p. 58, Bourke to Hay, 26/2/1827.
 4. E.g. Hockly, British Settlers, p. 91. A. Keppel-Jones, Ed., Philipps, 1820 Settler (Pietermaritzburg, 1960), pp. 154; 204-5; 213-4.

"If the Commissioners of Inquiry have made a proper use of their opportunities of acquiring a perfect knowledge of our true Interest and Capabilities - a Representative Assembly with its natural consequences of a simple Code of laws, moderate Taxation, and Security of Person and Property, will soon be enjoyed at the Cape." ¹

Such a statement would do little to enhance the reputation of the Council of Advice as an instrument of government. It was also setting standards by which the reports of the commissioners of inquiry would be judged. When it was discovered in 1828 that the constitutional reforms proposed by the commissioners of inquiry amounted to nothing more than a change in the composition of the council the criticism increased,

"Patch it [i. e. the council] as you will, it can never answer the needs for which Government is designed, or supersede the necessity of establishing at no distant period a Legislative Assembly, upon the more extended basis of Popular Representation." ²

Thus the moderate nature of the constitutional reforms suggested by the commissioners of inquiry served not to increase respect for the council, but rather to promote the campaign for a representative assembly. Such an idea had been far from the intentions of the commissioners who had recommended no more than the continuation of the existing council and the establishment of another similar advisory council for the eastern division of the colony. ³ Even the changes introduced in the personnel of the existing council had not been recommended in the first instance by the commissioners, but were proposed by the secretary of state to offset the loss that might be felt in the colony through the abolition of the Burger Senate. ⁴

The composition of the Council of Advice at the Cape had been determined originally by the Colonial Office. ⁵ Indirectly it had

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1. S. A. C. A., 7/1/1826, Editorial.
 2. S. A. C. A., 6/12/1828, Editorial.
 3. R. C. C. Vol. XXVII, pp. 367-8, Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826.
 4. Infra, pp. 117f.
 5. Supra, pp. 36-7.

subsequently been affected by the work of the commissioners of inquiry. The chief justice, Truter, had been appointed an ex officio member of the council in 1825. Later that year Truter had applied to the governor for permission to resign from office, but had been persuaded by Somerset to continue his services as chief justice until such time as the commissioners' reports had been received and comprehensive reforms of the judiciary introduced.¹ Thus it was through the tardiness of the commissioners' reports that Truter remained in office as chief justice and on the council as an ex officio member from 1825 - 8. Thereafter he continued to serve on the council as a colonial member.² The new chief justice, Wylde, became a member of the Council of Advice on his appointment in 1828, although the commissioners of inquiry had not favoured the retention of the chief justice as a council member, and had suggested that he should be replaced by the attorney general.³ Another important change in the personnel of the council was the introduction of Bourke as lieutenant governor in 1826. This had come about because of the commissioners' proposal to divide the colony into an eastern and western division with separate administrations in respect of each area.⁴ The arrival of Bourke had made it possible for the governor, Somerset, to take leave of absence, and, as acting governor, Bourke had held the reins of government for two and a half years. His energetic and effective leadership of the Council of Advice during this time had been of considerable significance for the development of the council as a valuable and useful instrument of government.⁵

The introduction of two members of the council to represent the interests of the colonists had come about because it was intended to abolish what was regarded as the only quasi-representative institution

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1. C.G. Botha, History of Law, Medicine and Place Names in the Cape of Good Hope (Cape Town, 1962), p. 36.
 2. *Infra*, p. 108.
 3. R.C.C. Vol. XXVII, pp. 375-6, Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826.
 4. *Supra*, p. 67. C.O. 49/16, Bathurst to Somerset, 20/8/1825.
 5. *Infra*, Ch. 7, *passim*.

in the colony, the Burger Senate.¹ The secretary of state had even suggested that if this were not considered a sufficient quid pro quo, the lieutenant governor might, at his own discretion, appoint a further two colonists.² There was no popular outcry against the abolition of the Burger Senate and Bourke did not avail himself of this additional authority. The two colonists appointed to the Council of Advice as colonial representatives in 1828 were the retired chief justice, Truter, and the newly-appointed commissioner general of the eastern division of the colony, Stockenstrom. It has already been noted that neither of these could really be regarded as a non-official member, as the one received a government pension and the other held government office.³

The appointment of a commissioner general for the eastern districts of the colony was in itself a reflection on the work of the Commission of Inquiry. The proposal made by the commissioners in 1825 to divide the colony into two separate establishments, as had recently been done in New South Wales,⁴ was repeated in the official report on the administration of the colony in 1826.⁵ But the Cape was experiencing a period of severe financial strain during the 1820s⁶ and for reasons of economy the secretary of state abandoned the plan to divide the colony. Instead of appointing a lieutenant governor for the eastern districts, with his own administration, responsible directly to the Colonial Office, a lesser post was created in the office of commissioner general. This official was to exercise a general superintendence over the eastern districts of the colony, and to hold a watching brief on the frontier situation.⁷ It has been suggested that while Bourke remained in charge of the colony the

1. *Infra*, p. 115f.

2. C.O. 49/19, Goderich to Bourke, Pte., 15/6/1827.

3. *Supra*, p. 65.

4. *Supra*, p. 50.

5. *R.C.C.* Vol. XXVII, pp. 360-1, Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826.

6. Hunt, *Sir Lowry Cole*, Ch. 8, *passim*.

7. King, *Richard Bourke*, p. 94. Hunt, *Sir Lowry Cole*, p. 96.

appointment was a success, but that with the arrival of the new governor, Cole, the commissioner general, Stockenstrom, found himself in an untenable position which could only end in his resignation.¹ When Stockenstrom left the colony on leave in 1833 he was required to resign his seat on the Council of Advice, and in 1834 the post of commissioner general was abolished.²

The most crucial point of contact between the Council of Advice and the Commission of Inquiry came at the end of 1827 when the council was called upon to implement recommendations made by the commissioners. The first official reports of the commissioners had been transmitted to London in September 1826, namely the reports on the administration, finance and justice. Some months of interdepartmental consultation and discussion had followed³ and in June and August instructions were prepared for the lieutenant governor of the Cape directing the implementation of many, though not all, of the reforms proposed by the commissioners.⁴ The instructions were tabled at a council meeting held on 5 November 1827, together with the commissioners' reports on administration and finance. The ensuing four months were the busiest that the council experienced in its nine-year existence. There was an average of twelve meetings a month and in December 1827 sixteen meetings were held.⁵ This was all the more remarkable in view of the fact that the summer heat was at its worst at this time. Officials normally moved into the country for the duration of the summer and there was a recess in council business.⁶ The urgency of enactment was due mainly to the fact that many of the reforms were required to be instituted by the beginning of 1828.

1. J. L. Dracopoli, Sir Andries Stockenstrom, 1792-1864 (Cape Town, 1969), p. 71.

2. *Ibid.*, p. 91.

3. E.g. C.O. 49/20, Hay to solicitor general, 25/5/1827 and Hay to Herries, 15/6/1827. C.O. 48/112, solicitor general to Hay, 16/7/1827.

4. C.O. 49/19 Goderich to Bourke, 14/6/1827. C.O. 49/21, Goderich to Bourke, 5/8/1827 and 10/8/1827. (R.C.C. Vol. XXXII, *passim.*)

5. *Infra*, Appendix E, Calendar of Council meetings.

6. *Ibid.* In December 1833 the lieutenant governor, Wade, had occasion to complain that he had twice been unable to summon a council meeting because so many government officials were out of town. C.A. A.C. 12, P.M. Brink to Clerk of the Council, 13/12/1833.

Broadly, the changes to be introduced involved the reorganisation of the administrative and judicial systems of the colony, the remodelling of the civil and judicial establishments and the introduction of a new scheme of taxation.¹ The proposed reforms had been based upon the recommendations of the commissioners but had not incorporated all of their proposals. Nevertheless the changes planned were to effect a thorough-going reorganisation of administrative structures and procedures in the colony in order to bring them more into line with British practice and institutions, partly, it has been suggested, in order to encourage more rapid immigration to the colony from Britain.²

A Charter of Justice for the colony had been issued in London in August 1827 to establish a new judiciary.³ British-trained professional lawyers were to hold all top positions. There was to be a chief justice and three puisne judges of the Supreme Court. Circuit courts, which had been introduced into the colony in 1811⁴ were to continue. Trial by jury was to be introduced for criminal cases and allowed in civil cases at the request of both parties. Judicial proceedings were to be conducted in English. In the districts of the colony resident magistrates were to be appointed to exercise the minor jurisdiction that had previously been undertaken by the local court of landdrost and heemraden.⁵ The English system of appointing justices of the peace was also to be introduced and an attorney general was to replace the fiscal in Cape Town.

Parallel changes were to be introduced into the structures of local government. There were in 1827 nine districts of the colony,

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1. King, Richard Bourke, p. 87. The taxation proposals are discussed elsewhere, *infra*, pp. 234f.
 2. C.O. 49/21, Hay to Bourke, 12/8/1827. (R.C.C. Vol. XXXII, p. 321.) Statement made by R. W. Horton, Pte. and Conf'l. 6/7/1828, Huskisson Papers, Vol. XXIX, British Museum, Additional Mss. 38, 762, cited by King, Richard Bourke, p. 88 and p. 269, n. 2. Horton had been in large measure responsible for planning the Commission of Inquiry and it has been suggested that he was all along concerned with making the Cape more attractive to immigrants by bringing its institutions more into line with those already familiar in Britain. King, *Ibid*, pp. 63-4 and 87-8.
 3. R.C.C. Vol. XXXII, p. 274, Charter of Justice, 6/8/1827.
 4. *Supra*, p. 92.
 5. Botha, History of Law, Medicine and Place Names in the Cape of Good Hope, Ch. 7.

namely the Cape, Stellenbosch, Worcester, Swellendam, George, Uitenhage, Graaff Reinet, Albany and Somerset. The latter two had been created in 1820 and 1825 respectively to handle the increased administrative work that had arisen as a result of the influx of some 4 000 British settlers in 1820.¹ Districts varied considerably in respect of size and population density,² yet in each the responsibilities of local administration and of minor jurisdiction had been held by the landdrost, an official whose office dated from the 17th century Dutch administration, assisted by a district secretary, and a board of four or six heemraden, two of whom retired each year.³ From 1828 the administrative functions formerly exercised by the landdrost and heemraden were to be undertaken by new officials. Civil commissioners were to hold office either for a single district or for two districts jointly and were to exercise the administrative responsibilities formerly attached to the boards of landdrost and heemraden.⁴ Each civil commissioner would have a clerk of the peace to assist him, as well as the services of the field cornets in the rural areas, responsible mainly for liaison work between the district officials and the local farmers.⁵ In practice the new structures of administration were to prove hardly more adequate than those which they had superseded. The combination of districts provided in some instance for

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1. Edwards. The 1820 Settlers in South Africa, Chs. 4 and 5, passim. Hockly, British Settlers, Chs. 6 and 9, passim. Proclamations, pp. 495 and 695, Govt. Proc., 13/10/1820 and Govt. Advt. 11/3/1825.
 2. C.A. C.O. 5970, Blue Book, 1828, Population Returns giving also a rough estimate of the extent of each district.
 3. Botha, History of Law, Medicine and Place Names in the Cape of Good Hope, p. 107. W.W. Bird, The State of the Cape of Good Hope in 1822 (Facsimile reprint, Cape Town, 1966; first published, London, 1823), pp. 22-4.
 4. C.O. 49/21, Goderich to Bourke, 5/8/1827. (R.C.C. Vol. XXXII, p. 262.) There were to be four civil commissioners for the western districts of the colony and three for the eastern districts. E.g. In 1831 there was a civil commissioner and a resident magistrate for the district of Stellenbosch, but one civil commissioner for the combined districts of George and Uitenhage, although each district had its own resident magistrate. South African Directory and Advertiser, 1831.
 5. The office was one which dated from the days of the Dutch administration, and which the commissioners of inquiry had decided should be retained. Botha, History of Law, Medicine and Place Names in the Cape of Good Hope, pp. 109-12.

very extensive areas, e.g. in the combination of Graaff Reinet and Beaufort which created a territory of some 32 000 square miles, or the combination of Albany and Somerset which established a frontier zone of some 300 miles to be supervised by one civil commissioner.¹ The new pattern of separating judicial and administrative responsibility was also to prove expensive so that in 1834 the offices of resident magistrate and civil commissioner were consolidated, and one incumbent held both for each district.²

In Cape Town itself the Burger Senate, a local board exercising responsibilities similar to those of the boards of landdrost and heemraden was also to be abolished, and its work undertaken by a judge of police and police court, and a number of other local bodies.³ The Orphan Chamber centred in Cape Town but exercising responsibility for the whole colony was also to be reorganised.⁴

The Council of Advice began its task of implementing these reforms in November 1827, as instructed by the secretary of state.⁵ Four months later the major enactments had been passed and the new administrative and judicial processes had come into operation. For the council this was a time of increased activity and, on occasion, of difficulty and division. Many of the necessary ordinances were straightforward and required only the persistent attention of the council

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1. King, Richard Bourke, pp. 93-94. *Infra*, Map of the Cape of Good Hope. K.S. Hunt, *The Development of Municipal Government in the Eastern Province of the Cape of Good Hope with Special Reference to Grahamstown, 1827-1862*, A.Y.B. 1961, p. 141.
 2. *Ibid.*, pp. 142-3. E.g. From 1834 one man, D.J. van Ryneveld, held both offices of civil commissioner and resident magistrate in Stellenbosch. Similarly, D. Campbell was civil commissioner and also resident magistrate for Albany, while J.F. Ziervogel held the two offices for Somerset from 1837. Cape of Good Hope Annual Register, 1839.
 3. *Infra*, pp. 115-21.
 4. *Infra*, pp. 127f.
 5. C.O. 49/19, Goderich to Bourke, 14/6/1827. C.O. 49/21, Goderich to Bourke, 5/8/1827. (R.C.C. Vol. XXXII, pp. 5-14 and 254-73.)

to hammer out the details, clause by clause, in preparation for enactment.¹ In other cases the drafting of the required ordinances precipitated unexpected difficulties or gave rise to new controversies that were to remain unresolved for many years. It is proposed to select for scrutiny those issues whose implementation raised points of procedural and constitutional discussion in the Council of Advice.² Issues such as Plasket's plea for a more extensive jurisdiction to be given to resident magistrates, Truter's conviction that the abolition of the Burger Senate was not consistent with the fundamental laws of the colony, the protracted debate over ordinance 41 of 1828 concerning the qualifications of jurors and the council's evasive action of the government's appropriation of the private fund of the Orphan Chamber highlight the difficulties which confronted members of the Council of Advice. Moreover the Charter of Justice of 1827 and the new machinery of government that went with it had been regarded by the Colonial Office as tentative and experimental rather than final and definitive.³ The difficulties exposed by the Council of Advice revealed the need for modification and may in part explain why a second Charter of Justice, drafted in London in 1832, assumed prophetically the establishment of the more sophisticated structure of an executive council and a legislative council.⁴

The first major difficulty that arose for the Council of Advice

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1. E.g. C.O. 51/8, Minutes, November and December 1827. C.O. 51/10, Minutes, January to June, 1828. Gazette, December 1827 and January and February 1828, Ords. Nos. 32 creating justices of the peace; 33, creating the office of resident magistrate and clerk of the peace; 36, creating the office of judge of the police for Cape Town; 37, outlining the duties of sheriff of the colony; 40, outlining criminal procedure; 41, defining the qualifications for jurors; 44 establishing the court of the police at Cape Town.
 2. In two recent publications detailed accounts are given of the changes introduced in the judicial and administrative structures. Hunt, Sir Lowry Cole, Ch. 10. King, Richard Bourke, Ch. 7.
 3. C.O. 324/80. Hay to Cole, Pte., 19/6/1828.
 4. *Infra*, p. 126.

out of the recommendations of the Commission of Inquiry was the situation which gave rise to Plasket's quarrel with governor and council in December 1827. The difference of opinion was ostensibly over the jurisdiction of resident magistrates, but in reality centred around procedures of the Council of Advice. Moreover, as already noted,¹ there were undercurrents of suspicion and distrust between the colonial secretary and the lieutenant governor. Hence the quarrel which flared up had as much to do with factors outside the council chamber as within it. Nevertheless, Plasket's subsequent resignation from the office of colonial secretary affected the composition of the council inasmuch as his successor, Bell, was already serving as a council member and there was thus a reduction in the number of council members from six to five.

A serious constitutional difficulty arose for the Council of Advice in the passing of an ordinance to abolish the Burger Senate. The status of the Burger Senate had been legally recognised in 1793 although this board appears to have existed in fact for more than a century before that date.² It exercised diverse responsibilities connected with the administration of local affairs in Cape Town³ and was also responsible for the public proclamation of government notices and enactments.⁴

1. Supra, pp. 62-3.

2. O.H.S.A. Vol. I, pp. 223 and 227-8. A.Boëseken, Die Nederlandse Kommissaris en die 18de Eeuse Samelewing aan die Kaap, A.Y.B. 1944, pp.38-45. R.C.C. Vol. XXVII, pp. 390-1, Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826.

3. E.g. The appointment of fire wardens, the allocation of land in Cape Town, the control of food supplies and fixing of prices, the maintenance of roads and water supplies, the collection of local rates and taxes. Bird, Cape, 1822, pp. 46-9. G.C. Botha, General History and Social Life of the Cape of Good Hope (Cape Town, 1962), pp. 157-63. van der Merwe, Die Kaap onder die Bataafse Republiek, p. 92. L.P. Green, History of Local Government in South Africa (Cape Town, 1957), pp. 8-9. P.W. Laidler, The Growth and Government of Cape Town (Cape Town, 1939), Ch. 10, which indicates that from the 17th century the Burger Councillors exercised oversight over such local affairs.

4. Infra, pp. 231-2; p. 232, n. 1.

Over the years the Burger Senate had also been acknowledged as the traditional channel through which local inhabitants might voice their grievances and express their dissatisfaction with government measures.¹ This right had been explicitly recognised by the Dutch, British and Batavian administrations in 1792, 1796 and 1804 respectively.² The use of the Burger Senate as a channel of protest against measures connected with the currency and with the condition of slaves in 1825 and 1826 was regarded as legitimate by the commissioners of inquiry, who acknowledged that this board had been "recognized by the government, and regarded by the inhabitants of Cape Town, as the organ of any general representation of their grievances."³

The number of Burger Senators had varied over the years, but by 1826 there were four members and a president. The latter held office for two years and received an annual salary of 3 500 rixdollars; on his retirement the senior member of the board automatically succeeded to office as president, and a new member was appointed by the governor from a short list submitted to him by the Burger Senate. By 1826 the financial affairs of the board had lapsed into a very unsatisfactory state, in spite of the services of an auditor and treasurer from 1821. The Burger Senate's management of local affairs in Cape Town also came under sharp criticism on occasion.⁴

The commissioners of inquiry recommended that the Burger Senate should be dissolved and its duties taken over by a civil commissioner to be appointed for Cape Town. They were aware that by its abolition, "the inhabitants will be partially deprived of the opportunities to which they have been accustomed for the representation of their grievances to the colonial government."⁵ They realised that the loss would be felt the more keenly, because it came so soon after

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1. O.H.S.A. Vol. I, pp. 227-8. Boëseken, Die Nederlandse Kommissaris en die 18de Euse Samelewing aan die Kaap, A.Y.B. 1944, pp. 38-9.
 2. R.C.C. Vol. XXVII, pp. 394-5, Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826.
 3. Ibid., p. 395.
 4. E.g. Bird, Cape, 1822, pp. 46-9, *passim*.
 5. R.C.C. Vol. XXVII, p. 396. Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826.

other major causes of dissatisfaction and they regretted that the loss of the Burger Senate might provide a fresh cause for dissatisfaction "in the interval which may take place before the more extensive privilege of popular representation be conceded."¹

Questions concerning the Burger Senate had come before the Council of Advice prior to their consideration of the reports of the Commission of Inquiry in November 1827, and there had also been fairly frequent contact between the two boards.² At first their relationship had been cordial, and it was not surprising that when the Burger Senate had been criticised by an anonymous writer in the local press, they should have turned to the council for redress. But the Council of Advice had found no grounds for interference and although they had pointed out that "the law is open to the Burger Senate," they had not recommended litigation.³

Some months after this the relationship between the Council of Advice and the Burger Senate had been strained by the latter's refusal to publish an ordinance for the amelioration of slavery in the colony.⁴ More than that, they had appealed for the ordinance to be repealed or suspended, and in addressing the Council of Advice had written,

"we have no Constitutional Power to prevent such Laws being carried into effect, we are weak and without power even as a Worm. But surely the foot cannot be blessed who will sternly refuse to turn aside one inch because it is only a worm which pleads its rights."⁵

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1. Ibid.
 2. E.g. On questions of the corn trade, currency and slavery. *Infra*, Chs. 4-7, *passim*.
 3. C.O. 51/1, Minutes, 14/2/1826. (R.C.C. Vol. XXIX, p. 251.)
 4. *Infra*, p. 232.
 5. R.C.C. Vol. XXVII, p. 98, Burger Senate to Bourke, 30/6/1826.

Yet the worm had turned! By their defiance over the proclamation of the ordinance the Burger Senate had attempted to obstruct its implementation in the colony. They had only yielded on the point after the lieutenant governor, Bourke, had warned them in an interview of their responsibility for "any mischief that might arise from such unwise proceedings."¹ Even the slave amelioration ordinance had been proclaimed with only the president of the Burger Senate in attendance. He and two other members had subsequently resigned in protest, and Bourke had been required to make new appointments.² When this had become publicly known a petition had been subscribed pleading for public election of members of the Burger Senate instead of appointment by the governor. This was the earliest clear request for some form of representation in the colony³ and it is noteworthy that most of the signatories have Dutch names. They claimed that such a move would "tend to constitute mutual confidence between the Burgher Senate and the Citizens" and would also foster good relations between the English and Dutch members of the community.⁴ The Council of Advice had refused the request on the grounds that it was untimely to make changes in the mode of appointing members of the Burger Senate while the institution itself was under investigation by the commissioners of inquiry.⁵

In accordance with the instructions of the secretary of state,⁶ a draft ordinance for abolishing the Burger Senate was prepared early in November 1827. It was then submitted as usual to the chief justice, Truter, for his authorisation that the proposed measure was consistent with the fundamental laws of the colony and with that

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1. C.O. 48/82, Bourke to Bathurst, 18/7/1826. (R.C.C. Vol. XXVII, p. 89.)
 2. C.O. 48/82, Bourke to Bathurst, 18/7/1826 and 3/8/1826. (R.C.C. Vol. XXVII, pp. 90 and 207.)
 3. Fryer, *The Government of the Cape of Good Hope*, A.Y.B., 1964, Vol. I, p. 7.
 4. R.C.C. Vol. XXIX, p. 350, Memorial of Cape Town Citizens, 15/7/1826.
 5. C.O. 51/3, Minutes, 24/7/1826. (R.C.C. Vol. XXIX, p. 342.)
 6. C.O. 49/19, Goderich to Bourke, 14/6/1827.

part of the law of the United Kingdom applicable to the colony. But in this instance the chief justice was not convinced that the required certification could be made. The question therefore came before the council in an unprecedented manner and posed a new constitutional issue. Truter's statement declared that,

"Fundamental Laws are Political Laws, in contradiction to Civil Laws, ... These Laws define the relative situation of the Government and the inhabitants and are considered by the latter as the groundwork of their welfare and security....
it strikes me that the remarks of His Majesty's Commissioners of Inquiry, in concluding their report ... are leading to this regular conclusion, that by the abolition of the Burger Senate the inhabitants will be deprived of a privilege, which they actually possess and exercise, and which in any country is considered to be of vital interest to the welfare and security of the community, with no other compensating advantage but an uncertain remote prospect of general popular representation, which as yet it does not appear to me that His Majesty's Government is disposed to grant."¹

Truter conceded that the representative nature of the Burger Senate was implied rather than explicit, but claimed that "in the retro-acts of the Colonial Government, ... the representations of the Burger Senate have seldom been disregarded."

Truter stated that he,

"did not feel justified to assert that the proposed dissolution of the Burger Senate is consistent with the fundamental laws at present in force in this Settlement, that is, that the measure will not be subversive of any fundamental lawful advantage to the community; unless the dissolution of that body be attended with the introduction of an equally essential advantage to the inhabitants, to which the inhabitants would then be obliged to submit, it never having hitherto been controverted that the King may change the political form of Government of a conquered dominion."²

After Truter's views had been presented to the council on 10 December 1827, extracts from two other documents were read, namely

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1. C.O. 51/9, Appendix O, Truter to Plasket, 9/11/1827.
 2. Ibid.

Bathurst's despatch of February 1825 describing the procedure to be adopted for bringing legislative measures before the council,¹ and Goderich's despatch of 14 June 1827,² directing the lieutenant governor to promulgate an ordinance for the abolition of the Burger Senate. The lieutenant governor then stated that it was his duty to comply with the latter instruction, "notwithstanding the opinion of the Chief Justice that the same was not consistent with the fundamental laws of the Colony," and the draft ordinance was read for the first time.³

At this point in the council's discussion Colonel Bell expressed doubt about proceeding with the discussion after hearing the "declaration of the Chief Justice just read." Council members were therefore asked to give their individual views on whether the draft ordinance should be considered further.

Truter himself spoke first, and the ambivalence of his situation in the council was revealed. He stated that,

"having given his opinion that the proposed Ordinance for the dissolution of the Burgher Senate is not consistent with the fundamental laws of the Colony, he would not feel justified in agreeing to the passing of the Ordinance, but that under the peculiar circumstances of the case, the Lt. governor having received the express commands of His Majesty's government to abolish the Burgher Senate, he conceived that the Ordinance ought to be read, matured and passed, notwithstanding his opinion of its inconsistency with the fundamental laws of the Colony."⁴

The confusion over the questions of legislative authority and the independence of the council could hardly be more plainly illustrated.⁵ Truter's views were supported by the receiver general, Stoll. Two other members, namely Daniell and Bell, were of the opinion that as the

1. Supra, p. 73.

2. Supra, p. 109.

3. C.O. 51/8, Minutes, 10/12/1827. (R.C.C. Vol. XXXIV, p. 508.)

4. C.O. 51/8, Minutes, 10/12/1827. (R.C.C. Vol. XXXIV, p. 508.)

5. Supra, Ch. 2, passim.

proposed ordinance had been declared contrary to the fundamental law of the colony the council were incompetent to enact it, but that it should be "otherwise promulgated as the order of His Majesty's Government, which must be considered imperative." They considered that the governor undoubtedly possessed the authority to enact without the concurrence of the council, whereas the council did not have the authority to accept or reject the chief justice's opinion - "the opinion of the highest law authority in the Colony."¹

The colonial secretary, Plasket, gave a different interpretation of the situation. He claimed that the form and procedure outlined for enactments had been intended for those acts originating in the colony, and were designed as a check upon the local government. But they could not be "considered as binding upon the Secretary of State himself, or as restricting the Council from passing any legislative Act expressly authorized ... by His Majesty's Government..." Moreover any member had the right to record his grounds of dissent, and, if a majority of the council rejected a proposed measure, "the governor is invested with a special power to act under such circumstances." In Plasket's view the existing machinery of enactment was flexible enough to be followed, whatever the council's opinion of the measure before them. The normal legislative procedure could therefore be followed.

The question is of interest for the light it throws on the attitude of council members towards the legislative authority of the governor. Two members, namely Daniell and Bell, had indicated that this was a case for recourse to the governor's special power to enact by proclamation in emergency situations. Three members Truter, Stoll and Plasket, had considered that the regular procedure of enactment by governor in council should be followed.² It was resolved that the ordinance should be further discussed at the following meeting.

When the council met the next day a new difficulty arose. Plasket

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1. C.O. 51/8, Minutes, 10/12/1827, (R.C.C. Vol. XXIV, pp. 509 - 10.)
 2. *Supra*, Ch. 2, *passim*.

moved an amendment to the preamble of the ordinance, to include the phrase "whereas it has appeared to His Majesty's Government that ...". But the lieutenant governor considered that the innovation of introducing these words into some ordinances, but not all, would carry the implication that some acts emanated from the British government, others from the local governor and council, and that the former carried greater weight. Despite Bourke's opinion and his obvious dislike of the suggestion, Plasket's proposed amendment was carried and was therefore inserted into the preamble of the ordinance.¹ Its inclusion may have made it easier for council members to agree to the ordinance, as the words would to some extent exonerate them from complicity in an act which they feared was going to prove unpopular locally. Their oaths of secrecy prevented their public disclaimer of the measure.

The ordinance to abolish the Burger Senate was finally passed on 26 December 1827 and apparently aroused little notice in Cape Town. Bourke reported that the measure had caused "but little sensation."² This may have been in part due to the fact that the main alternative channel of protest, the newspaper the South African Commercial Advertiser, was currently under a government ban. Another newspaper, The Colonist, had just begun publication, but was less aggressive in its attitude towards the government, and does not appear to have made political propaganda of the abolition of the Burger Senate. Nevertheless when a petition was drawn up in the middle of 1828 to appeal for a representative assembly for the colony, one of the reasons put forward was that the former channel of representation, namely the Burger Senate, had been abolished.³ It is likely too that another of the effects of the abolition of the Burger Senate was a re-channelling of local protest and dissatisfaction through the newly-created agency of the press. Protest and remonstrance

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1. C.O. 51/8, Minutes, 11/12/1827. (R.C.C. Vol. XXXIV, p. 514.)
 2. C.O. 48/124, Bourke to Huskisson, Pte., 30/1/1828.
 3. The Colonist, 3/6/1828, Report of a Public Meeting, and petition to be addressed to parliament.

did not cease in 1828, but sought a new outlet. It was fortuitous that the granting of a free press in ordinance 60 of 1829 provided such an outlet, but it was probably fortunate. Henceforth the newspaper became an influential element in public life at Cape Town.¹ In the country districts where the abolition of the boards of landdrosts and heemraden similarly removed what had formerly operated as an avenue of protest, there was nothing to offset this loss after 1828. It is arguable that subsequent defiance and near rebellion in the country districts over the policy of slave amelioration may in part be attributed to the lack of any legitimate means for the expression of public opinion.²

Other practical difficulties also arose as a result of the dissolution of the Burger Senate and the boards of landdrost and heemraden. In Cape Town in 1828 the management of the town property and revenues was transferred to the superintendent of police and the local tax-collector; but the services of one member of the Burger Senate were retained for the year 1828 in order to facilitate the transition for the new overseers.³ The added responsibility proved onerous for the two officers concerned. In 1829 one of the reasons given for the delay in preparing the Blue Book of the previous year was the difficulty being experienced by the police office and the collector of taxes in keeping up to date with the management of work formerly undertaken by the Burger Senate.⁴ Similar difficulties were experienced in the districts, where the courts of landdrost and heemraaden had also been abolished from 1 January 1828. The administrative duties formerly performed by these boards were placed in the hands of the new officials, the civil commissioners and the clerks of the peace, while their former judicial functions were exercised by resident magistrates. This replacement of amateur officials by professionals came at a time when every effort was being made to reduce both the establishment and the expenditure of the colony.⁵ One result of this was that civil commissioners and resident magistrates were both given

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1. *Infra*, Ch. 10, *passim*.
 2. *Infra*, pp. 257-8.
 3. C.O. 48/124, Bourke to Huskisson, 19/5/1828.
 4. C.O. 48/131, Cole to Murray, 23/12/1829.
 5. Hunt, Sir Lowry Cole, Ch. 8, *passim*.

a territorial responsibility too vast for practical efficiency. Several times the suggestion was made that the two offices should be merged and that the local boards of landdrost and heemraden should be revived. Instructions to this effect were sent from the secretary of state to the governor from time to time and finally, in 1836, an enabling ordinance provided for local municipal boards to be established.¹ Although the Burger Senate had been a municipal board of a kind, and its abolition in 1828 had left a gap, Cape Town did not obtain a municipal board of the new type until 1840.²

There was another problem which arose out of the reports of commissioners of inquiry and which led to an occasion when the chief justice was obliged to declare a draft ordinance inconsistent with the fundamental law of the colony. With the introduction of trial by jury in 1828 the Council of Advice had been given the responsibility of drawing up qualifications for jurors.³ These were discussed in January and February 1828 and were enacted in ordinance number 41.⁴ Men between the ages of twenty one and sixty who qualified in terms of specified property or tax requirements were eligible for service as jurors.⁵ Two problems subsequently arose. The one concerned the use of trial by jury in cases involving slaves, Bushmen and other persons of colour,

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1. Hunt, *The Development of Municipal Government in the Eastern Province in the Cape of Good Hope*, with special reference to Grahamstown, 1827-1862, *A.Y.B.*, 1961, pp. 140-5.
 2. *Ibid.*, p. 156. Cape Town had been specifically excluded from the enabling act of 1836 and required a special enactment, passed as ordinance 1 of 1840.
 3. Hunt, *Sir Lowry Cole*, p. 157.
 4. C.O. 51/10, Minutes, January and February 1828, *passim*. *Gazette*, 8/2/1828, Ord. No. 41.
 5. Petit jurors were required to own land on perpetual quitrent tenure, or on freehold tenure or as a loan place for which a minimum of £1-17-6d was payable annually in rent; or they could qualify if they paid a minimum of 20 shillings tax in the Cape district, or 15 shillings in any other districts. Grand jurors, who served only at Cape Town, had to own property valued at £2 000.

except Hottentots.¹ The commissioners of inquiry had intended that exceptions should be made in these circumstances and that in such cases there should not be a jury because they feared that any jurymen would be prejudiced. The commissioners' recommendations to this effect were not contained in the report on the judiciary submitted in 1826, but in a subsequent report on criminal law and jurisprudence which was sent to London after the Charter of Justice had been issued in 1827.² Provision was therefore not made for the exceptions intended by the commissioners of inquiry. In effect the people summoned to serve as jurors were from the very group who had formerly composed the courts of landdrost and heemraden and whose impartiality the commissioners had doubted.³ Until the middle of 1828 the "Hottentot code" introduced by a former governor, Lord Caledon, was in operation, and even after the passing of ordinance 50 in July 1828⁴ it was suspected that juries were biased in cases involving Hottentots, free persons of colour and slaves. In 1831 such suspicions were confirmed by the governor, Cole, in a confidential letter to the permanent under secretary, Hay.⁵ Nevertheless the practice of trial by jury was retained in the colony, probably because it was expected that with the emancipation of slaves and the liberties granted by ordinance 50 the problem would in time resolve itself.⁶

The other problem that arose from the introduction of trial by jury was the problem of language. From 1806 English had naturally become the language of the administration and from that time all papers received by the government were either to be in English or, if in Dutch, were to be accompanied by a translation.⁷ In 1813 the government had

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1. The commissioners had intended to remove the legal differences separating Hottentots from other inhabitants of the colony. R.C.C. Vol. XXXIII, p. 112, Report of the Commissioners of Inquiry upon the Criminal Law and Jurisprudence, 1/8/1827.
 2. Hunt, Sir Lowry Cole, p. 157.
 3. Hunt, Sir Lowry Cole, pp. 155-6.
 4. Infra, pp. 376-8.
 5. Hunt, Sir Lowry Cole, p. 161.
 6. Ibid.
 7. Proclamations, p. 25, Govt. Advt., 16/5/1806.

recommended that all inhabitants learn English and had advised that preference would be given to those who could speak English when appointment to government office was being considered.¹ A further proclamation of 1822 had stipulated that English would become the sole language of the courts in 1827, thus allowing five more years for the inhabitants to familiarise themselves with the English language.² In spite of occasional reminders of this provision³ there were few facilities for instruction and by 1826 it was clear that the majority of the inhabitants were still unilingual.⁴ The matter had come to the attention of the council in 1826, with a request from the Court of Justice and two local courts that the transition to English should be deferred. As it was known at the time that thoroughgoing changes in the local judicial system were being planned in Britain for the Cape the question was left in abeyance.⁵ In terms of the Charter of Justice of 1827 English became the language of all courts in the colony.⁶

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1. Proclamations, p. 232. Govt. Advt., 19/2/1813.
 2. Proclamations, p. 558, Govt. Proc., 5/7/1822.
 3. E.g. S.A.C.A., 21/4/1824.
 4. There were very few schools in the colony so that even the young had very little opportunity for formal education, particularly in the country districts. E.G. Pells, Sir John Herschel's contribution to educational development at the Cape of Good Hope, Q.B.S.A.L., Vol. XII (1957), passim. In 1827 a memorial from the Presbytery of Graaff Reinet was received by the Council of Advice, requesting government aid for the establishment of schools throughout the colony. It was turned down because the government lacked the resources to embark on such a programme. C.O. 51/6, Minutes, 21/5/1827. C.O. 51/7, Appendix J, Memorial from the Presbytery of Graaff Reinet.
 5. C.O. 51/5, Minutes, 12/12/1826 and 13/12/1826. Gazette, 15/12/1826, Ord. No. 27. (R.C.C. Vol. XXIX, p. 480.)
 6. In some courts of minor jurisdiction English had already become the sole language of proceedings because the population of the area was predominantly English speaking. E.g. At Albany, Proclamations, p. 641, Govt. Proc., 30/1/1824. At Algoa Bay, C.O. 51/1, Minutes, 28/5/1825. Gazette, 4/6/1825, Ord. No. 1.

Problems soon arose when it was found that some persons who had been empanelled as jurors were unable to speak or understand English. In these circumstances the chief justice and judicial bench resolved that ability to understand English was a necessary qualification for jurors.¹ However in practice, judges going on circuit court did not and indeed could not always abide by this ruling. Reference was made to Britain and on the advice of the legal adviser, Stephen, the secretary of state instructed that an ordinance should be passed in the colony to preclude persons ignorant of the English language from serving as jurors.² When Cole brought this question before the Council of Advice in the form of a draft ordinance the measure was obstructed by the chief justice's declaration that in terms of the Charter of Justice of 1827 such an enactment would be inconsistent with the fundamental law of the colony. Other members of the council agreed with this view, yet acknowledged the need to prevent the unnecessary summoning of persons to serve as jurors when on the decision of a judge they might be declared disqualified.³ The difficulty was circumvented by passing an ordinance which only precluded persons ignorant of the English language from being summoned as jurors for the Supreme Court in Cape Town. Subsequently however the ordinance was disallowed by the crown.⁴ Meanwhile a second Charter of Justice was in preparation⁵ and in this the question of a juror's competence in English was set at rest, with the declaration that no person who qualified as a juror in all other respects should be disqualified by his incompetence in the English language.⁶ Other amendments to be introduced by the revised Charter were not of considerable significance.

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1. C.O. 48/125, Bourke to Huskisson, 11/8/1828, Hunt, Sir Lowry Cole, pp. 158-9.
 2. C.O. 48/130, Stephen to Hay, 24/8/1829. C.O. 49/23, Murray to Cole, 22/9/1829. King, Richard Bourke, p. 90.
 3. C.O. 51/22, Minutes, 24/2/1831. Hunt, Sir Lowry Cole, pp. 160-1.
 4. C.O. 51/22, Minutes, January to July 1831, passim. Gazette, 13/5/1831, Ord. No. 83. Gazette, 16/5/1831, Ord. No. 84, amending ordinance 83. Gazette, 10/6/1831, Ord. No. 85, amending ordinance 84. C.O. 49/25, Goderich to Cole, 20/1/1833.
 5. *Supra*, p. 113.
 6. Hunt, Sir Lowry Cole, p. 161.

The second Charter of Justice arrived in the colony late in 1832 but difficulties arose regarding its promulgation. In it, reference was made to an Executive Council and a Legislative Council, anticipating the constitutional reforms that were in contemplation for the colony. In the light of this the Council of Advice had to defer its publication.¹ The new Charter came into operation only in February 1834 when the Council of Advice had been replaced by the Legislative and Executive Councils.²

Another difficulty arose for the Council of Advice over the implementation of the recommendations of the Commission of Inquiry for the reorganisation of the Orphan Chamber. This board had responsibility for the oversight of all wills and testaments and the care of orphans.³ The chief justice of the colony served as president of the Board of the Orphan Chamber. The commissioners planned some modifications in the organisation of the Orphan Chamber, most of which were quite acceptable to the Council of Advice.⁴ On one point however they disagreed with the proposed reforms. By 1826 there was accumulated in the Private Fund of the Orphan Chamber an amount of some £30 000, being monies that had not been claimed or collected by those to whom it was due. On the recommendation of the commissioners this money was to be applied to the public service of the colony and used for "various objects of public utility."⁵ When the draft ordinance concerning the Orphan Chamber came before the Council of Advice in February 1828 this provision was rejected, together with a proposal to increase the fees charged by the Orphan Chamber, and the ordinance was then promulgated.⁶

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1. C.O. 51/28, Minutes, 15/12/1832. C.O. 48/149, Cole to Goderich, 4/2/1833.
 2. Supra, p. 40. Hunt, Sir Lowry Cole, pp. 149 and 161.
 3. Bird, Cape, 1822, pp. 53-8.
 4. R.C.C. Vol. XXVIII, pp. 74f. Report of the Commissioners of Inquiry upon the Courts of Justice, 6/9/1826. C.O. 51/14, Minutes, February 1828, passim.
 5. C.O. 49/21, Goderich to Bourke, 10/8/1827.
 6. C.O. 51/10, Minutes, February 1828. Gazette, 7/3/1828, Ord. No. 42.

In April 1829 instructions were received from the secretary of state for the expunged clause of the draft ordinance, i. e. the clause concerning the appropriation of the private fund, to be incorporated in the Orphan Chamber ordinance, by order of His Majesty in Council.¹ By some oversight, or deliberate evasion, the matter was postponed until September 1830. It then came before the Council of Advice again, and preparations began for the implementation of the instruction received in 1829. Discussion and negotiation continued for another six months, but once again the matter seems to have been conveniently forgotten.² The new Charter of Justice of 1832 provided for the Orphan Chamber to be abolished and its duties to be assumed by a new officer, the Master of the Supreme Court. Accordingly during 1833 draft ordinances were prepared by the Council of Advice,³ but as the Charter did not come into effect until 1834 these ordinances were not promulgated until February 1834, when the private fund of the Orphan Chamber was finally appropriated.

Thus the inter-action between the Commission of Inquiry and the Council of Advice lasted throughout the nine and a half years of the council's existence. In some ways the contact between the two bodies was open and direct, in other it was more subtle and intangible. In all things, it was perhaps unfortunate that the commissioners took so long to present their reports that circumstances had in various ways changed to render their information and sometimes their recommendations out of date. The establishment of the Council of Advice was itself the most significant of such changes and one which in turn was to increase the pace of change in other directions. For the council on the other hand, the Commission of Inquiry was in many ways a hindrance, and in other ways a source of information which, by virtue of the existence of the council, had perhaps become superfluous and redundant. The Council of Advice itself could have provided the Colonial Office with the necessary information and recommendation for change.

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1. C.O. 49/23, Murray to Cole, 9/1/1829. C.O. 51/14, Minutes, 30/4/1829.
 2. C.O. 51/20 and C.O. 51/22, Minutes, September 1830 to March 1831.
 3. C.O. 51/30, Minutes, January to June 1833, *passim*.
 4. Gazette, 14/2/1834, Ords. Nos. 103 to 5, dated 7/5/1833, and passed by the Council of Advice in terms of the Charter of Justice under date 4/5/1832.

Chapter 4

The Introduction of British Sterling Currency:

the Fixing of the Rate of the Rixdollar.

The Council of Advice at the Cape of Good Hope dealt with many problems that were to have far-reaching effects on the colony's history. These included the questions of slavery, native tribes, labour, trade, currency, local administration and the structure of the judiciary. In most of these issues the council inherited difficulties that had troubled the colony for a long time, and for which no easy or immediate solution could be found. Indeed, some questions occupied the council throughout the whole period of its existence and were then passed on, unresolved, to the Legislative Council which superseded it in 1834. The currency question was one of these.

The matter of colonial currency was complex, difficult in itself and at the same time impinging on practically every other problem of the colony. It was thus a question of immediate concern to men in all walks of life and one in which every colonist had a direct interest. Merchants, in particular, kept a close watch on all monetary matters, especially during the 1820s and 1830s when trade was precarious. Likewise, the slave-owning agriculturalists were the more keenly aware of the currency crisis because they felt that their interests were also being threatened simultaneously by the policy of slave amelioration and a slump in the wine trade.¹ In 1826 and 1831 merchants and agriculturalists combined to seek redress for their many alleged grievances and to plead for representative government as a surer means of finding locally acceptable solutions to longstanding problems in the colony.² Private correspondence and letters to the press during the decade of the council's existence reflect the same sense of disillusionment with policy devised in Britain for difficulties which were thought to be better understood locally. Here too, the demand for representative government was frequently made.³

1. Infra, Chs. 6 and 7.

2. Infra, Ch. 10.

3. Infra, Ch. 10, passim.

The impatience for some form of representation is understandable in communities which were either familiar with the British constitution¹ or weary of company rule and ready for participation in government.² Yet there is a certain degree of naiveté in the assumption that the problems of the time would have been more effectively dealt with by a representative government. Instant, ready-made answers were not available for problems whose roots lay deep in the past. Moreover, the Cape had moved from the orbit of the Dutch colonial system to the British, and this in itself involved adjustment at many levels, particularly economic and constitutional. In addition, Britain herself was facing problems of post-war recovery, while at the same time there was a new awareness of the need for methodical planning on an imperial scale, in place of the haphazard improvisation of local expedients that had previously characterised colonial government. Deliberate policy-making was emerging as the new style of imperial control, often involving a number of different governmental departments in London.³ The currency question was one of these. In currency matters the Council of Advice at the Cape was required to implement policy devised not by the Colonial Office, but by the Treasury Board, and affecting not only the Cape of Good Hope, but the empire as a whole.

The currency question came before the Council of Advice in June 1825 but was not finally resolved until 1841, long after the council had ceased to exist. In 1825 two different streams of development interacted, the one with the other, to provoke the currency crisis of these years. On the one hand there was the post-war situation in Great Britain, and on the other, there was local inflation at the Cape. A brief survey of both of these aspects is a necessary prelude to an examination of the currency questions dealt with by the Council of Advice.

Britain's involvement in a major war against France for 20 years

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1. E.g. Merchants who had settled at the Cape from 1806.
 2. E.g. Winburg constitution of 1836, indicating a demand for popular control. M. Nathan, The Voortrekkers of South Africa (London, 1937), pp. 165-6.
 3. Knaplund, James Stephen and the British Colonial System, 1813-1847, pp. 37-8. Young, Colonial Office, Ch. 6.

had imposed a severe financial strain on the country.¹ In February 1797 the Bank of England had halted cash payments. Although intended as a temporary emergency measure the suspension had continued for the duration of the war. Inflation of the paper pound had followed, together with depreciation of sterling on foreign exchanges.² In 1811 a committee appointed by the House of Commons had made recommendations for the resumption of cash payments at the conclusion of hostilities, but in the years immediately after the peace of 1814 the Bank of England had been unable to maintain the pace of change anticipated by this committee.³ In 1819 a second committee under the chairmanship of Sir Robert Peel⁴ had proposed a two-phased resumption of cash payments by returning first to the gold standard, and only then to a metallic currency. This scheme had proved successful and by 1823 Britain again had a fully convertible currency.⁵

The concern with the currency problems of Britain had also focussed attention on currency problems throughout the empire. All colonies were beset with the same difficulty, namely that new settlements had never been adequately supplied with coin. As a result each colonial government had resorted to the use of whatever foreign coin was most readily available. "In theory currency followed the flag; in practice it was only the denominations and not the sterling coin which followed the English settlers".⁶ By the end of the 18th century the ubiquitous spanish dollar had been adopted as the currency of most British colonies, although accounting was still done in sterling.

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1. T.S. Ashton and R.S. Sayers, Ed., Papers in English Monetary History (Oxford, 1954), Ch. 1, *passim*.
 2. J. Steven Watson, The Reign of George III, 1760-1815 (Oxford, 1964), p. 407.
 3. J.H. Clapham, The Bank of England, 2 Vols. (Cambridge, 1945), Vol. II, p. 51.
 4. Sir Robert Peel (1788-1850), undersecretary for Home Department, 1810-12; chief secretary for Ireland, 1812-18; secretary of state for Home Department, 1822-7 and 1828-30; prime minister, 1834-5 and 1841-6.
 5. N. Gash, Mr Secretary Peel (London, 1961), pp. 244-5.
 6. R. Chalmers, A History of Currency in the British Colonies (London, 1893), p. 4.

The value of Spanish dollars varied from colony to colony, in spite of attempts during the 18th century to establish uniformity.¹

During the wars against France currency problems had been shelved. At the same time the inclusion of several new colonies in the empire² had increased the confusion in a situation already complex. In 1816, at the time of the first steps towards the resumption of cash payments in Britain, the Treasury Board had extended the scope of enquiry to include colonial currencies, with a view to providing a single coinage throughout the empire.³ A circular had been sent to all colonial governors, asking for information. The replies revealed the prevailing confusion, especially in the West Indies, and also a widespread preference for a silver standard based on the spanish dollar.⁴ In spite of this in 1825 when the Treasury Board was ready to take action on colonial currencies they chose to introduce the gold standard and British sterling. The decision was understandable in view of the recent resumption of cash payments and of the gold standard in Britain itself.⁵

The Treasury's plans were set out in a minute dated 11 February 1825. Briefly, it was proposed to do two things; to issue British metallic currency throughout the empire, and to fix the rate of exchange for all foreign coins currently in use.⁶ Sterling was to be put into circulation by each local office of the commissary general, through whom the Treasury Board was already directly concerned with colonial currencies.

At the Cape a variety of coins had been in use during the 18th

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1. Ibid., p. 17.
 2. Supra, p. 5.
 3. C. A. G.H. 3/2, Courtenay to Steven, 23/3/1816.
 4. Chalmers, History of Currency, p. 21.
 5. C.R. Fay, Great Britain From Adam Smith to the Present Day, 5th Ed. (London, 1950), p. 95. Supra, p. 131.
 6. P.P. 1826, XXIII (438), p. 4, Treasury Minutes, 11/2/1825.

century.¹ But by 1825 the circulating medium of the colony consisted almost entirely of paper rixdollars. This paper currency had been introduced by the Dutch East India Company in 1782 to ease a shortage of coin caused by the exigencies of war.² The Dutch ryksdaalder had long been out of circulation and the stiver was the smallest circulating unit in the colony. But traditionally a Cape rixdollar worth 48 stivers had been the standard unit of accounting.³ With the issue of paper money in 1782 the rixdollar had become the main circulating unit as well as the main accounting unit.

The paper money printed at the Cape in 1782 had been issued on the good faith of the government, with the assurance that it would be withdrawn as soon as coin was available again. It had been intended only as a stop-gap measure but successive crises had prevented its withdrawal and led to further issues of paper money.⁴ At the time of the second British occupation of the colony in 1806 the rixdollar circulation amounted to 2 086 000 rixdollars.⁵ Part of this had been issued through the government (whether Dutch East India Company, British or Batavian), and part had been put into circulation through the Lombard Bank, established in 1793 to make loans available to colonists on the security of mortgaged property. Originally this had been the only paper currency bearing some kind of security. But in 1795 and again in 1806 the British, either in ignorance or in good faith, had agreed that,

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1. E. g. Ducat, pagoda, rupee, mohur, johanna, dubloon. Proclamations, p.9, Govt. Proc. 23/1/1806.
 2. E. H. D. Arndt, Banking and Currency Development in South Africa, 1652-1927 (Cape Town, 1928), p.5.
 3. R. Leslie, Paper Money and the Gold Exchange Standard at the Cape, J.S.A.A.A.S., (1916), p. 157.
 4. E. g. In 1797 the British had issued a further 250 000 rixdollars for the payment of troops. R.C.C. Vol. II, p. 69, Craig to Dundas, 2/4/1797. In 1802 the British had issued 180 000 rixdollars because of a shortage of wheat in the colony. R.C.C. Vol. IV, pp. 133-6. Between 1803 and 1806 the Batavian administration had added 222 000 rixdollars because of a short-fall of revenue, and 75 000 rixdollars for reconstruction work in Stellenbosch after a fire had devastated the town in 1803. Arndt, Banking and Currency, p. 48.
 5. Arndt, Banking and Currency, p.22.

"the property of the Dutch East India Company . . . shall continue the security of that part of the money which is not already secured by Mortgages upon the Estates of Individuals by its having been lent to them . . . " 1

In this way the paper currency at the Cape had been given "a security and value . . . which never could have antecedently existed", ² as it had been issued originally merely on the good faith of the government. To try to give it security in terms of government-owned property was to prove a confusing task. This was made all the more difficult in later years by the claim of colonists that what had been guaranteed was not simply the continued circulation of the paper, but the existing rate of exchange which in 1806 was recognised as four shillings per rixdollar, although it was known even then that depreciation and occurred. ³ Further ambiguity arose because of another clause in the capitulation of 1806, which had stated that "the paper money actually in circulation should remain current as heretofore, until the pleasure of His Britannic Majesty should be known". ⁴ No clear definition on the currency situation of the Cape had been received from London. General approval of measures undertaken locally was frequently implied rather than explicitly stated, or else granted retrospectively. But in later years colonists were to claim that British approval of local decisions concerning the currency carried with it responsibility for the resultant depreciation. ⁵

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1. R.C.C. Vol. I, p. 130, Articles of Capitulation, 16/9/1795.
R.C.C. Vol. V, p. 265, Articles of Capitulation, 10/1/1806.
 2. R.C.C. Vol VI, p. 274, Caledon to Castlereagh, 4/2/1808.
 3. Proclamations, p.9, Govt. Proc., 23/1/1806. It was not explicitly stated that a rixdollar equalled 4s./-, but a shilling was rated at 12 stivers and there were 48 stivers in a rix-dollar.
 4. R.C.C. Vol. V, p. 265, Articles of Capitulation, 10/1/1806.
 5. The commissioners of inquiry admitted in 1825 that "the engagement of the British Government to discharge the debt of the Colonial Government . . . would appear to be comprehended in the tacit approval by His Majesty's Government of the terms of capitulation . . . on the 10th January 1806". P.P. 1826, XXIII (438), p. 15, Bigge and Colebrooke to Bathurst, 5/7/1825.

The problems inherent in the paper circulation of the colony were already manifest by 1806. Rapid deterioration of the notes, liability to forgery and fraudulence and fluctuations in the rate of exchange had all been experienced by the previous administrations.¹ All were to continue during the years of British rule and were exacerbated by the continuing increase in the quantity of paper money in circulation in the colony.

In 1806 the British commander, Sir David Baird,² attempted to stabilise the currency situation by controlling the issue of paper money and discouraging the export of coin. At the time the coin in the colony consisted of spanish dollars, a variety of other foreign coins and a quantity of British copper, mainly "cartwheel" pennies of 1797 which had been put into circulation in 1800 at double their value, i. e. at 2d each. They were known as "dubbeltjies" and continued current throughout the 19th century.³ Baird's efforts were partially successful and were commended to his successor, Caledon, in 1807. The new governor was specifically instructed

"not to alter any part of the Arrangements now in force with respect to this important point nor to add to the total amount of Paper Money now issued and in circulation without our especial Authority for so doing . . . " 4

Contrary to his instructions, Caledon established a discount branch of the Lombard Bank in 1808 and planned a new paper issue to provide capital for this venture.⁵ The secretary of state, Castlereagh,⁶

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1. Ibid. In 1804 the Batavian administration had recalled the entire paper currency for reprinting, partly because of these difficulties.
 2. Sir David Baird (1757-1829), served mainly in India; military commander of the Cape of Good Hope, 1795-8; lieutenant general at the capture of the Cape, 1806.
 3. E. M. Shaw, A History of Currency in South Africa (Cape Town, 1956), p. 8.
 4. R.C.C. Vol. VI, p. 10, Instructions to Caledon, 1/8/1806.
 5. R.C.C. Vol. VI, p. 273f, Caledon to Castlereagh, 4/2/1808. R.C.C. Vol. VI, pp. 356-8, Bird to president and members of Lombard Bank, 1/6/1808. Arndt, Banking and Currency, pp. 178-9.
 6. Robert Stewart, Viscount Castlereagh (1769-1822), secretary of state for war and colonies, 1805-9; secretary of state for foreign affairs, 1812-22.

did not favour the scheme at first but his opposition dissolved on learning of the fait accompli. Thereafter he gave his encouragement, even to the point of recommending an augmentation of the paper currency.¹ Accordingly, permission was given for a further 1 000 000 rixdollars to be put into circulation. Half of this amount was for the discount bank and half was to provide extraordinary revenue for public works planned by the government.² The bank's share was issued in June 1810 and the government's "public works" share between January 1812 and March 1814.³ Caledon's successor, Cradock, arrived in 1812 and although his instructions had also precluded him from increasing the paper currency,⁴ he continued the new issues already authorised. He was however concerned about the situation and instituted an inquiry into the state of the currency. The commission reported that the paper money in circulation was far in excess of the colony's needs and that current depreciation of the rixdollar was attributable to this factor.⁵ Recommendations were made for the withdrawal of the most recent issues. Cradock accepted these proposals and gave notice of his intention to prepare for the long-term withdrawal of the public works issue of 500 000 rixdollars.⁶ But before he could implement this decision he was succeeded by the new governor, Lord Charles Somerset. In addition to the renewed general instructions prohibiting the increase of the colony's paper money,⁷ Somerset received explicit commands from the secretary of state on the currency question.

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1. R.C.C. Vol. VI, p. 499, Castlereagh to Caledon, 12/5/1809.
 2. R.C.C. Vol. VII, p. 164, Caledon to Castlereagh, 12/10/1809; p. 260, Liverpool to Caledon, 3/3/1810.
 3. Proclamations, pp. 135; 176; 215; 228; 253 and 280, Govt. Procs., 14/6/1810; 15/1/1812; 27/10/1812; 21/1/1813; 23/8/1813 and 4/3/1814.
 4. R.C.C. Vol VIII, p. ³³~~448~~, Instructions to Cradock, ¹⁰~~22~~/4/1811.
 5. R.C.C. Vol. IX, Report of the Finance Commission, 14/2/1814.
 6. Proclamations, p. 280, Govt. Proc., 4/3/1814. Ironically he published a proclamation for the printing of the final instalment of the government's public works issue on the same day! Ibid., Govt. Proc., 4/3/1814.
 7. R.C.C. Vol. IX, p. 259. Instructions to Somerset, 3/11/1813.

"The measures which Sir John Cradock took . . . for settling the question respecting the 1 000 000 Rixdollars created by the Earl of Caledon will have relieved you from much difficulty. I cannot too much impress upon Your Lordship's attention the first Report of the Finance Committee appointed by Sir John Cradock as laying down in a clear manner the principles upon which all your financial operations should be conducted. That there exists a redundancy of Paper money in the Colony is too evident to admit a doubt as to the necessity of cancelling a portion of it, and the means recommended by the Committee are peculiarly well calculated ultimately to effect this object . . . The progress made by you in cancelling the Paper Currency of the Colony cannot fail to be highly interesting to His Majesty's Government, and I have therefore to desire that you will make me a Quarterly Report of the amount of Paper Currency actually in circulation, specifying the amount of that which has been issued and that which has been cancelled during the preceding Quarter." 1

Notwithstanding the above, Somerset pursued an independent line of action on the currency question. He sought the advice of two dissenting members of Cradock's finance committee, each of whom had submitted an individual report opposing the findings of the committee,² and also consulted the deputy colonial secretary, Christopher Bird,³ whose views coincided with those of the dissentients. In January 1815 Somerset informed the secretary of state that he had halted proceedings to withdraw the recent issues of rixdollars.⁴ Later in the same year he created a further 100 000 rixdollars for the use of the grain committee in Cape Town.⁵

In 1816 Somerset received instructions directly from the Treasury

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1. R.C.C. Vol. IX, p. 259. Instructions to Somerset, 3/11/1813.
 2. R.C.C. Vol. IX, p. 359, Memorandum by Henry Alexander, colonial secretary, 14/2/1814. Ibid., p. 360, Memorandum by Francis Dashwood, receiver general, 14/2/1814.
 3. Christopher Chapman Bird (1769-1861), deputy quarter master general at the Cape, 1797; deputy colonial secretary, 1807; colonial secretary, 1818-24, when he was forced to resign because it had been discovered that he was a Roman Catholic.
 4. R.C.C. Vol. X, p. 233f, Alexander to Somerset, 17/1/1825, and Bird to Somerset, 20/1/1815, enclosed with Somerset to Bathurst, 20/1/1815.
 5. Proclamations, p. 347, Govt. Proc., 28/10/1815. The grain committee supervised the colonial granary in Cape Town.

Board for the destruction of the public works issue printed during Cradock's time. The Board required to be kept informed of the progress of withdrawals.¹ Accordingly, provision was made late in 1816 for the necessary steps to be taken.² But in spite of repeated instructions from the Treasury Board and their attempted vigilance, by 1821 only 39 000 rixdollars of the issue of 500 000 rixdollars had been cancelled. In July 1821 Somerset sought permission to re-issue this amount, and also to create an additional 500 000 rixdollars for the Lombard Bank.³ Another sum of 200 000 rixdollars was issued in 1822 to provide an emergency fund, following severe storms which had caused considerable damage in several districts of the colony.⁴

The increase in the rixdollar circulation between 1806 and 1825 had amounted to 1 016 204 rixdollars,⁵ in spite of the restrictions imposed by the Colonial Office against the creation of new issues. Depreciation during these years was considerable and was generally attributed to the over-issuing of paper money beyond both the immediate needs of the colony and the rate of economic growth.⁶ Other factors however may have hastened the rate of depreciation, particularly the vast extent of forgery and fraudulence⁷ and the absence of any solid security behind the paper rixdollars. In 1814 Cradock had remarked on this feature of the Cape currency,

"the subject [of paper currency] is so complicated and

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1. R.C.C. Vol. XI, p. 90f, Instructions from the Treasury Board to the Governor of the Cape of Good Hope, 18/3/1816.
 2. R.C.C. Vol. XI, pp. 213-4, Bird to President and Members of the Lombard Bank, 8/11/1816.
 3. R.C.C. Vol. XIV, pp. 64-5 Somerset to Bathurst, 27/7/1821.
 4. Proclamations, p. 564, Govt. Proc., 8/8/1822. Arndt, Banking and Currency, pp. 34-5.
 5. Ibid., pp. 48-9.
 6. E.g. R.C.C. Vol. IX, p. 356f. Report of the Finance Commission, 14/2/1814. P. Warden Grant, Considerations of the state of the Colonial Currency of the Cape of Good Hope (Cape Town, 1825), *passim*. The following rate of depreciation was noted by the Commission of Inquiry:-

1806-10	1 rixdollar =	3/6d
1811-15	1 rixdollar =	2/6d
1815-20	1 rixdollar =	1/10d
1820-25	1 rixdollar =	1/6d
- P.P. 1826, XXIII (438), p. 28, Average value of Cape Rixdollar, 1808-25.
7. Infra, Ch. 5.

difficult in any country, but especially at the Cape of Good Hope, where no representation of specie is intended . . . " 1

Thus the problem of the paper money at the Cape differed from that, for instance, of England, where depreciation was mainly or in part attributable to an over-issue of paper, which had upset the balance between paper in circulation and gold reserves. The Cape paper money had never been the "shadow of gold", but simply an unbacked circulating medium put into service because none other was available. It was therefore peculiarly vulnerable and exposed to fluctuation and depreciation. The "over-issue" at the Cape could not be seen in relation to reserves held by the bank, for it held none. The extent of the over-issue could only be gauged in relation to the economic growth of the colony. But this in itself was at a standstill during the period 1815-25.² Yet as depreciation took place so the need for more units in circulation increased. The ostensible security given to this paper money by the mortgage of either private or public property was of a very ambiguous nature and was to prove difficult to effect in practice.

In 1825 the Treasury Board in Britain decided to fix the rixdollar at its current rate of 1/6d in order to halt further depreciation and also to provide sufficient sterling for the withdrawal of rixdollar notes from circulation.³ In this way it was hoped that the longstanding currency difficulties of the Cape would be solved. But this operation which had seemed simple at the outset took longer than had been anticipated and involved the Council of Advice in prolonged discussion and negotiation over currency question. Four different stages can be distinguished in the council's handling of the question. Firstly, the council acted as an administrative agency, giving effect to policy devised in Britain. As a result of this they had to bear the brunt of local protest and dissatisfaction over decisions that had been made in London prior to the establishment of the council and on which therefore their advice had neither been sought nor given. Secondly, they had to deal with the problem of continuing to re-issue paper money in place of worn and defaced notes, because of the insufficiency of coin supplied to the colony to replace the

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1. R.C.C. Vol. IX, p. 363, Memorandum of Cradock, February, 1814.
 2. C.G.W. Schumann, Structural Changes and Business Cycles in South Africa (London, 1938), p. 67.
 3. P.P. 1826, XXIII (438), p. 7, Treasury Minute, 11/2/1825.

rixdollar circulation. Thirdly, the council had also to make a thorough investigation of the scope and extent of fraudulence and forgery being practised in the colony because of falsified notes detected during the withdrawal and re-issue of rixdollars. Finally, the Council of Advice was called upon to decide whether a sterling backed paper currency, planned and printed in Britain, would serve as a substitute for sterling coin in the replacement of rixdollars throughout the colony.

It is proposed to examine in this chapter the first phase of the council's consideration of the currency question, namely, the fixing of the rixdollar at 1/6d and the subsequent protest and appeal for a reversal of this decision. This aspect is of particular interest in so far as several members of the council were themselves opposed to the rate of exchange, and yet were obliged to acquiesce in the measure fixing the rixdollar at 1/6d. For some council members there was a kind of "official schizophrenia" for in one capacity they consented to the currency ordinance establishing the rate of exchange, and in another official capacity they repudiated it.¹ This situation reveals not only the dilemma that faced government officials serving on the Council of Advice but also something of the confusion concerning the function of the council itself. When called upon to implement policy devised in Britain the independence of the council as an advisory body appeared to have been infringed. Council members did not know of the clear statement made by Stephen in 1828 on the need for bold and honest expression of opinion by officials on the spot, who were best equipped by their local knowledge and experience to determine the principles as well as the details of policy best-suited to the colony.² They were, to a considerable extent, hampered by this lack of knowledge.

As far as the Cape of Good Hope was concerned the Treasury Board proposed to do three things in 1825:- to fix the rate of the rixdollar at 1/6d; to provide for Treasury bills at a 3% premium; and to introduce enough British metallic money to make it possible to withdraw paper rixdollars from circulation. To these ends it was resolved in February

1. Infra, p. 40 and p. 153, n. 5.

2. Supra, p. 90.

1825: that rixdollars,

"shall be at all times exchangeable at the will of the holder for Bills upon this Board at the rate of £103 in value of Rixdollars computed at 1/6 each, for every £100, and that after the arrival of a sufficient Amount of British Metallic Money on the colony, no paper brought in to be exchanged for Bills upon this Board should be re-issued".¹

The Treasury Minute of February 1825 was submitted to the Colonial Office for approval and for recommendations on its implementation throughout the empire. Thereafter it was presented to the Privy Council, who agreed to issue the respective resolutions in the form of orders in council. Meanwhile both the Treasury Board and the Colonial Office had begun to set in motion the machinery for implementing the decisions of February 1825. By the time that the order in council reached Cape Town in July 1825 the local implementation of the measure was already under way.

The Council of Advice had been established at the Cape in May 1825.² At its second business meeting held on 6 June 1825 letters were tabled from both the Treasury Board and the Colonial Office on the currency question. In the despatch from the secretary of state instructions were given for a proclamation to be issued declaring British silver money legal tender at the rate of 1/6d per rixdollar; for orders to this effect to be given simultaneously to the troops; and for all accounts to be prepared in British money, and new schedules of rates and duties to be published, showing the amounts due in the old currency and also in sterling. The transition from the paper currency to the British metallic currency was to be "left exclusively to the officer in charge of the commissariat at the Cape".³

Enclosures from the Treasury Board enlarged on these arrangements, setting out the procedures to be followed for calling in rixdollars

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1. P.P. 1826, XXIII (438), p. 7, Treasury Minute, 11/2/1825.
 2. Supra, p. 57.
 3. C.O. 51/1, Minutes, 6/6/1825, Bathurst to Somerset, 6/3/1825. (R.C.C. Vol. XXIV, pp. 263-5.)

and British silver, in exchange for Treasury bills at the rate of £100 for £103. Notes of less than 10 rixdollars were not to be re-issued, and instructions for the destruction of the old paper currency were to be received in due course.

There was little discussion in the council on the currency question at this stage. A draft ordinance was read and it was resolved that,

"as the proposed Proclamation merely gives effect to the commands of His Majesty's Government the Council are of opinion that no discretion is left with them on the subject and that the Proclamation be therefore published".¹

In this way the council members were agreeing to the measure and at the same time indicating that it did not have their assent. This was the nearest they could come at this early stage to dissociating themselves from the decision to fix the rixdollar at 1/6d. Later, when the opportunity arose to express their personal views on the question, they did so unequivocally.² Later still, when they had gained in experience and confidence as members of an advisory body, they were not so quick to agree to measures which did not have their personal support.³

Ordinance number 2 of His Excellency the Governor in Council "for making British silver money a legal tender in the Colony . . . at the rate of one shilling and sixpence for each paper rixdollar" was passed on 6 June 1825,⁴ proclaimed by the Burger Senate on 7 June, and published in the Government Gazette on 10 June.⁵ It provided for the rate of 1/6d per rixdollar to be effective immediately in the discharge of all private debts, and stated that a table of rates of exchange between sterling currency and rixdollars would be published later. This appeared the following week.⁶

1. C.O. 51/1, Minutes, 6/6/1825. (R.C.C. Vol. XXIV, pp. 264-5.)

2. Infra, p. 145.

3. E.g. On the matter of a slave tax, infra, Ch. 6, *passim*.

4. C.O. 51/1, Minutes, 6/6/1825. (R.C.C. Vol XXIV, p. 264.) Ordinances were only meant to be passed after three readings but this provision was frequently disregarded initially.

5. Gazette, 10/6/1825, Ord. No 2.

6. Gazette, 17/6/1825, Govt. Advt.

It has been stated by Arndt that the ordinance was to "be effective from January 1, 1826",¹ but it is clear that the fixed rate of exchange and the acceptance of British silver money as legal tender were to begin "from and after the date of this proclamation or ordinance", namely 6 June 1825.² The change that was to be introduced in January 1826 was the publication of all departmental accounts in sterling.³ It is important to establish the chronology with precision because of the popular protest which followed immediately upon the publication of the ordinance. The urgency of the reaction would not have made sense if there had been a time lag between the publication of the measure and its operation. The sting lay in the fact that the rate of 1/6d was to be effective at once. No warning had been given and creditors therefore had no time to demand payment of longstanding debts that had been incurred when there was a more favourable rate of exchange. This practical difficulty was an added grievance for the creditor class of the community.

During the weeks that followed the promulgation of the currency ordinance the Council of Advice spent a great deal of time on this question. Letters and memorials were received from the Burger Senate and other official bodies, as well as from private groups of individuals throughout the colony. These applications failed to achieve an improvement in the rate of exchange, and the matter was closed by the middle of 1826 as far as the Treasury Board was concerned.⁴ Yet resentment and ill-feeling over the alleged "sudden reduction in property"⁵ continued to smoulder for many years in the colony. Moreover, in Britain itself the cause was taken up by a number of prominent spokesmen, including the former governor, Caledon. It is also of interest to note that the views of the commissioners of inquiry, who had been in the Cape since 1823, had not been sought prior to the Treasury decision of February 1825, and were unavailing when subsequently

1. Arndt, Banking and Currency, p. 47.

2. Gazette, 10/6/1825, Ord. No. 2.

3. *Ibid.*

4. *Infra*, p. 158.

5. P.P. 1826, XXIII (438), p. 50, Orphan Board to Somerset, 2/9/1825.

offered, unsolicited, to the secretary of state.

In the petitions that reached the Council of Advice during June 1825 a pattern can be discerned. In all of them protest was lodged against the rate of 1/6d per rixdollar, and plans submitted to petition the British government for a more favourable rate. Meanwhile, it was requested that the ordinance should be suspended locally. When this failed the plea was made that it should not be deemed effective with reference to debts due to individuals, and finally, memorialists pleaded that the ordinance might not operate retrospectively. Although the governor and council refused all these requests, they agreed to forward the petitions and memorials to the secretary of state for his consideration. Meanwhile they devised a temporary measure in order to halt the panic which was spreading in the colony, and to leave the way open for a more favourable rate of exchange if the British government gave way on the point.

Following the passing of the currency ordinance on 6 June, the Council of Advice received and tabled a number of letters of protest.¹ The Burger Senate requested the suspension of the ordinance.² They in turn had received a memorial from a large group of Cape Town citizens, pleading for the fulfilment of pledges allegedly made by the British government at the capitulation of the colony,³ and predicting "poverty and absolute ruin" if the fixed rate of 1/6d were to be put into execution. Permission had been sought for a public meeting to be held to discuss the question. The Burger Senate had granted permission, subject to the approval of the governor, which had also been given.⁴ A further memorial, signed by some 300 inhabitants, repeated the prediction of disastrous consequences, and requested the suspension of the ordinance with reference to debts due to individuals, pending appeal to "the High Authorities in England". The governor, Somerset, had already replied to this letter, regretting that he could not grant the request, but would forward it to London.⁵

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1. C.O. 51/1, Minutes, 13/6/1825. (R.C.C. Vol. XXIV, p. 266-75.)
 2. C.O. 51/1, Burger Senate to Governor in Council, 8/6/1825. (R.C.C. Vol. XXIV, p. 266.)
 3. *Supra*, pp. 133-4.
 4. C.O. 51/1, Minutes, 13/6/1825; 118 citizens to Burger Senate, 10/6/1825; Plasket to Burger Senate, 11/6/1825. (R.C.C. Vol. XXIV, pp. 266-70.)
 5. C.O. 51/1, Minutes, 13/6/1825; Memorial of certain inhabitants ... n.d.; draft reply to memorialists. (R.C.C. Vol. XXIV, p. 273.)

When these letters had been presented to the council on 13 June 1825 Somerset informed the meeting that although he had already made up his own mind, he would like to hear the opinion of other members "whether he would be justified in suspending the execution of a measure upon which he had received the positive commands of His Majesty".¹

The chief justice, Truter, spoke first. He stressed the injurious consequences which might ensue if the ordinance were later repealed. He suggested that "if the governor did not feel justified in granting the requested suspension" (hinting perhaps that such discretion was still available to him) some interim measure should be introduced to make redress possible in the event of a final decision favourable to the colonists. Plasket and Stoll supported this idea, and the former outlined a procedure which might be adopted. They also stated that they did not think that the governor had authority to suspend the ordinance under the existing circumstances. This view was confirmed by the three remaining members of the council, Daniell, Bell and Bentinck, but the latter two added that this opinion "did not imply approbation of the measure", which was "much to be regretted".² Some of the confusion and the tensions operative within a council of advice are revealed in these replies, in particular, the ambiguity of the situation when members are consulted on policy already drawn up in Britain.

The council met again a week later when further correspondence on the currency question was received. The public meeting, for which permission had been given, had been held on 14 June and a committee had been elected to negotiate on the question. Their letter to the governor was tabled at the meeting of 21 June. In this attention was drawn to the "immediate confusion and doubt already thrown upon every pecuniary Transaction" by the Ordinance. The claim was made that it was,

"consonant to the first principles of Justice that every party in an engagement is bound to the strict performance of the

1. C.O. 51/1, Minutes, 13/6/1825. (R.C.C. Vol. XXIV, p. 273.)

2. C.O. 51/1, Minutes, 13/6/1825. (R.C.C. Vol. XXIV, pp. 273-5)

same, without being affected by any legislative enactments which can never be made to have any retrospective application".¹

The committee suggested to the governor that the uncertainty regarding all credit and debit transactions would be removed if a declaration could be made that the Ordinance of 6 June "has no reference to, nor is binding upon any obligations entered into previous to that date . . . and only provides for every contract or pecuniary transaction formed subsequent to that period". Thus, having failed to obtain an immediate suspension of the Ordinance for making British silver money a legal tender at the rate of 1/6d per rixdollar, and having failed in the attempt to have it suspended in so far as its application to debts due to individuals was concerned, the inhabitants of Cape Town made a last bid to free themselves from what they regarded as the tyranny of the ordinance in that de facto it must act retrospectively in the case of leases, debts and contracts concluded in good faith before its proclamation and therefore in different circumstances.

The committee went on to comment on the depreciation of the rix-dollar currency. They had, in effect, been invited to do so by Somerset, who had reacted somewhat pompously to their earlier reference to "certain measures which from time to time the Colonial Government have deemed it expedient to adopt". In reply Somerset had stated that he was at a loss to understand the allusions, and had invited a candid exposition of them, so that they might become "the objects of his earliest attention and consideration".² The currency committee had taken him at his word. After thanking the governor for his "liberal and paternal view" they enumerated the measures alluded to as:

- "1. The excessive over issue of Paper Currency above the wants of the Public, and
2. the non-fulfilment of the assurances held out to the Public to redeem that over issue by destroying it, whenever that money issued should have attained the objects required."³

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1. C.O. 51/1, Minutes, 21/6/1825: Currency Committee to Plasket, 16/6/1825. (R.C.C. Vol. XXIV, p. 277.)
 2. C.O. 51/1, Minutes, 13/6/1825; Memorial of certain inhabitants . . . n.d.; draft reply to memorialists. (R.C.C. Vol. XXIV, pp. 271-3.)
 3. C.O. 51/1, Minutes, 21/6/1825, Currency Committee to Plasket, 16/6/1825. (R.C.C. Vol. XXIV, p. 278.)

In elaborating on these two grievances they referred especially to the proclamation of 14 June 1810 by which,

"without any necessity being felt by the Public, an additional Sum of One Million of Rixdollars was added to the Paper Currency then already superabundant, the immediate object of which was to depreciate the internal value of the circulating Medium of the Colony, and to raise the exchange with England from 18 to 60 per Cent premium, an injury thus immediately felt by the Public at large, and increased by a subsequent further issue" . 1

They acknowledged that there had been great benefits from the second part of this issue, i. e. the 500 000 rixdollars intended for public works, but claimed that the acceptance by the public at large of the resulting devaluation of the rixdollar had been regarded as temporary and that this view had been confirmed as recently as 1822, in the Governor's Proclamation of 21 June that year. Their grievance lay in the fact that,

"with the exception of a very insignificant sum, the whole of that circulating medium issued for specific purposes, which it has long since attained, is to this moment unredeemed and continues in circulation to the very great and general depreciation of the whole". 2

These factors, it was maintained, had been the main causes contributing to the 200 per cent premium on the colonial currency.

Somerset had probably not expected such a forthright answer. During his ten years as governor he had repeatedly ignored or defied instructions from the Treasury Board for the withdrawal of recent issues of rixdollars. He had also continued the long-established practice of creating new emergency issues. Both factors had probably accelerated the inflationary trend, so that the currency committee's complaints were justifiable. But the British Treasury had waited some ten years for action to be taken locally and had then decided to intervene directly at a time when currency matters were being dealt with in all colonies simultaneously. The Treasury Board's action appeared arbitrary to colonists, and its subsequent attitude appeared

1. C.O. 51/1, Minutes, 21/6/1825, Currency Committee to Plasket, 16/6/1825. (R.C.C. Vol. XXIV, pp. 278-80.)

2. Ibid.

implacable. But at least their intervention had halted the downward trend of the currency. It was, however, not easy for local inhabitants to appreciate this fact, nor possible for them to see the Cape situation in its wider imperial context.

No opportunity was given for the council to discuss the issues raised in the letter received from the currency committee, in reply to Somerset's invitation to explain the measures previously alluded to. For Somerset the situation must have been somewhat embarrassing. His tenure of office was already in question in Britain where the real battle for his survival as governor would take place. He was, therefore, particularly sensitive to any hint of criticism. He prevented the council from engaging in discussion on the matter by moving rapidly on to a new question. Without preamble, he introduced an ordinance for reducing the reward to be paid for the destruction of tigers, from 10 to 5 rixdollars a head! It was passed and published as ordinance number 3, and served to distract attention from the grievances of the currency committee.¹ ✓

Their complaints could not be so easily shelved, however, and at the next council meeting a further communication was received asking for clarification on the question whether the rate of 1/6d. was to be "absolutely compulsory" in the discharge of bonds and debts. In reply the council resolved that the currency ordinance was to be binding upon all obligations, "whether entered into previously or subsequently to the date of the Ordinance."²

The council then considered Plasket's scheme for introducing an interim measure which would protect local inhabitants against loss in the event of a new rate of exchange being adopted. Plasket proposed that the receiver general should accept British silver money in exchange for rixdollars at the rate of 1/6d; if a more favourable rate were later introduced the rixdollars could be returned and exchanged again for British coin, at their increased

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1. C.O. 51/1, Minutes, 21/6/1825. (R.C.C. Vol. XXIV, p. 280.) Gazette, 25/6/1825, Ord. No. 3. Three years later the council abolished the system of offering rewards for the destruction of wild animals. C.O. 51/10, Minutes, 31/3/1828. Gazette, 4/4/1828, Ord. No. 45.
 2. C.O. 51/1, Minutes, 27/6/1825. (R.C.C. Vol. XXIV, pp. 282-3.)

value. The council accepted the scheme and published a memorandum accordingly.¹

At the same meeting an ordinance was passed for destroying an amount of 20 000 rixdollars, worn and defaced paper currency, and also a sum of 3 000 rixdollars, being the 20th instalment repaid on the Stellenbosch loan of 1804.² This may have been as a result of the committee's earlier criticism of Somerset for not withdrawing emergency issues.

Further documents on the currency question were received by the council in the middle of July. A minute of the Privy Council incorporating the Treasury Board's February minute, was enclosed with a despatch from the secretary of state. The council decided to publish these documents, for local information.³ This would ease the situation for those council member who were in sympathy with local opposition, and yet bound by the oath of secrecy concerning council business.

One such council member was the receiver general, Stoll. In his capacity as landdrost of the Cape district he had signed a letter to the council soliciting favourable consideration for a petition that he was forwarding from the inhabitants of his district. This and an identical memorial from the Stellenbosch district were also received by the council on 12 July 1825, together with a preliminary petition which had been forwarded to Britain by a convenient vessel the previous week. This petition had been drawn up by the local currency committee in haste, in order to take the "earliest and first opportunity" of addressing the King. The petitioners had asked for the suspension of the currency ordinance until, "Your Majesty's Petitioners shall have an opportunity of laying at Your Royal Feet the prayer of the Public on this subject."⁴ Somerset notified the council that he had transmitted

1. Gazette, 1/7/1825, Govt. Advt.

2. Gazette, 1/7/1825, Ord. No. 5.

3. C.O. 51/1, Minutes, 12/7/1825. (R.C.C. Vol. XXIV. p. 288.)

4. C.O. 51/1, Minutes, 12/7/1825. (R.C.C. Vol. XXIV. pp. 288-92.)

the petition to the secretary of state together with all other relevant documents. The memorials from the Cape and Stellenbosch districts and the currency committee's petition tabled on 12 July 1825 were the last representations on the currency question to be received by the Council of Advice. As a channel of protest and a source of redress the council had proved unavailing and subsequent representations were to be made directly to London rather than through the local council.

The commissioners of inquiry, Bigge and Colebrooke, had also become involved in the currency crisis. They, too, took advantage of the impending departure of the vessel, *Britannia*, to address the secretary of state on the subject. By July 1825 they had been in the colony for two years but had not yet submitted any of their official reports. They gave a detailed analysis of the currency situation to Bathurst, and summarised the causes of depreciation as the failure to withdraw the public works issue and the re-issuing for ordinary revenue of that paper currency and the interest from the Lombard Bank. They claimed that any measure to stabilise the rixdollar would have brought inconvenience to some, and that fixing the rixdollar at four shillings would have brought ruin to many.

In the view of the Commissioners most people presently holding paper currency had received it at the rate of 1/6d. per rixdollar. ✓ The only real hardship that might arise would be to the creditor class to whom loans of long duration might still remain due, and the only way that an equitable arrangement might be made would be by insisting that these be repaid at the rate at which the loans had been issued. The government itself was included in this group of creditors. But by the recent ordinance the government had abandoned any claim to have such debts repaid at rates conforming to the original value of the loans, and had thereby made a great ✓ concession to those parties indebted to it.¹

1. P.P. 1826, XXIII (438), pp. 14-20. Bigge and Colebrooke to Bathurst, 5/7/1825.

The commissioners had intended to recommend measures for the gradual appreciation of the rixdollar currency before the introduction of British sterling coin. To achieve this they would have proposed the fulfilment of the promised withdrawal of the public works issue of 500 000 rixdollars, "in support of which Your Lordship had given distinct and positive instructions"; the granting of permission to the colonial government to draw bills upon the Treasury at the current rate of exchange; and the transmission of specie for payment of the troops. In this way a partial adjustment of the value of the rixdollar could have been deliberately achieved in preparation for the change-over to the British metallic currency. The commissioners had thus intended something similar to Peel's currency plan for Britain in 1819, when by a procedure of fixing the price of bullion over a number of years the value of the wartime paper pound was to be restored to parity with the mint price of bullion, in preparation for the return to a metallic currency.¹

The commissioners reported that at a second public meeting held on 30 June a compromise had been reached concerning the rate of the rixdollar, and it had been agreed that a rate of two shillings would be acceptable.²

The documents sent per Britannia were received at the Colonial Office in September 1825, and transmitted at once to the Treasury Board.³ Subsequently a further despatch was received from Somerset, explaining the delay in withdrawing the public works issue, and giving details of the current situation. His justification lay in the view that

"as long as it could be so employed (when the works first undertaken had been completed) it would be most beneficial to the interests of the colony to re-employ those sums on the public account rather than destroy them and relinquish objects of general importance."⁴

1. Supra, p. 131.

2. P.P. 1826, Vol. XXIII (438), p. 19, Bigge and Colebrooke to Bathurst, 5/7/1825.

3. C.O. 49/18, Hay to Harrison, 29/9/1825, with enclosures, and Hay to Harrison, 12/10/1825.

4. C.O. 48/69. Somerset to Bathurst, 23/7/1825.

The full petition of the currency committee was ready by the middle of August 1825 but the collection of signatures throughout the colony delayed its transmission to London. When Somerset knew that the petition was available he applied to the currency committee for a copy of it, ostensibly to enable the government to collect the necessary information to accompany it, and thus prevent delay later (although when the petition was formally submitted to the secretary of state no enclosures from the government accompanied it.) Having been obliged to send a copy to the governor, the currency committee decided to send one to the commissioners of inquiry as well. This was done on 17 August 1825.¹

The Commissioners took it upon themselves to relay this without delay to the secretary of state, in advance of the petition with signatures. They despatched it on 29 August 1825 and in the covering letter stated that they did not consider it necessary to add to the observations that they had already made. They mentioned that in the period of three months since the publication of the currency ordinance a sum of 384 532 rixdollars had been brought in to the commissariat department in exchange for Treasury bills. They also stated that although the sum of £12 000 sterling had been put into circulation during this time, the response of the public to the invitation to bring in silver in return for paper currency, as provided for in the government advertisement of 28 June 1825 had been minimal and only 3 000 rixdollars (£225) had been re-issued in this way.² It is of interest to note that within such a short space of time one tenth of the paper currency of the colony had been brought in to be exchanged for Bills upon England, in spite of the popular dismay at the rate of exchange. Within less than two years one third of the legal paper money had been placed in the hands of the

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1. P.P. 1826, Vol. XXIII (438), pp. 44-5, Hawkins and Cloete to Gregory, 17/8/1825.
 2. P.P. 1826, Vol. XXIII (438), p.44, Bigge and Colebrooke to Bathurst.

commissariat.¹ Protests notwithstanding, it seems probable that if a sufficiency of British money had been available immediately in the colony in 1825 the successful transition from one currency to another might have been effected within a few years.²

The petition forwarded by Bigge and Colebrooke arrived in London in November 1825 and was referred immediately by the Colonial Office to the Treasury Board.³ The Treasury decided, seemingly at once, that no change could be made in the currency arrangements already introduced at the Cape. Although they did not notify the Colonial Office of this decision until much later⁴ it meant in effect that the question of the colony's currency had been pre-judged and pre-determined even before the official copy of the petition, with signatures appended, had arrived in Britain.

The currency petition complete with 2 115 signatures was ready in Cape Town by 20 September 1825 and the following day Somerset forwarded it to the secretary of state, together with some explanatory remarks concerning the interim measure introduced in the colony the previous month, and yet another letter on the subject, received from the president and members of the Orphan Chamber.⁵ These documents arrived at the Colonial Office in December and, once again, reference was made immediately to the Treasury Board⁶ but they had already reached their verdict.

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1. C.O. 48/107, Bourke to Bathurst, 22/2/1827. The amount brought in by this time was 1 237 000 rixdollars.
 2. *Infra*, Ch. 5, *passim*.
 3. C.O. 49/18, Hay to Harrison, 10/11/1825.
 4. *Infra*, p. 158.
 5. C.O. 48/69, Somerset to Bathurst, 21/9/1825 and enclosures. The letter from the board of the Orphan Chamber bore the signature of the chief justice, J. A. Truter, in his capacity as president of the board.
 6. C.O. 49/18, Hay to Harrison, 26/12/1825.

The Treasury Board were not willing to alter the rate of exchange established by them in February 1825.¹ Their decision had been made by November 1825, and they sought the earliest opportunity to convey this information to the colony. An additional member of the Commission of Inquiry² was about to leave Britain for the colony and the Treasury Board decided to send an informal message with him. The new commissioner, William Blair, arrived at the Cape in January 1826, and informed the governor at once of the Treasury decision. Somerset in turn notified the council that,

"shortly before [Blair's] departure from England he had been requested by Mr Herries of the Treasury, to make it publicly known here that government were determined to adhere to the measure of rating the Rixdollar at one and sixpence sterling, and that an official communication to that effect would probably be brought out by General Bourke"³

In the light of this information the council rescinded the temporary arrangements made the previous July for exchanging British silver money for rixdollars.⁴ Notification to this effect was given in a government advertisement published at once.⁵

As far as the Council of Advice was concerned the question of the rate of exchange was now concluded. The rixdollar would remain at 1/6d. as fixed by the Treasury Board the previous February, although the communication to this effect had been only semi-official and was not followed up by a formal despatch on the subject until September 1826, nor did the lieutenant governor, Bourke, bring

1. Supra, p. 139.

2. Supra, p. 26, n. 3.

3. C.O. 51/1, Minutes, 3/1/1826. (R.C.C. Vol. XXIX, p.225.)

4. Supra. p. 148. C.O. 51/1, Minutes, 3/1/1826.

5. Gazette, 6/1/1826, Govt. Advt.

with him any further communication.¹ The haste with which the Council of Advice acted in January 1826 to rescind the existing temporary arrangement was, in the long run, to prove disadvantageous to the colonists as it deprived the Colonial Office of room to negotiate on the settlement of longstanding debts. Nevertheless this was the last time that the question of the value of the rixdollar was to be discussed by the council.

But in London the topic was not yet closed and continued a vexed question at two separate levels. Firstly, the Treasury Board had not notified the Colonial Office of their decision to adhere to the rate of 1/6d. and further correspondence was therefore necessary.² And secondly, the colonists had not yet given up hope of redress and persisted in their efforts to have the rate of exchange altered. These two aspects merged into one as agents acting in London on behalf of the colonists continued to harass the Colonial Office and goad them into further correspondence with the Treasury Board.

At the same time that the currency committee's full petition with over 2 000 signatures was transmitted to London, in September 1825, two colonists left Cape Town to canvass in person on behalf of the inhabitants. They were Christopher Bird, the former secretary to government at the Cape, and Alexander MacDonald, a local merchant and a member of the currency committee.³ They took with them a long letter from the Cape Town currency committee amplifying the case set forth in the petition.⁴ The two men arrived

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1. C.O. 49/19, Bathurst to Bourke, 11/9/1826. King points out that the difficulties of Bourke's administration of the colony were exacerbated by the currency problems, and also suggests that before he left for the Cape Bourke had been informed confidentially by the Treasury that there would be no change in the rate of exchange, King, Richard Bourke, pp. 82-4.
 2. E.g. C.O. 49/18, Hay to Treasury Lords, 3/1/1826, requesting an early decision on the currency question of the Cape.
 3. Alexander McDonald, resident merchant at the Cape, 1798-1827.
 4. P.P. 1826, Vol. XXIII (438), p. 59. Currency committee to Bathurst, 22/9/1825.

in London in December 1826 and obtained the active support of Abraham Borradaile,¹ the chairman of a London-based Cape of Good Hope Trade Society, which consistently promoted the interests of the colony in Britain.² Borradaile had already been in touch with the Colonial Office and the Treasury Board in May and October 1825, on the currency question.³

Little evidence has been found of McDonald's endeavours on the currency question, but for six months Bird pursued the matter along every channel that was open to him. He was assisted by Borradaile in his personal capacity, and by a great many others, whom he met mainly through Borradaile. In January 1826 Bird consulted a number of lawyers and members of parliament.⁴ They advised him to petition the king in council. But Bird preferred a direct approach to the secretary of state and on 31 January, together with McDonald and Borradaile, he met Bathurst, who agreed to forward the currency committee's letter to the Treasury Board.⁵ Bird also sought an audience with the Treasury, but the request evoked no reply, and he therefore decided to address the king in council, as suggested to him earlier.⁶ He not only petitioned them, he again requested a personal audience, this time with the King and Privy Council! But the request was referred back from the Home Department to the Colonial Office. The question had by now turned full circle, for Bird knew that the Colonial Office could only refer the matter once more to the Treasury Board.⁷ This was done

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1. Abraham Borradaile (? - 1857), chairman of Cape of Good Hope Trade Society, 1825-57; partner in the Cape Town firm of Borradaile, Thompson and Pillans.
 2. R. F. M. Immelman, Men of Good Hope (Cape Town, 1955), Ch. 5.
 3. C.O. 48/74, Borradaile to Hay, 6/5/1825, P.P. 1826, Vol. XXIII, p. 36, Borradaile to Treasury Lords, 4/10/1825.
 4. Stephen Lushington, J. Mackintosh, Henry Brougham and J. C. Tindal.
 5. Supra, p. 155. C.O. 48/86, Borradaile to Bathurst, 28/1/1826 and Borradaile to Hay, 1/4/1826. C.O. 49/18, Hay to Borradaile, 28/1/1826 and Hay to Harrison 1/2/1826.
 6. R.C.C. Vol. XXVI, pp. 30-6, Memorial of Bird to King-in-Council, n.d.
 7. S.A.C.A., 3/10/1826. Bird to Hawkins, July 1826.

but again elicited no response. In March Bird approached the Treasury Lords directly himself.¹ Borradaile meanwhile continued to keep the question alive at the Colonial Office.² Finally, in May, Herries of the Treasury Board,³ agreed to see Bird, but the interview proved to be "very unsatisfactory."⁴

In desperation Bird had meantime decided as a last resort to submit the question to parliament. He did this without the support of Borradaile's Cape of Good Hope Trade Society, who did not wish to undermine their own interests by joining in a representation to parliament on what was already acknowledged to be a hopeless case.⁵ In London Bird had renewed his friendship with Caledon, a former governor of the colony, and through him had met Alexander Baring.⁶ Towards the end of May 1826 Baring presented to the House of Commons a memorial on the Cape's currency situation, which had been drawn up by Bird.⁷ After brief consideration the chancellor of the exchequer moved for returns "in order to put the House in possession of certain facts explanatory of the nature of the paper currency."⁸ The papers called for were published in June 1826,⁹ but the question did not come before parliament again until a year later.¹⁰

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1. Ibid.
 2. C.O. 48/86, Borradaile to Hay, 1/4/1826 and Borradaile to Hay, 14/4/1826. C.O. 49/18, Hay to Borradaile, 7/4/1826 and Hay to Hill, 6/4/1826.
 3. John Charles Herries (1778-1855), financial secretary to the Treasury Board, 1823-7; chancellor of the exchequer, 1827-8; master of the mint, 1828-30.
 4. S.A.C.A., 3/10/1826, Bird to Hawkins, July, 1826.
 5. S.A.C.A., 7/10/1826, Borradaile to Bird, 17/4/1826.
 6. Alexander Baring (1774-1848), first Baron Ashburton, member of House of Commons, 1806-35, when he was raised to the peerage.
 7. R.C.C. Vol. XXVI, pp. 359-62 Petition to House of Commons.
 8. R.C.C. Vol. XXVI, p. 375. Hansard, 19/5/1826.
 9. P.P. 1826, Vol. XXIII (438).
 10. Infra, p. 165.

Meanwhile, the Treasury Board had at last replied to the Colonial Office on the question of the Cape currency, mainly as a result of Borradaile's persistent approaches to the Colonial Office as well as directly to the Treasury Board. Two days after the "very unsatisfactory" interview between Bird and Herries, a communication was sent to the Colonial Office, terminating the question as far as the Treasury Board was concerned. Herries reminded the Colonial Office that the arrangements made for the Cape of Good Hope were part of a measure prepared for the whole British empire.¹ In planning to introduce British sterling money in all its colonial possessions the Treasury Board had been required first to fix the rates at which the various colonial currencies could be made convertible into sterling money. Of the rixdollar, currency at the Cape, Herries wrote that it was,

"paper not convertible into coin at the will of the holder and not subject to any special obligation or redemption . . . The object of the British government was to make these paper rixdollars convertible into the silver money to be introduced into circulation at the Cape, at the fair current value of the paper, and at no other."²

Herries referred to the representations from the colony in which two grounds of protest had been expressed, firstly that the rate fixed had been incorrectly calculated and that the rate of two shillings would have been more generally satisfactory; and secondly, that no other rate than four shillings per rixdollar should have been considered. In dismissing the first of these arguments as incorrect Herries pointed out that the Commissioners of Inquiry had confirmed the rate of 1/6d. Referring to the second argument Herries acknowledged that there might be some persons who had just titles and claims to payment of debts at this rate. He adverted to the temporary arrangement made by the colonial government which would "afford an opportunity to all such parties of retaining the means of prosecuting their particular claims." Such an arrangement would have

1. Supra, p. 132.

2. C.O. 48/85, Herries to Horton, 13/5/1826.

to be left entirely to the local government of the colony; and the Treasury Board would not accept responsibility for finding the means of making payment, nor would the Board recognise a general claim to any alteration in the value fixed for the rixdollar on the grounds that some inhabitants of the colony had such valid titles.

Although they had been waiting for this official reply for many months, neither Hay nor Bathurst dealt promptly with the matter once they had received it. Several months passed before an official despatch on the subject was sent by the Colonial Office to the colony. This delay is puzzling, particularly as Borradaile continued, with indefatigable concern, to remind them of the need for clarifying the issue at the Cape. He discussed the matter with Hay on 20 May (a week after Herries' letter had been written) and was assured that a despatch on the subject would be prepared. On 31 May Borradaile was still receiving importunate letters from Cape Town and wrote to the Colonial Office again, asking whether the official communication was ready and would be carried on board H. M. S. Success, due to sail for the Cape the following Sunday.¹ No reply seems to have been sent to Borradaile, and no despatch sent per H. M. S. Success. The prevarication may have been on account of Bird's intended representation to parliament, of which the Colonial Office had been notified on 16 May.² A despatch for the governor of the colony was prepared only in September 1826.³

Bird himself arrived back in Cape Town in September 1826. News of his efforts had preceded him, and had been published in the local press from August. There were two newspapers in the colony at the time, the South African Commercial Advertiser,⁴ edited by Fairbairn, and the South African Chronicle and Mercantile Advertiser, which ran for 29 months under the editorship of William Bridekirk and was pro-government in tone.⁵ The role of the S. A. C. A. as a

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1. C.O. 48/85, Borradaile to Hay, 31/5/1826.
 2. Supra, p. 157. R.C.C. Vol. XXVI, p. 359 Bird to Horton, 16/5/1826.
 3. Supra, p. 154, Infra, p. 162.
 4. Supra, p. 29.
 5. William Storey Bridekirk (1796-1843), came to Cape Town as a printer and worked on the staff of the Government Gazette for many years.

channel of protest in the colony was of considerable importance, and in 1826 the question of press freedom was itself a lively issue.¹

Fairbairn, the editor of the S. A. C. A., was highly skilled at playing upon the dissatisfactions and disaffections of the colonists. He desired for the colony a free press, trial by jury and representative government, and managed to manipulate all local grievances so that they strengthened one or other of these causes.²

On the currency issue Fairbairn had at first been cautious, tending to support the Treasury Board decision in so far as it had served to halt depreciation.³ Without retracting this view he had gradually shifted his ground in such a way that the currency issue had added grist to the constitutional mill. By blaming the colonial government for the over issue of paper money, and the governor (Somerset) for not cancelling the public works issue, Fairbairn had been able to foster dissatisfaction with the existing government.⁴ In addition he had exposed the fact that some government functionaries had actually benefitted from the depreciation because their salaries were fixed in sterling, but paid in rixdollars.⁵

In August 1826 British papers carrying reports of the proceedings in the House of Commons had arrived in the colony, and the news of Bird's petition to parliament had been reprinted locally.⁶ Subsequently both private correspondence and editorial comment had focussed attention on the currency question.⁷ Further reports from Hansard had also appeared,⁸ so that when Bird arrived back in the colony at the end of September 1826 the currency question was one of the most lively topics in the local press. The several letters and papers brought back by Bird were made available for publication and engendered more

1. Infra, Ch. 10, *passim*.

2. Infra, Ch. 10.

3. S. A. C. A., 14/9/1825, Editorial.

4. S. A. C. A., 30/11/1825, Editorial.

5. S. A. C. A., 7/12/1825, Editorial.

6. S. A. C. A., 15/8/1826. South African Chronicle and Mercantile Advertiser, 15/8/1826.

7. E.g. S. A. C. A., 26/8/1826, Editorial and Letter from A Sufferer. S. A. C. A., 2/9/1826, Editorial.

8. S. A. C. A., 2/9/1826 and 12/9/1826.

heat into an already hot subject. These appeared in successive issues of the S. A. C. A. throughout October.

The first of these documents published by the newspaper was the letter written by Bird in July 1826, to the chairman of the currency committee at the Cape, explaining all that he had done in fulfilment of the pledges he felt he had made to his "constituents." }
 Amongst other important documents on the currency question published by the press were the letter and minute written by Bird to Herries; the minute and correspondence of the Cape Trade Society; a memorandum prepared by Bird for the currency committee on his conversation with Herries on 11 May 1826; and a letter and similar memorandum that Bird had sent to Caledon on the same subject.¹

One thing that emerged from the documents published was that although the Treasury Board was determined not to alter the official rate of exchange of the rixdollar, it was not opposed to private arrangements for the fulfilment of engagements entered into at a different rate of exchange. "The Treasury left individual claimants to establish their claims where they could obtain redress, they did not pretend to interfere with them."²

The currency committee appointed at the Cape in 1825 was still active when Bird returned to the colony in September 1826. When they received the documents available on Bird's return they passed a resolution approving his actions and, in writing to him, stated that they were, "still bouyed up with the hope of seeing some redress granted to ourselves and our constituents."³ In view of the Treasury Board's refusal to alter the rate of exchange it seems likely that such hope as the committee still had referred to the

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1. S. A. C. A., 3/10/1826; 7/10/1826 and 10/10/1826.
 2. S. A. C. A., 10/10/1826, Memorandum by Bird on his interview with Herries at the Treasury Board.
 3. S. A. C. A., 14/10/1826, Currency Committee to Bird. The Committee had also written to Caledon and Baring to thank them for their good offices on behalf of the colonists.

adjustment of private claims, rather than the official rate of exchange of the rixdollar. Yet private individuals were being given no encouragement at the Colonial Office to think that their personal claims could be paid at a different rate of exchange.¹

During November and December 1826 a move was sponsored by the editor of the S. A. C. A. to submit a general petition to the British government on matters of government, taxation and the state of the currency. The petition was prepared early in December and an advertisement appeared in the press inviting signatures.²

The grievances listed in this petition reflect popular dissatisfaction and distress over a variety of causes, including the state of trade and agriculture; taxation; the form of government and of the judiciary; the depreciation of the paper currency; and restrictions on the press. The prayer of the petitioners was that, like other colonies, the Cape of Good Hope might be given "the blessings of a Representative Government, Trial by Jury, an Independent Bench of Judges, and the Liberty of the Press, duly protected by Law."³ Support for the petition came rapidly; by the end of December 1200 signatures had been appended.⁴

It was just at this time that the official communication from the Colonial Office regarding the currency petition of 1825 was received in the colony. Bathurst had finally prepared a despatch on the matter in September 1826, at the very time when the currency topic was so much in the public view in Cape Town, following the reports of Bird's petition to the House of Commons.⁵

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1. E.g. R. C. C. Vol. XXII, pp. 3-4, Memorial of Thomas Rowles, R. C. C. Vol. XXXI, p. 343, Memorial of Elizabeth Rowles, widow, 23/2/1826.
 2. S. A. C. A. 5/12/1826. The idea of the petition had first been mooted in August 1826. S. A. C. A., 26/8/1826 and 2/9/1826 *Infra*, Ch. 10, *passim*.
 3. C.O. 48/84, Petition to parliament, 1/12/1826, enclosed with Bourke to Bathurst, 9/12/1826.
 4. S. A. C. A., 6/1/1827, Editorial.
 5. *Supra*, p. 159.

Enclosing Herries letter of 13th May 1826¹ Bathurst had written, "there does not seem to be any objection to you publishing the grounds upon which the decision is founded."² Accordingly, when the despatch was received in Cape Town, the colonial secretary, Plasket wrote to inform the currency committee of the outcome of their memorial of September 1825, incorporating almost the whole of Herries' letter in his own. In this letter Herries had stated that the paper rixdollar had never been a convertible currency, until the Treasury Board's measure of February 1825 had rendered it convertible into British metallic coin.³ Like other documents on the currency question, Plasket's letter was published in the local press.⁴

A spate of letters to the press followed, strongly condemning the view of the Treasury Board that the rixdollar currency was not a convertible paper.⁵ One writer noted that Herries had referred to the interim measure introduced by the council in July 1825 and subsequently rescinded.⁶

"Were their Lordships aware that the Government Advertisement of the 28th June 1825, to which they no doubt allude, was done away with by a similar notification issued on the 6th January following? Surely their Lordships could not have been ignorant of this? Where then is the benefit so particularly pointed at? It was expected by the Colonists that the measure alluded to could have remained in force until the pleasure of His Majesty could have been obtained on the Petition; but so far from it, it was rescinded shortly after the dispatch of that Petition!"⁷

Almost all of the points made by this correspondent were also adopted by the currency committee in reply to the Treasury Board. At a meeting held on the 17 January 1827 it was agreed to address another letter to Caledon on the subject of the currency, together with some

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1. Supra, p. 158, n. 2.
 2. C.O. 49/19, Bathurst to Bourke, 11/9/1826.
 3. Supra, p. 158.
 4. S.A.C.A., 6/1/1827, Plasket to Currency Committee, 29/12/1826, and Minutes of Currency Committee, 2/1/1827.
 5. E.g. S.A.C.A., 13/1/1827, Letter from Maria N.
 6. Supra, pp. 148 and 154.
 7. S.A.C.A., 20/1/1827. Letter from An Inhabitant.

comments on the Treasury Board communication. This was ready to be sent by the 19 January 1827. A copy of the letter and comments was published in the S. A. C. A. some weeks later.¹

In the same edition of the paper it was announced in the leading article that the petition for a representative assembly, which had been prepared at Cape Town two months previously had been despatched.

"The Petition to Parliament, signed by upwards of One Thousand and Six Hundred of the most respectable inhabitants of the Cape, was dispatched on Sunday last by H. M. Ship Slaney, and will be transmitted through a mercantile house in London to the Earl of Caledon, our former Governor, who has been requested to obtain from Mr. Alexander Baring the favor of his presenting it to the House. A letter has also, we believe, been addressed to Sir John Cradock (now Lord Howden), another of our former Governors, soliciting such support as it may be in his power to give to the Petitioners."²

The knowledge that both of these sets of documents would be going to Caledon, and from him possibly to Baring and parliament, caused some embarrassment to the colonial government at this point.

Neither the Treasury Board nor the Colonial Office had ever been notified directly of the action taken by the Council of Advice upon receipt of Blair's communication in January 1826.³ The secretary of state might have learnt of it in due course from the minutes of the council, copies of which were forwarded to London twice a year although it is unlikely that he read these himself. Hay had been obliquely informed of it by Borradaile.⁴ But clearly the Treasury Board were unaware that the measure had been rescinded and had written as if it were still in operation. Because of this when the colonial secretary had written to the currency committee to tell them

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1. S. A. C. A., 6/2/1827, Minutes of Currency Committee, 17/1/1827; Currency Committee to Caledon, 19/1/1827.
 2. S. A. C. A., 6/2/1827, Editorial.
 3. Supra, p. 154.
 4. C. O. 48/86, Borradaile to Hay, 14/4/1826.

of the outcome of their petition, he had "altered those expressions in the Treasury letter from which it could be inferred that the Regulation was still in existence."¹ In spite of this both the currency committee and private individuals at the Cape realised that the Treasury Board was still under such a misapprehension. When the colonial secretary, Plasket, saw from the press that this was the case he wrote at once to explain the confusion. In a private letter to Hay he stated that the temporary measure,

"was adopted at the period above-mentioned [i. e. in June 1825] with the view of quieting the minds of the people until the decision of His Majesty's Government could be known, but being merely a local measure and without authority from home, it was rescinded by Council so soon as we were made acquainted with the decision of the Treasury on the Currency Question, which was on the 25th December 1825, on the arrival of Mr. Blair, the Commissioner of Inquiry, who wrote officially to Lord Somerset to state that he had been desired by the Treasury to announce its determination to adhere to its original decision."²

It is of interest to note that the breakdown in communication between The Treasury Board and Colonial Office in London had its counterpart in a breakdown between Cape Town and London.

When the petition from the Cape reached Caledon he sought the aid of Baring as requested, and the petition was presented to the House of Commons on the 8 June 1827. Baring urged the need to introduce some form of representation into the government of the Cape, and spoke scathingly of the currency and other questions related to the colony. On the currency issue another speaker³ upheld the claims made by the Orphan Board of the colony for a more favorable rate of exchange in the transactions of the Board for wards whose affairs had been the Board's responsibility for many years.⁴ No decision

1. R. C. C. Vol. XXX, p. 385. Plasket to Hay, Pte. 15/2/1827.

2. Ibid.

3. Hudson Gurney (1775-1864), member of House of Commons, from 1816.

4. R. C. C. Vol. XXXI, pp. 443-9, Harsard, 8/6/1827.

was made by the House with respect to the petition and it was ordered that the papers should lie on the table.

Caledon forwarded to Baring not only the petition he had received from the Cape but also the other documents received from the currency committee. In response, Baring prepared a statement on the currency question with special reference to longstanding debts and contracts. He sent this to Caledon who, in turn, addressed it to the Treasury Board. Baring's statement was then transmitted to the Colonial Office¹ - an interesting sequence, in view of the fact that when letters on the subject went directly to the Colonial Office, they were immediately transmitted to the Treasury Board!

In his memorandum Baring acknowledged that the evil that resulted from tampering with a country's currency was such "that no human wisdom can afterwards repair the mischief or do justice between individuals whose reciprocal contracts and engagements have been distorted and deranged."² He nevertheless went on to suggest measures for the settlement of old debts. He recommended that a commission be appointed to assess the average annual rate of exchange of the rixdollar from 1806 onwards; that all debts be paid at the average rate for the year in which they were incurred, and debts from earlier than 1806 be paid at the rate for that year; that debts acquired by purchase be made payable at the rate for the year in which they were purchased, but that those acquired by inheritance should not be affected by this new regulation.

In transmitting these recommendations to the Colonial Office the Treasury Board indicated its willingness to adopt such a plan provided that it could "be carried into execution consistently with the Laws and Usages of the Colony," and they asked whether, "the form in which it is proposed by Lord Caledon and Mr. Baring to apply it be the best, or whether any different modification of the details may appear to His Lordship to be more advisable."³

1. C.O. 48/113, Herries to Hay, 16/5/1827.

2. R.C.C. Vol. XXXI, p. 374, Memorandum by Baring.

3. C.O. 48/113, Herries to Hay, 16/5/1827.

Baring appears to have been well acquainted with the Dutch Laws of the colony, and for this reason made express suggestions regarding bonds, contracts and mortgages acquired either by purchase or inheritance. Nevertheless, when a reply was sent from the Colonial Office it was explained that the regulations in Dutch law and usage in respect of the transfer of debts presented an "insuperable objection to the proposed arrangement." The Dutch law allowed the transfer of "Choses in Action" by transfer or purchase, and required of an heir that he should assume responsibility for all debts of his predecessors, and these two facts were quoted in explanation of the "insuperable objection". The secretary of state (now Goderich) referred the matter again to the Treasury Lords, "to determine whether it is desirable to adopt any other modification of the Order in Council." There is no indication whether the Colonial Office had by this time received the letter from the Cape explaining that the temporary measure had been rescinded.¹ It would probably have arrived by May, having been sent in February, yet both Treasury Board and Colonial Office appear to have been dallying with the question of private adjustment as if the measure were still in force.

In reply to Hay's further enquiry regarding any other possible modification, the Treasury Board stated that, "it does not occur to their Lordships that any other modifications of the Order in Council would be expedient."²

Once again interdepartmental negotiation had led to delays and procrastination as well as an unwillingness to assume responsibility for decision-making. In August Caledon again approached the Colonial Office directly.³ He had received further documents from the currency committee at Cape Town claiming to refute the view of the Treasury Board that the rixdollar currency had never been a fully

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1. Supra, p. 165. C.O. 49/20, Hay to Herries, 13/6/1827.
 2. C.O. 48/113, Hill to Hay, 5/7/1827.
 3. C.O. 48/114, Caledon to Goderich, 9/8/1827.

convertible issue.¹ The papers called for by the House of Commons in May 1826 and published in June had reached the colony early in 1827. From these the currency committee had learned that the views of the Treasury Board had been largely influenced by the letter written by the commissioners of inquiry at the same time as the first currency petition to London.² Correspondence on the question between the currency committee and the commissioners of inquiry had become personal and bitter, so that the currency committee preferred to seek redress once again in London. In writing to Caledon they had pleaded yet again for the fulfilment of longstanding pledges made by successive governments at the Cape.³ This letter and other documents were forwarded to the Colonial Office by Caledon in August 1827 in support of the scheme suggested by Baring and himself for a scale of payments for existing debts based upon the rate of exchange at the time when such debts had been incurred.⁴ In reply the secretary of state, Goderich, wrote to say

"that upon the fullest consideration of the subject and after much communication with the Treasury there appear to be many serious and insurmountable difficulties arising out of local circumstances which would preclude the adoption of the plan proposed by your Lordship and Mr. Baring and that any partial attempt to get over these difficulties would only have the effect of still further complicating a question which from its very nature is unavoidably most difficult of solution, in a manner which would be satisfactory to all parties".⁵

With this admission of the extreme difficulty of the case the question of the rate of rixdollar was finally concluded. Undeniably, there were difficulties. Cradock had identified the crux of the matter

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1. Supra, pp.163-4. R.C.C. Vol. XXXII, p.303, Hawkins to Caledon, 1/5/1827.
 2. Supra, p. 150.
 3. C.O. 48/114, Hawkins to Caledon, 1/5/1827, enclosed with Caledon to Goderich, 9/8/1827.
 4. Supra, p. 166.
 5. C.O. 49/20, Goderich to Caledon, 31/8/1827.

in 1814 when he had stated that at the Cape "no representation of specie is intended" in the rixdollar currency.¹ It was this central fact which precluded the rixdollar money from having "any real fixed value with reference to metallic money."² Colonists however, denied this, pointing out that the original issues in 1782 had been made because of an immediate shortage of coin but would be exchangeable as soon as coin became available.³ The continuation of currency difficulties was attributed to the frequent over-issuing of paper money,⁴ but was due also to confusion and a lack of definition on currency questions prior to 1825. Obligations made in 1795 and again in 1806 that "the paper money actually in circulation shall continue current as heretofore" and that government "lands, houses and property ... should remain as security for that part of the paper money ... not secured by mortgage"⁵ had never been clarified.

The commissioners of inquiry were themselves baffled on this point. When the British had first occupied the Cape in 1795 they had been persuaded that the colony would be subject to ruin if the buildings and property of the Dutch East India Company were not retained as security for the paper money. A statement to this effect had therefore been included in the articles of capitulation.⁶ A year later, however, the legitimacy of this demand by the Dutch had been questioned by the British Commander.

"When the money was first borrowed in 1781 by the government from the Inhabitants, it was promised to be restored to them ... in the meantime paper or parchment was substituted in its place and thus introduced into circulation, under the general supposition of the company standing as security

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1. Supra, p. 139, n. 1.
 2. P.P. 1826 Vol. XXXIII (438), p. 7, Treasury Minute, 11/2/1825.
 3. E.g. S.A.C.A., 13/1/1827, Letter from Maria N. Arndt, Banking and Currency, pp. 5-7.
 4. Supra, pp. 136-9.
 5. Supra, p. 134.
 6. Supra, p. 134.

but in the original proclamation of the government there is not a syllable said of lands and houses; therefore by artifice on one side were proposed, and by misapprehension or oversight on the other were admitted and particularly mentioned in the Capitulation..."¹

Macartney had gone on to say that as the British had pledged themselves to this position they would now "have to take it as we find it, and enquire whether the lands and houses will answer the debt..." He had shown that they would not.²

When Britain had occupied the colony for the second time government property had again been pledged as security for the paper money, but without further clarification. In 1824 Bigge and Colebrooke sought elucidation on the question from Bird, shortly after his resignation from office.³ They asked whether he was aware,

"of the existence of any other public recognition of the Colonial Currency than that which was declared by Sir David Baird in the Articles of Capitulation ... of the 10th January 1806. And also whether it occurs to your recollection that in the course of the progressive augmentations that were made to the original amount of Paper Money any public declaration or Act has been made or done by which the value of the Paper Rixdollar has been officially declared and recognised."⁴

In reply Bird stated that in his view the Capitulation of 1806 was "expressive of the Policy which the British government had avowed" during the first occupation of the Colony; "a Policy fresh in the memories of those who capitulated in 1806, and one calculated to ensure their confidence in British faith and to reconcile them to second change."⁵

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1. R.C.C. Vol. II, p. 189, Macartney to Dundas, 20/10/1797.
 2. Ibid.
 3. He had been forced to resign because of the "discovery" that he was a Roman Catholic.
 4. R.C.C. Vol. XIX; p. 395, Bigge and Colebrooke to Bird, 7/1/1825.
 5. R.C.C. Vol. XIX; p. 403, Bird to Bigge and Colebrooke, 9/1/1825.

Bird went on to state that it was his opinion that,

"When the British government encreased the amount of the Cape Currency by an issue of one Million of Rixdollars, unless it can be shewn that it then affixed and declared a new value to the Cape Rix-dollar, (which it is clear is not the case) it must be acknowledged to have avowed that the one million so issued was to be considered and taken at the same rate at which the Cape Rixdollar was issued and circulated previous to the adoption of that measure; it was otherwise a gross fraud, the more condemnable as effected by trick."¹

That there had been a lack of precision and definition about currency matters throughout the years of British administration is clear and provides some justification for the colonists' deep sense of grievance. But this confusion and evasiveness was still current after 1825, notwithstanding the clear definition of policy respecting the rate of exchange and the introduction of British coin.

In 1826 Bird reported on his interview with Herries of the Treasury Board,

"The Treasury had sent £40 000 in Silver and Copper to the Cape, and were preparing to send more; it was a great sacrifice from this country to the colony, as they did not consider themselves bound to discharge any Colonial debts, or to defray any Colonial Expenditure; nor had the Treasury anything to do with the engagements entered into by the local government, therefore the Treasury did not take into consideration the pledges of that government as to the value of the Rixdollar, nor as to its redemption; neither did they consider the question of mortgages of the government lands, these were arrangements with which the Treasury did not concern itself. - Besides (Mr. Herries observed) supposing the Lands and Houses to have been given up, what would the people have done with them?"²

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1. Ibid. Because he was out of office Bird no longer had access to official papers and was not a willing informant.
 2. S. A. C. A., 10/10/1826, Memorandum by Bird, 11/5/1826. My emphasis.

In effect, The Treasury Board washed its hands of any previous commitment made by the local administration in the name of the British government. What had happened was to be considered a local affair, and was unrelated to the measures proposed in 1825 to fix the rate of the rixdollar and introduce British sterling money as a substitute. In the ensuing years the Treasury Board was to find that it could not so easily slough off responsibility for local decisions and their consequences. In the withdrawal of rixdollars and their replacement by British sterling new questions were to arise concerning the scope and extent of Treasury responsibility.¹

The decision of February 1825 to fix the rixdollar at 1/6d created difficulties that confronted the council of advice at the start of their work. This aspect of the currency question throws light on the council as an administrative body, employed in implementing policy decisions made in Britain; and as an intermediary between colonists at Cape Town and the Colonial Office in London. Local inhabitants and the currency committee appointed by them were not satisfied with the efforts of the council. They considered that the decision taken by council members in January 1826 to rescind the interim measure passed the previous August² had been over-hasty and precipitate, notwithstanding the fact that this decision had been based on the knowledge that the Treasury Board had rejected local complaints against the fixed rate of exchange. Thereafter both private individuals and the currency committee had preferred to direct their protests through sympathetic supporters in London, rather than through the Council of Advice at the Cape. The most notable of these supporters was himself a former governor of the colony, presently holding a seat in the House of Lords and carrying some influence in the House of Commons, yet even his efforts on behalf of the inhabitants of the Cape had proved unavailing.

The currency issue was also exploited by the editor of the S. A. C. A. to castigate the Council of Advice, and to undermine

1. Infra, Ch. 5.

2. Supra, p. 154 and p. 148.

confidence in it as a governing body. In this way the local press became another important outlet for protest on the currency issue. This diverges from what came to be the normal pattern. For where the S. A. C. A. was in agreement with the views of the Council of Advice, then the colonists were content to work through the council, as they did for instance on the question of slavery.¹ Over the currency crisis the local press was at loggerheads with the Council, and the colonists tried to by-pass the council.

As an illustration of the development and effect of inter-departmental consultation on colonial affairs the fixing of the rate of the rixdollar is of particular interest. The Colonial Office and Treasury Board each persistently refused to take the responsibility for making a firm decision. The developments from October 1825 to September 1827 provide an interesting example of the caution, procrastination and evasiveness that could easily arise with the development of interdepartmental consultation and the broadening of responsibility for Colonial affairs. Moreover, Bathurst, as secretary of state, appears to have resented Treasury interference in colonial affairs and to have been therefore particularly sensitive to the encroachment of Treasury control.² For the Cape it was unfortunate that the currency question made excellent material for the departmental cold war, which may in part have accounted for delays and even failure in communication between the two departments. There were, in addition, delays in correspondence between London and Cape Town, so that the whole process of negotiation on the rate of the rixdollar was considerably lengthened. For the Council of Advice the matter was concluded within six months, but for the colonists a protracted effort to obtain a better rate of exchange had ensued. On the other aspect of the introduction of British sterling currency to the Cape, namely the withdrawal and replacement of the rixdollar circulation, the Council of Advice was involved throughout the nine years of its existence.

1. *Infra*, Ch. 6 *passim*.

2. Young, Colonial Office, Ch. 7, *passim*.

Chapter 5

The Introduction of British Sterling Currency: the Withdrawal and Replacement of the Rixdollar.

The decision to link the rixdollar with sterling had meant not merely re-valuation, but devaluation and consequent protest and distress. The Council of Advice had done little more than act as a buffer in the early stages between the decisions of London on the one hand and the discontent of the Cape on the other. This was but one aspect of the question. There was also the need to replace the local money with British sterling currency. This transition took many years and was hindered in a variety of ways during the years that the council dealt with the question. Initially, insufficient coin was sent from Britain; at the same time the sterling money brought in was rapidly re-exported as payment for imports. The withdrawal of rixdollar notes, especially those in small denominations created a severe shortage of change in the colony while notes still in circulation became so worn and defaced that they were no longer serviceable, and had to be replaced. Their withdrawal and cancellation disclosed forgery and fraudulence on a vast scale. This in turn created new problems. Finally, the Treasury Board decided to issue a sterling paper currency for the colony, but the notes printed in Britain were rejected by the Council of Advice as unsuitable for circulation at the Cape. Further negotiation between Cape Town and London followed, and in 1832 the first sterling notes were put into circulation - more than five years after they had first been suggested.

In addition to these practical difficulties there were other problems which had an indirect bearing on the currency question. These included the frustrations of unanswered despatches and dilatory correspondence, and the confusion arising from the sharing of responsibility between several departments of government. In London whether the council corresponded directly with the Colonial Office or

through Thomas Courtenay, its colonial agent,¹ the process of decision-making involved the Treasury Board and the Colonial Auditors. At the Cape in addition to the Council of Advice and on occasion the governor acting alone, three government departments were involved, namely the commissariat, the receiver general's office and the Lombard Bank. As the lines of communication grew more complex so also did the delays in decision-making. Delay hampered effective action and sometimes necessitated the introduction of interim measures. These in turn created further complications.

Other difficulties were more subtle. Psychologically it was expedient for rixdollars to be removed from circulation as soon as possible since their continued use served as a reminder of an alleged betrayal by the British government. At the same time it was essential for any new paper currency to be free from those weaknesses that had characterised the rixdollar.² But the Treasury Board was slow to grasp the importance of such intangible factors, and attempted to deal only with obvious difficulties. For the men on the spot, especially Bourke and Cole, the imponderable factors of human reaction to a change which had already evoked protest and resentment were just as weighty. To communicate this aspect of the situation to the respective departments in London became a compelling necessity and both Bourke and Cole found it advantageous to use the Council of Advice to give added weight to their own views.

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1. Thomas Peregrine Courtenay (1782-1841), secretary to the India commission, 1823-8; vice president of Board of Trade, 1828-30; colonial agent for the Cape of Good Hope. Colonial agents for the conquered colonies were also known as crown agents; they were responsible in Britain for the financial transactions of such colonies and were appointed by the secretary of state for colonies. In 1833 a consolidated Crown Agency Office was established. Young, Colonial Office, pp. 24-5. L.M. Penson, The Origin of the Crown Agency Office, English Historical Review, Vol. XL (1925), pp. 196-206.
 2. Non-convertibility and resultant fluctuation in value. It was for this reason that the Council of Advice refused to issue the first sterling notes sent from London, *infra*, p. 196.

The shortage of coin in the colony had been a matter of concern long before the Treasury decision of 1825. Very little British coin was available, apart from the coppers known as dubbeltjies put into circulation, in 1800.¹ Spanish dollars, which had regularly been used for payment of the troops, were also in short supply. In 1816 Somerset had reported this to Bathurst, who had agreed to send a further supply of coin to the colony and had also explained that the Treasury Board was planning to mint special coins for colonial use.² But nothing had come of this proposal, nor is there any report of the promised consignment of Spanish dollars arriving in the colony. The difficulty of finding coin for the commissariat persisted, and in 1820 permission was given for the troops to be paid in rixdollars.³ Three years later Somerset again raised the question of minting coins for the colony, and asked particularly for small denominations: pennies, halfpennies, fivepenny and tenpenny pieces.⁴ Once more the question was deferred, possibly because the Treasury Board was already planning the introduction of sterling coin throughout the empire.

The new arrangements of 1825 should have alleviated the situation. But unfortunately the Treasury Board did not undertake to substitute British metallic currency for the entire paper circulation at the Cape. Nor were they willing to assume full responsibility for currency throughout the empire. The provision of coin for the Cape was described as "a great sacrifice from this country to the colony"⁵ and the Treasury explicitly repudiated the pledges of the colonial government "as to the value of the Rixdollar ... (and) its redemption"⁶ In this way the Treasury Board appears to have taken

1. *Supra*, p. 135.

2. *R.C.C.* Vol. XI, pp. 112-4; 134-6; 165, Somerset to Bathurst, 21/5/1816 and 25/6/1816 and Bathurst to Somerset, 6/9/1816.

3. *R.C.C.* Vol. XIII, p. 314, Taylor to Goulburn, 13/10/1820.

4. *R.C.C.* Vol. XV, p. 364, Somerset to Bathurst, 8/4/1823.

5. Coin sent from Britain was not originally intended as a gift or donation, but was to be put into circulation by the commissariat in place of rixdollars. *Infra*, p. 181.

6. *S.A.C.A.*, 10/10/1826, Memorandum by Bird on his conversation with Herries, 11/5/1826.

an unfair advantage over the colony. They had fixed the rate of the rixdollar at 1/6d while at the same time refusing to replace the full quantity of paper money which had caused the depreciation leading to this poor rate of exchange.

The official estimate of paper currency in circulation in the colony in 1825 was just over 3 000 000 rixdollars.¹ To replace this amount a sum of £226 000 was required. But the Treasury Board proposed to replace only a portion of this. They therefore required that part of the paper money should be cancelled and withdrawn,

"as a part of those rixdollars were issued by a government establishment called the Lombard Bank, upon various securities, the sums which may from time to time be paid upon these securities, should be applied towards the liquidation of this paper money."²

In the normal course of events such a procedure might have been expected to bring about a gradual appreciation of the rixdollar. The commissioners of inquiry had intended to recommend this method of improving the rate of exchange before withdrawing the paper currency,³ and several colonists also favoured such an approach.⁴ But the Treasury Board planned to reduce the number of rixdollars in circulation without enhancing the rate of exchange. Little wonder that the decision evoked bitterness and resentment in the colony, and that questions of honour and justice were raised.⁵ The alternative would have been to accept the rate of 1/6d and provide for the replacement of the entire rixdollar issue, even the public works issue printed by Caledon and Cradock.⁶ Other factors also had a bearing on the

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1. C.A. C.O. 5966, Blue Book 1824, Amount of Coin in the Colony. P.P. 1826, Vol. XXIII (438), p. 7. Treasury Minute, 11/2/1825. These official estimates did not include the augmentation due to fraudulence and forgery that were later taken into account.
 2. P.P. 1826, Vol. XXIII (438), p. 7, Treasury Minute, 11/2/1825.
 3. P.P. 1826, Vol. XXIII (438), p. 18, Bigge and Colebrooke to Bathurst, 5/7/1825.
 4. E.g. S.A.C.A., 19/10/1825, Letter from Colonist; 21/10/1825, Letter from "A Friend to the Settlement."
 5. S.A.C.A., 26/8/1826 and 9/9/1826, Editorials.
 6. This was recommended several times. E.g. R.C.C. Vol. XXX, p. 118, Plasket to Hay, 22/1/1827. C.O. 48/142, Cole to Goderich, 3/5/1831.

situation. New paper issues in the colony had always been linked with immediate needs, either of the government or of the population. The necessity of financing public works from extra-ordinary resources still existed, even in the 1830s.¹ Moreover, the white population of the colony had almost doubled between 1806 and 1825.² If a total of 3 000 000 rixdollars had been in excess of the colony's needs in 1814,³ this was not necessarily still the case in 1825.

An amount of £42 000 was sent to the colony in sterling coin during 1825. In the following two years a further £60 000 was received, so that by 1828 more than £100 000 had arrived in the colony in coin.⁴ By the end of 1829 a further sum of £70 000 had reached the commissariat. But no more coin was received during the following nine years, until 1837 when £80 000 was sent to the commissariat, and another £90 000 arrived in the colony, mainly as compensation money following the emancipation of slaves.⁵

With the total of £170 000 received in British coin between 1825 and the end of 1829, the Treasury Board might well be considered to have gone a long way towards fulfilling its undertaking to provide the major part of the £226 000 necessary to replace the colony's paper currency.⁶ Furthermore, by the end of 1829 more than 1 000 000 rixdollars had been withdrawn from circulation and placed in the hands of the commissariat, pending instructions from London for their destruction. Thus, outwardly at least, it would appear that the transition from rixdollars to a sterling currency was well advanced. Closer examination, however, reveals that there were still many obstacles preventing the complete replacement of the old currency with the new.

The first of these was the longstanding practice of using British

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1. E.g. In 1831 it was almost necessary to call for public subscriptions for the completion of a vital mountain pass over the Hottentots Holland mountain range. Hunt, Sir Lowry Cole, p. 128.
 2. White population 1806 - 26 568
1825 - 49 040
R.C.C. Vol. VI, p.75 and C.A. C.O. 5967, Blue Book, 1825, Population Returns.
 3. Supra, p. 136.
 4. C.A. C.O. 5969, Blue Book, 1827, Amount of Coin in circulation.
 5. C.A. C.O. 5995, Blue Book, 1852, Amount of Coin in circulation.
 6. Supra, p. 141.

coin to pay for external debts. The export of coin was hastened after 1825, when the introduction of a 3% premium on Treasury bills rendered them unpopular as a form of payment for goods imported from Britain. Early in 1827 the colonial secretary, Plasket, informed Hay that of £56 000 sterling coin so far issued in the colony, he suspected that half had already been re-exported, mainly "on remittances by merchants to save the 3% on Commissary's Bills, and partially ... in payment of trifling imports in foreign vessels."¹ Bourke confirmed this view and suggested that the 3% premium should be abolished, and that Treasury bills should be available in sums of £50 and over, instead of £100 only.² Plasket had anticipated the former request, but feared "that their Lordships will not be so generous to us" and had suggested a premium of $1\frac{1}{2}\%$ to keep the metallic currency in circulation in the colony.³ Other colonies made the same complaint and request, and in 1827 the Treasury Board conceded the point.⁴

But at the Cape the reduction in the premium did not have the desired effect. Specie still left the colony in payment of goods brought from Britain. Of the amount of £170 000 received in sterling coin by the end of 1829, only £75 000 was still in circulation by 1833.⁵ Although some of the re-exported coin had been transmitted by the commissariat itself, merchants were responsible for the greater share.

The struggle to keep British coin in the colony was only one aspect of the difficulty of introducing a sterling currency. There were many others. The Treasury Board's failure to provide fully for the immediate replacement of all rixdollars provoked anger and hostility

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1. R.C.C. Vol. XXX. p. 389, Plasket to Hay, 18/2/1827.
 2. C.O. 48/107, Bourke to Hay, Pte., 26/2/1827 and Bourke to Bathurst, 22/2/1827. The restriction of Treasury bills of less than £100 meant that payment of smaller amounts necessitated the re-export of coin.
 3. R.C.C. Vol. XXX, Plasket to Hay, 18/2/1827.
 4. Chalmers, History of Currency, p. 26.
 5. C.A. C.O. 5975, Blue Book, 1833, Amount of Coin in Circulation.

in the colony. The £40 000 sent in 1825¹ was inadequate for the swift and efficient change of currency which colonists had been led to believe was intended and which alone might have appeased their anger over the fixed rate of exchange.

"When the value of the Rixdollar was reduced to Eighteen pence, we were led to expect that a Specie Currency would be established, but in this, as in other expectations, we are disappointed, for the greater part of the Specie having disappeared and none having been sent to replace it, the old Rixdollar, degraded, torn and defaced, is once more in full circulation throughout the Settlement..."²

Even the government was hampered by the insufficiency of coin. In 1826 the commissariat reverted to payment in Spanish dollars and this step was viewed locally "with much apprehension as indicating the inability of the government to keep up their sterling payments."³ Such fears are understandable in view of the long history of depreciation following new issues of paper money in time of shortage or need.

Moreover, as long as the rixdollars continued in circulation colonists were daily reminded not only that the promised metallic currency had not materialised, but also that alleged guarantees regarding the paper currency had not been fulfilled.

"How long are we to be mocked by this Colonial Paper - represented by nothing tangible, - subject to depreciation, - and never seen without reminding the inhabitants of unredeemed pledges and ruinous losses?"⁴

Bourke and Plasket were both sensitive to this aspect of the situation. Plasket stated bluntly, "The subject of the Paper Currency

1. Supra, p. 178.

2. S. A. C. A., 28/6/1826, Letter from An Observer.

3. C.O. 48/86, Extract from a letter from the committee of merchants, enclosed with Borradaile to Hay, 31/5/1826.

4. S. A. C. A., 18/7/1827, Letter from Colonist.

is a very sore one here and the sooner we get rid of the rixdollar the better."¹ Bourke suggested that if a sufficiency of coin were not available, a paper currency in sterling denominations would be preferable to rixdollars. He stated that,

"In addition to the convenience of this measure, I contemplate ... a tranquillising effect by getting rid of the paper whose depreciation has caused so much discussion."²

The mode of withdrawing rixdollars from circulation had been prescribed by the Treasury Board in 1825, and was conscientiously followed for eighteen months. Paper money brought in to be exchanged for Treasury bills was to be withdrawn by the commissariat and a similar practice adopted by the Lombard Bank when loans were repaid.³ By the beginning of 1827, 1 237 000 rixdollars had been taken out of circulation, mainly in notes of small denominations: - 5, 4, 3, 2, 1, $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$ rixdollars respectively. The removal of notes of low value, together with the insufficiency of coin, created a drastic shortage of small change, especially in the remote frontier districts of the colony. Farmers, merchants and the general public all complained of hardships suffered.⁴ Some colonists displayed a rough wit in expressing their grievances, as, for example, the correspondent who wrote to a newspaper editor,

"As you are desirous of obtaining early and accurate information, I hasten to acquaint you that "Queen Anne's dead", which may be one of the reasons why her Farthings are so rare; but in what, I would ask, have His present Majesty's Cape Lieges so much offended, that the sight of his Gracious Countenance is withheld from them, even on this small scale?"⁵

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1. R.C.C. Vol. XXX, p. 390, Plasket to Hay, 18/2/1827.
 2. C.O. 48/107, Bourke to Bathurst, 22/2/1827.
 3. P.P. 1826, Vol. XXIII (438), p. 7, Treasury Minute, 11/2/1825.
 4. C.O. 48/86, Extract from the committee of Merchants, 27/2/1826, enclosed with Borradaile to Hay, 31/5/1826. C.O. 51/5, Minutes, 8/12/1826, Evidence of Mr. Oliver, farmer of Graaff Reinet complaining of a shortage of coin in the district.
 5. S.A.C.A., 28/6/1826, Letter from Scrutator. Italics in original.

This same writer urged the importation of farthings to the value of £5 000 and half pennies to a similar amount, thus indicating the dire need for small change throughout the colony. Although the sterling coin introduced into the colony between 1825 and December 1827 had included some £4 000 in copper, clearly this was insufficient to balance large-scale removal of rixdollar notes of small denomination. The commissariat had been instructed that they should on no account re-issue notes below the value of 10 rixdollars each.¹ These were to be sent back to Britain as vouchers for the payment of military accounts. But because the colony did not receive enough sterling coin, it became necessary to re-issue the paper currency which had been brought in. Permission to do so had been implied in the Treasury instructions received in 1825.²

The re-issuing of old rixdollar notes was not a straightforward matter. Thick card had been used in their manufacture and this did not stand up well to constant handling. After the total reprinting in 1804³ some notes had become so worn within two years that it had been necessary to replace them with new notes.⁴ Altogether there had been 90 such reprintings of specified sums between 1804 and 1825,⁵ yet some of the 1804 issue was still in circulation.⁶ Even the more recently issued notes deteriorated rapidly. During the latter half of 1825 the Council of Advice had three times made provision for the destruction of worn and defaced paper money and its replacement by new issues.⁷

No new paper notes were printed in 1826, during the first year of Bourke's administration. Understandably, Bourke hoped that the introduction of a sterling currency would eliminate the need for further reprinting of rixdollars. As an alternative temporary measure he

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1. R.C.C. Vol. XXIV, p. 353, Harrison to Hewetson, 5/3/1825.
 2. Ibid.
 3. Supra, p. 351, n. 1.
 4. Proclamations, p. 38 and 39, Govt. Procs. 3/10/1806 and 17/10/1806.
 5. Arndt, Banking and Currency, p. 62.
 6. E.g. Gazette, 9/10/1835, Govt. Proc.
 7. C.O. 51/1, Minutes, 1825, *passim*.

arranged for the commissariat to sort through the paper notes accumulated during 1825 and 1826 and select those still in serviceable condition.¹ These were then put back into circulation in place of worn rixdollar notes. But this process could not go on indefinitely. Early in 1827 Bourke pointed this out to the secretary of state, explaining that,

"old and defaced notes must either be re-issued from the chest, or new ones stamped, or otherwise Specie sent out to the Colony to an extent which might be inconvenient to effect."²

Because the Treasury might not be prepared to send the large amount of coin needed at once in the colony Bourke suggested another possibility. He proposed that sterling paper money be printed in Britain, to be issued locally in lieu of worn and defaced rixdollar notes. These would be put into circulation through the commissariat, who would, simultaneously, destroy an equivalent amount in rixdollar notes. Bourke was thus not proposing to augment the paper currency of the colony. He further proposed,

"that these notes should be made payable to the commissariat here in bills on the British Treasury. By this means a new note of a better manufacture and of a current denomination would be gradually introduced into the Colony and the old Rixdollar absorbed and destroyed."³

The sterling notes should be free of the premium of 3% still being charged on Treasury bills and might also be issued through the receiver general's office "if it were thought desirable to get more expeditiously rid of the old Rixdollar."⁴ Bourke considered that a circulating medium consisting of silver and copper coin and sterling notes (kept in a properly adjusted proportion) would be adequate for the colony.

Similar proposals had been forwarded to the Colonial Office the previous year by the Colonial secretary, Plasket, but had not been

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1. C.O. 48/107, Bourke to Bathurst, 22/2/1827.
 2. Ibid.
 3. Ibid.
 4. Ibid.

favourably received. Plasket suspected that his plan had been misconstrued as an attempt to increase the amount of paper money in circulation.¹ In February 1827 he wrote again to clarify the situation and to urge the necessity for printing new paper money, whether in sterling or in rixdollars,² Bourke's proposals, made a few days later, were probably the outcome of discussions held with Plasket. It is of interest to note that Bourke promoted the scheme, notwithstanding his prior knowledge of the Treasury Board's disapproval.³ This was characteristic of Bourke, who regularly showed that he was willing to persist in his attempts to win support for a measure if he considered it to be clearly in the interests of the colony.⁴ In May 1827 he referred to the question again, emphasising its urgency,

"Something must very speedily be done in this respect, as a considerable quantity of sterling has been exported since I wrote and the paper money is daily becoming more unserviceable."⁵

Bourke also commented, both in February and May, on the distress arising within the colony as a result of the reduction in paper money. Insolvencies were frequent, and the Lombard Bank was finding that its debtors were unable to repay loans and mortgages. Bourke suggested that the interest rate on mortgages should be reduced from 6% to 5% and warned that full repayment might ultimately prove impossible.⁶

By November 1827 Bourke had received no reply to his urgent representations on the currency situation, although his earlier despatch had been forwarded to the Treasury Board.⁷ He therefore wrote again,

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1. R.C.C. Vol. XXX, p. 342, Plasket to Hay, 3/2/1827.
 2. R.C.C. Vol. XXX, p. 389, Plasket to Hay, 18/2/1827.
 3. *Ibid.*
 4. Cf. His attitude on the corn trade, *infra*, Ch. 7, *passim*.
 5. C.O. 48/109, Bourke to Hay, Pte., 28/5/1827.
 6. *Ibid.*
 7. C.O. 49/20, Hay to Hill, 25/5/1827.

pointing out the need for prompt action,

"Referring to my despatch of the 22nd February last No. 16 and other communications since made on the subject of the Rixdollar notes, and which have been repeated to the Treasury by the Deputy Commissary General, I must now state that the condition of our paper currency is so bad as to render great part of it useless and to favour many curious frauds but too commonly practised on the unwary. It will shortly be absolutely necessary to take some steps respecting it. If I shall not hear therefore definitely on the subject before the first of January next, I must propose to Council to call in and destroy a large portion of the old and issue new paper notes to the same amount. These I think of making in the denomination of shillings, as our accounts are now kept in British Currency. The materials to be had here for notes are extremely bad."¹

By January the situation was critical. And still there was no indication whether the Treasury would adopt the proposal to print sterling notes in Britain for the Cape, or would sanction the printing of them in the colony. Bourke had warned that he could procrastinate no longer, and in January proceedings were set in motion to replace some of the worn paper currency.²

In mid-January the president and directors of the Discount Bank wrote to urge the government's immediate attention to the currency crisis.

"The Proclamations which have heretofore been issued from time to time for replacing the accumulations of defaced paper in the hands of the Receiver General with an equal amount of new paper, having been discontinued for some time past, appear to us to have given rise to the evil at present sustained, which we have taken the liberty to state for His Honor's consideration in order that should he deem it expedient, the measure of substituting a certain quantity of new paper for the old in the present exigency may again be had recourse to."³

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1. C.O. 48/109, Bourke to Hay, Pte., 7/11/1828. The letter itself is missing from the volume but is described in the index and is available in R.C.C. Vol. XXXIV, pp. 104-5.
 2. The paper notes held by the commissariat were not merely worn, but were in a state of rotteness, with maggots crawling through them! *Infra*, p. 194, n. 7.
 3. C.O. 51/11, Appendix F1, Marshall, Maasdorp and Hewetson to Bell, 12/1/1828.

This letter was presented to the Council of Advice on 23 January 1828, thus reintroducing the question of the currency. Two years had elapsed since Blair's letter had ended the first phase of the council's dealings with this question.¹ With the reintroduction of the subject in January 1828 the second phase began. In this the council was not concerned with the rate of the rixdollar, but with its ultimate removal and replacement by sterling money and with securing a reliable and convertible paper currency in the event of insufficient coin being supplied for the colony.

The Council of Advice agreed that an amount of 50 000 rixdollars of worn and defaced paper money should be destroyed and a similar quantity of new notes printed. The lieutenant governor was directed to have ordinances prepared for this purpose.² At a subsequent meeting Bourke reported that he had discussed the proposed ordinances with the new chief justice, Wylde, who had suggested a new procedure. As the replacement of worn paper currency was an emergency measure it should be effected by proclamation rather than by ordinance. The council were agreeable provided that the new procedure were not used for the printing of any new issues of paper money. Bourke endorsed this view, stating that he did not consider himself authorised to increase the paper currency "under any circumstances whatever."³ The following week he issued a proclamation for the destruction and re-printing of 50 000 rixdollars.⁴

This step proved to be only a stop-gap. In March 1828 the receiver general and the assistant commissary general reported the urgent need to replace amounts of 113 000 and 136 940 rixdollars respectively. The paper held by the commissariat was stated to be in such a worn and defaced condition that

"when the sum in British Sterling now in the Military Chest shall be exhausted, which will shortly be the case,

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1. Supra, p. 154.
 2. C.O. 51/10, Minutes, 23/1/1828.
 3. C.O. 51/10, Minutes, 6/2/1828.
 4. Gazette, 15/2/1828, Govt. Proc. This was the first time that the two procedures of destroying and reprinting paper money were provided for in the same enactment.

I shall be at a loss to select issuable paper to meet my current expenditure..."¹

Bourke therefore brought the matter before the Council of Advice again, and their meeting of 3 April 1828 was devoted exclusively to the currency question. Bourke explained that for some time he had been awaiting instructions from the British government for the issue of a new paper currency. For this reason he had postponed the recall and replacement of worn notes. No instructions had been received and the greater part of the paper money was already unfit for use.

"It exposed all who were obliged to receive it to great inconvenience and in many cases to loss by the many frauds which it was found possible to practice in consequence of the tattered condition of the Paper. It further delayed business by rendering a severe scrutiny of the paper ... necessary, with respect to most of it."²

The lieutenant governor then proposed that the full amount requested by the two offices should be reprinted, namely 250 000 rixdollars, as a step towards the full replacement of worn currency with new notes. He recommended that a more durable paper should be used and showed sample notes of a new design to members of the council. It was agreed to print a new issue in denominations of 10, 20, 40, and 100 rixdollars.³ Notes of smaller denominations were not considered necessary because of the recent reduction in the premium on Treasury Bills which, it was hoped, would halt the transmission of coin out of the colony.⁴

The reprinting of the rixdollar notes, on superior thin paper and in the new red stamped design began in April 1828.⁵ By July of the following year the sum of 1 900 000 rixdollars had been issued in the red stamped currency.⁶

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1. C.O. 51/11, Appendix F3, Hewetson to Ryan, 17/3/1828.
 2. C.O. 51/10, Minutes, 3/4/1828.
 3. Although he would have liked to introduce sterling notes into the colony Bourke did not consider himself free to make this change because he had not received Treasury approval.
 4. C.O. 51/10, Minutes, 3/4/1828. *supra*, p. 179.
 5. Gazette, 25/4/1828, Govt. Proc.
 6. Gazette, 30/5/1828; 5/9/1828; 23/1/1829; 17/7/1829.

The partial replacement of worn currency with new notes distinguishable by their design, colour and texture, provided a unique opportunity for assessing both the quality and the quantity of the colony's paper money. This led to the detection of forgery and fraudulence on a very extensive scale. A detailed report on the situation was later presented to the Council of Advice, and initiated yet another stage in their handling of the currency question, namely the investigation of falsified paper money. Meanwhile the Treasury Board in London had at last responded to the persistent requests for a sterling paper currency, and had prepared a consignment of sterling notes for the colony. When these arrived, the question of whether or not to issue them came before the council concurrently with the problem of fraudulence and forgery. For the purposes of the council, the two questions merged into one.¹

In May 1828 Bourke informed the secretary of state of the first batch of red-stamped rixdollar notes printed the previous month. He referred again to his unanswered despatch of 22 February 1827, and explained that it had become imperative to issue new notes, but that

"having received no instructions ... I have not ventured on changing the denominations from Rixdollars to Sterling, although such a change would for many reasons have been desirable."²

Despite the improved paper and design of the new rixdollar notes Bourke was still not satisfied with local materials and workmanship. He wrote again a month later, repeating his views that more durable notes were required, preferably in sterling denominations. Undeterred by the neglect of the Treasury Board and the Colonial Office, he had found a new channel through which to press the claims of the colony. He reported to the secretary of state that he had written to the colony's agent, Thomas Courtenay, with a request to investigate the possibility

1. *Infra*, p.195.

2. C.O. 48/124, Bourke to Huskisson 19/5/1828.

of having rixdollar notes printed in London. Specimen rixdollars had been forwarded to Courtenay,

"with instructions to ascertain the cost of engraving a good note, upon paper with or without a watermark, and to obtain your sanction for incurring the expense..."¹

This was a subtle move. Whether Bourke had intended to bypass the Treasury Board or simply to prod them into action is not clear. The end result, however, was the production of sterling notes for the colony, as originally requested!

Courtenay lost no time in complying with Bourke's instructions. In October 1828 he submitted to the Colonial Office the estimated cost of engraving the rixdollar notes.² Meanwhile at the Colonial Office Hay had referred Bourke's despatch of 10 June 1828 to the Treasury Board, and informed them of the plan to print rixdollar notes of a better quality in London. This spurred them to action at last.³ Late in October the papers were returned, with the promise of immediate attention to the matter. In November Hay was told that the Treasury Board had decided to issue a sterling paper currency for the colony on condition that the new notes were only put into circulation in exchange for cancelled rixdollar notes and that adequate precautions were taken to prevent the governor from increasing the paper circulation in the colony. The Treasury asked for the most recent estimate of the quantity of rixdollars in circulation.⁴

Hay replied at once, giving the desired assurance that the governor was not authorised to add to the paper currency and stating

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1. C.O. 48/124, Bourke to Huskisson, 10/6/1828. In 1808 Caledon had made a similar request. Arndt, Banking and Currency, p. 25, n. 8.
 2. C.O. 48/126, Courtenay to Hay, 16/10/1828. The letter itself is missing from the volume, but it is described in the index.
 3. C.O. 49/22, Hay to Hill, 12/9/1828.
 4. C.O. 48/126/156, Stewart to Hay, 13/11/1828, enclosing a copy of Stewart to Hewetson, 31/10/1828, informing the Commissariat at Cape Town of the Treasury Board's decision.

that there were approximately 2 600 000 rixdollars still in use in the colony. The Treasury agreed to replace this entire sum with notes in British sterling, in denominations of not less than one pound.¹ Hay immediately instructed the colonial agent, Courtenay, to arrange for sterling notes to be printed, to the value of £199 999-4-0, "on good durable paper, containing a watermark." It was further directed that

"These Notes should set forth a promise on the part of the Treasurer of the Colony to pay to the bearer on demand, the sum to be expressed in Sterling Money, which the notes may represent and the corresponding value thereof in Rixdollars should be stated on the face of the Notes."²

A draft form of the proposed notes was to be submitted to the Colonial Office for approval before the final printing. This was available by February 1829 but when he sent the draft Courtenay queried the terms of obligation expressed thereon. He had been in contact with Bourke - now returned from the Cape - who had suggested that a fully convertible sterling paper currency might prove an embarrassment to the colonial government, and had recommended instead that

"the Colonial Government might have the option of paying the holders of Paper Money, either in Sterling or by Bills upon England, with a deduction of $1\frac{1}{2}$ percent for the exchange."³

Courtenay sought the opinion of the secretary of state on this point. But the question was not one which concerned the Colonial Office alone. Once again, consultation with the Treasury Board became necessary. The matter was referred early in February 1829, and a reply received some two months later.⁴ Contrary to their earlier decision, the Treasury Lords now considered that it would "not be expedient" for the sterling notes to be made payable in coin,

"but that much inconvenience will be obviated and the credit of the Notes be equally maintained if they are made payable in Bills on this Board, on the same terms

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1. C.O. 49/22, Hay to Stewart, 24/11/1828. C.O. 48/126, Stewart to Hay, 24/12/1828. cf. Arndt, Banking and Currency, p. 63, where it is stated that "it was not until July 1831 ... that the Treasury authorised the issue of a new paper currency for the Cape."
 2. C.O. 49/22, Hay to Courtenay, 29/12/1828.
 3. C.O. 48/132, Courtenay to Hay, 3/2/1829.
 4. C.O. 49/22, Hay to Stewart, 9/2/1829. C.O. 48/132, Stewart to Hay, 2/4/1829.

as British Silver Money, which mode of payment has been adopted in respect of Sterling Promissory Notes issued at New South Wales."¹

Thus the Treasury Board rejected the suggestion of an optional obligation, with payment to be made either in coin or in Treasury bills (as Bourke had preposed), and chose instead to make the sterling paper convertible into bills upon England only. The technical problem of expressing this form of obligation precisely and without ambiguity created a further difficulty and was in part the cause of the later rejection of the notes in the colony.²

Two other communications on this subject were received by the Colonial Office. These were a memorandum, dated 16 April 1829 written by the former colonial secretary, Plasket - also now in London - and an unsigned note of no address, dated 28 April, authorising the adoption of Plasket's proposals. There is no indication whether Plasket's memorandum had arrived unsolicited, nor whether it had been addressed in the first instance to the Treasury Board or the Colonial Office. The authority of the other note appears to be that of the Treasury Lords for only they could have borne responsibility for such a decision.

Plasket's memorandum concerned the introduction of a sterling paper currency in the colony. He recommended water-marked paper and notes similar to those recently designed for New South Wales, in units of £1, rather than 15s/= or £1-1-0, notwithstanding the rixdollar fraction contained in one pound.³ As an alternative he suggested that the notes should bear a value expressed in pounds and guilders, rather than pounds and rixdollars. A guilder equalled sixpence so that there were forty in one pound, eliminating the problem of fractions. He explained that the guilder was generally used in "all sales, Mortgages, and Transfers of landed property at the Cape," and was thus a familiar unit to the Dutch inhabitants. He advised the same dual form of obligation as Bourke had suggested, namely that

1. Ibid.

2. Infra, p. 196.

3. £1 equalled 13 ¹/₃ rixdollars, 15s/= equalled 10 rixdollars, and £1-1-0 equalled 14 rixdollars.

the government should pledge to pay the value of the note in British silver or in Treasury bills. Finally Plasket expressed surprise that an amount of £199 000 should be required in sterling paper for the Cape. At the time of his departure from the colony a year previously there had been only 1 900 000 rixdollars still in circulation.¹ An amount of £142 500 would be necessary for the replacement of this sum. Plasket therefore advised strongly against sending more than £150 000 to the colony in sterling notes.²

The interference by Plasket and Bourke in London was to prove crucial. Had the Treasury Board sent £199 999 in notes convertible into coin, as originally planned,³ the Council of Advice would have been able to put them into circulation at once and initiate the final withdrawal of rixdollars as early as 1830. In the event however, Plasket's views were accepted in principle.⁴ The amount of sterling paper to be sent to the colony was reduced from £199 999 to £160 000 and the curious novelty of stating the value in pounds and in guilders was adopted.⁵ Both of these changes were to have far-reaching consequences. In combination with the ambiguous terms of obligation expressed on the notes, they were to give justification to the Council of Advice for refusing to circulate the issue in the colony.⁶

In April 1829 Courtenay received new instructions for the preparation of sterling notes in accordance with the latest decision of the Treasury Board and the Colonial Office.⁷

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1. Plasket was unaware that in the interim more coin had left the colony and more rixdollars had been put back into circulation.
 2. C.O. 48/132, Memorandum on Sterling Paper Currency, initialled R.P., 16/4/1829.
 3. Supra, p. 190.
 4. C.O. 48/132, Unsigned note, no address, 28/4/1829.
 5. Plasket had suggested that the views of Lord Charles Somerset, Sir Richard Bourke, and an 1820 Settler then in London, Mr. Biggar, should be sought on this point, but the Colonial Office had dismissed the idea.
 6. Infra, p. 196.
 7. C.O. 49/22, Hay to Courtenay, 30/4/1829, enclosing a specimen note.

The consignment of notes in denominations of £1, £5, £10, £20, £30 and £60,¹ was ready by December 1829 and arrived at Cape Town in April 1830.² This was 3 years after Plasket and Bourke had first suggested a sterling paper currency.³ It is of interest that the idea had originated with them because their interference in the question in 1829, when both had left the colony and resigned from office was to result in the rejection of the notes at the Cape.

In Cape Town the Council of Advice learned of the issue of sterling promissory notes at a meeting held on 5 April 1830. The currency question had already been under their consideration during the preceding fortnight, because of extensive fraudulence detected during the replacement of rixdollars in 1828 and 1829.⁴ In a specially prepared memorandum the colonial secretary, Bell, had reported to the council on 25 March 1830, that an excess of 293 165 rixdollars had been discovered, in notes varying from 40 to 50 rixdollars.⁵

The council had called for a full-scale enquiry and at the two following meetings a number of witnesses had been examined.⁶

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1. Cf. Arndt, Banking and Currency, p. 63, n. 12, where it is stated that "the Treasury at first refused to have notes for less than £200 made payable in bills..." In a subsequent issue only notes of £20 or more were payable in Treasury bills. *Infra*, p. 202.
 2. C.O. 48/132, Waterfield to Hay, 3/12/1829. C.O. 49/23, Murray to Cole, 2/12/1829. C.A. G.H. 22/1, Courtenay to Cole, 2/2/1830. The notes had been engraved by Messrs Halfhide, Barnes and Co., whose account for £151 - 9-6, chargeable on the colonial government, was enclosed with Courtenay's letter.
 3. *Supra*, p. 183.
 4. *Supra*, p. 187, ns. 5 and 6.
 5. C.O. 51/18, Minutes, 25/3/1830.
 6. C.O. 51/18, Minutes, 29/3/1830 and 1/4/1830. Those examined were John Marshall, president of the Lombard Bank; G.H. Maasdorp, one of the bank directors; Robert Crozier, post-master general and a former bank cashier; James Horne, deputy assistant commissary general; B.J. van de Sandt, compositor in charge of the government press; J.W. Stoll, receiver general and himself a member of the Council of Advice.

Evidence had shown that the old cartoon currency facilitated fraudulence. Notes torn into two or more pieces were regularly accepted by the bank and the receiver general's office, as were half-notes, without any security against the subsequent presentation of the other half.¹ Notes of different values had sometimes been made similar in form, colour, size, date, and the order of officials' signatures, rendering it relatively easy to alter the face value of a note.² Even bank officials were sometimes unaware of the marks of identification of different notes.³

The witnesses had all expressed surprise at the extent of fraudulence uncovered, but were not incredulous. One stated that falsified notes "might have passed through the Bank to any amount whatever from the impossibility of detecting them."⁴ It had not even been customary to keep a register of all notes destroyed or cancelled. This in itself was a situation open to abuse and error.⁵

Witnesses had been in agreement that the new red-stamped currency⁶ was less liable to fraudulence (though it was suspected to be more readily forged); and also that the old currency still in existence was in a deplorable state.⁷ In view of this the Council of

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1. C.O. 51/19, Appendix E3 and E6, Evidence of Crozier and Stoll.
 2. E.g. In 1817 notes worth 1 rixdollar and 2 rixdollars respectively had been printed almost identical in form to an earlier issue of notes worth 200 rixdollars each. C.O. 51/19, Appendix E3, Evidence of Crozier.
 3. C.O. 51/19, Appendix E1, Evidence of Marshall.
 4. C.O. 51/19 Appendix E3, Evidence of Crozier.
 5. The carelessness and confusion attendant upon the destruction of worn currency was such that in the later replacements of 1828 some 20 000 rixdollars in the new red-stamped notes had been burnt in error! C.O. 51/18, Memorandum on the present state ... of the Paper Currency ..."; C.A.. C.O. 5973, p. 186, Blue Book 1830.
 6. Supra, p. 187.
 7. By the time it was destroyed it was "in many instances in a putrid state, and in all scarcely to be decyphered," C.O. 51/19, Appendix E1, Evidence of Marshall. At the commissary it was sometimes "received in a state so rotten that in opening the Chest maggots have been found creeping in it, and although condemned as unfit for circulation the best part of it had been picked out and re-issued," C.O. 51/19, Appendix E4, Evidence of Horne.

Advice had decided to continue the replacement of worn currency with the new red-stamped notes. It was at this stage that they learned of the consignment of British Sterling notes which had been received in the colony. The two questions of fraudulence and the introduction of a sterling paper currency merged into one, for the purposes of the council. At their meeting on 5 April the council received a second memorandum on the currency, giving statistical backing to the earlier allegations of fraudulence, and also the despatch from London about the new promissory notes. The governor Cole, pointed out that an amount of approximately £190 000 would be required to replace the rixdollar circulation augmented as it clearly was by falsified money. But the Treasury had supplied only £160 000. Consequently, only a partial replacement of rixdollars would be possible and "there would be passing current in the colony, at the same time, two species of paper money, differing in denomination and character,"¹ Moreover, Cole said that in his view the terms of payment expressed on the new promissory notes were ambiguous. He had therefore invited a number of businessmen and others to attend the council in order to see a note and explain their understanding of the terms of obligation it carried, namely that,

"The government of the Cape of Good Hope promises to pay the bearer on demand Five Pounds Sterling in exchange for Bills on His Majesty's Treasury on the same terms as British silver money."²

Evidence was heard from eight persons altogether at two council meetings.³ Without exception witnesses admitted that the terms of payment were confusing and appeared to mean that "the holder of (the note) will receive £5 sterling on presenting it, together with £5 worth of Bills on the Treasury, to the proper officer of the government."⁴

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1. C.O. 51/18, Minutes, 5/4/1830.
 2. C.O. 51/18, Minutes, 5/4/1830.
 3. Those interviewed by the council were S.B. Venning, William Gadney, Thomas Sutherland, George Thompson and James Nisbet, all merchants; Clarke Burton, master of the Supreme Court, Anthony Oliphant, attorney general; and William Petrie, deputy commissary general.
 4. C.O. 51/19, Appendix E21, Evidence of Oliphant.

But this was an absurdity; "the issue of such a note... would cause great inconvenience as it is liable to many constructions."¹

After hearing evidence on the terms of obligation, the council summarised their views on the two related questions of the fraudulent rixdollar currency and the issue of sterling paper notes. It was agreed that fraudulence was probably the cause of "the great excess which has been detected in certain classes of notes of high value"; and that the British promissory notes could not be issued because of the ambiguous terms of payment and also because the amount supplied was inadequate to effect a complete withdrawal of the rixdollar currency. The question should be referred again to London. Meanwhile, the remaining rixdollars printed on old cartoon paper should be withdrawn and replaced by new red-stamped notes.² This decision is significant because it reveals the effect of the interference of Bourke and Plasket in 1829.³

The council decided to recall all the old cartoon rixdollars before the end of July 1830, and replace them with red-stamped notes.⁴ Precautions were also taken against the former practice of accepting torn notes.⁵ A large quantity of the old paper was brought in during 1830 - more in fact than had been expected!⁶ But the period of three months proved too short for the recall of the entire issue, especially in the remote frontier districts⁷ and frequent extensions of time were

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1. C.O. 51/19, Appendix E17, Evidence of Gadney.
 2. C.O. 51/18, Minutes, 8/4/1830.
 3. Supra, p. 192.
 4. Gazette, 16/4/1830, Govt. Proc.
 5. Gazette, 30/4/1830, Govt. Proc. forbidding public offices to accept torn notes, "except such Notes as may be cut diagonally ... for the convenience of transmission by Post.!"
 6. By November 1830, 425 000 rixdollars had been replaced and 135 000 rixdollars in old notes destroyed and not replaced. Many old notes were still in circulation and further excesses due to fraudulence had been detected. Gazette, 29/4/1830; 30/6/1830 and 4/11/1830.
 7. C.A. C.O. 3946/227, Memorial of A. Chiappini and C.O. 2/7/1830; requesting more time for the recall of old cartoon rixdollars from their clients in the interior districts of Graaff Reinet and Uitenhage.

required. The last of the old cartoon notes were destroyed as late as 1841 when the final withdrawal of rixdollars took place.¹

The recall of the old cartoon paper revealed further fraudulence,² and in the following year, 1831, it was also discovered that the new red-stamped notes were being forged on a large scale.³ The problems of forgery and fraudulence did not come before the Council of Advice again, but continued to harass the government. In an attempt to make the red-stamped currency less liable to forgery, black lettering was super-imposed on the red, in issues printed from 1831 onwards.⁴ In 1835 it was discovered that forgery had continued in spite of the government's vigilance. Accordingly it was decided in Cape Town to withdraw from circulation all red-stamped notes issued between 1828 and 1830, i. e. before the black lettering had been added to the design.⁵ Later that year the secretary of state directed that all rixdollars should be withdrawn and provision was made accordingly. From July 1836 rixdollars ceased to be legal tender in the colony, but could be exchanged at the receiver general's office for sterling notes. In January 1831 it was advertised that the period for exchanging rixdollars for sterling would cease on 31 March, 1841.⁶ As a currency of account rixdollars continued in use for some years more. Arndt states that,

For a long time, however, the old mode of reckoning in rixdollars, shillings and stivers prevailed amongst the Colonists, and in the two Republics, also in biddings at sales and auctions."⁷

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1. Gazette, 14/5/1841, Govt. Proc. An amount of 18 082 rixdollars in old notes had also been destroyed in 1835. Gazette, 9/10/1835, Govt. Proc.
 2. C.O. 48/135, Cole to Murray, 12/5/1830. C.O. 48/136, Cole to Murray, 26/9/1830, reporting that the excess of fraudulent notes detected so far amounted to 514 185 rixdollars, which was 221 185 rixdollars more than had been reported in May.
 3. Gazette, 5/8/1831, Govt. Notice.
 4. Ibid.
 5. Gazette, 30/10/1835, Govt. Proc. Gazette, 20/11/1835, Govt. Notice.
 6. Gazette, 15/1/1841, Govt. Proc.
 7. Arndt, Banking and Currency, p. 65.

The final official figure given for falsified rixdollars detected during the transition to British sterling was 499 873 rixdollars.¹ Of this amount 12 022 rixdollars were destroyed and not replaced, and the remaining 487 850 rixdollars were converted into British promissory notes.² The sterling paper currency proved more difficult to forge and the government was no longer troubled with this problem on a large scale once sterling notes were generally in use. Adequate precautions were also introduced for more regular procedures to be followed in the cancellation and destruction of notes.³

Although the problem of fraudulence did not concern the Council of Advice after April 1830 the question of issuing sterling notes, and its corollary, the withdrawal of rixdollars remained before them. Following the decision of 8 April 1830 to refer the matter of sterling promissory notes back to London for further consideration, the council at its next meeting, prepared a statement elaborating their decision. They considered it necessary that any paper money intended to replace rixdollars should bear a distinct pledge of convertibility into coin or Treasury bills, and that the procedure to be followed in exchanging notes for Treasury bills should be clearly defined. Such notes should be signed by a government officer, who would himself bear responsibility for the fulfilment of the obligation should the government not meet this. Notes to the value of at least £ 170 000 would be necessary, to replace the rixdollar circulation, and should be printed in denominations of £2, £5, £20 and £50. Lower denominations were not considered desirable, as there was sufficient British coin in circulation to provide for smaller amounts. The council were emphatic that the value of notes should not be expressed in Dutch money,

"Since any such expression will only tend to perpetuate a feeling of dissatisfaction which would otherwise cease to exist in a few years. The Guilder, moreover, is

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1. C.A. C.O. 5995, Blue Book, 1852, p. 308. Amount of Government Paper Money in Circulation.
 2. Ibid.
 3. C.A. C.C. 5978, Blue Book, 1835, p. 147, Amount of Paper Currency in circulation.

only known in the purchase, sale or mortgage of immoveable property, and never in mercantile or other common transactions of the day."¹

It was considered "absolutely necessary" for the colonial government to have authority to replace worn currency as the need arose, without prior reference to London.²

The council supported their views with a reference to the Treasury Minute of 11 February 1825,³ and other earlier documents. They also recalled the public irritation over the rate of exchange of 1/6d, and suggested that it was essential to guard against further cause for dissatisfaction on currency matters, which continued to provoke widespread interest.

"It is well known that the public watches with the utmost jealousy and circumspection every measure relating to the Paper Currency which can by possibility lead, however indirectly, or in what ever degree to its future depreciation."⁴

Cole informed the secretary of state of the council's decision regarding the sterling promissory notes in May 1830, at the same time as he described the extent and diversity of fraudulent practices. He explained why the council had decided against issuing the notes and enclosed copies of the minutes and other relevant material.⁵ In September Cole wrote again on the question of fraudulence.⁶ Copies of both of these letters were sent from the Colonial Office to the Treasury Board and initiated a lengthy correspondence.⁷ The Office of Colonial

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1. C.O. 51/8, Minutes, 15/4/1830.
 2. Sterling notes were first issued in the colony in 1832 and the first replacement of worn notes was in 1836. Gazette, 19/8/1836, Govt. Proc.
 3. Supra, p.141. The Treasury Minute had stated that it would be impossible to introduce a metallic currency without providing for the replacement of the rixdollar currency either in coin or in Treasury bills.
 4. C.O. 51/18, Minutes, 15/4/1830.
 5. Supra, p. 195. C.O. 48/135, Cole to Murray, 12/5/1830.
 6. C.O. 48/136, Cole to Murray, 26/9/1830.
 7. C.O. 49/24, C.O. 48/137, C.O. 48/145, passim.

Audit was also brought into the picture for the first time and expressed surprise at some of the earlier proceedings.¹ It took twelve months of interdepartmental negotiation before arrangements for a new sterling paper currency were finalised by the three departments concerned.

The first question to be settled was whether sterling notes should be made available to replace the entire rixdollar circulation including the excess due to fraudulence.² The Treasury Board agreed to do this, but suggested that the transition should be accomplished gradually, rather than by means of a large-scale recall of rixdollars within a limited period of time.³

Because of Hay's diplomacy in stressing the question of fraudulence and the excess of rixdollars, the problem concerning the terms of obligation on the sterling notes appeared to be of only secondary importance.⁴ Nevertheless, the Treasury Board dealt with this question as early as November 1830. They decided that notes of small denominations should not be made convertible into Treasury bills but should bear a statement that "they will be received at any time in payment of the Colonial Revenue for the sum in Sterling specified thereon."⁵ They therefore directed that the entire issue of notes prepared in 1829 should be cancelled. The decision to issue two kinds of sterling notes may have been a face-saving move for the Treasury Board. They adhered to their resolution despite pressure from both the Colonial Auditors and the Colonial Office to make the entire issue convertible into Treasury bills.⁶ In support of this view

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1. C.O. 51/27, Appendix A, Byng and Conroy to the Treasury Lords, 7/2/1831.
 2. C.O. 49/24, Hay to Stewart, 30/9/1830. C.O. 48/137, Stewart to Hay, 8/10/1830. C.O. 49/24. Hay to Stewart, 9/10/1830 and 15/12/1830.
 3. C.O. 48/137, Stewart to Hay, 24/11/1830. C.O. 48/145, Stewart to Hay, 12/4/1831.
 4. Hay had written concerning the terms of obligation, "... Cole will receive such explanation from the Secretary of State as will effectually clear up that point..." C.O. 49/24, Hay to Stewart, 30/9/1830.
 5. C.O. 48/137, Stewart to Hay, 24/11/1830.
 6. C.O. 51/27, Appendix A, Byng and Conroy to Treasury Lords, 7/2/1831. C.O. 49/24, Hay to Stewart, 3/6/1831.

it was pointed out that the Treasury Board itself had guaranteed this in 1825, and that such a move would decrease the risk of future depreciation in the colony.¹ However, the Colonial Auditors were subsequently won over to the Treasury's point of view, and in June 1831² they recommended that notes of £20 and more should be convertible into Treasury Bills, and notes of £10, £5, and £1 should be non-convertible. They also suggested what proportion of each type of note should be sent to the colony. More than half were to be in notes above £20. In this way the officers of Colonial Audit offered, as their own, ideas which had already been worked out by the Treasury Lords, who were able, then, to accept the proposals and recommend them to the Colonial Office once again. No one had lost face and the additional delay had not been considerable - only a few more months added to the negotiations which had already been seriously under way for two years (March 1829 - June 1831), but which had been brought to the attention of the Colonial Office and Treasury Lords some five to six years previously.

The office of Colonial Audit also showed great concern over the "marked carelessness" which had pervaded all currency transactions in the colony, particularly in the mode of destroying worn notes. They suggested improved procedures for checking fraudulence and for the destruction of worn paper. These were adopted in the colony.³

Plans to provide a new sterling paper currency for the Cape were finalised in July 1831, and the colonial agent, Courtenay, was once again instructed to arrange for the notes to be printed.⁴ Notes to the value of £205 000 were to be provided, enough to replace the entire rixdollar circulation. Of this amount £112 000 were to be

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1. C.O. 51/27, Appendix A, Byng and Conroy to Treasury Lords, 7/2/1831.
 2. C.O. 51/27, Appendix A, Byng and Conroy to Treasury Lords, 21/6/1831.
 3. Gazette, 13/7/1832, Govt. Proc. These regulations were superseded two years later. Gazette, 24/10/1834, Govt. Proc.
 4. C.O. 49/24, Hay to Courtenay, 9/7/1831.

convertible into Treasury bills in denominations of £20, £50, and £100 and the remaining £93 000 were to be in notes of smaller denominations and were non-convertible, but were to be acceptable in payment of colonial revenue. The value of the notes was to be expressed in sterling only.¹ The terms of obligation on the note stated simply that they were exchangeable for Treasury bills on the same terms as British silver coin.²

Details of the new sterling paper currency were despatched to the governor of the Cape in July 1831 (in reply to his letter of May 1830) and the notes themselves were ready for transmission by September 1831.³ They arrived in the colony in January 1832 and once more the currency question came before the Council of Advice, who again found themselves unable to accept the proposals of the Treasury Board without further reference to London. At a meeting held on 6 February 1832 the governor Cole, sought the council's opinion on the expediency of issuing those notes which "were receivable only in payment of Colonial Revenue."⁴ The question was most carefully considered by the council, with reference back to the statement prepared the previous April.⁵ The main principle enunciated then was re-iterated, namely that any paper money issued in place of rixdollars "ought to bear a distinct pledge of its convertibility... into Metallic Money, or into Bills on His Majesty's Treasury." Nevertheless, the council considered that sufficient security would be provided if the entire sterling issue were made convertible into Treasury bills. They expressed appreciation for the support given by the secretary of state and Colonial Auditors on this point,⁶ which,

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1. Cf. The value expressed in Dutch guilders on the notes prepared in 1829. *Supra*, p. 191.
 2. C.O. 51/27, Appendix A, Byng and Conroy to Treasury Lords, 7/2/1831 and 21/6/1831.
 3. C.O. 49/25, Goderich to Cole, 12/7/1831 and Goderich to Cole, 1/9/1831.
 4. C.O. 51/26, Minutes, 6/2/1832.
 5. *Supra*, p. 196. C.O. 51/18, Minutes, 15/4/1830.
 6. *Supra*, p. 200.

they emphasised, was an indispensable safeguard against further depreciation. The council therefore, could not see their way clear to issuing the non-convertible notes, i.e. the amount of £93 000 in denominations of £1, £5, and £10. It was further pointed out that if both types of sterling note were issued and the replacement of rixdollars undertaken only gradually, as suggested by the Treasury Board, three varieties of paper money would be passing current in the colony at the same time. Of these, only two kinds would be legal tender¹ and the council foresaw that,

"The Merchants will most certainly refuse paper with which they can procure neither Bills nor money, - and the Inhabitants will not take that which the Merchants refuse (and notes will be) forced back to the place of their issue, as fit for one purpose only out of the many for which paper money is useful and requisite. ... The purpose for which the paper was issued will be scrupulously kept in view by the people, who will pay their taxes and duties in paper of the smallest real value to them."²

Other consequences of issuing the non-convertible notes were also predicted, notably a general rise in prices, and the increased circulation of rixdollars which would lead to their rapid deterioration and defacement.

Once more the council pleaded for the fulfilment of the "recorded engagement entered into by the King's Government in 1825", which, "unsought for by the Colonial Government (had) emanated entirely from the Home Government without even a reference being made to the local government on the subject." Recommendation was made to the governor,

"to refrain from issuing any portion of the new paper money which consists of notes under £20 each in value, until a communication shall have been made by His Excellency to His Majesty's Government on the subject and their final decision made known."³

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1. i.e. The new sterling notes and the red-stamped rixdollar notes, both of which were convertible into Treasury bills. C.O. 51/26, Minutes, 6/2/1832.
 2. C.O. 51/26, Minutes, 6/2/1832.
 3. Ibid.

Cole followed this advice. He withheld the non-convertible notes and explained to the secretary of state that he had done so on the advice of the council, whom he had consulted because he had feared "a dissatisfaction" over the non-convertible notes. He had feared that their introduction in the colony would have created "a feeling of distrust for His Majesty's Government" which would have proved difficult to eradicate. He wrote,

"It would have been competent for me to ascertain the public feeling in regard to the smaller notes, by the introduction of a portion of them into circulation, but I trust your Lordship will admit that the dignity and character of His Majesty's Government ought never to be hazarded by having recourse to an experiment of the kind."¹

In the event of the Treasury Board requiring the non-convertible notes to be put into circulation alongside the other notes, Cole asked for "precise instructions whether and in what terms they are to be declared legal tender."²

Cole's despatch was received at the Colonial Office in May 1832, and the Treasury Board was immediately furnished with a copy.³ Three months later the Treasury Board decided that the entire sterling issue for the Cape should be exchangeable for Treasury bills. But they had decided to reduce the total amount of notes in small denominations for £93 000 to £75 000, in order to enforce a reduction in the paper currency of the colony.⁴ For the third time the colonial agent, Courtenay, was directed to have notes prepared for the colony.⁵ These were ready by November 1832, and were received at the Cape in March

1. C.O. 48/146, Cole to Goderich, 2/3/1832.

2. Ibid.

3. C.O. 49/24, Hay to Stewart, 10/5/1832.

4. The Treasury Board had learned that earlier instructions for withdrawing rixdollars from circulation had been disregarded in the colony because of a shortfall in revenue. C.O. 48/142, Cole to Goderich, 3/5/1831. C.O. 49/25, Goderich to Cole, 28/8/1832.

5. C.O. 49/24, Hay to Courtenay, 22/8/1832.

1833.¹ Two months later, in May 1833, 3 000 notes of £1 each from this consignment were put into circulation in place of 40 000 worn rixdollars.² The following month another amount of £3 000 was issued, in notes of £5 denomination, and in October the first batch of £10 notes was released for circulation.³

The proposal for a sterling paper currency for the colony had first been made in 1826.⁴ The first sterling notes had been received in 1830, but had not been put into circulation.⁵ From the batch of notes received in January 1832 only that portion that was convertible into Treasury bills had been accepted and the first of these had been issued in July 1832 in denominations of £50 and £20, to replace 180 000 rixdollars worn currency.⁶ Further issues of these notes, in denominations of £20, £50, and £100, had increased the sterling paper in circulation to £24 000 by the time that the new notes of smaller denomination were added.⁷ By the end of 1833 a further £15 000 in notes of smaller denominations had brought the total sterling paper circulation to £39 000.⁸ During the following years the replacement of worn rixdollar notes by the sterling notes continued steadily. The first replacement of sterling notes took place in 1836 when an amount of £3 000, in denominations of £50 and £100, was replaced by a further issue of £10 notes, vindicating the council's earlier insistence on the right to decide locally when notes needed to be replaced, without prior reference to Britain.⁹

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1. C.O. 49/24, Hay to Courtenay, 6/11/1832. C.O. 48/149, Cole to Goderich, September 9/3/1833.
 2. Gazette, 17/5/1833, Govt. Proc.
 3. Gazette, 28/6/1833 and 11/10/1833, Govt. Procs.
 4. *Supra*, p. 183.
 5. *Supra*, p. 196.
 6. Gazette, 27/7/1832, Govt. Proc.
 7. Gazette, 16/11/1832 and 22/3/1833, Govt. Procs.
 8. Gazette, 6/12/1833, Govt. Proc.
 9. Gazette, 19/8/1836, Govt. Proc. *Supra*, p. 199.

By 1839 a total sum of £202 698 had been issued in the colony in sterling notes. In the four years that followed no further issues were made, and an amount of £131 612 was withdrawn from circulation, in part on account of the long outstanding issue of one million rixdollars made by the British government between 1810 and 1814.¹ In 1843 the guarantee of the British Government for convertibility of the sterling notes, for which the Council of Advice had held out so tenaciously, was removed. The notes would continue,

"to be received into, and paid out of the Commissariat Chest ... at their full Sterling Value, ... and continue to be received in exchange for such Bills upon Her Majesty's Treasury as the Officer in charge of the said Chest may require, and be held and considered in every respect as specie ..."²

But the Treasury guarantee was withdrawn and convertibility was henceforth to be provided by the colonial government. The notes still bore the original obligation which had been devised after months of negotiation between the colonial government, the Colonial Office, the Treasury Board and the Colonial Auditors. But, by proclamation, they became exchangeable for "Specie on demand at the Colonial Treasury", or for government debentures bearing interest at the rate of 5%.³

The currency question is illuminating in many ways as far as the Council of Advice is concerned. Although metallic money had been in existence in the colony in small quantities prior to 1825, and several large sums had been sent to the colony after 1825 in order to provide for the transition to sterling currency as determined by the Treasury Board, the quantity of coin had not proved adequate for the withdrawal of rixdollars. Both Plasket, with his wide experience in colonial affairs

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1. Supra, p. 136.
 2. Gazette, 17/11/1843, Govt. Proc.
 3. Ibid.

and Bourke, clear sighted and practical, had each made an early appeal for a sterling paper currency to be issued for the colony. Misunderstandings, procrastination, especially on the part of the Treasury Board, and delays in communication (by Cole and the Treasury Board in particular) had drawn out negotiations on this question for six or seven years. But behind much of the difficulty lay the novelty of the situation, and the lack of experience and precedent for the kind of policy-making and implementation that was being undertaken. Never before had the British government attempted to deal with the problems of colonial currency in anything more than a piecemeal fashion. In 1825 the decision had been made to introduce a common currency throughout the empire. But the range of the difficulties to be encountered, even in one colony, had not been foreseen, although in Britain itself the return to a convertible currency after the war years had been a complex procedure.¹

There was, moreover, an understandable reluctance on the part of the Treasury Board to undertake full responsibility for colonial currency, because of the close link between currency and problems of revenue. At the Cape the issue of a paper currency had usually been associated with emergency expenditure. The regular shortfall of revenue meant that there was no margin of safety for meeting the frequent crises that occurred through drought, storm, flood and crop disaster. Without any resources to cushion them against unexpected exigencies the government had generally fallen back on the expedient of creating new issues of paper money. Thus Treasury fears of further augmentations were valid in the light of previous experience. These fears are also more readily understood in view of the stringent financial position of Britain herself in the three decades after the war against France.² To the Treasury Board it was both reasonable and justifiable to limit the commitment and

1. *Supra*, pp. 130-1.

2. J. H. Clapham, An Economic History of Modern Britain, 1820-1850 (Cambridge, 1959), pp. 317-9.

responsibility for colonial currency.

Yet in a colony where the action of the Treasury Board in fixing the rate of the rixdollar at 1/6d had already caused dissatisfaction and protest, the attempt to limit responsibility by issuing non-convertible notes carried with it an element of risk, both in terms of renewed protest and in terms of further depreciation. In this situation Cole, as governor, showed wisdom in consulting the Council of Advice, rather than assuming sole responsibility for implementing instructions from the Treasury Board.

Both Bourke and Cole had found it necessary to refer the currency question to the Council of Advice. Bourke had done so because there had been no response from Britain to his frequent and urgent appeals for a sterling paper currency to supplement the coin provided for the colony. Cole had done so because he considered it necessary to reject the sterling notes prepared in London for use at the Cape. In seeking the council's advice Cole had been able to give added weight and authority to his own opinion. This manoeuvre illustrates the way in which a cautious, or skilful, governor might use the conciliar system not only to create a buffer between himself and the local inhabitants but also as a means of strengthening his hand against his superiors in London when necessary. Both governors had also seen the value of calling in experts and taking their evidence before putting forward resolutions from the Council of Advice to the Colonial Office in London. The point is significant for it illustrates the suggestion made above that an advisory council could serve in a capacity very similar to that of a commission of inquiry.¹

The situation also reflects the influence which could be brought to bear upon the authorities in Britain when a governor and his council were in agreement. The Treasury Board yielded in this instance on a question which they had already deliberated at great length.

1. Supra, p. 94.

The currency question had been thrust on the Council of Advice initially, and in the passing of the ordinance for making British silver money a legal tender in the colony the Council is seen acting as an administrative body, implementing policy devised in Britain, upon which their advice had been neither sought nor given. In its handling of the protests that resulted from the fixing of the rate of the rixdollar at 1/6d, the council is seen as an intermediary between the colonists and the distant governing bodies in Britain. Members of the council had been placed in an ambivalent and embarrassing position as they were generally sympathetic to the protestors and, in some cases, officially associated with them. When the Council had proved impotent to help, the colonists had sought assistance elsewhere, although to no avail.

In handling the question of re-issuing rixdollars, necessitated by the neglect of the Treasury Board, the council had acted quickly and efficiently, instituting a thorough enquiry into the state of the paper money. On the question of British promissory notes the council appears to have acted in the interests of the colonists, and of the colony as a whole, even when this meant opposing decisions made in London.

A review of the council's concern with the currency question over some seven years shows a marked change in attitude during this period. In 1825 when they had been required to implement the Treasury Minute of February that year, they had accepted because they argued that they had no discretion.

"As the proposed Proclamation [to fix the rate of the rixdollar at 1/6d] merely gives effect to the commands of His Majesty's Government the Council are of opinion that no discretion is left with them on the subject and that the Proclamation be therefore published."¹

But in 1832 when they had been required to introduce a non-convertible paper currency in the colony the council had taken quite a

1. Supra, p. 142, C.O. 51/1, Minutes, 6/6/1825.

different stand.

"The Council does not presume to enquire into the motives which may have led to the measure of dividing the paper Currency into two portions, bearing unequal obligations and confessedly of probable unequal value. They conceive that no motive of expediency, no fear of consequences, ought to interfere with the fulfilment of a recorded engagement entered into by the King's Government in 1825, in regard to the circulating medium of this colony. That engagement was unsought for by the Colony; it emanated entirely from the Home Government without even a reference being made to the Local Government on the subject; and the Council can only repeat their conviction that the intended measure particularly in regard to the smaller sterling notes, will create universal dissatisfaction throughout all classes of the Colonists and put an end to all confidence in the Home as well as in the Colonial Government."¹

And they had advised the governor not to issue the notes of smaller denomination. It is true that on this question the council were referring back and taking a stand upon engagements made by the British government in 1825. Yet it is also clear that by 1832 council members were more independent in the assertion of their views, and much bolder in opposing instructions from Britain. It is noteworthy that the three council members who had served continuously from 1825, Bell, Truter and Stoll, gave a lead in this regard. Indeed it was through Bell's initiative that the statement concerning the council's views on the colony's currency was drawn up in April 1830, following the investigation into the extent of fraudulence in the colony.² With increased self-assurance after some years' experience on the council, and with their courage and conviction strengthened by successful opposition on a variety of other questions³ council members had a greater degree of confidence in exercising their powers in 1832 than they had had in 1825. Though it must remain unanswered, it is tempting to ask whether the Council of Advice would have dealt more authoritatively and more independently with the question of the fixed rate of the rixdollar, upon which most members held strong convictions in disagreement with the view of the Treasury Board, if this aspect of the currency question had been presented to them at a later date, and not at the second business meeting held by the new Council of Advice in 1825.

1. C.O. 51/26, Minutes, 6/2/1832. *Supra*, p. 203.

2. C.O. 51/18, Minutes, 25/3/1830. *Supra*, p. 196.

3. E.g. Questions of the slave tax, and the corn laws, *infra*, Chs. 6 and 7.

Chapter 6
British Slave Policy and its Implementation
at the Cape of Good Hope.

In 1832 the secretary of state, Goderich, wrote to Cole, the governor of the Cape,

"Slavery is in itself an institution essentially opposed to justice, - and therefore, to sound national policy: ... the relation of Master and Slave, though tolerated for a time, must be dissolved throughout the British Empire ... The Lawgiver is to reconcile things which are in themselves incompatible. He is to enforce justice, and at the same time, to uphold a system which is acknowledged to be unjust. He is to maintain that domestic authority without which Slavery would be but a name; while he is gradually to prepare the way for the ultimate removal of those foundations on which the authority rests."¹

This statement reflects the essential dilemma that confronted the British and colonial governments in the decade 1823 to 1833, as a programme of slave amelioration was developed and implemented, in preparation for the tremendous step of abolishing slavery throughout the empire. Once it had been acknowledged that the institution of slavery was unjust and immoral, reconciliation between the interests of slaves and slave owners had become virtually impossible. There was moreover an essential contradiction in the fact that from 1772 slavery had been declared illegal in Britain in terms of Mansfield's judgement in the *Somerset Case*,² and yet continued "perfect in every part" in those parts of the empire where time-honoured custom had made it an inherent part of the social and economic pattern.³ This was the crucial dilemma which had been exposed in the sixty years from 1772 and which

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1. C.O. 49/25, Goderich to Cole, Sep. 29/2/1832.
 2. W.C. Costin and J. Steven Watson, The Law and working of the Constitution: Documents, 1660-1914, 2 Vols. 2nd Ed., (London, 1962), Vol. I, p. 315, Mansfield's judgement in the *Somerset Case*.
 3. *Ibid*, Vol. II, pp. 256-9, The Case of the Slave Grace, in the King vs. John Allan, 1827.

Goderich was clearly facing and enunciating in unmistakable terms for Cole in 1832.

At the Cape the conflict was not only one between the opposing interests of two groups of people, but also involved an economic threat in a colony already suffering from a devalued currency, an unfavourable trade balance and an inadequate revenue. In addition the implementation of slave policy took place during a transitional stage of constitutional development at the Cape. The problems of slavery came before the Council of Advice at its inception in May 1825 and were also discussed at the council's final meeting in January 1834. During the intervening years many constitutional issues latent in the conciliar system were forced into the open by questions of slavery. The topic of slavery is then important per se; it is also important to any consideration of the role of the Council of Advice. Among the many issues raised was the central one of the governor's right to legislate without the consent of the Council of Advice.¹

The British campaign against slavery lasted some sixty years and depended for its persistence and much of its strength on evangelical reformers both inside and outside of parliament. Their skill in organisation and propaganda, developed over many years of campaigning, was to have a profound influence on British political life.² By 1833 when the reformed parliament met they were able to ensure an abolitionist majority in the House of Commons and the Emancipation Act was passed in July of that year.³

In Britain the initial impetus towards emancipation had come in 1772 when 14 000 slaves had been freed, following Mansfield's verdict in the *Somerset Case*.⁴ "Behind the legal judgement lay the moral

1. Supra, Ch. 2, passim.

2. R. Cowherd, *The Politics of English Dissent* (London, 1959), p. 63. E.M. Howse, *Saints in Politics* (London, 1953), Ch. 7.

3. 3 and 4 Wm. IV, c. 73.

4. Mellor, *British Imperial Trusteeship*, p. 41. Mansfield's judgement had been anticipated by many years by the ruling of Holt, in the case of *Smith and Brown vs. Others*, that "as soon as a negro comes to England he is free." D. Ogg, *England in the Reigns of James II and William III* (Oxford, 1969), p. 74.

judgement"¹ but no swift or easy plan could eradicate a system so long and deeply embedded in the economic and social structure of the empire. The subsequent campaign had moved in three distinct phases. The abolitionists first sought to end the slave trade. In 1788 William Wilberforce² introduced proposals to this end in the House of Commons. Parliament was, in part, sympathetic, but the West Indian interest was strong and fears of the economic effects prevailed for many years.³ The cause of abolition was impeded during the wars against France but finally in 1807 legislation was passed to end the British slave Trade.⁴

During the second phase, from 1807 to 1823, abolitionists kept a close watch on the implementation of the act and moved for many additional safeguards to ensure its observance.⁵ They also urged statutory enforcement of ameliorative measures put forward by the West Indian interest in the 1790s as an alternative to the abolition of the trade, and subsequently disregarded. Attempts were also made to prevent the further extension of slavery as, for instance, in the case of the Cape when the preclusion of slave labour was written in to land grants to be made to the new settlers in 1820.⁶

By 1823 it was clear that colonial legislatures would not voluntarily adopt an amelioration programme and the Anti Slavery Society was formed in Britain with the explicit aim of mitigating the circumstances of slavery in preparation for emancipation. In May 1823 Thomas Buxton⁷ presented to the House of Commons a series of

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1. R. Coupland, The British Anti Slavery Movement (London, 1933), p. 56.
 2. William Wilberforce (1759-1833) parliamentary leader of the cause of the abolition of the slave trade, 1787-1807; advocate of various other measures concerning slavery.
 3. E. Williams, Capitalism and Slavery (London, 1964) passim. L. J. Ragatz, The Fall of the Planter Class in the British Caribbean, 1763-1833 (New York, 1928), Ch. 8.
 4. 47 Geo. III, session I, c. 36.
 5. E.g. 51 Geo. III, c. 23, which made slave trading an offence punishable by transportation.
 6. Duly, British Land Policy at the Cape 1795-1844, Ch. 6. *Infra*, pp. 366-8.
 7. Thomas Fowell Buxton (1786-1845), leader of the slave emancipation movement in the House of Commons, 1823-33.

resolutions embodying the aims of the emancipists. In a tactical manoeuvre the government adopted these resolutions as their own¹ thus securing support for themselves in parliament and control of the pace of innovation. Even then the task was not easy and this final phase in the campaign against slavery proved also to be the most complex. In the interplay of rival tensions between West Indian and East Indian sugar interests² and between emancipists and planters, the ministry had added to the difficulties of its already insecure position.³ Moreover, throughout the decade public opinion and pressure varied but rarely ceased. Despite political crises and changes in government from 1827 the abolition question remained a live one in Britain. But colonial legislatures remained obdurate in the West Indies and even in colonies of conquest like the Cape the implementation of slave policy devised in Britain was slow and grudging. The imperial government had hoped to avoid the necessity of imperial legislation but by 1833 had changed its view. When the Emancipation Act was enacted in London in July 1833 the initiative and responsibility was taken out of the hands of colonial governments, whether conciliar or legislative, and assumed by the imperial government. It remained for local governments to make provision for the implementation of the act⁴ on lines laid down at Westminster, and to deal with the dissatisfaction of many slave owners, dismayed and disillusioned at the manner of emancipation and the means of compensation.⁵ At the Cape the Council of Advice was presented with the Emancipation Act at its only meeting in 1834, but the implementation of the act became the responsibility of the Executive and Legislative Councils introduced in that year.

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1. Hansard, Parliamentary Debates, New Series, Vol. IX, c. 285-6, Canning's resolutions, 15/5/1823. Howse, Saints in Politics, pp. 156-7. W.L. Mathieson, British Slavery and its Abolition (New York, 1967), pp. 119-24.
 2. Williams, Capitalism and Slavery, pp. 137-8.
 3. A. Briggs, The Age of Improvement (London, 1962), Ch. 4, *passim*.
 4. 3 and 4 Wm. IV, c. 73.
 5. Twenty million pounds was voted for compensation to slave owners throughout the empire. There were many difficulties surrounding the distribution and collection of compensation monies.

Britain's second occupation of the Cape had begun in 1806 so that the colony was in British hands when the slave trade was abolished. Governors of the Cape, unhampered by any kind of local legislature, co-operated readily with the British government to end the trade and prevent smuggling from foreign slave ships.¹ One method of control was the registration of all slaves, a scheme first introduced in Trinidad in 1812.² In 1815 Wilberforce moved in parliament for registration throughout the empire. The proposal was not adopted but the following year the governor of the Cape, Somerset, introduced the scheme locally on his own initiative.³ For this action Somerset received the special approbation of the prince regent.⁴ But slave owners in the colony were slow to comply with the new regulation, in spite of coercive measures.⁵ Similar indifference was manifest in other colonies and in 1819 the British government forced the issue by making statutory provision for duplicate registers to be kept in London.⁶

In 1823 regulations to improve the conditions of slavery were introduced at the Cape, once again in advance of similar measures proposed in London. It has been suggested that by taking the initiative Somerset hoped to forestall the British government and to appease local slave owners, by limiting the scope of amelioration.⁷ But Somerset showed genuine concern for amelioration and, ultimately, emancipation. As early as 1817 he had written,

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1. Foreign slave traders persistently called at Table Bay. E.g. R.C.C. Vol. IX, p. 459, Cradock to Bathurst, 2/4/1814. R.C.C. Vol. XII, pp. 1-4, Somerset to Bathurst, 13/5/1818.
 2. Ragatz, The Fall of the Planter Class in the British Caribbean, 1763-1833, p. 390.
 3. Proclamations, p. 360f, Govt. Proc., 26/4/1816.
 4. R.C.C. Vol. XI, p. 164, Bathurst to Somerset, 6/9/1816.
 5. E.g. Proclamations, pp. 391-3 and 407-10, Govt. Procs., 20/6/1817 and 30/1/1818.
 6. 59 Geo. III, c. 120.
 7. I.E. Edwards, Towards Emancipation: A Study in South African Slavery (Cardiff, 1942), pp. 91 and 95. This view is based mainly on Remarks on the 1823 Proclamation, by Dr. John Philip, who is acknowledged by Edwards to be a partisan critic, and on statements made by the colonial secretary, Plasket, *infra*, p. 224.

"The introduction of a class of Free labourers here will tend more to lessen the value of slaves, and thus by degrees tend to the abolition of this horrid establishment than any other measure or circumstance. Your Lordship will perceive that I could not very properly use this argument in a public despatch and leave it to be read here, where slaves are considered most valuable property."¹

In transmitting the new regulations of 1823 Somerset explained in a private letter to the secretary of state that the moment was favourable for improving the condition of the local slave population, in preparation for the ultimate abolition of slavery in the colony.²

Understandably, the regulations of 1823 were adapted both to the nature of slavery at the Cape and to the temper of local slave owners, who were willing to face gradual amelioration and emancipation. Provision was made for the encouragement of marriage and family life among slaves, and for the possession of private property by them, for the first time; for education and instruction in the Christian faith; for restriction on the hours of daily labour and remuneration for overtime in the ploughing and harvesting seasons; for limitations on the domestic punishment of slaves; and for the admission of slave complaints to the law courts, and the right of all baptised slaves to give legal evidence upon oath.³

On this occasion Somerset's promptitude did not meet with unqualified approval. In July 1823 the secretary of state transmitted to the Cape a circular on slave amelioration prepared for the West Indies as a result of the government's resolutions the previous May.⁴ Bathurst made no comment on Somerset's ameliorative proclamation of March 1823, although this had already reached London. In August

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1. R.C.C. Vol. XI, p. 433. Somerset to Bathurst, 19/12/1817.
 2. R.C.C. Vol. XV, pp. 354-5, Somerset to Bathurst, 31/3/1823. Infra, pp. 217-8.
 3. Proclamations, p. 593f, Govt. Proc., 18/3/1823. In practice evidence was also taken from unbaptised slaves, R.C.C. Vol. XVII, p. 39, Somerset to Bathurst, 31/1/1824.
 4. Supra, p. 214. R.C.C. Vol. XVI, p. 141, Bathurst to Somerset, 21/7/1823.

after receiving the report of the legal adviser, Stephen, on the Cape proclamation Bathurst replied in detail.¹ He gave Somerset credit for his benevolent intention but pointed out that on a matter of such importance and "peculiar delicacy" it was necessary that there should be consistency throughout the empire. The Cape regulations differed in several respects from those recommended for all slave colonies, and Bathurst required that they should be modified to bring them into line with regulations to be introduced elsewhere in the empire.

In reply Somerset gave an assurance of his continuing concern for the welfare of the slave population of the colony but pointed out that there was scarcely any similarity between slavery at the Cape and slavery in the West Indies.² He also explained that when he had drawn up the new regulations in February 1823 he was not aware that "new laws respecting the Slaves were likely to be enacted in the month of June following." Moreover he had ascertained that plantation slavery differed considerably from local slavery and "all Regulations which it will be wise to make, must depend upon local Information and Experience." In view of the great value of slave property to the owners³ he had considered it necessary "to balance any Interference... with their feelings and Authority." Somerset also explained the timing of the measure.⁴ The opportunity had been occasioned by a legal case in 1822 in which the son of a local clergyman had been convicted and sentenced to death for the brutal murder of a slave, an event which had made a deep impression on the local populace and had

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1. C.O. 48/61, Stephen to Wilmot Horton, July 1823. It is of interest to note that three clauses of the Cape regulations were recommended by Stephen for application in the West Indies. R.C.C. Vol. XVI, pp. 180-2, Bathurst to Somerset, 10/8/1823.
 2. R.C.C. Vol. XVII, pp. 38-9, Somerset to Bathurst, 31/1/1824. E. V. Goveia, Slave Society in the British Leeward Islands at the end of the Eighteenth century (New Haven, 1969) Chs. 2 and 3.
 3. Slaves were considered to be most important assets, were regularly mortgaged and formed a valued portion of bequests, or insolvent estates. E. Hengherr, Emancipation and After: a Study of Cape Slavery and the Issues arising from it, 1830-1843 (M.A. Thesis U.C.T., 1953), p. 15.
 4. *Supra*, p. 216.

opened the way for a re-consideration of the state of slavery in the colony. Had he delayed, Somerset claimed, he would have had to struggle with prejudices and feelings of hostility against the humane objects he had in mind.¹

Although Bathurst had required that Somerset should submit details of the modifications he intended to introduce to the Cape regulations,² the governor prevaricated. In January 1824 he informed the Court of Justice at Cape Town that only one change should take effect immediately, namely the abolition of flogging as a penalty imposed by the courts on female slave prisoners.³ Even this was not to be widely publicised, and there was to be no parallel prohibition against flogging as a domestic punishment. Thus the curious situation arose where the courts were precluded from imposing a sentence of flogging for a serious crime, "while the proprietors are allowed to do so in their own houses for idleness etc."⁴

Unlike the Cape which had by 1824 modified the conditions of slavery quite considerably, almost every other colony refused to introduce the changes required by the British government.⁵ Only Trinidad had complied, perhaps because there was no local legislature through which local opposition to the reforms could be effective.⁶ In Trinidad a draft order was prepared for promulgation by the king in council. In spite of intransigence and in some cases violence in

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1. R.C.C. Vol. XVII, p. 44, Somerset to Bathurst, 1/2/1824.
 2. Supra, p. 217.
 3. R.C.C. Vol. XVI, p. 493, Somerset to chief justice and Court of Justice, 5/1/1824.
 4. R.C.C. Vol. XX, p. 409, Plasket to Wilmot Horton, 31/3/1825.
 5. Mathieson, British Slavery and Its Abolition, Ch. 2.
 6. Supra, p. 22.

other colonies,¹ the British government persisted in its policy of amelioration, adopting the Trinidad order in council as a model for other colonies.²

A copy of the Trinidad order in council was sent to the Cape Town in February 1825 with instructions that a draft order "in the spirit of [these] Regulations and adapted to the Laws and State of the Settlement" should be prepared locally and transmitted to London for promulgation as an order in council.³ Unfortunately in the same month a band of slaves and Hottentots of Worcester were responsible for the murder of two farmers and a school master in the district and allegedly attempted to incite a rebellion because they believed that emancipation had been planned for them but was being obstructed by local slave owners. The trial of the insurgents was held in the middle of March 1825 and three of the leaders were sentenced to death and executed in April.⁴ These events had given rise to feelings of great alarm and insecurity on the part of local slave owners, particularly as desertions and insubordination had been on the increase. The 1823 rebellion at Demerara, which had been reported in detail in the local press, gave added weight to their fears and apprehensions. The Court of Justice and the board of landdrost and heemraden at Stellenbosch each submitted a report on the Worcester rising to the governor and requested clarification of the existing slave regulations and a greater measure of government protection for slave owners.⁵ Somerset granted both requests. He placed a military detachment in the Stellenbosch district where slaves

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1. E.g. Demerara, where a brutal confrontation between slave owners and slaves had taken place. Missionaries were accused of inciting the slaves to revolt and one such missionary, John Smith, had died in prison. Ragatz, The Fall of the Planter Class in the British Caribbean, 1763-1833, pp. 430-1. These events had been fully reported in the S.A.C.A. at Cape Town during 1824.
 2. Mathieson, British Slavery and its Abolition, p. 154.
 3. R.C.C. Vol. XX, p. 2, Bathurst to Somerset, 8/2/1825.
 4. R.C.C. Vol. XX, p. 188f, Trial of Galant and Others. R.C.C. Vol. XXI, p. 140, Somerset to Bathurst, 26/4/1825.
 5. R.C.C. Vol. XX, pp. 385-7, Chief Justice and Members of the Court to Somerset, 25/3/1825. R.C.C. Vol. XXI, pp. 142-3, landdrost of Stellenbosch to secretary to government, 26/4/1825.

outnumbered colonists¹ and he published a statement describing the regulations of 1823 in simple terms, which were to be explained by local officials to all slaves and slave owners.

Somerset had already received the Trinidad order in council² by the time that he reported to the secretary of state on the slave uprising, the murders and the subsequent execution of the criminals. He had also already received the Additional Instructions of February 1825 for the establishment of a council of advice in the colony.³ He wrote to Bathurst,

"It would not become me to enter at this moment on the delicate subject respecting Slavery in this colony, as I shall have the honor of doing so soon as I can collect every necessary information to bring the subject together with Your Lordship's Dispatch relative thereto, under the consideration of the Council."⁴

Meantime Somerset had sent the Trinidad order in council to the chief justice Truter, for his comments on the proposed regulations in relation to the existing proclamation of March 1823.⁵ He also, apparently, directed the colonial secretary, Plasket, to draw up a draft order in conformity with the instructions received from London.⁶

The slave question was thus awaiting the attention of the Council of Advice even before its members had been sworn in. The subject

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1. C.A. C.O. 5967, Blue Book, 1825, Population returns, Stellenbosch: whites - 5 464; Slaves - 8 564.
 2. Supra, p. 219.
 3. Supra, p. 36.
 4. R.C.C. Vol. XXI, pp. 140-1, Somerset to Bathurst, 26/4/1825.
 5. Supra, p. 216.
 6. Plasket stated that he prepared the draft order while on board ship from Algoa Bay to Cape Town. R.C.C. Vol. XX, p. 410, Plasket to Wilmot Horton, 21/3/1825, postscript, 3/4/1825.

was introduced at the second meeting of the council, held on 6 June 1825.¹ Bathurst's despatch of 8 February 1825, with enclosures was tabled, together with the reports of the disorders in the Worcester district, and Truter's prepared statement on the proposal to amend the local slave regulations. Truter began by explaining that during his academic training at Leyden University he had examined the question of slavery and had,

"arrived at the conclusion that the state of Slavery was an unnatural state in Society, an evil deeply to be deplored by everyone who has the wellbeing of human society sincerely at heart..."²

But the evil could not easily be removed from society and "justice ought to be the touchstone of all beneficial regulation on this subject."³ Truter outlined several essential principles on which a programme of amelioration leading to emancipation in the colony would have to be based. Truter claimed that the master's authority and his property rights had been guaranteed at the cession of the colony to Britain. Therefore abolition would have to be accompanied by compensation and until this could be provided, the legislature was bound to uphold the authority of the master, in order to maintain "the relative situation of master and slave." At the same time the state of slavery should be "softened by moral improvement" but "every step ... avoided which can be conducive to create a hostile feeling between the Master and his slave." For this reason the regulation of slavery should be "gradual and seasonable, so as either to secure the co-operation of the Master, or to justify the Measure without it."⁴

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1. C.O. 51/1, Minutes, 6/6/1825.
 2. C.O. 51/2, Appendix B1, Truter to Somerset, 25/5/1825.
 3. Cf. The statement of Goderich made in 1832, *supra*, p. 211.
 4. C.O. 51/2, Appendix B1, Truter to Somerset, 25/5/1825 Both at the capitulation in 1806 and the cession in 1814 property rights had been guaranteed. The authority of the master was not explicitly guaranteed, but might be considered to have been implied.

Thus at the very outset of the council's proceedings the core of the problem had been identified - to exercise justice in a system acknowledged to be unjust; to foster interests patently in opposition to each other and yet to retain equilibrium in the social structures of the colony. Here in a localised situation was the very dilemma that Goderich was to diagnose in 1832.¹

After these preliminary remarks Truter compared the existing regulations at the Cape with those proposed by the order in council received from London. In his view the ameliorative measures in operation were adequate and most of the additional proposals were not applicable locally. In particular he rejected a suggestion to abolish flogging as a domestic punishment for female slaves; and the introduction of a twenty four hour delay before domestic punishment might be inflicted as well as the need for such punishments to be witnessed and recorded in a punishment record book. He also disapproved of the proposed forfeiture of all slaves belonging to an owner twice convicted of cruelty and the plan to allow slaves to buy their own freedom by appraisal. Truter's denunciations of these proposals underline his view that the state was bound to uphold the authority of the master while the institution of slavery lasted. Truter's opinion carried weight in the council and the draft order subsequently prepared for transmission to London reflected his main reservations.²

Truter himself was one of the chief slave owners in the colony: in 1825 he owned fifty slaves.³ Only two others, namely P.G. van der Byl and D.G. van Reenen reached that total. As a member of one of the old established Dutch families at the Cape and a landowner of some importance Truter was in sympathy with the views of other

1. Supra, p. 211.

2. Infra, p. 227.

3. C.A. S.O. 6/32. S.O. 6/35. S.O. 6/36. S.O. 6/37. S.O. 6/73. Most slave owners at the Cape owned less than eight slaves each, Hunt, Sir Lowry Cole, p. 178, Appendix B.

slave owners many of whom were directly related to him.¹ Several members of his own family became active in opposing the slave legislation at the Cape.² Yet Truter appears to have been sincere in his dislike of slavery and in his desire for its abolition. In 1831 he was one of eight persons who pledged themselves to free all slave children born to the slaves in their possession after 8 April 1831 as a means towards effecting a general emancipation.³ Schemes of this sort were frequently proposed in the colony and were alleged to have wide support. Yet when a society was established at Cape Town in 1828 to assist slaves to buy their freedom it was able to emancipate only 102 children in four years.⁴

The ambivalence of Truter's position as a member of the Council of Advice has already been noted in chapter four, with reference to the currency problems.⁵ On the question of slave amelioration Truter's situation was similarly confused and ambiguous. As chief justice he held the second highest office in the colony and was

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1. Truter's paternal grandfather had arrived in the colony in 1722. D.F. du T. Malherbe, Family Register of the South African Nation (Stellenbosch, 1966). Truter himself lived like a grand old patriarch, "surrounded by his sons and daughters, all married and residing in neat small houses on the old gentleman's grounds." W.H.B. Webster, Narrative of a Voyage to the Southern Atlantic Ocean in the Years 1828, 1829 and 1830, performed in H.M. Sloop Chanticlear. (London, 1834), p Vol. I, pp. 277-8. It may have been because he had his extended family living with him that Truter owned so many slaves.
 2. E.g. His brother, P.J. Truter and his son, J.A. Truter.
 3. C.A. S.O. 6/13, p. 157. Loose mss. letter inserted beside the name of P.G. Brink. The signatories were J.A. Truter, J.W. Stoll, A. Stockenstrom, P.G. Brink (all members of the Council of Advice), George Thompson, Charles Pillans, F.S. Watermeyer and the widow Ziervogel.
 4. S.A.C.A., 8/8/1832, Report of the Fourth Annual General Meeting of the Philanthropic Society.
 5. *Supra*, p. 153, n. 5.

obliged to comply with instructions from Britain and to assist and support the local governor. Yet on the grounds of personal conviction he was often unable to consent to measures that came before the council. His personal dilemma was eased when in 1828 he resigned the office of chief justice.¹ He remained a member of the council and was able to exercise a greater measure of candour in expressing his views. After 1828 he frequently disagreed with official opinion and regularly recorded the grounds of his opposition in the minute book. Truter received an adequate pension during his retirement and his attitude after 1828 probably represents not so much a shift in loyalty or increased opposition to British policy as a greater sense of independence, once released from the constraints of office.

On 6 June 1825 the Council of Advice tabled various documents on slavery but deferred discussion of the question. The subject was resumed at two subsequent meetings and on 12 July the chief justice was asked to prepare a draft order for further consideration. This was discussed and amended at three further meetings and on 1 August it was directed that a fair copy should be prepared.² There is little in the minutes to illustrate the tenor of deliberations but the colonial secretary, Plasket, later reported that he,

"[had] had a very hard battle to fight to get [the draft order] to assimilate as nearly as it does now, to the Trinidad Order in Council, and I still fear you will think it incomplete.

The Chief Justice has resisted almost every change, in which he has been backed by Lord Charles, they being both of the opinion that the Proclamation of 18th March 1823 should not have been extended or interfered with ..."³

The draft order was approved on 8 August, when it was agreed that explanatory notes should be drawn up giving the reasons for deviating from the Trinidad order in council.⁴ As a preliminary step, a

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1. Supra, p. 107.
 2. C.O. 51/1, Minutes, June to August 1825. There is no mention in the minutes of the draft order which Plasket claimed he had prepared. Supra, p. 220, n. 6.
 3. R.C.C. Vol. XXIII, p. 161, Plasket to Wilmot Horton, 26/9/1825.
 4. A comparison of the explanatory remarks of the council and the statement made by Truter is found in Edwards Towards Emancipation: A Study in South African Slavery, Appendix II, p. 228.

statement reflecting the discrepancies between the Trinidad order and the council's draft order was called for, so that each council member might prepare his own comments thereon.¹

The draft order and explanatory notes were finally approved on 5 September 1825. Edwards has suggested that on the whole question of slave amelioration the council of advice "danced to the tune called by Somerset," and that Truter was chosen to prepare the draft as Somerset's "loyal henchman!"² While this interpretation may be based on Plasket's report of the council's deliberations it nevertheless overlooks the real difficulties of reconciling opposing interests, articulated at a local level by Truter and at the imperial level by Goderich.³ The whole question had been carefully considered by the council throughout July and August and there is no evidence in the minutes to suggest that Somerset had enforced his own views on council members, or that Truter was merely the tool of the governor. The statement sent forward to London represented the agreed opinion of the Council of Advice on a complex question which involved the interests of the local population. In subsequent years the council adhered in the main to the opinion formed in 1825, although Somerset was no longer in the colony, Truter no longer held the office of chief justice and the personnel of the council had changed from time to time. This in itself serves to underline the fact that the position in 1825 reflected the real difficulties of the situation rather than a partisan view favoured by the governor.

In many ways the draft order proposed by the council provided a compromise. New features included the appointment of a slave protector and guardian, and local assistant guardians, to be responsible for the legal interests of all slaves brought to court. The slave protector was to submit a detailed report to the Colonial Office in London twice a year.

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1. C.O. 51/1, Minutes, 16/8/1825. (R.C.C. Vol. XXIV, p. 304.)
 2. Edwards, Towards Emancipation: A Study in South African Slavery, p. 97.
 3. *Supra*, p.211.

A ban was imposed on the employment of slaves in profitable labour on Sundays, e.g. by hiring them out, or engaging them in regular works of production. Works of necessity might be performed on Sundays, for which slaves were to be paid at rates fixed by the Protector. Provision was made for manumission by appraisement, once a slave had saved enough money to buy his own freedom.¹ All of these innovations were later deplored by slave-owners in the colony.

At the same time many of the provisions in the draft order differed from those of the Trinidad order in council. Instead of a total prohibition on the domestic flogging of female slaves, only public flogging was forbidden. A moderate whipping on the shoulders, privately administered, was to be permitted. The 24-hour delay of domestic punishment, the presence of witnesses for domestic punishment and the keeping of a punishment record book were all omitted from the Cape draft order. The separate sale of children over ten years was to be permitted, instead of sixteen years, as prescribed in the Trinidad order in council, "because in this climate a child of ten ... no longer stands in need of maternal care."²

In the Trinidad order, masters twice convicted of cruel and unlawful punishments were to forfeit all their slaves. At the Cape it was proposed that a master twice convicted of cruelty should be declared incapable of owning slaves, and that those in his possession should be sold for his benefit rather than become forfeit - except for the victims of his cruelty who should be released whether the charge of cruelty was a first or a second offence.

This departure from the terms of the Trinidad order in council is of considerable importance, for the story of slave amelioration at the Cape in the ensuing nine years is the story of the increasing insistence by the British government on the implementation of those clauses of the

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1. C.O. 48/69, Somerset to Bathurst, 24/9/1825, with enclosures. (R.C.C. Vol. XXIII, p. 128f.)
 2. C.O. 51/1, Minutes, 5/9/1825, Reasons for altering or passing over ... articles ... of [the] Order-in-Council for Trinidad. (R.C.C. Vol. XXIV, p. 310.) Slave children were to be sent to school only until the age of ten.

order in council which had been omitted or modified by the Council of Advice in 1825. The views of most council members on the inexpediency and unsuitability of the provisions for punishment record books, the witnessing and delay of punishments and the abolition of corporal punishment for females, remained unchanged. But the council as a whole yielded, albeit reluctantly, to imperial authority and issued the ordinances required of them: the outcry that followed throughout the colony only served to confirm the reservations of council members. The issue reflects again the ambiguous position of the council, summoned officially to advise, yet forced to agree to measures devised in Britain in conformity with a policy being applied throughout the empire.

The draft order and explanatory notes of the Council of Advice were forwarded to London in September 1825.¹ Somerset's action in referring the matter back to London was not due to caution as suggested by Knaplund,² nor was he attempting "to shelve the responsibility of publishing the Ordinance by requesting that it should be promulgated as an Order-in-Council," in order to avoid displeasing his Dutch slave-owning friends, as contended by Edwards.³ Somerset was acting in accordance with the instructions issued to him in February that year.⁴ The original intention had been that an order in council based on the draft would be issued in London, as in the case of Trinidad. A year later, in February 1826, the proposal to issue an order in council was revised. Accordingly the secretary of state returned the draft to the colony and instructed that it be promulgated as an ordinance of the governor in council.⁵ By the time that it arrived Somerset had left the colony, and Bourke was lieutenant governor.

Bathurst's despatch and the original draft, with minor alterations inserted in London, were presented to the Council of Advice on 29 May 1826 and considered further at two subsequent meetings. Two

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1. C.O. 48/69, Somerset to Bathurst, 24/9/1825. (R.C.C. Vol. XXIII, p. 128.)
 2. Knaplund, James Stephen and the British Colonial System, 1813-1847, p. 103.
 3. Edwards, Towards Emancipation: A Study in South African Slavery, p. 101.
 4. C.O. 49/16, Bathurst to Somerset, 8/2/1825. (R.C.C. Vol. XX, p. 2.) *Supra*, p. 219.
 5. C.O. 49/19, Bathurst to Somerset, 20/2/1826. (R.C.C. Vol. XXVI, p. 37.)

amendments were significant. The one, directed by Bathurst, concerned the removal from the ordinance of a clause exempting certain slave owners from the payment of any general tax on slave property.¹ The other provided for the immediate promulgation of the ordinance, which would come into effect on 1 August 1826, without further reference to the secretary of state.²

The ordinance was passed on 19 June 1826 and promulgated as ordinance 19.³ The lieutenant governor, Bourke wrote to Bathurst,

"it is a measure which will occasion a considerable sensation in the Colony by some of its enactments, but I have no doubt that good feeling will ultimately prevail..."⁴

The "sensation" that followed probably exceeded that imagined by Bourke. For some three months opposition persisted. Memorials protesting against the measure were received from the Burger Senate; from local boards of several districts; from groups of private citizens; and from a committee appointed especially for the purpose. The memorials were similar, sometimes identical even, in phrasing and were probably based on that submitted by inhabitants of Cape Town to the Burger Senate on 3 July 1826.⁵ The main grievances outlined were that the newly appointed slave guardian would be entitled to intervene between a man and his legal property; that slaves would be tempted to steal the money for the purchase of their freedom by appraisement; that slaves were to be allowed to witness in court against their masters, and on a conviction of cruel or unlawful domestic punishment might win their freedom. It was claimed that slaves would inflict injuries on themselves and then accuse falsely in court in order to become free; or else would provoke their masters into making an attack upon them, with the same object in view.

1. *Infra*, p. 234f.

2. C.O. 51/3, Minutes, 5/6/1826. (*R.C.C.* Vol. XXIX, p. 315.)

3. *Gazette*, 30/6/1826, Ord. No. 19.

4. C.O. 48/82, Bourke to Bathurst, 21/6/1826. (*R.C.C.* Vol. XXVI, p. 492.)

5. C.O. 51/4, Appendix Q8, Cape Town Citizens to Burger Senate. (*R.C.C.* Vol. XXVII, p. 98.)

Many of the memorialists stated that they were anxious to co-operate with the government in the amelioration and gradual abolition of slavery. But for this purpose the Burger Senate insisted on two principles.

- 1) "that the rights of property be not in the least encroached upon"
- 2) "that the emancipation of the Slaves should not be so sudden and to such an extent as to become a useless Boon to the emancipated, or inconvenient to the Public."¹

Both principles, they claimed, had been repeatedly "admitted and relied upon by the most distinguished Statesmen in both Houses of Parliament and in His Majesty's Cabinet."

But neither was embodied in the present measure. The Burger Senate summed up their fears and complaints by quoting "one of His Majesty's most distinguished Ministers,"

"The mutual confidence between the Master and his Slave will be destroyed by stepping in between them, insubordination will be fostered on the one hand, and distrust engendered on the other ... A barrier of insurmountable hostility will be placed between the slave and his master, a flame will be kindled only to be quenched in blood."²

Similar predictions of bloodshed and insurrection were made by the Burger Senate and other memorialists at the Cape. In highly emotive language they drew analogies from San Domingo and Demerara.³

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1. C.O. 51/4, Appendix Q3, Burger Senate to Governor in Council, 30/6/1826. (R.C.C. Vol. XXVII, p. 91.)
 2. The reference was to Lord Liverpool who had been quoted in the local press in a report which had originally appeared in a London newspaper.
 3. In San Domingo there had been an outburst of violence by slaves in 1793, *supra*, p. 14, n. 5 and in Demerara the troubles were of recent occurrence, *supra*, p. 219, n. 1.

"A burning flame of distrust and discord is thrown in our Houses ...; our domestics are our enemies, bloody scenes are already seen at a distance."¹

"The flames of devastation will not alone destroy our habitation, but will also cause your Houses to fall to ruin! Nor alone our wives and Daughters, but also yours will in a libidinous manner be prosecuted by our Slaves with Rape and defloration, and when after all this out of the pit of our murdered fellow Citizens a San Domingo has arisen ... you yourselves will be compelled by the Slaves ... to carry the bones of your Wife and your Child to make a monument of their freedom obtained by fire and murder..."²

Although disturbing, the rhetoric is also intriguing, as it was the standard and generally reasonable plea of the Cape that conditions there were totally different from those on the plantation colonies.

But the fears expressed probably reflect more than the threat to the established structure and mores of local society. Economic insecurity provides the key to understanding the intensity and apparent illogicality of local reaction to ordinance 19. One disaster appeared to be following another. The currency crisis and the loss of the wine preference were now, it seemed, to be followed by an unavoidable decline in the value of slave property.³ Some memorialists specified the economic factor.

"Our hearts bleed of a second wound, without another wound of last year, the depreciation of our currency, being healed."⁴

The Burger Senate did not explicitly request the suspension of ordinance 19, but hinted broadly that the "sacred duties" of governor

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1. C.O. 51/4, Appendix Q 8, Cape Town Citizens to Burger Senate. (R.C.C. Vol. XXVII, p. 98.)
 2. C.O. 51/4, Appendix Q 4, Inhabitants of Stellenbosch to Landdrost and Heemraden, 10/7/1826. (R.C.C. Vol. XXVII, p. 114.)
 3. Immelman, Men of Good Hope, pp. 59-62. de Kock, Economic History of South Africa, p. 196.
 4. C.O. 51/4, Appendix Q 8, Cape Town Citizens to Burger Senate, 3/7/1826.

and council lay in this direction. Other memorials appealed outright for suspension or repeal. When a local committee, appointed to make representation to the king in council, claimed that suspension of the ordinance was a necessary pre-requisite to their alternative plans for amelioration and emancipation, they were informed that they had exceeded the powers vested in them.¹ When their request for the suspension of the ordinance was not granted, the committee halted their activities, confirming the suspicions of Bourke that their real objective had been limited to obtaining the repeal of ordinance 19.² In the search for an alternative plan of amelioration and emancipation, the lieutenant governor placed more reliance on a committee formed in Graaff Reinet, but no major results ensued from their efforts either.³

From June to September 1826 the Council of Advice received and rejected applications concerning ordinance 19, refusing throughout to suspend or repeal the measure. Finally, on 4 September they resolved for the fifth and last time,

"That the Ordinance for improving the condition of the Slaves at the Cape of Good Hope having been duly weighed and considered by Council in all its provisions and having been submitted to, and approved by His Majesty's Government, and promulgated by its authority, it is not expedient to suspend its operation or make any alteration in its enactments, more especially as the apprehensions entertained by the Memorialists, and the difficulties suggested by them appear to rest on no solid foundation."⁴

Opposition to the ordinance had not been expressed only through memorials to the local and imperial governments. Deliberate resistance had been shown by two local boards. Both the Burger Senate and the court of heemraden at Stellenbosch had refused initially to proclaim the ordinance, thinking thereby to obstruct its promulgation.

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1. C.O. 51/3, Minutes, 31/7/1826 and 14/8/1826. (R.C.C. Vol. XXIX, pp. 354-6 and 361-3.)
 2. C.O. 48/82, Bourke to Bathurst, 14/9/1826. (R.C.C. Vol. XXVIII, p. 185.)
 3. Hutton, Autobiography of Sir Andries Stockenstrom, Vol. I, pp. 258-66.
 4. C.O. 51/3, Minutes, 4/9/1826. (R.C.C. Vol. XXIX, p. 388.)

Both boards were directed by Bourke to publish the law in the usual manner. This was duly done but with the minimum number of officials in attendance. The stand taken by the two bodies was based on nothing stronger than custom, that laws and regulations were published, in the sense of communicated to the public, in Cape Town by the Burger Senate and in the country districts by the boards of landdrost and heemraden.¹ Because the legality of ordinance 19 was brought into question through the attempted obstruction of the Burger Senate, Bourke subsequently arranged for an ordinance to be passed defining the mode of publication of laws within the colony.² The Stellenbosch heemraden remained obdurate and tried to refuse the slave protector admission to their court. They gave way however when Bourke threatened to replace them by special magistrates.³

The lieutenant governor had kept the secretary of state informed of the situation in the colony, forwarding memorials and other enclosures relative to ordinance 19 in July, August and September 1826.⁴ In October he wrote,

"The Statute has been brought into operation throughout the Colony, with some manifestations of ill-will, but without any determined opposition... the visitation inseparable from the introduction of such a Statute as Ordinance No. 19 in a Slave Colony has nearly subsided. The law has been brought into operation wherever it has been required, and it is no longer questioned. All idea of its suspension seems abandoned; ..."⁵

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1. This practice had been started in 1804. C.O. 48/82, Bourke to Bathurst, 18/7/1826. (R.C.C. Vol. XXVII, p. 89.) C.O. 48/83, Bourke to Bathurst, 11/9/1826, enclosing a letter from the Court of Justice to Bourke; 5/8/1826. (R.C.C. Vol. XXVIII, pp. 128f.)
 2. C.O. 51/3, Minutes, August 1826, *passim*. Gazette, 1/9/1826, Ord. No. 21.
 3. C.O. 48/84, Bourke to Bathurst, 25/10/1826. (R.C.C. Vol. XXVIII, p. 271.)
 4. C.O. 48/82, Bourke to Bathurst, 18/7/1826. C.O. 48/83, Bourke to Bathurst, 11/8/1826 and 14/9/1826. (R.C.C. Vol. XXVII, p. 89 and 254; Vol. XXVIII, p. 184.
 5. C.O. 48/84, Bourke to Bathurst, 25/10/1826. (R.C.C. Vol. XXVIII, p. 271.)

Bathurst approved both the ordinance, and the firmness displayed by the lieutenant governor and council in the face of local opposition.¹ On receiving Bourke's October despatch Bathurst again approved the measure and expressed his satisfaction that "the vague and groundless apprehensions ... are gradually subsiding." But he considered that Bourke had been too lenient with the committee appointed in Cape Town whose correspondence had been "of so objectionable a character that it should not have been received." He warned against entering into "correspondence with any class of persons in the colony assuming to themselves the character of a representative body" -² as the Cape Town committee appeared to have done.

Although ordinance 19 had been approved by the secretary of state, it was still subject to the king's allowance. The king's pleasure concerning ordinances 1 to 27, passed in the colony between June 1825 and December 1826, was received at the Cape in February 1828. Ordinance 19 was among those allowed by the king, but the governor was instructed to make certain amendments to its provisions. The age at which a child might be separately sold was to be raised from ten to fourteen years; domestic punishment was to be delayed until 24 hours after the offence had occurred; and clause 17 of ordinance 19 was to be amended so that a slave guilty of bringing a groundless complaint before a court of law was not to be automatically punished, but was to be charged by his owner in a separate case. Two other small points of clarification concerning savings accounts were also required.³

In February 1828 when this despatch was received in the colony Bourke considered it unwise to provoke further public controversy over the slave amelioration programme. He therefore shelved the question, without reference even to the Council of Advice, apart

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1. C.O. 49/19, Bathurst to Bourke, 22/10/1826. (R.C.C. Vol. XXVII, p. 245.)
 2. C.O. 49/19, Bathurst to Bourke, 19/12/1826. (R.C.C. Vol. XXVIII, p. 469.)
 3. C.O. 49/19, Huskisson to Bourke, 21/10/1826. (R.C.C. Vol. XXXIV, p. 45.)

from tabling the allowance despatch.¹ Bourke wrote a private explanation to the Colonial Office.² By the middle of the year frontier problems had become a major concern.³ Bourke was dependent for defence on slave-owners in the frontier districts of Graaff Reinet and Somerset and therefore had further reason to leave the slave question dormant, not wishing to revive the "bitterness of discontent" that had been provoked by ordinance 19 in the first place.⁴ The matter of amending ordinance 19 in accordance with the instructions of the secretary of state was only resumed later in 1828 when Cole had become governor of the colony.⁵

Although the question of amelioration was kept off the agenda of the Council of Advice between September 1826 and November 1828, a closely related topic, that of taxing slave property, was thrust into prominence on several occasions and provoked antagonism and division in the council chamber. The subject had arisen directly out of correspondence on the amelioration ordinance and highlights the difficulties created in the colony by the prolonged investigations of the Commission of Inquiry, as well as the complications that could arise for the Colonial Office in London when cross currents of opinion from a variety of sources were found to conflict with one another.⁶

The slave regulations introduced by Somerset in 1823 had provided that

"Slave proprietors who had caused their slave children to be baptised . . . , shall, as far as relates to such slaves be exempt from any tax which has been imposed on slaves in this Colony."⁷

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1. C.O. 51/10, Minutes 18/2/1828.
 2. Referred to in C.O. 48/124, Bourke to Hay, Pte., 29/6/1828.
 3. *Infra*, pp. 405-6.
 4. C.O. 48/124, Bourke to Hay, Pte., 29/6/1828.
 5. *Supra*, p. 67.
 6. *Supra*, Ch. 3, *passim*.
 7. Proclamations, p. 593, Govt. Proc., 18/3/1823.

At the time there was no general tax on slave property at the Cape but in the districts of Stellenbosch and Worcester a local levy had been introduced soon afterwards.¹ Following the two models of the 1823 proclamation at the Cape and the Trinidad order in council, the exemption clause was included in the draft order prepared by the Council of Advice in 1825 for transmission to London.² Meanwhile the commissioners of inquiry were preparing their reports and recommendations. When they learned that the exemption had been included in the draft order they wrote at once to the secretary of state informing him that they intended in due course to recommend a tax of £1 per head on all slaves between the ages of 8 and 60, "as the most equitable ... and practicable mode of providing for the deficiency of the Revenue without a further and considerable charge upon His Majesty's Treasury."³ Their purpose in letting Bathurst know of the proposal was to prevent the enactment of a clause in the amelioration order which might later prove prejudicial to the introduction of such a tax.

Bathurst however became alarmed lest the refusal to allow a slave tax should lead the Cape to apply directly to the Treasury for financial assistance. He therefore decided not only to delete the exemption clause from the draft order, but to introduce such a tax at once. He returned the draft order for promulgation at the Cape⁴ and explained that he had removed the exemption clause. He also directed the governor to "promulgate an Ordinance for levying an assessment of £1 sterling on all Slaves 8 to 60 years."⁵

Somerset had already learnt of the intended tax through private

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1. P.P. 1827, Vol. XXI (282), p. 42, Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826. C.O. 51/5, Minutes, 27/11/1826. (R.C.C. Vol. XXIX, p. 426.)
 2. Supra, p. 227.
 3. R.C.C. Vol. XXIII, p. 238, Bigge and Colebrooke to Bathurst, 6/10/1825.
 4. Supra, p. 227, n. 5.
 5. C.O. 49/19, Bathurst to Somerset, 20/2/1826. (R.C.C. Vol. XXVI, p. 38.)

correspondence with the commissioners of inquiry.¹ He approved the idea, suggesting that it would be a fair property tax on the great proprietors, but that it would fall heavily on owners who had only one or two slaves.² But Somerset was no longer in the colony when Bathurst's despatch with the draft order arrived in May 1826. The lieutenant governor, Bourke, realised that the proposed slave tax formed part of a general plan for remodelling the colony's finances and inquired from the commissioners of inquiry whether the slave tax would afford "the means of repealing others of a more objectionable nature." He told them that in his view the economic distress of the colony rendered the period "particularly unsuited to the imposition of a new burden on the people, unaccompanied by any redeeming circumstance" and suggested "the inexpediency of the proposed tax unless I could at the same time hold out the advantage to be obtained by the removal of others."³

The commissioners answered Bourke very fully, with a detailed but confidential statement on the financial proposals that they intended to recommend. In addition to the slave tax, they had planned a tax of 10s/= per head on all male servants and apprentices from 8 to 60 years and a personal tax of 7/6d per head on all other adult males in the colony. They explained,

"our object in bringing the subject of the slave tax under Earl Bathurst's consideration was to anticipate any confirmation of the exemptions that were proposed... from the tenor of Earl Bathurst's letter we think it probable that his Lordship had apprehended some speedy defalcation of the Colonial Revenue and had felt anxious to anticipate any sudden resort to the British Treasury for relief by the assessment of a local and productive tax which has long been imposed in other colonies."⁴

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1. R.C.C. Vol. XXV, p. 287, Bigge and Colebrooke to Somerset, 8/1/1826.
 2. R.C.C. Vol. XXVI, p. 86, Somerset to Bigge and Colebrooke, 25/2/1826.
 3. R.C.C. Vol. XXVI, p. 393, Bourke to the Commissioners of Inquiry, 25/5/1826.
 4. R.C.C. Vol. XXVI, p. 439-44, *passim*, Commissioners of Inquiry to Bourke, 9/6/1826.

It was left to Bourke's discretion,

"to determine upon the expediency of carrying these partial revisions of the system into immediate effect, or of deferring them until the general arrangements for the Colony may be decided upon by His Majesty's Government." ¹

Bourke postponed the introduction of the slave tax and explained to the secretary of state that the immediate object of the commissioners had been merely precautionary. ² He informed Bigge and Colebrooke of his decision and commented on their financial proposals. He considered that the rate of the intended slave tax was too high at £1 per head and suggested 10s/= instead, for slaves over 10 years of age; 10s/= for free servants in domestic service; and 5s/= for apprentices and contract labourers. ³ On a closer understanding of the economic distress of the colony Bourke later proposed that the slave tax should not be more than 5/= per head. ⁴ The commissioners however accepted his first recommendation with the proviso that should the colony's economic position improve, the additional 10s/= might be levied. ⁵

Meanwhile Somerset was in London providing on the spot information and advice to the Colonial Office. In June 1826 in the very month when Bourke and the commissioners were corresponding on the subject in Cape Town, Hay submitted to Somerset the commissioners' plan for introducing a slave tax in the colony and requested his views. Contrary to his earlier opinion ⁶ Somerset stated,

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1. Ibid.
 2. C.O. 48/82, Bourke to Bathurst, 22/6/1826. (R.C.C. Vol. XXVII, p. 2.)
 3. R.C.C. Vol. XXVII, p. 75, Bourke to the Commissioners of Inquiry, 17/7/1826.
 4. C.O. 48/84, Bourke to Bathurst, 24/10/1826. (R.C.C. Vol. XXVIII, p. 253.)
 5. P.P. 1827, Vol. XXI (282), p. 42, Report of the Commissioners of Inquiry upon the Administration of the Government, 6/9/1826.
 6. *Supra*, p. 236.

"that a tax on Slaves employed in Agriculture would be extremely erroneous and would oppress the very class of persons whom it is most desirable to relieve ... when it is considered that Slave property constitutes almost the only valuable property of the Colonists, it may be a question how far a property tax bearing on one class of persons would be justifiable."¹

Somerset recommended that the question be referred back to the Council of Advice for discussion under three headings

- "1) whether it would be expedient to impose a Tax on Slaves at all?
- 2) whether if a Tax on Slaves be considered advisable it will not be necessary to make certain exemptions and Modifications?
- 3) what these Exemptions and Modifications should be ..."²

Somerset's views embarrassed the secretary of state. It was only four months since Bathurst had instructed that a capitation tax should be imposed on all slaves from 8 to 60 years of age. He now withdrew this instruction and explained to Bourke that he had learnt with "surprise[?] and regret" that the commissioners of inquiry had not consulted the governor, Somerset, on this important question. Bathurst suggested that they reconsider the whole subject, in conjunction with the Council of Advice. With some asperity Bathurst concluded his despatch.

"If ... the Council should be of opinion that the tax on Slaves is objectionable, it will be incumbent upon them... to propose some other tax equally productive, which it might... be more advisable to adopt.

In suggesting any exceptions, however, which might be made in the application of the tax generally, the Council will take care that the exceptions be not so numerous as to defeat the object of the tax; as they must always bear in mind the necessity of making the Revenue equal to the Expenditure."³

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1. R.C.C. Vol. XXVI, p. 463, Somerset to Hay, 17/6/1826.
 2. Ibid.
 3. C.O. 49/19, Bathurst to Bourke, 9/7/1826. (R.C.C. Vol. XXVII, p. 48.)

The personal repercussions of this confused question lingered on into the following year. The first reports of the commissioners of inquiry were transmitted to Britain in October 1826.¹ A month later Bathurst's despatch reached the colony, with the suggestion that the commissioners consult with the council and reconsider the whole question of a tax on slave property. Meanwhile Bigge's colleagues, Colebrooke and Blair, had moved on to Mauritius, so that he alone remained to deal with the problem at the Cape. Bigge was deeply hurt that the credibility of the commissioners was in doubt even before their reports had been received. He wrote to Bathurst of his "deep mortification" over the disapproval and censure conveyed to him via the lieutenant governor, "on a point of duty upon which we beg to observe our instructions are silent" He referred to Somerset's correspondence while in the colony and his apparent support for the proposed tax.² Bigge regretted that his pledge of secrecy over this correspondence prevented him from revealing the letters of Somerset, so that "the council will thus be deprived of an opportunity of deciding to which of his Lordship's opinions the greatest weight is to be attached."³

When Colebrooke, who was already in Mauritius, learnt of the situation he wrote at once to Bathurst, expressing his

"great regret that it should have devolved upon Mr Bigge alone to sustain the effect of the censure which Your Lordship has been induced to communicate to us in a dispatch to General Bourke, the measure which called it forth, being one for which we were jointly responsible."⁴

Colebrooke then set out in detail the reasons for the slave tax which he and his colleague had recommended.

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1. Supra, p. 96.
 2. Supra, p. 236.
 3. R.C.C. Vol. XXVIII, p. 336, Bigge to Bathurst, 24/11/1826. On request of Bourke extracts from the confidential correspondence were subsequently presented to the Council of Advice.
 4. R.C.C. Vol. XXX, p. 106, Colebrooke to Bathurst, 18/1/1827.

On 24 November 1826 Bourke brought the question of a slave tax before the Council of Advice as instructed. It was the first time that they had focussed their attention directly on the question of revenue. Throughout the nine years of the council's existence pressing problems of revenue and expenditure were experienced in the colony.¹ Many of the topics handled by the Council of Advice involved revenue, although it was not in this light alone that they were discussed by the council.² Attempts made to reduce the civil establishment in order to curb expenditure came occasionally within their purview,³ but on the whole the council was concerned more with the difficulties of supply rather than expenditure. In 1833 a statement of revenue and expenditure for the previous year was published at Cape Town for the first time and was welcomed in the colony as a small crack in the cloak of secrecy that had hitherto surrounded all matters of government.⁴

The documents tabled on 24 November 1826 included the recent despatch from the secretary of state and the enclosed letter from Somerset rejecting a slave tax; the earlier directive of February 1826 ordering that a slave tax be introduced;⁵ Bourke's subsequent private correspondence with the commissioners, as well as his explanation to Bathurst for deferring the question; relevant extracts from the confidential correspondence in 1825 between Somerset and the commissioners,⁶ whose permission to reveal these had been obtained; and a letter written by Bourke to Bathurst as soon as the first reports of the commissioners had been forwarded to London, giving his personal opinion on the financial state of the colony and suggesting that the slave tax should not exceed 5s/= per head.⁷

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1. Leverton, *Government Finance and Political Development in the Cape, 1806-1834*, A.Y.B. 1961, Chs. 3, 4 and 5. Hunt, Sir Lowry Cole, Ch. 8.
 2. E.g. Corn laws, frontier trade, wine licences, *infra*, Ch. 7. Stamp duty on newspapers, *infra*, Ch. 10.
 3. E.g. C.O. 51/22, Minutes, 30/6/1831. C.O. 51/24, Minutes, 10/9/1831. C.O. 51/26, Minutes, 23/1/1832 and 6/2/1832. Gazette, 10/2/1832, Ord. No. 89.
 4. *Supra*, p. 76. Hunt, Sir Lowry Cole, p. 131.
 5. *Supra*, p. 235.
 6. *Supra*, p. 236.
 7. C.O. 51/5, Minutes, 24/11/1826. (R.C.C. Vol. XXIX, pp. 420-8.)

The council looked first at Somerset's question "whether there may be any fundamental objection to a Tax on Slaves?" They first decided to invite Bigge to join them. The following meeting was taken up entirely with Bigge's address to the council.¹ His main points were that as two districts had already introduced a slave tax the proposed to supply the "deficiency of the Colonial Revenue by a tax upon all Slaves was no innovation in this Colony, although the principle had only been partially acted upon."; that a similar tax was operative in several other colonies;² that there had been a considerable increase in the value of slave property at the Cape since 1808, and the cost of subsistence for slaves was low, while their productive capacity was high; that ill or infirm slaves would be exempt from the tax, as would the mothers of children emancipated at birth; that it was intended to repeal numerous existing taxes, which would afford general relief in the colony and reduce the cost of maintaining slaves; and that a slave tax would provide an "easy method of relieving produce from all taxation whatever."

The council resumed consideration of the subject two days later and agreed that, "there exists no fundamental objection to a tax on Slaves."³ The council then moved on to the next question, "whether there may be any objection to the rate at which it has been proposed to fix such a tax?"⁴ Bigge had explained that the rate of 10s/= per head on all slaves from 10 to 60 years of age had been recommended,⁵ together with a similar tax on all adult male servants, and a personal tax on all other adult males in the colony. The council tried to assess the likely effect of these changes, as well as proposed alterations in the manner of collecting taxes. Tax returns for 1824 and 1825 were called for, and it was decided to examine a number of witnesses.

At five meetings held from 5 to 13 December 1826 evidence was taken from thirteen persons, including corn, wine and cattle farmers from several districts of the colony; two master builders; and a number of

1. C.O. 51/5, Minutes, 27/11/1826. (R.C.C. Vol. XXIX, pp.425-30.)

2. E.g. Trinidad, St. Vincent, Jamaica.

3. C.O. 51/5, Minutes, 29/11/1826. (R.C.C. Vol. XXIX, p. 431.)

4. This was not identical to Somerset's second question, *supra*, p. 238.

5. As suggested by Bourke, *supra*, p. 237.

local officials. The questions submitted covered a wide range of detail on the cost and value of all kinds of labour, the productivity of the land, the existing taxes and the way in which these were collected. Bigge attended most of these meetings.

On 15 and 16 December the council reviewed the evidence taken and the documents tabled earlier and decided that "the proposed tax of 10s/= per head upon all Slaves between the ages of 10 and 60 in this Colony is high inexpedient."¹ Detailed reasons were given for this decision, and related mainly to the special circumstances of the colony. Not one of the objections suggested that slavery itself might disappear and with it this source of revenue.

Bathurst had required that in the event of the council rejecting the proposed slave tax, a feasible alternative was to be put forward. In response to this the council moved that the existing taxes were to be preferred and should be retained.² Bigge was informed of the council's decision and one cannot help but wonder whether he felt dismayed to know that the financial proposals drawn up by himself and his colleagues had been rejected in the colony while they were yet to be considered in London.³ It was certainly a curious state of affairs, in that the centre of decision making in so crucial a field as finance seemed for the moment to have shifted to Cape Town. As Hay was later to say, the opinion of the Council of Advice had "set at nought" the labours of the Commission of Inquiry.⁴

Bourke wrote to the secretary of state at once to inform him of the council's decision. He explained that the commissioner, Bigge, had declined to present a full report to the council so that a comprehensive review of the situation had not been possible. Bourke believed however that,

1. C.O. 51/5, Minutes, 16/12/1826. (R.C.C. Vol. XXIX, p. 494.)

2. Ibid.

3. The reports had been sent forward only in September 1826, *supra*, p. 96.

4. *Supra*, p. 99.

"influenced by the unvaried tenor of the Evidence brought before them, the Council fully concur, in the opinion I have already had the honor to submit to your Lordship, that the state of this Colony will not admit of any additional taxation."¹

This despatch was neither acknowledged nor answered. It arrived at the Colonial Office in March 1827, just when the commissioners' reports were under consideration. A few weeks earlier Bathurst had informed Somerset that he intended to resume the question of the slave tax notwithstanding Somerset's earlier reservations about it.² The views of the Council of Advice at the Cape do not appear to have had any immediate effect on this decision. But in April 1827 Bathurst left the Colonial Office after fifteen years' tenure. In June 1827 the new secretary of state, Goderich, sent instructions to the colony for the implementation of the recommendations of the commissioners of inquiry, including their financial proposals.³ It is not clear whether the opinion of Bourke and the council had been considered and rejected, or ignored and overlooked as a result of cabinet changes.

With reference to the financial proposals Goderich wrote,

"As it is the opinion of His Majesty's Government that it will be proper to adopt the suggestions of the Commissioners of Enquiry for the repeal of the several Taxes and Restrictions on Trade which they have enumerated in their Reports, and that it will be equally proper to impose and regulate the Land-rents, Assessed Taxes, Rates, Customs Duties, Stamps, Licences, Auction Duties and Fees, upon the principles laid down in those Reports, I refer you to those documents for your guidance in framing the arrangements which you will have to devise and mature accordingly, in conjunction with the Council of Government, and finally to promulgate by an Ordinance which you will direct to take effect simultaneously with all other proposed changes from and after the 1st of January next."⁴

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1. C.O. 48/84, Bourke to Bathurst, 17/12/1826. (R.C.C. Vol. XXVIII, p. 458.)
 2. C.O. 49/19, Hay to Somerset, 21/2/1827.
 3. C.O. 49/19, Goderich to Bourke, 14/6/1827. (R.C.C. Vol. XXXII, pp. 5-13.)
 4. Ibid.

This despatch was tabled at a council meeting held on 5 November 1827, together with the reports of the commissioners of inquiry. The council were able for the first time to examine in detail the whole financial scheme proposed. The commissioners had aimed at reducing the multiplicity of taxes in the colony and increasing the efficiency of collection. Their attempt to streamline the revenue system was in keeping with the current trend in Britain.¹ But even with their plan of reduced expenditure and increased revenue they had predicted a shortfall of £12 000 - "tantamount to an admission that the colony was already taxed to capacity."² The commissioners had planned a reduction in indirect taxation and had intended a more equitable distribution of the tax load. Taxes to be repealed or modified were the income tax, the opgaaf duties, the tithe, the market duties, and the import duties - to be decreased to 3% on British goods and 5% on foreign goods. The chief sources of income were to be land revenue (hitherto a very erratic and easily evaded source of revenue); stamp and licence fees; auction and transfer duties; and the assessed taxes, namely the personal, or commando, tax, the slave and servant's taxes and the carriage and horse tax.

Preparations were immediately made by the Council of Advice to initiate the changes required by the secretary of state. Ordinances for abolishing the pacht and vendue systems and introducing wine and auctioneer's licences were passed during November 1827.³ On 30 November the council proceeded to the consideration of the proposed assessed taxes, and the lieutenant governor presented the outline of an ordinance on the subject. At the following meeting it was decided that the personal, or commando tax, should be prescribed in a separate ordinance as it was not intended to be permanent.⁴

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1. A Brady, William Huskisson and Liberal Reform (London, 1928), Chs. 5 and 6.
 2. Leverton, Government Finance and Political Development in the Cape, 1806-1834, A.Y.B., 1961, p. 319.
 3. *Infra*, pp. 279-80.
 4. C.O. 51/8, Minutes, 3/12/1827. (R.C.C. Vol. XXXIV, pp. 502-3.)

The subject was resumed two weeks later, on 14 December 1827.¹ Before discussion of details took place, Bourke sought the opinion of each council member

"upon the expediency of carrying those arrangements into immediate effect and to the full extent desired by His Majesty's Government as it might be embarrassing for him to find any difference of opinion in Council upon the principle whilst the details alone were supposed to be under consideration."²

Bourke appears to have been referring obliquely to the situation a year earlier when the council had agreed to the principle of imposing a tax on slave property, and had afterwards rejected the whole scheme, while supposedly discussing only the rate at which it might be levied.³ Clearly, Bourke wished to avoid a repetition of this situation.

The relevant paragraph of Goderich's despatch of 14 June 1827 was again read to the council and individual opinions were then expressed and minuted. Of the five members present, apart from Bourke, Bell alone considered that the council had authority to oppose the measure, which had already received the most attentive consideration of the council. He stated that,

"he could not believe it to be the intention of His Majesty's Government on this or any other occasion, to compel the Council to act in opposition to their declared and unanimous opinion, since their concurrence in the measure is by no means absolutely necessary."⁴

The other members, Truter, Plasket, Daniell and Stoll were still convinced of the inexpediency of the measure but regarded the instructions from London as "binding and imperative." Nevertheless, Truter proposed that the council should once again record their respectful observations

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1. Other aspects of the commissioners' reports had been dealt with in the meantime.
 2. C.O. 51/8, Minutes, 14/12/1827. (R.C.C. Vol. XXIV, p. 517.)
 3. *Supra*, p. 242.
 4. C.O. 51/8, Minutes, 14/12/1827. (R.C.C. Vol. XXXIV, p. 519.)

on the tax innovations; Plasket suggested that taxes for the current year should be levied as usual in the following April and at the old rates;¹ and Stoll asserted that,

"since the measures themselves are so directly at variance with the deliberate and recorded opinion of the Council, he had a right to disclaim all responsibility for the result in thus yielding his own judgement to superior authority."²

Stoll's remark highlights the hidden issue at stake, namely the independence of the council and the authority of their opinion in relation to the Colonial Office.³ Once the individual opinions of council members had been heard a draft ordinance for imposing a personal tax was read a first time and ordered to be printed.

Meanwhile news of the intended tax on slave property had spread throughout the colony as the commissioners' reports had become available. The reaction amongst slave proprietors was one of prompt and active opposition to the projected tax. Early in December a memorial carrying 281 signatures was presented to the lieutenant governor, protesting against the proposal. Bourke transmitted this to the secretary of state at once, together with the views of council members, explaining that the council still adhered to their stand taken a year previously as outlined in the despatch of 17 December 1826.⁴ Bourke also pointed out the inconvenience of introducing the new system of taxation before 1829,⁵ which would also allow time for a final decision to be made in London.⁶

From the point of view of the Council of Advice the question of the new taxes was temporarily shelved by a formal decision taken on

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1. The existing financial year ended on 31 March. The introduction of the new rates from 1 January 1828, as instructed, would have caused complications.
 2. C.O. 51/8, Minutes, 14/12/1827. (R.C.C. Vol. XXXIV, p. 520.)
 3. *Supra*, pp. 89-90.
 4. *Supra*, p. 243, n. 1.
 5. *Supra*, n. 1.
 6. C.O. 48/110, Bourke to Goderich, 15/12/1827.

18 December 1827 to postpone the introduction of the new scheme until 1829.¹ When the matter of taxation was resumed in February 1828 there were two new members of the council, Wylde and Stockenstrom.² For their benefit the minute of the council meeting held on 14 December 1827 was read, in which the personal opinions of the several council members had been recorded.³ Afterwards Stockenstrom expressed his satisfaction that these views coincided so closely with his own. He also considered the instruction from London to be "imperative on the colonial government" but still hoped that some alternative forms of taxation might be found.⁴

Throughout February the council considered and amended the personal tax ordinance and the complementary draft ordinance, for repealing certain taxes and imposing others in lieu thereof. By 20 February the amended drafts were ready, but before the final reading of the ordinance for repealing certain taxes, the new chief justice, Wylde, questioned once again the expediency of passing measures "so directly at variance with the deliberate and recorded opinion of the council" and suggested that the whole matter should again be referred to London.⁵

Once more Bourke required the council to hear the relevant passage from Goderich's despatch of 14 June 1827.⁶ He then recounted council's deliberations on the subject in December 1826, and reminded council members that a full report had been submitted to the secretary of state, to which no reply had been received from the colonial office. Instead,

"commands had been issued to carry the system of taxation proposed by the commissioners into immediate effect, and he had taken an early opportunity of calling their attention to the embarrassing situation in which he would be placed if

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1. C.O. 51/8, Minutes, 18/12/1827.
 2. *Supra*, p. 65.
 3. *Supra*, pp. 245-6.
 4. C.O. 51/10, Minutes, 4/2/1828.
 5. C.O. 51/10, Minutes, 20/2/1828.
 6. *Supra*, p. 243 and 245.

while the details of the system were before the Council the principles upon which it was grounded should be made a subject of discussion."¹

Although a majority of the council had then affirmed that they might not deviate from the instructions received,

"if ... a majority of them were now so deeply impressed with the injurious tendency of the Bill on the Table as to be of the opinion that the further reading thereof should be deferred, he would not hesitate to act in accordance with their advice."²

On the question being put whether the ordinance should be passed the unusual situation occurred of an equal division. Wylde, Bell and Stockenstrom voted against the motion; Daniell, Truter and Stoll voted in favour. Using his casting vote for the second time, Bourke supported the motion and the ordinance was passed.³ This critical division clearly reflects the influence of the two new council members, Wylde and Stockenstrom, who both supported Bell in his view that despite explicit instructions from the secretary of state, the council was entitled to act independently.

Another tactic was now brought into operation. Although he had voted for the tax ordinance, Stoll had previously reserved the right to amend the time at which it should come into effect. He now requested the lieutenant governor to inform the secretary of state of the council's dissent from the new system of taxation, and moved that the promulgation of the ordinance be deferred until further instructions were received from London. Wylde, Bell, Truter and Stockenstrom supported the suggestion; Daniell voted against it, and gave notice of his intention to record the grounds of his opinion.⁴

The personal tax ordinance was similarly passed and then suspended. This tactical manoeuvre was both skilful and legitimate. In preparing and passing the required ordinances, the council was fulfilling

1. C.O. 51/10, Minutes, 20/2/1827. *Supra*, p. 245.

2. *Ibid.*

3. The first occasion, had been on 24 December 1827 during Plasket's quarrel. *Supra*, p. 62.

4. C.O. 51/10, Minutes, 20/2/1828.

the instructions of the secretary of state. But in exercising the right of suspension they were preventing the introduction of a measure considered ill - advised and untimely, and also fulfilling the letter of the Additional Instructions of February 1825, which had required that laws passed in the colony should be referred to London for confirmation before being promulgated locally, a requirement very seldom observed.¹

The next move in the matter of taxes arose out of a remark made in the grounds of opinion recorded by Daniell,²

"on rejecting the mode of Taxation recommended by His Majesty's Commissioners of Inquiry ... it is the duty of Council at the same time to propose another mode which will not only meet the expenditure but also prove less injurious to the Colonial population, and for performing this duty, I conceive that the Council have made themselves responsible."³

The suggestion was taken up and at a council meeting held on 4 March 1828 a schedule of proposed taxes in lieu of the commissioners' scheme of taxation was tabled. It had been prepared by Truter, Stockenstrom and Stoll, they had also drawn up an explanatory statement. The main target of their criticism of the commissioners' tax proposals was still the slave tax and this, together with the personal tax and tax on servants had been omitted from the new schedule. Instead it was proposed to increase several of the existing taxes, namely capitation, income and stock taxes, and to adopt some of the proposals of the commissioners, notably the waggon, carriage and horse taxes. "Nothing of importance is introduced ... to which the people are not accustomed," it was stated.⁴

When the proposed schedule was discussed by the council several amendments were introduced of which the most significant was the inclusion of a capitation tax of 10s/= per annum on male servants and on slaves over 16 years of age employed only in domestic service. Stoll and

1. Supra, p. 79.

2. Supra, p. 248, n. 4.

3. C.O. 51/10, Minutes, 22/2/1828, Grounds of opinion of Daniell.

4. C.O. 51/10, Minutes, 4/3/1828, Statement on Proposed schedule of taxes.

Stockenstrom recorded their most strenuous opposition to this move.¹

The alternative schedule was referred to London straight away by Bourke, who outlined the council's proceedings on the whole revenue question and gave justification to the suspension of the tax ordinances. A delay in introducing the new financial measures,

"would be less prejudicial to His Majesty's Service than the absolute rejection of the advice of so large a majority of the Council and the immediate promulgation in the Colony of so important a measure by my own authority alone and under the form of a proclamation; whereas if His Majesty shall be pleased to return this Ordinance for promulgation it will be published in the usual form of legislative Acts, namely as an Ordinance in Council."²

Bourke himself urged the acceptance of the alternative scheme of taxation in preference to the commissioners' proposals, mainly because of the widespread antagonism towards a general tax on slave property. With his official despatch Bourke sent a private letter to the secretary of state, concerned with the constitutional implications of the council's recalcitrance and other difficulties currently being experienced within the council.³ He raised the question of the governor's right of enactment by proclamation without the consent of the council in view of the recently promulgated Charter of Justice, which provided for the enforcement of laws made "with the advice of the Council of Government."⁴

Bourke's despatch on the tax proposals of the council had been addressed to Huskisson, but by the time it reached the Colonial Office Murray had replaced him as secretary of state.⁵ The question received prompt attention, and a reply was despatched in July 1828. The new secretary of state had found it difficult to determine the case, being reluctant "to set aside the long and laborious investigation which the Commissioners of Inquiry have instituted," but at the same time hesitant

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1. C.O. 51/10, Minutes, 13/3/1828.
 2. C.O. 48/124, Bourke to Huskisson, 7/3/1828.
 3. C.O. 48/124, Bourke to Huskisson, Pte., 7/3/1828.
 4. Supra, Ch. 2, passim.
 5. Infra, Appendix A.

to confirm an ordinance

"stated to be repugnant to the feeling and opinion of all those persons in the Colony who must be allowed to be best qualified to understand the merits of the question which those Ordinances involve."¹

The latter consideration had outweighed the former, and the schedule of taxes prepared by the council was approved. Murray confessed that he had been,

"swayed less by considerations of a mere financial nature, then by my anxious desire to avail myself of every proper opportunity of promoting the exercise of that unfettered judgment which the Council of Government has displayed in the deliberation of those two Ordinances.. It has always been the object, and will ever be the earnest desire of His Majesty's Government that the Council of Government should assist His Majesty's Representative with their free and unbiased advice."²

The decision of the secretary of state appears to have been a bold but wise one. It is nonetheless questionable whether the advice of the council had been entirely unbiased since three members, Stoll, Truter and Stockenstrom were themselves slave owners. It was moreover these three who had drafted the alternative tax schedule.

Murray's despatch was presented to the council late in November 1828, at the first business meeting held by Cole after his arrival in the colony in September. A month later a draft ordinance incorporating the new schedule of taxes was discussed and amended. In February 1829 the subject was deliberated further, and on 5 March 1829 the measure was passed as ordinance 57.³ The new system of taxation was to come into operation on 1st April 1829. The ordinance was transmitted to the

1. C.O. 49/21, Murray to Cole, 16/7/1828.

2. Ibid.

3. Gazette, 13/3/1829, Ord. No. 57. On the passing of the ordinance both Stockenstrom and Stoll again recorded dissent against that portion of it which imposed a tax on slaves, C.O. 51/14, Minutes, 5/3/1829. *Supra*, p.250, n. 1.

secretary of state in April 1829,¹ and its allowance was conveyed to the governor in August 1829² - more than a year after the scheme had been originally approved in London. Delays on this occasion were colonial, not imperial.

Apart from minor questions concerned mainly with the collection of taxes rather than their form, the subject did not come before the Council of Advice again. The imperial authorities however reverted to the idea of introducing a tax on slave property. In May 1831 Cole received instructions that he was to substitute a slave tax of 5s/= per head for the carriage tax introduced in 1829.³ These instructions were altered in October 1831, insofar as the taxation of produce was to be abolished in preference to the tax on vehicles.⁴ Cole was annoyed not only because the question of a slave tax had been revived but also because after three years' experience in the colony he considered that his opinion should have been sought on a question of such importance.⁵ The despatch of 27 May 1831 had also required that Cole cut the costs of government by reducing the salaries of some officials and consolidating a number of offices.⁶ In his reply to this directive Cole commented in detail on the proposed reductions to the civil establishment but avoided any mention of the slave tax.⁷ When he received the October letter concerned with the proposed alterations in taxation he wrote back to expressing his relief "to observe that Your Lordship had expected me to use a discretionary power in this very delicate matter," and that convinced "of the utter inexpediency of imposing a slave tax, however modified," he had taken no steps to fulfil the instructions received.⁸

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1. C.O. 48/130, Cole to Murray, 16/4/1829.
 2. C.O. 49/23, Murray to Cole, 20/8/1829.
 3. C.O. 49/23, Goderich to Cole, 27/5/1831. Leverton, *Government Finance and Political Development in the Cape, 1806 - 1834*, A. Y. B. 1961, p. 318. Hunt, Sir Lowry Cole, p. 130.
 4. C.O. 49/25, Goderich to Cole, 17/10/1831.
 5. Hunt, Sir Lowry Cole, p. 130.
 6. *Ibid.*
 7. C.O. 48/143, Cole to Goderich, Sep., 10/10/1831.
 8. C.O. 48/146, Cole to Goderich, 4/3/1832. Hunt, Sir Lowry Cole, p. 131.

Cole's decision in this regard had been in part, influenced by the inflamed state of opinion in the colony over the other major slave question, namely amelioration.¹ In view of the fact that slavery itself was only to last another two and a half years in the colony it was fortunate that through the efforts first of the council and then of Cole a tax on slaves had not become an essential source of revenue to the colony.

On the question of a slave tax the advice of the council at Cape Town had remained unequivocal and their persistent refusal to acquiesce had resulted in the adoption of their own scheme of taxation in preference to the schedule of taxes proposed by the commissioners of inquiry. But on the wider question of slave amelioration even the persistent and strenuous opposition of the council was of no avail for the issue was an imperial one not merely a local one.

When Cole became governor of the colony in September 1828, the instructions to amend ordinance 19 had not yet been fulfilled.² At Cole's first council meeting, held on 22 November, a draft ordinance for this purpose was tabled and ordered to be printed. This peremptory action by the new governor appears to have been lacking both in courtesy and in tact. From his experience in Mauritius and the information available to him at the Cape, Cole must have known that the question of slave amelioration was a delicate one, requiring careful handling. Bourke's private reasons for delaying the amendments had been accepted by the Colonial Office which had waived the urgency of the amendments.³ Yet the new governor made no attempt to gain the personal confidence of the council or to elicit the support of council members for the amendments required before presenting to them a ready prepared draft ordinance.⁴

1. *Infra*, p. 257f.

2. *Supra*, p. 232.

3. C.O. 49/21, Murray to Cole, Sep. and Conf'l., 25/9/1828.

4. This situation probably reflects Cole's inherent dislike of the conciliar system and his view that a governor should exercise the authority delegated to him on his own initiative, after seeking the advice of other officials informally. Hunt, Sir Lowry Cole, pp. 40 - 1.

The amendments were mainly those provisions which had already been discussed by the Council of Advice in 1825 and rejected.¹ When the matter came before them again in November 1828 the council had just scored a victory over the Colonial Office on the question of taxation.² This may be why they were emboldened to resist once again the measures proposed for their adoption. Early in December 1828 the council agreed that,

"although several of the provisions of this Ordinance [to amend Ordinance 19] may not in themselves be deemed objectionable, yet it would be inexpedient to promulgate them by a legislative act. The ferment which the publication of Ordinance 19 created in the public mind is now subsiding, but the agitation of the subject at the present moment, or even for some time to come, would most certainly produce much alarm and dissatisfaction among the slave proprietors, while the alterations proposed would be attended by no material improvement in the condition of the slaves."³

They added that they were watching the operation of ordinance 19 and would avail themselves of any opportunity to extend its benefits. To this general statement was added a more lengthy personal opinion submitted by Truter, now relieved of the office of chief justice. He reiterated the two points made by the council, namely that reaction against ordinance 19 was only just beginning to subside and that real advantage had already accrued to the slaves through this ordinance. As in 1825, Truter claimed that "Necessity or manifest utility ought to exist for the introduction" of any further amelioration measures and that, at present, the peace of the colony should not be jeopardised. He commented again in detail on the amendments required, re-emphasising many of the points he had made in 1825.⁴

Although Cole had brought the question of amending ordinance 19 to the attention of the council at an early opportunity, he was dilatory about

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1. Supra, pp. 226-7.
 2. The despatch conveying approval of the council's proposed tax schedule was tabled at the same meeting as the draft ordinance on slave amelioration. C.O. 51/12, Minutes, 22/11/1828.
 3. C.O. 51/12, Minutes, 4/12/1828.
 4. Supra, p. 221. C.O. 51/12, Minutes, 18/12/1828, Grounds of opinion of J. A. Truter.

informing the secretary of state of the council's decision.¹ Three and a half months passed before a despatch was sent to London on the question. Cole then suggested that if the secretary of state, Murray, remained adamant that the colony's slave regulations should be changed, he should arrange for the preparation of draft legislation in Britain, to be sent to the colony for promulgation.² Like Bourke a year earlier Cole was not confident that the new Supreme Court would uphold an enactment passed without the consent of the Council of Advice, because of the terms of the Charter of Justice issued in 1827.³

Cole received no reply at this time to the queries concerning his legislative authority, so that the uncertainty of his right to enact a measure in the face of opposition from the council persisted. The question of slave amelioration received attention a year later. The Colonial Office had planned "a much more comprehensive measure to bring some uniformity into the slave code of colonies of conquest."⁴ The new regulations were passed by order in council on 2 February 1830, and included provisions for the limitation, delay and witnessing of all domestic punishment; the keeping of punishment record books which were to be inspected by the local slave protector twice a year; the prohibition of corporal punishment for female slaves; further restrictions against the use of slave labour on Sundays, notification of which was to be given to the local protector; prohibitions against Sunday markets; and the restriction of the separate sale of slave children to those over sixteen years of age.⁵ Most of those provisions had already rejected by the council of advice at the Cape.⁶ Other requirements concerning the food, clothing and working conditions of slaves were to be planned locally, as well as the administration of the law in the respective courts of the colony.⁷

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1. Cole's attention to correspondence was usually dilatory.
 2. *Supra*, p. 84, C.O. 48/130, Cole to Murray, 30/3/1829.
 3. *Supra*, p. 110 and pp. 80f.
 4. Hunt, *Sir Lowry Cole*, p. 114.
 5. *Gazette*, 13/8/1830, Order in Council, 2/2/1830. Ordinance 19 had allowed the separate sale of children over ten years of age.
 6. *Supra*, p. 226.
 7. C.O. 49/23, Murray to Cole, 19/3/1830 and Murray to Cole, Sep., 20/3/1830.

No discretion was left with the governor regarding the promulgation of the new regulations. They were to in operation within six weeks of arrival in the colony. Partly for this reason and also because enactment by proclamation had been specified for some of the new provisions, Cole decided not to consult the council at all and to effect all the required changes by proclamation. But the attorney general, Anthony Oliphant,¹ halted these arrangements on the grounds that such a procedure was not legal. The question was referred to the judges who were unanimously of the opinion that in terms of the Charter of Justice they would not be able to enforce such laws.² Cole was thus obliged to bring the whole matter before the Council of Advice, probably the very thing he had been anxious to avoid doing in the light of their earlier attitude.

Cole found himself in an embarrassing position and explained at some length why he had intended to promulgate the new regulations without prior consultation with the council.³ He also had to point out that there was no discretion left to the governor or council in the matter - the new regulations were to be in operation within six weeks. Accordingly, there was no discussion by the council and "consulting" them was, in this instance a mere formality, by which the letter of the law might be observed.

The order in council and a number of related proclamations appeared in the local Government Gazette of 13 August 1830, and regulations concerning food and clothing for slaves and provision for baptism and interment of slaves were published a week later, as ordinances 75 and 76.⁴ The regulations came into effect on 26 Aug, exactly six weeks after instructions for their enactment had reached the colony. Two days later Cole wrote to the secretary of state to inform him of the colony's compliance.⁵

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1. Anthony Oliphant (1796-1859), attorney general at the Cape, 1827-1839.
 2. The Charter of Justice required the courts to enforce laws that had been made by the governor and Council of Advice. *Supra*, p. 80.
 3. C.O. 51/20, Minutes, 9/8/1830.
 4. Gazette, 13/8/1830, Order-in-Council. Gazette, 20/8/1830, Ord. Nos. 75 and 76.
 5. C.O. 48/136, Cole to Goderich, 28/8/1830. Hunt Sir Lowry Cole, pp. 116-7.

Cole's position at this time was difficult. He was himself severely critical of many of the new regulations because they were totally unsuited to the circumstances of the colony, particularly those provisions concerning domestic punishments and Sunday labour.¹ While Cole was sympathetic to slave owners in 1830 he was also determined that the law should be upheld.²

The new regulations re-aroused the anger of local slave owners and late in 1830 protests were received from all parts of the colony. As in 1826 the solid grounds for protest, namely the practical difficulties of observing the law in a vast and thinly populated colony and amongst people largely illiterate, were not presented, but rather an emotive plea was made by slave owners against having to be their own accusers before the law, i. e. through the keeping of punishment record books - a plea hardly likely to mellow the attitude of officials at the Colonial Office or of evangelical reformers of the Anti-Slavery Society in London!

"We are forced by the said enactment ... to write down, sign and solemnly swear before God to the transgressions we have committed of unlawful punishments etc., or otherwise, in order not to accuse ourselves we must make improper or false returns, and falsely swear thereto. If it be true that the law is not made against the good, but against the bad, then the guilty have only the alternative of either incriminating themselves or of committing Perjury!!!"³

Cole did not immediately refer the memorials and petitions to the Council of Advice. But in January 1831 when it was widely known that many slave-owners intended defying the law with respect to punishment record books, he sought the council's opinion on the propriety of suspending the clauses requiring the books. Cole was conscious not only of the practical difficulties for slave-owners, but also of the burden of responsibility placed upon local officials.⁴ The council advised unanimously against suspension

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1. C.O. 48/136, Cole to Murray, 28/8/1830.
 2. Hunt, Sir Lowry Cole, p. 118.
 3. C.O. 48/142, Memorial of the inhabitants of Zwartland, enclosed with Cole to Goderich, 1/4/1831.
 4. C.O. 51/22, Minutes, 6/1/1831.

but reaffirmed their opinion of 1825, that the scheme of keeping and inspecting punishment record books was inapplicable to the circumstances of the colony. Stockenstrom recorded his "strong conviction that the most expedient measure for the ... colony to adopt ... would be to get rid of slavery altogether."¹

The minute of the above meeting was transmitted to the secretary of state in April 1831, together with sixteen other enclosures, mainly memorials from slave-owning inhabitants and the views of the respective judges of the Supreme Court. Emphasis was placed on the difficulties created by distance in the colony, a factor which rendered it almost impossible to observe some of the recent regulations.² Cole himself urged modification of the order in council and warned that if the regulations were to be enforced in their present form he would require additional troops in the colony.³ Later in April 1831 Cole sent forward special returns that he had requested from the slave protector, giving substance to the claim that many of the provisions of the order in council were impractical at the Cape.⁴ He also repeatedly took occasion to stress the need for local adaptation of slave regulations when transmitting the regular reports of the slave protector to London.⁵

Although Cole was convinced of the inappropriateness of the new slave regulations in the colony he did not betray this publicly when dealing with two test cases that arose in 1831. The difficulties were in part inspired by the publication of two pamphlets promoting the abolition of slavery.⁶ One had been written by a government official and

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1. C.O. 51/22, Minutes, 6/1/1831, Opinion of Stockenstrom.
 2. E.g. The requirement that the local assistant slave protector was to be notified of the intention to employ slaves on a Sunday and the inspection of punishment record books.
 3. C.O. 48/142, Cole to Goderich, 1/4/1831. Hunt Sir Lowry Cole, p. 118.
 4. C.O. 48/142, Cole to Goderich, 21/4/1831.
 5. E.g. C.O. 48/143, Cole to Goderich, 5/7/1831, enclosing Slave Protector's Report. C.O. 48/146, Cole to Goderich, 24/7/1832, enclosing Slave Protector's Report.
 6. C.O. 48/142, Pamphlets by T. Miller and J. C. Chase.

was misconstrued as an unofficial "kite" on the question of emancipation. This gave rise to new fears on the part of slave-owners that their legitimate property rights were in jeopardy.¹ In February 1831 two groups of inhabitants had separately petitioned Cole for permission to hold a public meeting to elect a committee that would consider plans for emancipation² and other "interests of the colonists at large."³ Cole refused both applications without reference to the council and, also on his own authority, publicly disclaimed any knowledge of the intentions of the British government, and any prior knowledge of the two recent publications. He announced that he did not plan to alter or suspend the new regulations, but would recommend to His Majesty's Government any "temperate representation" on behalf of slave-owners, which would be better received in Britain if it were known that colonists were complying with the law as it stood. He would also permit the calm consideration of the question of emancipation, if undertaken as a united effort in the colony, and in the light of reason, justice and humanity.⁴ There was no immediate response.

A more severe test of the new regulations occurred in Stellenbosch and led to the dismissal of the local resident magistrate for failure in public duty. At the first inspection of punishment record books a riotous mob had gathered and prevented many slave-owners from taking the necessary oaths in the presence of the assistant slave protector. Although called upon for help the resident magistrate had declined, mainly because his sympathies lay with the rioters. Cole instituted an official inquiry into the incidents and afterwards dismissed the resident magistrate for dereliction of duty.⁵

Over a period of some two years Cole did not cease to point out at every possible opportunity the unsuitability of the 1830 order in council

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1. Miller, sometime acting clerk of the Council of Advice had written that the question of slave emancipation should not be "frittered down to a mere question of profit and loss."
 2. C.O. 48/142, Cape Town merchants to Cole, 5/2/1831, enclosed with Cole to Goderich, Sep., 6/4/1831.
 3. Ibid., Slave owners to Cole, 5/2/1831.
 4. Gazette, 11/2/1831, Govt. Advt.
 5. Hunt, Sir Lowry Cole, pp. 118-9.

for the conditions of the colony. His persistence, reinforced by the views of the slave protector, the council of advice and the local inhabitants, ultimately influenced the Colonial Office to a limited degree. In November 1831 new consolidated slave regulations were provided for all crown colonies. But these were not transmitted to Cole until a modifying order in council had been passed adapting the regulations for application to the Cape, three months later. This delay was the cause of a minor constitutional crisis within the colony and of the only occasion when a governor used his authority to act in an emergency in despite of the council of advice. The general orders in council of November 1831 and the supplementary order prepared for the Cape in February 1832 arrived in the colony together, in July 1832. Meanwhile unofficial copies of the November order in council had reached Cape Town in April 1832 and had been reprinted in the local press. At the time there was nothing to indicate that modifications were to be introduced before the application of the new regulations to the Cape. Local slave owners at once became alarmed. Opposition to the proposed new measure was fostered by a Dutch newspaper, De Zuid Afrikaan, and at the village of Koeberg active resistance was planned. Support for the Koeberg farmers was expressed in Stellenbosch and local defiance threatened to erupt into open rebellion.¹

Cole wished to take prompt action to suppress the dissidents, but did not obtain the immediate support of the Council of Advice. He therefore, for the first time, published an ordinance in the name of the governor and council without in fact having obtained the prior consent of the council.² He was enabled to do this because the question of the governor's legislative authority, which had been referred so many times to London, had at last been "set at rest" by a clear statement defining the authority of the governor.³ This had arrived at the Cape Town just before the promulgation of ordinance 90, for prohibiting public meetings, and may well have been crucial.

1. Infra, Ch. 10.

2. Supra, pp. 80f.

3. Supra, p. 89.

When the modified order in council, applicable only to the Cape, arrived in July 1832 the threatened defiance subsided and slave owners were temporarily pacified. But the modifications introduced in the supplementary order were slight,¹ and the new features of the November orders in council were considerable.² After the steady endeavours of Cole and of the slave protector to stress the local difficulties of applying even the existing regulations, the result must have seemed disappointing. Moreover, for Cole personally there was an implied censure in a separate letter from the secretary of state, answering his various communications of the previous April on the subject of slavery.³ Goderich observed that Cole's remarks were "exclusively directed to the practical details of the subject: and that those great principles by which the government must direct its course, are left without any distinct notice." Once the principle had been accepted that slavery was unjust,

"no law can be framed for regulating the relative rights and duties of the Proprietors and the Slaves which will not to a considerable extent be anomolous, and even inconsistent with itself ...

When anomolies and inconsistencies are pointed out in the Royal Order in Council, and it is thence inferred, that it is framed in ignorance and haste, I must protest against the inference. No amount of knowledge, no clearness of apprehension, and no precision of style could provide against or obviate all such objections. Whatever is enacted, to control the Owners' power, and to prepare the Slave for Freedom will, in some degree, infringe upon the Rights of property. Whatever is enacted to secure the Owner's authority and to enforce the submission of the Slave, will, in some degree, derogate from the great principle, that the Laborer is worthy of his hire."⁴

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1. E.g. A reduction in fines and provision for local adaptation of the regulations for punishment record books in respect of slave owners living more than 20 miles away from an administrative centre.
 2. E.g. Working hours were to be limited to 6 a.m. to 6 p.m.; the slave protector and his assistants were to have right of entry to the dwellings of slaves.
 3. Supra, p. 257a.
 4. C.O. 49/25, Goderich to Cole, Sep., 29/2/1832. It is from this letter that the quotations at the beginning of this chapter have been taken.

Cole seems to have taken this rebuke to heart. In a curt note written in December 1832 he informed the secretary of state that the new regulations were in force in the colony.¹ He subsequently showed considerable diffidence in expressing his own opinion on the question of slavery.²

As in 1830, the regulations of 1832 were to come into force within six weeks of arrival in the colony. After his experience of August 1830 Cole did not this time attempt to introduce the new regulations without prior discussion with the council of advice. Even those matters which were left to his discretion he brought to their attention, and immediately encountered difficulties. On the suggestion of Truter an ordinance for repealing ordinances 75 and 76³ was rejected by the council although the attorney general, Oliphant, considered that such an ordinance would be "convenient for the guidance and information of Mageistrates."⁴ Further difficulty was experienced over the modifications planned by Cole for the keeping of punishment record books beyond the 20 mile radius prescribed in the Cape order in council.⁵ Cole intended to make all local officials responsible for the distribution and inspection of such books, including justices of the peace and field cornets. In this way it would be possible for all slave owners in the colony to keep punishment record books. The council resisted these proposals throughout August 1832.⁶ For the next four months Cole did not summon the council - perhaps because he was evading the deadlock that he knew would ensue on this subject.

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1. C.O. 48/146, Cole to Goderich, 19/12/1832. Cole had also been reprimanded for owning one slave and had to write and explain the circumstances of the case, C.O. 48/146, Cole to Goderich, 6/12/1832.
 2. E.g. "I am fully aware of the extreme delicacy of thus venturing to express opinions opposed to those of His Majesty's Government in regard to Slavery in this colony . . . , C.O. 48/149. Cole to Goderich, 15/3/1833.
 3. Supra, p. 256, n. 4.
 4. C.O. 51/28, Minutes, 13/8/1832.
 5. Supra, p. 260, n. 1.
 6. C.O. 51/28, Minutes, August 1832.

By December other matters required the attention of the council and a meeting was held on 17 December 1832. The first decision taken was that "it would not be advisable to proceed further" on the subject of punishment record books.² Cole yielded to the view of the council, although he might have issued the necessary proclamation without their consent. When Cole informed the secretary of state that the new regulations were in operation he omitted any reference to the punishment record books or the controversy in the council.³

Meantime in the colony slave owners had once again reacted to the new measures of amelioration. In September 1832 a committee was appointed to petition to king in council and to request from the governor the immediate suspension of the most recent regulations. Cole refused this request and warned the committee to keep within the bounds of their specified task, namely to prepare a petition to the king.⁴ Early in 1833 a petition carrying over 3 000 signatures was forwarded to Britain, listing the objections of slave owners to numerous clauses of the new regulations, pleading for their repeal, and asking that His Majesty might,

"be further graciously pleased to grant to this Colony the right and benefit of a Representative Legislative Assembly, to be freely elected by the inhabitants, when the Petitioners pledge themselves to co-operate with Your Majesty's Government in the manifest wish of further improving the Slave Population and of finally abolishing Slavery within this Colony."⁵

In 1826 slave proprietors had appealed locally to the Council of Advice for ordinance 19 to be suspended or repealed as a preliminary to the

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1. C.O. 51/28, Minutes, August 1832.
 2. C.O. 51/28, Minutes, 17/12/1832.
 3. C.O. 48/146, Cole to Goderich, 19/12/1832. Slave owners within the 20-mile radius were however required to keep punishment record books.
 4. Hunt, Sir Lowry Cole, p. 121.
 5. C.O. 48/149, Petition from Slave Proprietors, enclosed with Cole to Goderich, 21/3/1833.

preparation of plans for effective but gradual emancipation.¹ By 1832 slave proprietors of the colony had come to realise that on questions of slavery the Council of Advice was being forced to rubber-stamp policy devised in Britain. In petitioning the king they therefore asked not only for relief from onerous slave regulations, but also for more effective recognition of local opinion by means of an elective assembly. It was not the first time such a request had been made, nor the first time that it had been linked to questions of slavery.² But the British government had already committed itself to emancipation by June 1832 and was not likely to grant greater representation locally until emancipation had been accomplished.³

Slavery did not appear on the agenda of the council of advice at all in 1833, although it remained a lively and controversial topic in the colony generally. In Britain government resolutions for emancipation were moved in May 1833 and the Act itself received the royal assent on 29 August 1833,⁴ It was to come into operation on 1 December 1834. Twenty million pounds was voted for compensation to slave owners, and a scheme of apprenticeship was devised, in order to facilitate the transition from slave labour to free labour, and to ensure that plantations could continue to operate.

Unofficial news of the government's resolutions on emancipation reached the Cape in July 1833,⁵ but the official despatches arrived only in December, when Wade was acting governor of the colony. He wrote at once to the secretary of state, reporting that he did not expect any disturbances on the part of the colony's slaves and that proprietors had received the news in "dogged gloomy silence." This was not an

1. Supra, pp. 230-1.

2. Infra, Ch. 10, passim.

3. In 1830 the question of granting a legislative assembly to the Cape had been discussed in the House of Commons and it had been stated then that it would be inexpedient to introduce representation while the state of slavery still existed in the colony. Eybers, Select Constitutional Documents Illustrating South African History, 1795-1910, p. 32, Debate in the House of Commons, 24/5/1830.

4. Mathieson, British Slavery and its Abolition, pp. 231 and 240.

5. S. A. C. A., 20/7/1833.

indication of indifference on their part for they viewed emancipation with "utter detestation . . . alarm, and want of confidence in the good faith of the British government in regard to the amount and prompt payment of the compensation."¹ Wade urged that the settlement of compensation should be speedy and generous if the slave owners of the Cape were to be appeased, and the strong anti-British feeling countered. He recommended the introduction of a vagrancy law² and the suppression of De Zuid Afrikaan, which had continued to publish provocative articles on slavery, or else the publication of a government sponsored paper to counteract this influence.³

The official copies of the Emancipation Act arrived in the colony early in January 1834,⁴ having also been preceded by private copies which were immediately printed in the local press.⁵ Wade had already arranged to have copies printed and an explanatory note drawn up for circulation by the time that the official despatch was received.⁶ He proceeded with the plan, and was able to add the authorisation of the secretary of state. The Emancipation Act, and the explanatory memorandum were presented to the Council of Advice on 7 January 1834, at what was to prove their final meeting. Wade explained to the council the procedure he intended to adopt for publishing the act and memorandum in the colony. There is no indication in the minutes of the response of council members to the news. They immediately moved on to the next item of the agenda and passed an ordinance for establishing a toll on the road between Grahamstown and Port Elizabeth.⁷

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1. C.O. 48/151, Wade to Stanley, 6/12/1833.
 2. *Infra*, p.
 3. C.O. 48/151, Wade to Stanley, 6/12/1833.
 4. C.O. 49/25, Stanley to Officer administering the Government, 5/9/1833.
 5. S.A.C.A., 21/12/1833.
 6. C.O. 48/154, Wade to Stanley, 14/1/1834.
 7. C.O. 51/34, Minutes, 7/1/1834.

This was to be their last activity as a council of government.

In reviewing the role of the Council of Advice on the question of slavery in the colony, it is clear that on the chief issue, namely the decision of the British government in 1823 to initiate a programme of slave amelioration the influence of the council was limited. From 1823 British policy was based on new principles, and these became the criteria in planning practical measures of amelioration. Initially, greater discretion was given to colonial governments to implement and adapt policy devised in Britain. The apparent success of the Council at the Cape in 1825 in rejecting some of the provisions of the Trinidad order in council, must be seen within the wider context of the imperial government's early preference for local enactments. When these regularly fell short of standards set by the Colonial Office, the field of discretion exercised locally was steadily narrowed and finally withdrawn altogether. The attempt made by the Council of Advice in 1825 to set long-term limits to the ameliorative programme applicable in the colony, was effective only in delaying for some years the comprehensive scheme envisaged in Britain. From 1828 obstructive tactics within the council served to hinder the governor and cause him to seek ways of by-passing the necessary consultation with them rather than to halt the amelioration programme.

On the question of a slave tax the Council of Advice proved more successful in resisting proposals recommended to the Colonial Office by the Commission of Inquiry. This was in part due to their conviction and independence on the question, and in part due to the fact that they put forward a feasible alternative to a scheme already acknowledged to be inadequate. But additional factors existed, namely the local nature of the issue in contradistinction to the imperial nature of the slavery issue, the willingness of the secretary of state to acquiesce in order to assure the local council of its worth and value; and impliedly the doubtful benefit of a tax on slaves, when slavery as an institution was known to be coming to an end.

In relation to local slave owners the role of the Council of Advice is also of interest. Protests and petitions from dissatisfied slave owners

were received each time that new measures of amelioration were introduced in the colony, but these proved unavailing. To the local inhabitants it would appear that members of the council were unsympathetic or indifferent to the very real difficulties of the new regulations. Yet this was not the case. Council members were not only sympathetic, they had exerted every effort to prevent the introduction of those aspects of the ameliorative measures which seemed inapplicable to the colony. Their endeavours in this regard were not known to the public because of the oath of secrecy. Nor was it known how frequently they had pleaded for gradual rather than sudden emancipation. The silence of the Council of Advice when emancipation itself was announced, was like the general acquiescence in the colony, inexplicable, except in terms of the disappointment of those who had long realised that their views were not being heeded in London, and that ultimately emancipation was going to come about on British not colonial terms.

Chapter 7Questions of Trade that came before the Council of Advice

During the years that the Council of Advice was in existence in the colony, the Cape of Good Hope was suffering an economic depression. The recurring problem of the colony was the excess of imports over exports,¹ and the most urgent need was to find more markets for agricultural products and for other marketable commodities. This explains why trade questions were so important during the period 1825 to 1834 and why the council of advice concerned itself with them.

In Britain tentative steps were being taken towards a freer trade during the decade 1820 to 1830², notably while Huskisson was president of the Board of Trade, from 1823 to 1827. Although this was only a beginning of economic reform in Britain and more significant changes were to come about later,³ nevertheless the movement towards a freer trade was to ripple out towards the colonies and to effect changing economic patterns throughout the empire.⁴ At the Cape the growth in economic freedom reflected not only the cautious changes begun simultaneously in Britain, but also the development for the first time within the colony of an economic structure

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1. P.P. 1829, V (300), pp. 34-5, Appendix No. 1.
 2. A. Brady, William Huskisson and Liberal Reform, (London, 1928), Chs 4 and 5.
 3. E.g. Repeal of the corn laws in 1846; repeal of the Navigation laws in 1849. Fay, Great Britain From Adam Smith to the Present Day, pp. 66-7 and 50.
 4. R.L. Schuyler, The Fall of the Old Colonial System, A Study in British Free Trade, 1770-1870, (New York, 1945), Chs 3 and 4.

freed from traditional monopolies. During the years of Dutch East India Company rule economic growth had been fettered by company monopoly and the limited market available.¹ During the years of Batavian rule the intention of commissary de Mist² had been to bind the colony to the parent state with the ties of orthodox mercantilism.³ The second British occupation in 1806 meant that the Cape was pulled into a different economic orbit at a time when Britain controlled the sea lanes. But it was only after the formal cession in 1814 that new developments could emerge. Although the way was opening up for a new economic system both in Britain and in a parallel movement at the Cape, old vested interests as well as long-established practices and patterns ensured that the pace of change was gradual rather than dramatic and the nature of change piecemeal rather than comprehensive. The regulation of the import and export trade of the colony was dependent upon wider imperial interests and was therefore not left to the discretion of the local administration. Nevertheless, in some areas of economic life policy decisions made in Britain had important local repercussions. Some of the trade questions dealt with by the Council of Advice from 1825 onwards arose as a reaction to policy devised in London. In some cases the council was able to effect changes which brought relief to local producers or merchants whose interests seemed threatened by economic change in Britain itself.⁴ In other cases the council was unable to help.

1. O.H.S.A. Vol. I, pp. 199; 201-2; 287-8.

2. Jacob Abraham de Mist (1749-1823), commissioner general of Batavian Republic at the Cape, 1803-5.

3. C.H.B.E. Vol. VIII, p. 195.

4. E.g. The wine producers, *infra*, pp. 273-5.

Questions of internal economy were of greater significance for the members of the Council of Advice because of the greater degree of discretion and independence left to them. The council concerned itself with a variety of subjects which had a direct or indirect bearing on the internal economy. These included the matter of communications and the development of the port of Algoa Bay,¹ measures taken to end long-standing economic monopolies in the colony;² and a protracted dispute over distillery rights.³

Two other major trade issues occupied the attention of the council. These were the corn trade and the frontier trade of the colony. Essentially the regulation of the corn trade was a matter of internal economy but because the Cape was now tied to an imperial centre in which the protection of the corn trade was one of the cornerstones of the economy, it was to prove difficult to divorce the local corn trade from the traditional style of regulation in Britain itself. On this matter the Council of Advice gave sufficient support to the lieutenant governor, Bourke, to enable him to effect the changes necessary for the different circumstances of the colony.⁴

The frontier trade between colonists and tribesmen beyond the boundaries of the colony was a question which impinged on many other topics, notably the problem of maintaining peace in the frontier districts. It was

1. *Infra*, p. 277.

2. *Infra*, p. 279.

3. *Infra*, pp. 282-6.

4. *Infra*, pp. 287-307.

therefore a question of crucial significance. Changes introduced by the Council of Advice were to have far reaching effects, both on the export potential of the colony, and on the relationships between black and white within the Cape frontiers, and beyond.¹

As a conquered colony the Cape of Good Hope did not fall within the scope of the navigation laws of Britain, "but a special discretionary power was temporarily vested in the Crown to regulate its commerce by orders in council."² The trend of regulation was for an open trade, both import and export, with all countries in amity with Britain, but with discriminatory duties on foreign goods and on foreign shipping.³ In 1809 reservation was made to the East India Company of all trade to the east of the colony, and of the trade in arms and ammunition.⁴ In 1811 the East India Company's monopoly was modified, with the permission of the directors, and a limited trade was inaugurated between the Cape and New South Wales, and the Cape and Ceylon.⁵ When the East India Company Charter was revised in 1813 the company lost their general

1. *Infra*, pp. 309-332.

2. *C.H.B.E.* Vol. VIII, p. 233. Such orders in council were published locally by government proclamation so that what appears by its title to be a local enactment is very often the embodiment of a decision of the Privy Council.

3. *Proclamations*, pp. 27 and 66, Govt. Advt., 30/5/1806 and Govt. Proc., 18/9/1807.

4. *Proclamations*, pp. 116-8, Govt. Proc., 29/9/1809.

5. *Proclamations*, pp. 151-2, Govt. Advt., 23/4/1811.

monopoly, and henceforward only the tea trade remained exclusively in their hands.¹ Even this was challenged by merchants at the Cape.

Trade regulations were not affected by the peace in 1814, and the orders in council of the war years continued in operation until further amended. In 1820 the discriminatory duties against foreign shipping were abolished but there was still a trade preference in favour of British goods.² At the same time an embargo was placed on foreign articles of cotton, wool, iron and steel.³ In 1826 the privilege of trading with the colony was confined to those foreign countries which would grant reciprocal trading rights to Britain in respect of their colonies.⁴

Policy decisions made in Britain provoked some of the trade questions handled by the Council of Advice. From 1825 a group of London and Cape Town merchants attempted to undermine the tea monopoly of the East India Company, and in 1827 a local firm received a consignment of tea shipped directly from London by private merchants.⁵ But the Table Bay customs officer refused to release the shipment without authority from either the East India Company agent⁶ or the colonial government. The matter was therefore referred to the governor and council, who

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1. Proclamations, p. 300, Govt. Proc., 24/6/1814.
 2. Proclamations, p. 491, Govt. Advt., 6/10/1820. Foreign goods were subject to 10% duty, British goods to 3%.
 3. Ibid.
 4. P.P. 1829, V (300), p. 4, 6 Geo. IV, c. 114.
 5. M. Arkin, Storm in a Teacup, the Later Years of John Company at the Cape, 1825-36 (Cape Town, 1973), pp. 49-61.
 6. William Hawkins, agent for the East India Company at Cape Town, 1823-36.

decided in favour of the consignees.¹ The incident was significant as a test case, in which the monopoly of the East India Company had been infringed, but did not lead to large-scale private importation of tea.²

Another question that came to the attention of the Council of Advice through policy changes in Britain was that of local wine production. Wine was the most important product of the Cape in the first half of the 19th century³ and a considerable proportion of this was exported, mainly to Britain.⁴ Two types of wine were produced at the Cape, the Constantia wine, widely acknowledged to be of a superior quality but available only in small quantity,⁵ and the ordinary, inferior wine,

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1. C.O. 51/6, Minutes, 27/2/1827 and 2/3/1827. (R.C.C. Vol. XXXIV, pp. 350-65.)
 2. Arkin, Storm in a Teacup, the Later Years of John Company at the Cape, 1825-36, p. 59.
 3. O.H.S.A. Vol. I, p. 290. In the second half of the 19th century wine was superseded by wool.
 4. C.A. C.O. 5966. Blue Book, 1824, Value of wine exported to Britain, £154 528-0-0; value of wine exported elsewhere, £30 409-0-0.
 5. E.g. C.A. C.O. 5966, Blue Book, 1824, quantity of ordinary Cape wine exported - 1 211 363 gallons: quantity of Constantia wine exported - 6 030 gallons. The government had a contract to purchase Constantia wine, but ended this in 1829. C.O. 51/14 and C.O. 51/16, passim.

commonly described as harsh or earthy in flavour.¹ Attempts to improve the quality of Cape wines had achieved little by 1825.² Preferential tariffs granted by Britain in 1813 may have created a false sense of security so that local capital was invested in expansion rather than improvement.³ In 1824 the British Board of Trade planned to reduce the duty payable on foreign wines, thus undermining the protection enjoyed by the Cape producers.⁴ It was indirectly this threat which brought the question of Cape wine before the Council of Advice in 1825.

Although the colony's wines enjoyed preferential treatment in Britain, they were taxed in various ways before leaving the colony. Market dues and tolls at Cape Town amounted to 5½ rixdollars per leaguer, including a gauging fee of 1 rixdollar introduced in 1818 for the establishment of a public library!⁵ Wine for export was subject to a further charge of one rixdollar wharfage fee per leaguer,⁶ and three rixdollars per leaguer, payable to the wine taster, whose task it was

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1. C.L. Leipoldt, 300 Years of Cape Wine (Cape Town, 1952), pp. 61-70. E. Blount, Notes on the Cape of Good Hope (London, 1822), p. 72.
 2. E.g. Appointment of a wine taster in 1811. Establishment of a wine Committee in 1813. Restrictions in 1815 on the export of wine not fully fermented. Leipoldt, 300 Years of Cape Wine, passim.
 3. Cape wines were charged only one third of the duty payable on foreign wines, C.H.B.E. Vol. VIII, p. 235. R.C.C. Vol. XX, p. 115f, Memorial of Committee of Cape Trade Society, 25/3/1825.
 4. Fay, Great Britain from Adam Smith to the Present Day, pp. 54-5.
 5. Proclamations, p. 413, Govt. Proc. 20/3/1818. C.O. 51/1, Minutes, 28/11/1825.
 6. Bird, Cape, 1822, p. 114.

to see that no inferior wine was exported from the colony.¹ In 1825 the combined dues payable before export represented roughly 10% of the local market value of wine.² This was considered by local wine producers to be oppressive and in face of the threatened loss of their protection on the British market they had appealed in July 1825 to the governor, Somerset, for a reduction of local duties. Somerset had referred the matter to London, perhaps in order to strengthen the case of those already negotiating on behalf of local producers for the continued protection of Cape wine.³ Meanwhile both the currency question and a general depression in the colony had intensified the pressure on wine producers.⁴ In November 1825 they appealed again for relief from local dues, this time addressing themselves to the governor and the Council of Advice.

The memorial was received at the council meeting held on 28 November 1825, and considered at the subsequent meeting. Somerset explained that he had already referred the question to the secretary of state, with a recommendation that the request be granted and the deficit in revenue made up by an import duty imposed on goods not used in agriculture. The council deferred the matter, pending a reply from London.⁵ This was received in February 1826 and in accordance with Bathurst's directions an ordinance was

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1. Ibid. Supra, p. 273, n. 2.
 2. C.O. 51/1, Minutes, 28/11/1825. (R.C.C. Vol. XXIV, p. 335.)
 3. C.O. 48/69, Somerset to Bathurst, 25/7/1825, with enclosure. (R.C.C. Vol. XXII, pp. 377-9.)
 4. Supra, Ch. 4. Schumann, Structural Changes and Business Cycles in South Africa, p. 111, table 14.
 5. C.O. 51/1, Minutes, 28/11/1825 and 5/12/1825. (R.C.C. Vol. XXIV, p. 335-6.)

passed in July 1826 abolishing the office of wine taster and ending the duties attached thereto.¹ Subsequently a recommendation of the commissioners of inquiry for the abolition of the wine gauger's fee was adopted by the Council of Advice. As the revenue from this source had previously maintained the public library, measures were also introduced to establish the independence of this institution by the appointment of trustees and the allocation of an annual grant.² Two other minor changes also occurred. In 1826 a request for wine to be brought to the Cape Town market in the pipes used for export instead of in leaguers was granted.³ And in 1832 the restriction on bringing wine to the market between February and September was lifted, also in response to a memorial from wine producers.⁴

It is noteworthy that the Council of Advice was not called upon to exercise a mediatory role between the local wine producers and the British government over the question of a preferential tariff. Protests and negotiations were conducted through other local channels, mainly the Commercial Exchange and the Cape Wine Trade Committee.

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1. C.O. 49/16, Bathurst to Somerset, 15/10/1825. C.O. 51/1, Minutes, 21/2/1826; 2/3/1826 and 3/7/1826. (R.C.C. Vol. XXIX, passim.) Gazette, 7/7/1826, Ord. No. 20.
 2. C.O. 51/8, Minutes, 26/12/1827 and 28/12/1827. (R.C.C. Vol. XXXIV, pp. 538-40.) Gazette, 4/1/1828, Ord. No. 35.
 3. C.O. 51/5, Minutes, 22/12/1826. (R.C.C. Vol. XXIX, p. 499.) Gazette, 29/12/1826, Govt. Advt.
 4. C.O. 21/26, Minutes 20/2/1832. C.O. 51/28, Minutes, 19/7/1832 and 7/8/1832. Gazette, 10/8/1832, Ord. No. 95.

The former had been established in 1804 to promote Cape business interests and was by 1825 a flourishing local institution housed in the exchange building in the centre of town.¹ The latter was appointed in 1826 under the patronage of the governor, Somerset, to encourage improvement in the quality of local wines.² These two Cape Town organisations were assisted by the London-centred Cape of Good Hope Trade Society formed in 1825 to foster trade links with the colony and promote the interests of the Cape wine merchants in particular.³ The newly established press at the Cape also served as a channel for protest on questions concerning the local wine trade.

On questions of the internal economy the Council of Advice consistently showed itself alert to the needs of the colony. By improving communications and introducing satisfactory port regulations the council was not only facilitating the internal trade, but also increasing the export potential. By freeing some trades from the monopolies which had formerly restricted them, the council was encouraging the development of a more lively commerce within its own bounds.

The council supported several applications for new and better roads, and made provision for their maintenance by the establishment of tolls.⁴ Better roads facilitated

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1. Immelman, Men of Good Hope, pp. 23-37.
 2. R.C.C. Vol. XXV, pp. 318; 370-5; 395-405, various papers concerned with the committees efforts towards improving the wine produced locally.
 3. Immelman, Men of Good Hope, pp. 58-9. In 1831 an adjustment was made in the duties payable on Cape wine, so that they paid half the duty imposed on foreign wines. B.J.T. Leverton, Government Finance and Political Development at the Cape, 1806-1834, A.Y.B., 1961, p. 305.
 4. C.O. 51/3, Minutes, March to September, passim. Gazette, 1/9/1826, Ord. No. 1 Local, establishing a toll on Du Toit's pass in the Stellenbosch district. C.O. 51/5, Minutes, December 1826, passim. Gazette, 5/1/1827, Ord. No. 3 Local, establishing turnpikes on the road between Cape Town and Simon's Town.

access to the Cape Town market and also to the Table Bay harbour. The last act of the council in 1834 was to make provision for a toll on the Howieson's Poort road between Grahamstown and Port Elizabeth, again improving the communication between the interior and the harbour.¹ More significantly, the council in 1830 supported the governor, Sir Lowry Cole, in the project of building a new road over the Houw Hoek mountains, although the scheme had been disapproved by the Colonial Office, and Cole had been reprimanded for the unauthorised expenditure.²

The opening of Port Elizabeth as a free port in 1826 was in itself a significant development, providing a more accessible outlet for produce from the eastern districts and a more convenient harbour for trade with Mauritius and the east.³ Encouragement was given to this trade in Mauritius as well as at the Cape.⁴ Port Frances was also given a customs house in 1826 and the privileges of a port, but failed to develop into a viable proposition and the customs house was closed in 1828.⁵ Port Elizabeth, in contrast, developed rapidly, particularly as the frontier trade became more vigorous.⁶ Within a few years the value of goods shipped thence reached £60 000 and in 1833 it

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1. C.O. 51/34, Minutes, 7/1/1834. Gazette, 10/1/1834, Ord. No. 8 Local.
 2. Hunt, Sir Lowry Cole, pp. 127-8. Gazette, 28/5/1830, Ord. No. 74; 24/6/1831, Ord. No. 87; 15/6/1832, Ord. No. 91.
 3. Gazette, 4/8/1826, Govt. Minute declaring Ports Elizabeth and Frances open to trading ships.
 4. Gazette, 2/11/1827, Ord. No. 26 of Governor in Council of Mauritius, exempting salt provisions cured at the Cape of Good Hope ... from the duty of 6% ...
 5. Hockly, British Settlers, p. 114.
 6. *Infra*, p. 313f.

totalled £81 230.¹ In the same year the value of goods landed at Port Elizabeth was £97 845.² However these figures do not represent the import and export trade from Algoa Bay, because the carrying trade between Port Elizabeth and Cape Town accounted for a considerable proportion of the total. The most valuable items shipped from Port Elizabeth were hides, which regularly made up a quarter of the total value, and in 1834 amounted to £32 179 out of a total of £65 796.³

Regulations for merchant vessels in port⁴ as well as quarantine regulations were also enacted by the Council of Advice. The latter was discussed in detail between April and October 1826 and a draft ordinance was prepared and submitted to London for approval before promulgation in the colony.⁵ But the most essential facility for improving Table Bay harbour, a stone pier, was not provided because of the prohibitive cost.⁶ The need for a stone pier had been recognised since the time of Somerset, but it was not obtained until 1855.⁷

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1. C.A. C.O. 5972, Blue Book, 1829, Value of Goods shipped from Algoa Bay. C.A. C.O. 5975, Blue Book, 1833, Value of Goods shipped from Algoa Bay.
 2. C.A. C.O. 5975, Blue Book, 1833, Returns for Algoa Bay.
 3. C.A. C.O. 5976, Blue Book, 1834, Returns for Algoa Bay.
 4. Gazette, 30/11/1827, Ord. No. 29.
 5. C.O. 51/3, Minutes, March to October 1826, passim. C.O. 51/16, Minutes, August 1829, passim. Gazette, 28/8/1829, Ord. No. 65.
 6. Table Bay was a treacherous harbour and the Admiralty preferred to use Simon's Town harbour, some 23 miles away. Even here very little was done to improve the anchorage before 1860, Graham, Great Britain in the Indian Ocean, pp. 35-6.
 7. Hunt, Sir Lowry Cole, p. 130.

Another field of communications with which the Council of Advice was concerned was the establishment of a regular and well organised postal service.¹ Postal regulations were constantly under scrutiny and ordinances for this purpose were passed in 1826 and 1829.²

The question of local monopolies was not tackled by the council until the end of 1827, when they began to implement the recommendations of the commissioners of inquiry, as directed by the secretary of state, Goderich, in June 1827.³ The commissioners had proposed that free enterprise should be encouraged as much as possible in the colony to eliminate the stultifying effects of monopoly.⁴

The first step taken by the Council of Advice in this direction was to abolish the pacht system, which had provided for a monopoly of the retail sale of wine and was farmed out annually.⁵ The pacht had already been replaced by a licensing system in Cape Town, but was still operative in the country districts.⁶ A request to end the

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1. C.O. 51/3, Minutes, June to October 1826, *passim*.
C.O. 51/14, Minutes, January to February, 1829, *passim*.
 2. Gazette, 20/10/1826, Ord. No. 25 and 13/2/1829, Ord. No. 56.
 3. C.O. 49/19, Goderich to Bourke, 14/6/1827.
 4. P.P. 1827, XXI (282), pp. 36 and 50-1, Report of the Commissioners of Inquiry upon the Government and Finance of the Cape of Good Hope.
 5. Bird, Cape, 1822, pp. 41-3.
 6. Proclamations, p. 628, Govt. Proc. 14/11/1823.

pacht had come before the Council of Advice in November 1826, but the question had been deferred, pending the reports of the commissioners of inquiry.¹ A year later, after receiving the recommendations of the commissioners, the council sought the advice of local officials before passing an ordinance to end the pacht and extend the licensing system throughout the colony.²

In November 1827 preparations were also made to end the auctioneering monopoly, or vendue system. Government officers, known as vendue masters had previously exercised a monopoly of all auctioneering business in the colony.³ This system was abolished in December 1827 and provision made for licensed auctioneers to practise.⁴ An amending ordinance in 1832 enabled certain legal officers and market masters to sell by auction without a licence.⁵

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1. C.O. 51/5, Minutes, 6/11/1826. (R.C.C. Vol. XXIX, p. 417.) The question of the relations between the Commission of Inquiry and the Council of Advice is examined in Chapter 3.
 2. C.O. 51/8, Minutes, November and December 1827, *passim*. Gazette, 7/12/1827, Ord. No. 30. The wine licensing ordinance was amended several times. E.g. Gazette, 5/12/1828, Ord. No. 54 and 11/12/1829, Ord. No. 67. In 1832 these ordinances were all repealed and two new ordinances passed regulating brewing, distilling and the retail trade, Gazette, 29/6/1832, Ord. Nos 93 and 94.
 3. Bird, Cape, 1822, pp. 44-5.
 4. C.O. 51/8, Minutes, November and December, 1827. Gazette, 7/12/1827, Ord. No. 31.
 5. C.O. 51/26, Minutes, 21/6/1832. Gazette, 29/6/1832, Ord. No. 92. The Council of Advice also frequently had to consider the problem of debts owed by vendue masters. In their handling of this question they showed a willingness to allow for flexibility and adaptation.

In 1828 the retail butchery trade was also freed from former monopolies and opened to licensed butchers.¹ Provision was made for local cattle fairs to be held in place of the former practice of sending a butcher's agent into the country districts to purchase cattle.²

Another question of monopoly that came before the council several times was the matter of banks. In 1825 all banking business was in the hands of the government,³ but from that time there were a number of attempts to establish private or joint-stock banking concerns. The first application received by the council on this matter was in September 1825.⁴ A local merchant, Arthur Hogue, planned to establish a private bank, upon securities arising from the sale of a cargo of goods recently brought from India. The Council of Advice sought the opinion of the committee of the Commercial Exchange,⁵ who did not favour the issue of notes "not convertible ... into Bullion or its equivalent" and the council advised Hogue accordingly.⁶

1. Gazette, 5/9/1828, Ord. No. 51.

2. S.D. Neumark, *Economic Influences on the South African Frontier, 1652-1836* (Stanford, 1957), pp. 147-8.

3. *Supra*, p. 133 and p. 135.

4. C.O. 51/1, Minutes, 19/9/1825. (R.C.C. Vol. XXIV, pp. 314-5.)

5. *Supra*, p. 276.

6. C.O. 51/1, Minutes, 30/10/1825. (R.C.C. Vol. XXIV, pp. 318-9.)

Another merchant, J.B. Ebdén, whose exertions in London in the economic interests of the colony have already been noted,¹ was also eager to start a bank at the Cape. While in London in 1825 he had tried to obtain a royal charter or act of parliament for the founding of a bank, but the question had been shelved after a first reading in the House of Commons in March 1825.² Ebdén had returned to the Cape in October 1825 and took up the question with the colonial government. The Council of Advice again sought the opinion of the Commercial Exchange, who did not favour the scheme. But this time the council decided not to intervene.³ Ebdén's private bank was launched in March 1826, but did not prove to be a success.⁴ Other attempts were made to establish a joint-stock bank at the Cape but it was only in 1837 with the founding of the Cape of Good Hope Bank that such a venture was successful.⁵

The questions of brewing and distilling in which a type of monopoly existed also received the attention of the Council of Advice. In 1830 an ordinance was passed defining the brewing regulations of the colony, because some doubts had arisen concerning the need to hold a licence for this purpose. An annual stamped licence

1. Supra, p. 101, ns. 1 and 2.

2. Arndt, Banking and Currency, pp. 197-203.

3. C.O. 51/1, Minutes, 24/12/1825 and 3/1/1826. The view of the council was endorsed by the secretary of state in due course. C.O. 51/6, Minutes, 20/2/1827.

4. Arndt, Banking and Currency, pp. 205-11.

5. Ibid., pp. 211-36.

worth £45, was required.¹

The question of distilling was rather more complex. At the end of 1826 a memorial was sent from 192 Albany inhabitants to the governor in council, requesting permission to use their surplus barley and oats for distilling purposes.² It was alleged that the brandy made from grapes in the western districts of the colony was of a very inferior quality and deteriorated rapidly. But the major reason for the request was the question of the colonial supply of grain. Since 1798 the use of grain for distilling had been prohibited. By 1825, when the memorial was received, the cavalry force on the frontier had been considerably reduced and farmers were seeking a new outlet for the barley which formerly had been bought by the commissariat. The council was at first evasive and decided to refer the question to London.³

The despatch explaining all this reached the Colonial Office in April 1827, just at the time when changes in the ministry were taking place. Political instability in Britain from April 1827 to November 1833⁴ was to have repercussions on many colonial issues.⁴ In this case fifteen months elapsed before a reply was sent to the colony and in that time Bathurst had left the Colonial Office, Goderich, and then Huskisson, had come and gone, and Murray had become secretary of state.⁵ It was Murray who replied

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1. C.O. 51/20, Minutes, 23/12/1830. Gazette, 24/12/1830, Ord. No. 80.
 2. C.O. 51/7, Appendix B, Memorial of inhabitants of Albany.
 3. C.O. 51/6, Minutes, 26/1/1827. (R.C.C. Vol. XXXIV, p. 329.)
 4. *Infra*, Appendix A.
 5. *Ibid.*

to the question concerning distilling from grain. He was inclined to be cautious and to balance the interests of the western Cape wine farmers against the seemingly legitimate needs of the Albany settlers. He finally proposed that the Council of Advice should grant a limited number of licences "to a very few persons of approved character, resident in Grahamstown!"¹

In the colony the question had been kept alive by the tenacity of Thomas Philipps,² leader of the Albany petitioners. He had written firstly to the colonial secretary in Cape Town to inquire about the outcome of the memorial and then directly to the Colonial Office in London, letting the lieutenant governor at Cape Town know that he was doing this.³ In London the question was referred to Plasket for his opinion.⁴

In January 1829 the Council of Advice resumed consideration of the matter, on the basis of Murray's despatch of the previous June.⁵ They were still cautious.

1. C.O. 49/21, Murray to Cole, 13/6/1828.

2. Thomas Philipps (1776-1859), leader of one of the British Settler parties of 1820; gave evidence to the Aborigines Committee in 1836; active in public life in the eastern Cape, particularly in the matter of immigration.

3. C.O. 48/127, Philipps to Huskisson, 5/3/1828. Keppel-Jones, Philipps, 1820 Settler, p. 340, Philipps to R. Harries, 13/6/1828.

4. C.O. 48/127, Plasket to Hay, 7/6/1828.

5. Supra, n. 1.

Having voted five to one in favour of repealing the prohibition of 1798 they shrank from implementing the decision and again referred the question to the secretary of state.¹

There is a strong suspicion that since the Albany petition had first been presented (if not earlier) distillation had been taking place in the eastern districts.² No grain was exported from Port Elizabeth between 1828 and 1834³ despite the fact that the reduction of cavalry based in the district had lessened the local demand for barley and oats. Furthermore, Philipps clearly knew of the recommendations of Murray's June despatch, and on this basis assumed the council's compliance. Distilling, he confidently announced in a letter of July 1829, would begin the following January.⁴

Procrastination in London again had its counterpart in Cape Town. Inadvertently the question of distilling was omitted from official correspondence from the Cape in 1829. Two years later Philipps again wrote to the colonial secretary, Bell, requesting an answer to the Albany petition. He took the precaution of sending a copy of this letter to the Colonial Office in London.⁵

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1. C.O. 51/6, Minutes, 3/1/1829.
 2. Prosecutions for the sale of spirits without the necessary licence sometimes occurred, with no indication whether the spirits sold had been locally distilled. E.g. C.A. C.O. 2712, No. 111, Campbell to Bell, 2/6/1829.
 3. C.A. C.O. 5970-5976, Blue Books, 1828 to 1834, Exports from Port Elizabeth.
 4. Keppel-Jones, Philipps, 1820 Settler, p. 354, Philipps to R. Harries, 1/7/1829, "... We had hard battles on the point of distillation ... We have no good distillers amongst us, the term for commencement is 1830 ..."
 5. C.O. 48/145, Philipps to Hay, 14/7/1831.

Finally in 1832 the new secretary of state, Goderich, authorised the repeal of the 1798 proclamation.¹ In June 1832 the Council of Advice made preparations to amend the wine licensing ordinance, number 30 of 1827,² to include control of brewing and distilling. Two ordinances made provision for a new licensing system for wine and spirit dealers, effective from July 1832, and for new brewing and distilling regulations, effective from January 1833.³

Thus the Albany settlers obtained the desired permission to distil from grain five years after they had first requested it, mainly through the perseverance and tenacity of Thomas Philipps who was willing to take the matter to London when there was no satisfaction from Cape Town. Neglect and delay characterised the handling of the matter by the Council of Advice as well as the Colonial Office in London and the colonial secretary's office in Cape Town. It is not surprising that colonists from the eastern districts frequently complained that their interests were largely overlooked both by the local and the imperial authorities.⁴ The long saga of the Albany petition to distil shows how any lack of political stability at the centre re-acted on colonial patterns on the periphery of the empire. At the Cape two governors dealt with the question of distilling and at the Colonial Office four

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1. C.O. 48/141, Cole to Murray, 4/2/1831. C.O. 49/25, Goderich to Cole, 2/6/1831.
 2. Supra, p. 280. C.O. 51/26, Minutes, June 1832, passim.
 3. Gazette, 29/6/1832, Ord. Nos 93 and 94.
 4. J.L. Stead, The Development and Failure of the Eastern Cape Separatist Movement with special reference to John Paterson (M.A. Thesis, Rhodes University, 1974), pp. 7-13.

secretaries of state were directly concerned and the new regulations were finally confirmed by a fifth.¹ ✓

Of all the trade questions dealt with by the council of advice the story of the corn laws is perhaps the most interesting because of the light it throws on the council as it functioned in relation to the governor, the colonial office in London, and the local community. The wheat supply was one of the first trade questions brought to the attention of the council, and in the course of an enquiry into the grain resources of the colony it became clear that the existing regulations needed revision. As in the case of other questions delay and apparent indifference in London dragged out proceedings to the point where they might easily have halted altogether.

Wheat had been grown at the Cape from its earliest years, but the Dutch East India Company administration had discouraged large-scale production.² The geographic and climatic conditions necessary for wheat growing were only found in the western Cape³ so that the extension of the colony towards the east in the 18th century did not increase wheat production, although many colonists in the interior grew small crops for their own use. The assumption that the eastern districts were suitable for wheat

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1. C.O. 49/25, Stanley to D'Urban, 9/11/1833, allowing ordinances 85 to 98.
 2. de Kock, Economic History of South Africa, p. 185.
 3. M. Cole, South Africa, 2nd Ed., (London, 1966), p. 178.

was to prove almost disastrous to the British settlers brought to the colony in 1820.¹ Even in the rich cornlands of the western Cape fluctuating harvests and inadequate mills and storage facilities had resulted in alternating periods of abundance and scarcity. During the first British occupation of the Cape from 1795-1803 emergency measures had been necessary to keep the colony supplied with grain.² Again in 1806, supplies had to be obtained urgently from St Helena, Madagascar, Bengal and Rio de Janeiro, and other precautions taken to prevent a state of famine in the colony.³

The establishment of a Cape Town granary in 1806 had hardly eased the situation. Neither the assurance of a ready market nor the rise in prices in the next decade had led to a dependable supply of wheat.⁴ The problem was related to the wider question of the imbalance between imports and exports. Wheat was a valuable export product when the harvest was good, and markets were readily available. In 1817 when the price on the British market had risen above 80s/= several shipments of wheat had been allowed to leave the colony.⁵ Early in 1818 the folly of this had become clear when the Cape itself experienced a shortage and high prices.

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1. T. Pringle, Some Account of the Present State of the English Settlers in Albany, South Africa (London, 1824), pp. 27-30.
 2. R.C.C. Vol. II, pp. 61-3, Craig to Dundas, 27/2/1797. R.C.C. Vol. III, p. 362, Govt. Proc., 4/12/1800, restricting the use of grain.
 3. R.C.C. Vol. V, p. 278, Baird to Castlereagh, 13/1/1806.
 4. P.P. 1829, V (300), p. 45, Appendix II, Returns on wheat production.
 5. R.C.C. Vol. XI, p. 453, H.T. Colebrooke to Bathurst, 28/1/1818.

Rising prices and the uncertainty of the harvest had led in 1818 to the prohibition of the export of wheat whenever the local price reached 130 rixdollars per load.¹ The governor retained the right to grant export licences when the local price fell below this level.² This was the first attempt at the Cape to regulate the corn trade according to the local market price, providing a systematic control without the need for emergency legislation. The scheme was further developed in 1822 when, in addition to the ban on export at a certain price level, import restrictions were eased whenever the local price rose.³

At the end of 1818 the blight or rust had re-appeared in the Cape wheat,⁴ and early in 1819 a severe grain shortage was threatening the colony. Precautionary measures were introduced,⁵ and special commissioners appointed to investigate private supplies being hoarded by farmers.⁶ By July the crisis seemed to

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1. Cf. the English corn laws of 1815 and their many antecedents, E. Lipson, The Economic History of England, 3rd Ed. (London, 1943), Vol. II, pp. 449-52.
 2. Proclamations, p. 451, Govt. Advt., 20/3/1818.
 3. Infra, p. 291.
 4. D.J. van Zyl, Die Geskiedenis van Graanbou aan Die Kaap, 1795-1826, A.Y.B. 1968, Vol. I, p. 245. The rust had been known at the Cape early in the 18th century, G. Thompson, Travels and Adventures in Southern Africa, Ed. by V.S. Forbes (Cape Town, 1968) Vol. I, p. 37, Vol. II, p. 114.
 5. E.g. Proclamations, p. 437, Govt. Proc., 12/2/1819, prohibiting the use of grain for feeding cattle. The transfer of responsibility for the town granary from a grain committee to the Burger Senate was made at this time, Bird, Cape, 1822, p. 46.
 6. Proclamations, p. 440, Govt. Proc., 9/3/1819.

be over and the restrictions imposed earlier on the use of grain for feeding cattle or for fine confectionary were lifted.¹ But the rust continued in the ensuing years, especially in the eastern districts of the colony where the British settlers were struggling to establish themselves on agricultural smallholdings of 100 acres each.² The population was now larger and more diffuse and this increased the risk of famine, yet there was no attempt to build a reserve store of grain. A bad season and the blight combined to make an acute shortage in 1822 and emergency steps had to be taken. The import duty was reduced from 10% to 3% for a period of 10 months, and a further rebate of $\frac{1}{5}$ of the duty was offered on the inferior corn from India.³ In consequence, the value of wheat imported in 1822 rose to 579 812 rixdollars, the highest figure for the period 1820 to 1826.⁴

The new regulations also included provisions aimed at encouraging corn merchants to keep up a steady importation of wheat. Arrangements made for the bonding of wheat and its later sale or re-export were to be kept permanently in force, as was the lower duty payable when

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1. Proclamations, p. 451, Govt. Advt., 23/7/1819.
 2. Hockly, British Settlers, pp. 64-5; 74; 81; 90.
 3. Proclamations, p. 541, Govt. Proc., 8/2/1822. Wheat from India sometimes arrived in such a bad state that the customs officer would not allow it to be landed. E.g. R.C.C. Vol. XIV, p. 261-2. Wittever to Lushington, 12/1/1822.
 4. P.P. 1829, V (300), p.40-1, Appendix No. 4.

the local price exceeded 160 rixdollars. In theory this meant that merchants could order wheat at any time and hold it in bond until the local price rose to the level at which duty fell to 3%. But in practice merchants did not avail themselves of this opportunity because they considered a 10% duty prohibitive,¹ and could not risk the long delays waiting for prices to rise and duty to fall. In addition the distance of the colony from its sources of imported wheat rendered speculation risky. The long haul to the Cape, the time factor and the fluctuating local prices tended to reduce the efficacy of the measure intended to ease the regulation of corn imports in 1822.

Yet the swing between abundance and scarcity was so familiar as to be almost predictable. In 1822 one observer attributed it to a misunderstanding about the colony's potential crop.

"A very erroneous opinion has prevailed, that the Cape colony has the capability of growing any quantity of bread corn ... A gradual small increase of the growth ... may possibly ensue; but events prove, taking good and bad seasons, that the Cape at no time, with a smaller population, could do more than grow its own bread; and that even in these days of improved agriculture, whenever a harvest excessively abundant tempted to the folly of exportation, dearth has uniformly followed, and a quantity of grain, exceeding the export, has been imported in the succeeding year, to prevent distress."²

1. *Infra*, p. 293.

2. Bird, Cape, 1822, pp. 105-6.

In spite of the rust during the 1820s small quantities of wheat were exported from the colony in 1822, 1823, 1824 and 1825.¹ Towards the end of 1825 another crop failure seemed imminent and in October the Burger Senate, which was responsible for assessing the food requirements of Cape Town, applied for a temporary prohibition on wheat exports. They explained that there was only enough wheat in storage for about two months and they recommended that the export of grain should be halted until the state of the next year's crop was known.²

When the request was made the price of wheat had already risen above 130 rixdollars per load, the point at which exports were forbidden. The South African Commercial Advertiser quoted prices ranging from 132 to 200 rixdollars per load for the month of October. The gentlemanly reminder was theoretically superfluous.

It is difficult to follow the reasoning of the Council of Advice. They gave consideration to the letter of the Burger Senate on 17 and 24 October and reached two decisions, firstly that until the state of the harvest was better known the governor should exercise caution in authorising the export of wheat: and secondly, that because of the current high price of wheat in Cape Town, the Burger Senate should be advised to sell an amount of up to 1 000 muids from the colonial granary at a price of not less than 175 rixdollars per load of 10 muids.³

1. P.P. 1829, V (300), p. 41, Return of Grain Imports and Exports, 1820 to 1826.

2. C.O. 51/2, Appendix N, Burger Senate to Somerset, 7/10/1825.

3. C.O. 51/1, Minutes, 17/10/1825 and 24/10/1825. (R.C.C. Vol. XXIV, pp. 323-5.)

The Burger Senate acted upon the proposal although they did not obtain the stipulated price. They advertised at the end of October the sale of "good serviceable Cape Wheat ... 167 rixdollars - laid in at the beginning of the year ..." ¹ Some months later the Burger Senate reported to the governor that the amount of wheat in the granary had been reduced to 4 986 muids. ²

Local merchants were also concerned about the state of the wheat supply in the colony, but were reluctant to act under the regulations of 1822. ³ In March 1826 an anonymous writer to the press stated,

"to my knowledge several Houses here would have ordered corn from Europe full six months ago, had they not feared that a fall in the price ... might have exposed them on its arrival to serious losses." ⁴

This letter well illustrates the unintentional tyranny over speculators that resulted from the provision to order wheat when the price was high and, if necessary, put it into bond on its arrival in the colony. The difficulty was brought directly to the attention of the Council of Advice late in 1825 by one Pieter Dusing, a Cape Town baker. Dusing submitted a memorial to the governor in which he explained that he feared a poor harvest, and was anxious to import 3 000 to 4 000 muids of wheat, but wanted the assurance that he would be able to land the shipment on arrival, even if local prices

1. S.A.C.A., 2/11/1825.

2. C.O. 51/1, Minutes, 26/1/1826, *infra*, p. 294.

3. *Supra*, p. 290.

4. S.A.C.A., 22/3/1826, Letter from A Merchant.

had dropped by then.¹ Like the Burger Senate, Dusing may simply have been drawing attention to the possibility of a wheat shortage, but he probably hoped for the lower duty rate regardless of the price. The Council of Advice decided that "no necessity exists for altering the Regulations of government relative to the importation of wheat into this Colony."²

Questions relating to the Cape Town bakers, although not directly connected with the threatened shortage of wheat, kept the corn question before the Council of Advice in December 1825 and January 1826.³ At the end of January the council's attention was again drawn specifically to the scarcity of wheat. The Burger Senate reported that the total quantity of wheat stored in the granary and by bakers was hardly sufficient for two months consumption. They requested a commission to ascertain, on oath, what supplies were being held by all inhabitants within the jurisdiction of Cape Town so that "measures might be taken to ensure a supply of bread for the public until the next harvest."⁴ The council resolved that a commission was unnecessary, but that the Burger Senate should be instructed to make "such general enquiries as may be in their power and to report the result to the government without delay."⁵

1. C.O. 51/2, Appendix M, Memorial of P.F. Dusing. (R.C.C. Vol. XXIV, pp. 327-8.)

2. C.O. 51/1, Minutes, 31/10/1825. (R.C.C. Vol. XXIV, p. 328.)

3. The questions concerned duties paid by bakers and the price of bread. C.O. 51/1, Minutes, December 1825 and January 1826, *passim*.

4. C.O. 51/1, Minutes, 30/1/1825. (R.C.C. Vol. XXIX, p. 243.) A similar commission had been appointed in 1819, *supra*, p. 289.

5. C.O. 51/1, Minutes, 7/2/1826. (R.C.C. Vol. XXIX, p. 247.)

The Burger Senate either ignored the urgency or were unusually dilatory, for they did not report until the middle of March, by which time Somerset had left the colony and Bourke was acting governor. There is a noticeable difference in the concern shown by the two governors. Bourke not only acted promptly, but also exercised both initiative and foresight in seeking temporary alleviation as well as a permanent solution to the perennial problem of the colony's wheat supply.

The report of the Burger Senate showed that supplies in the colony would be sufficient for 3 months, but that the market returns for January to February 1826 showed a considerable reduction in the quantity of wheat brought in compared with the same period the previous year. The council therefore moved for an enquiry, to ascertain from local merchants how much wheat had already been ordered from overseas. Should this be insufficient for the colony's needs, they requested Bourke "to adopt such measures without delay as will secure the country from actual scarcity."¹

In accordance with the council's decision, Bourke approached the committee of the Commercial Exchange, "to know whether any steps on the part of the colonial government were necessary to secure the colony against the consequence of the failure of the last crops."² Subsequently, he twice met a deputation of merchants, who also recommended the removal of the restrictions on the import of wheat as the only means of securing to the colony an ample supply.

1. C.O. 51/3, Minutes, 20/3/1826. (R.C.C. Vol. XXIX, p. 258.)

2. S.A.C.A. 29/3/1826, Report.

Bourke disclosed his intention to suspend the restrictions for the remainder of the year.

Bourke reported to the Council of Advice on the same day, stating that he had been assured that "in the event of this law being repealed, absolute orders for cargoes of grain would forthwith be despatched."¹ Three resolutions on the corn trade were then passed by the council. Firstly, it was resolved that all prohibitions against the importation of grain into the colony should be temporarily removed; secondly, the fifth section of the proclamation of 8 February 1822 should be repealed until the first day of January 1827;² and thirdly, that provision should be made for the admission of all grain and flour into the colony on payment of a duty of 3%, from April to December 1826. A week later ordinance 17 was passed incorporating these decisions.³

Bourke wrote immediately to inform the secretary of state, explaining that the failure of the wheat crop had for some time been "a matter of notoriety", with the harvest so poor in some districts that there was not even enough wheat for sowing. In spite of a general fear that scarcity and high prices were imminent, merchants were reluctant to place orders overseas because of loss and hardship suffered on previous occasions when cargoes ordered while the price was high had arrived at a time when the local price had dropped.⁴

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1. C.O. 51/2, Minutes, 28/3/1826. (R.C.C. Vol. XXIX, p. 262.)
 2. This provided for the differential rates of duty according to the local price. *Supra*, p.291.
 3. C.O. 51/2, Minutes, 3/4/1826. (R.C.C. Vol. XXIX, p. 284.) Gazette, 7/4/1826, Ord. No. 17.
 4. C.O. 48/82, Bourke to Bathurst, 3/4/1826. (R.C.C. Vol. XXVI, p. 218.)

Having taken the initiative in meeting the immediate crisis Bourke proposed to study the whole question more closely and suggested permitting the export and import of grain at a small fixed duty.¹ Bathurst accepted the temporary measures but was hesitant about the more fundamental change which Bourke proposed. Bourke was to take "no step in regard to this delicate question ... without having the sanction of His Majesty's Government."² In England itself the question of corn laws was a delicate one and this perhaps explains the blunt précis of Bathurst's despatch of 25 June 1826 in the Colonial Office entry book - "Do not meddle with the Corn Laws of the Colony."³

In the colony Bourke had not waited for the views of the secretary of state before turning to the wider question of a free trade in corn. At the end of April 1826 he prepared a minute on the corn laws of the colony which was discussed by the council early in May. Three resolutions were finally agreed, namely, that the agricultural interests of the colony were sufficiently protected by the high cost of freight and did not need the additional protection of high duties; that all import restrictions on flour and grain should be lifted and an import duty of 3% charged; and that licences for exporting grain and all internal barriers on the trade should be abolished.⁴ The decisions were to be referred to London

1. Ibid.

2. C.O. 49/19, Bathurst to Bourke, 25/6/1826.

3. C.O. 49/19, Index.

4. C.O. 51/3, Minutes, 1/5/1826. (R.C.C. Vol. XXIX, p. 291-2.)

before implementation. The complexities of the existing regulations were explained by Bourke to the secretary of state. There were twenty six "statutes"¹ on the import, export and internal circulation of grain, nine others relating to market duties and two market regulations issued by the Burger Senate. Bourke stressed that the price of foreign wheat precluded it from the local market. As if well aware of the delays and obstructions caused by inter-departmental negotiation, Bourke urged the need for an early decision - even if the question had to go to the Board of Trade.²

In London the question was not referred to the Board of Trade, but the opinion of J.D. Hume³ was sought on the matter of ad valorem duties, particularly the 3% duty proposed for corn imported into the colony.⁴ Hume disliked ad valorem duties, even when imposed for the sake of revenue; as protective duties he considered that "the fluctuation of the duty operates wrongly - on whichever side they deviate from the average."⁵

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1. Word used by Bourke, C.O. 48/82, Bourke to Bathurst, 1/5/1826. (R.C.C. Vol. XXVI, p. 321.)
 2. C.O. 48/82, Bourke to Bathurst, 1/5/1826. (R.C.C. Vol. XXVI, pp. 320-1.)
 3. James Deacon Hume (1774-1842), worked in customs office for 38 years; consolidated the customs law into ten acts in 1825; joint secretary of the Board of Trade, 1828-40.
 4. C.O. 49/20, Hay to Hume, 22/7/1826.
 5. C.O. 48/85, Hume to Hay, 29/7/1826.

The views of Hume provided the substance of the argument elaborated in Bathurst's reply to Bourke. It is clear, moreover, that both Bathurst and officials in the Colonial Office were still under the illusion that the eastern Cape, where most of the 1820 settlers were located, was suitable for intensive agriculture. Bathurst expressed his anxiety to protect the agriculturists,

"The proposition contained in the second Resolution for opening the Ports at the Cape of Good Hope, is one which cannot be acceded to, without at the same time giving to the Agriculturists, who may have fixed themselves there, the full benefit of that protection which they may justly claim; for after the encouragement which has of late been given to settlers who may have been disposed to emigrate to the Cape, that Colony must now be dealt with as an Agricultural Settlement."¹

The courteous despatch rejecting the views of the governor and council, particularly their preference for an ad valorem duty rather than a fixed duty, included a request for further information. It blandly ignored the fact that the proposals already submitted had been drawn up in compliance with the general regulations of the order in council of 1820, which imposed ad valorem duties on all goods imported into the colony.²

1. C.O. 49/19, Bathurst to Bourke, 22/8/1826. (R.C.C. Vol. XXVII, p. 276.) The question of emigration had recently been the subject of several parliamentary commissions, e.g. P.P. 1823, XIII (401); P.P. 1824, XVI (116); P.P. 1825, XVIII (131).

2. *Supra*, p. 271, n. 2.

Bathurst's despatch was tabled by the Council of Advice at their last meeting held in December 1826. Throughout January 1827 they acted upon the request for further information. The whole question of the corn trade was thoroughly investigated, with evidence being taken at five meetings, from six merchants, four grain farmers, three bakers and a member of the Burger Senate. The findings were printed and formed the basis of discussion at a further three meetings, together with letters received from the Commercial Exchange in Cape Town, the Cape of Good Hope Trade Society in London and from Somerset, Bourke's predecessor.¹

At the end of January the council summed up their views on the corn question. Having minutely examined the evidence before them as well as Bathurst's observations on the three resolutions drawn up the previous May,² council members were convinced that these resolutions "might be safely adhered to and acted upon."³ They gave their reasons fully, in a lengthy comment upon the three propositions formerly submitted to the secretary of state. Their view that local agriculturists were adequately protected by the cost of importing wheat into the colony had been confirmed by those merchants examined by the council. With reference to the ad valorem duty of 3% the council explained that its purpose was not protective but "merely to draw some little assistance from this source in support of the slender and declining income of the colony ... all the duties at present levied in the colony are ad valorem." Nevertheless they were willing to adopt

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1. C.O. 51/6, Minutes, January, 1827. (R.C.C. Vol. XXXIV, p. 274 f.)
 2. Supra, p. 296.
 3. C.O. 51/6, Minutes, 30/1/1827. (R.C.C. Vol. XXXIV, p. 331.)

the proposal of the secretary of state for a fixed duty.

The council also referred to Bathurst's mention of the special responsibility of protecting the agriculturists among the recent British immigrants to the colony. It was emphasised that because of the recurrent failure of the wheat crop, many settlers had given up their agricultural pursuits, hence it was difficult to know whether the eastern Cape would be able in future to provide wheat for the "southern districts of the Colony." Meantime,

"in securing to the growers of wheat inhabiting the ancient corn districts the full remunerating price, as much has been done for the protection of the agriculturist as a due regard for the interests of the consumer will allow."¹

Bathurst had suggested that any arrangements made by the council should be of a provisional nature only.² The council decided instead to defer the matter until "the final decision of His Majesty's Government on this important point shall have been received." They planned meantime to suspend the operation of the town granary, which had not proved to be financially viable, and which was less necessary as a result of the free trade in corn begun in 1826.

The minutes and evidence on the corn trade were transmitted to Bathurst by Bourke early in February, with

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1. C.O. 51/6, Minutes, 30/1/1827. (R.C.C. Vol. XXXIV, pp. 336-7.)
 2. C.O. 49/19, Bathurst to Bourke, 22/8/1826. (R.C.C. Vol. XXVII, p. 278.)

the observation that the views of the council had "undergone no change in consequence of the late investigation, but in deference to your Lordship's observations a fixed duty is proposed in lieu of one ad valorem."¹

The despatch to the secretary of state arrived in London early in April 1827, but was neither acknowledged nor transmitted to the Board of Trade for comment.² No further reference was made to the Cape corn laws in correspondence from London during 1827 or 1828.

Meanwhile in the colony the Council of Advice continued its vigilance and facilitated importation whenever possible. During 1827 several applications to land wheat were received from merchants and from ships' captains. Each case was considered on merit, and the council showed considerable adroitness in handling a variety of situations. When the customs office demanded duty at 10% on a shipment of Danish wheat and flour the council ruled that rate should be fixed according to the average weekly price of wheat, rather than the average price for the month.³ In March 1827 permission was granted for 100 bags of Bengal wheat to be landed to defray port expenses.⁴ When a captain who had brought 250 casks of flour from New South Wales pleaded ignorance of the local import restrictions and undertook to carry Cape wine in place of the flour the council granted him permission to land the wheat at the lower rate of duty.⁵ The precedent

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1. C.O. 48/107, Bourke to Bathurst, 3/2/1827. (R.C.C. Vol. XXX, p. 332.) On the same day Bourke wrote privately to Hay, stressing his anxiety over the harvest and urging the proposed changes. C.O. 48/107, Bourke to Hay, Pte., 3/2/1827. (R.C.C. Vol. XXX, p. 340.)
 2. The oversight may have been due to ministerial changes. *Infra*, Appendix A.
 3. C.O. 51/6, Minutes, 20/2/1827 and 2/3/1827. (R.C.C. Vol. XXXIV, pp. 349 and 363.)
 4. C.O. 51/6, Minutes, 20/3/1827. (R.C.C. Vol. XXXIV, p. 384.)
 5. C.O. 51/8, Minutes, 23/7/1827. (R.C.C. Vol. XXXIV, p. 449.)

thus established was subsequently applied to a local merchant who had ordered seedwheat from England when the local price was high and the duty low, but who found the position reversed by the time his consignment arrived. He was granted permission to land the cargo of wheat at the lower rate of duty provided he entered "into a bond to export colonial produce to the same amount within three months of this date under a penalty of £100."¹ The council consistently showed itself anxious to encourage a freer trade, and to administer the existing regulations with flexibility and an awareness of local needs.

The encouragement given by the council in these instances was in part necessitated by the poor harvest early in 1827.² From March to May 1827 returns were received from the wheat-growing districts and also from the Burger Senate and the customs office, on the amount of grain available in the colony.³ The situation did not however become critical and no emergency measures as distinct from discreet bending of the regulations were required.

The threatened shortage of wheat was in part responsible for one of the more unusual requests received by the Council of Advice. In May 1827 the Presbytery of Graaff Reinet sent a memorial to the governor asking him to set apart the 25 July as a day of fasting and of prayer and humiliation in their district because they had witnessed,

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1. C.O. 51/8, Minutes, 22/10/1827. (R.C.C. Vol. XXXIV, p. 471.)
 2. C.O. 51/6, Minutes, 9/3/1827. (R.C.C. Vol. XXXIV, p. 374.)
 3. C.O. 51/7, Appendix Ff, Nos 1-16.

"with deep concern the numerous and severe judgements with which it has pleased Almighty God lately to visit ... this Colony ... particularly ... the scorching drought, the destructive rust, and the immense swarms of Locusts ... /which/ calamities cannot be regarded otherwise than as coming from the chastening hand of a merciful but offended Deity ..."¹

The council rejected the request as there was no precedent for declaring a "partial fast" and the afflictions were not so widespread as to require a general fast! But they urged the Presbytery of Graaff Reinet to turn "the late Dispensations of Divine Providence to the improvement and edification of their respective congregations."²

The following season the harvest was promising and as early as December 1827 the export of wheat recommenced.³ But Bourke did not lose sight of the need to revise the colony's corn laws. In December 1827 he wrote,

"As soon as the most urgent matters of the new arrangements are gone through, I propose to regulate the corn trade in the manner recommended by Council in the beginning of this year, namely by allowing free import and export with a small fixed duty upon the former."⁴

Despite this tactful reminder, still no directive was received from the Colonial Office in response to the despatch sent 10 months earlier.⁵ In May 1828 Bourke

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1. C.O. 51/7, Appendix I, Memorial from the Presbytery of Graaff Reinet. (R.C.C. Vol. XXXIV, p. 409.)
 2. C.O. 51/6, Minutes, 21/5/1827. (R.C.C. Vol. XXXIV, p. 412.)
 3. The total value of wheat exported during this season was £20 343. No wheat was imported during 1828. C.A. C.O. 5971, Blue Book 1828, Import and Export Returns.
 4. C.O. 48/110, Bourke to Hay, Pte., 9/12/1827.
 5. Supra, pp. 301-2.

took action without waiting any longer for approval or authority from the secretary of state. At a council meeting held on 26 May 1828 he gave notice that he intended bringing forward the question of the corn laws, although there had been no reply from London.¹ At the following meeting an ordinance "For regulating the Importation and Exportation of Grain and Flour in this Colony" was passed, without further discussion or the usual three readings.²

Ordinance 47 repealed the proclamation of February 1822 and provided for the free export of all pulses, grains and flour from any of the ports of the colony, without licence; and for the import of grains on payment of a fixed duty of 6d per muid of grain and 1/6d per barrel of 162 Dutch lbs. of flour. Rice was still to be charged a 10% ad valorem duty.

This ordinance was sent to the secretary of state, Murray, six weeks later, together with four other new laws, including the important ordinances 49 and 50.³ In his accompanying despatch Bourke described the new corn law as an enactment that had long been wanting in the colony,

"I had the honor to call the Attention of Earl Bathurst to the subject in 1826. Some inquiries were made here by His Lordship's directions and a Minute of Council on the Colonial Corn Laws was forwarded from hence in my Despatch of the 3rd February 1827, No. 10 ..."⁴

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1. C.O. 51/10, Minutes, 26/5/1828.
 2. C.O. 51/10, Minutes, 7/6/1828.
 3. *Infra*, Ch. 8.
 4. C.O. 48/125, Bourke to Murray 22/7/1828.

The ordinances were received at the Colonial Office in October 1828, and the pencilled comment: - "Mr Stephen, especially respecting the Hottentots Ordinance" - was written in the margin of the covering despatch. Ordinance 50 became a focal point of interest to missionary societies, the House of Commons and the Privy Council.¹ The significance attached to this particular ordinance may well have resulted in the oversight of the others transmitted to London at the same time. Whatever the reason, no official confirmation of ordinance 47, on the corn laws, has been found. Allowance and disallowance of ordinances numbered from 27 to 45 is contained in a despatch of December 1828;² special approval of ordinance No 50 was sent in January 1829;³ other single ordinances were separately approved in January and February 1829,⁴ and in July 1829 allowance of ordinances numbered 57, 58 and 59 was conveyed to the governor;⁵ in July 1830 ordinances 52 - 55 and 60 - 67 were confirmed.⁶ But it would appear that those ordinances transmitted from the colony at the same time as ordinance 50 were neither allowed nor disallowed. This included the new regulation of the corn trade.

In some colonies the king's power of allowance had to be exercised within three years, otherwise a law was taken to be disallowed.⁷ In the case of the Cape there

1. *Infra*, Ch. 8, *passim*.

2. C.O. 49/21, Murray to Cole, 28/12/1828.

3. C.O. 49/23, Murray to Cole, 10/1/1829. *Infra*, p. 386.

4. C.O. 49/23, Murray to Cole, 24/1/1829, confirming Ord. No. 42. C.O. 49/23, Murray to Cole, 23/2/1829, confirming Ord. No. 51.

5. C.O. 49/23, Murray to Cole, 25/7/1829.

6. C.O. 49/23, Murray to Cole, 16/7/1830.

7. E.g. In New South Wales, *supra*, p. 47.

was no such detailed definition of the terms of allowance and disallowance. The original instructions to the early governors had required that the Colonial Office should be notified of alterations to the existing law of the colony without delay.¹ When the Council of Advice was created in 1825 the further specification had been made that all legislative enactments passed in the colony should be transmitted to London for allowance by the crown, but no time limit had been imposed.² In practice the silence of the crown was taken as consent.³ This was the case, for instance, with ordinance 47 of 1828 which was never formally allowed, but was repealed by order in council in 1832, when the colony's import and export regulations were consolidated.⁴

The revision of the colony's corn laws is of considerable interest in assessing the role of the Council of Advice. The sequence of events illustrates the different attitudes of Somerset and Bourke towards their responsibilities and towards the council. Somerset had been at the Cape since 1814 and had been called on several times during this period to introduce emergency measures because of a shortage of wheat. He was familiar with the situation and aware of the damage to crops, especially by rust after 1817. Yet when the Burger Senate applied to him for an investigation into the state of the harvest in 1826 he prevaricated. In contrast Bourke, who had only just arrived at the Cape, arranged for further inquiry to be made, met with a deputation of merchants himself, and

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1. R.C.C. Vol. VIII, p. 32, Instructions to Cradock, 10/4/1811.
 2. C.O. 49/16, Bathurst to Somerset, 9/2/1825. (R.C.C. Vol. XX, p. 14.)
 3. The same difficulty existed in regard to ordinance 49. *Infra*, p. 434.
 4. Gazette, 20/7/1832, Order in Council, 22/2/1832.

on his own initiative proposed a number of resolutions to the council. Within two weeks of the first approach to Bourke on the subject, ordinance 17 had been passed giving temporary relief on the grain situation. This was six months after Somerset had first been informed of the impending scarcity. For five months he had known of the risk, but had done nothing to avert it.

Bourke's concern with the question did not end with the temporary measures taken in April 1826. Characteristically, he attempted to establish the whole question on a more secure footing, and sought a permanent solution to what was obviously a recurring problem. After further investigation he summarised the findings for the council and the Colonial Office and put forward recommendations based on this evidence. In this matter, as in many others, Bourke showed efficiency and foresight, not only in the local context but also in relation to the Colonial Office and its need for full and timeous information. He was not discouraged when the council's recommendations were rejected by the Colonial Office. Instead of shelving the question, he instituted fresh inquiries and, when these were ignored in London, he went ahead with the necessary legislation.

The corn question also illustrates the influence that an efficient and well informed council might bring to bear on the Colonial Office. As an investigating committee, examining witnesses and weighing up evidence, the council is seen in a role similar to that exercised by the commissioners of inquiry in the colony. Undaunted by Colonial Office neglect or delay, the local council quietly followed up the investigation with the introduction of the necessary measures.

The frontier trade between colonists and tribesmen was another area of economic activity in which important changes were initiated by the Council of Advice. As this trade held the promise of expansion and provided valuable articles for export, it was of considerable importance to the depressed economy of the colony. The establishment of Algoa Bay as a free port in 1826 facilitated the frontier trade by providing a nearby harbour for exportation as well as for the coastal carrying trade.¹ Trade beyond the colony was considered to be an important means of "civilising" the tribesmen and was thus favoured by officials, missionaries, settlers and travellers alike. It was moreover highly valued by the tribesmen themselves.²

Trade between black and white in the interior of the colony had begun early in the 18th century but had never been given legal sanction by the Dutch governors of the colony.³ Yet it had proved impossible to prevent the trading contact in spite of frequent government orders forbidding it.⁴ The British had maintained the official ban between 1795 and again from 1806 but with a similar lack of success. At the same time officials in London were eager to improve the economic potential of the colony and considerations of this nature on occasion over-rode the pragmatic need to limit the opportunity of contact between colonists and tribesmen. In 1811 Cradock (like Somerset in 1814) was directed on appointment to investigate the opportunities for "establishing and carrying on a Commerce" with the native peoples of the colony, namely the Hottentots and Caffres, and to use his best endeavours to promote such a trade by recommending ways in which it

1. Supra, p. 277.

2. R.C.C. Vol. XI, p. 310, Minutes of a Conference between Gaika and Somerset, 2/4/1817.

3. H.M. Robertson, 150 Years of Economic Contact between Black and White, Part 1, S.A.J.E., Vol. II (1934), p. 404.

4. "The multiplication of placats is an index of their ineffectiveness." Ibid.

might be extended and improved.¹ Ironically the so-called "clearing of the zuurveld" took place the following year, when all Xhosa tribesmen were removed from the colony and a further proclamation forbade all "intercourse with the Caffre people ... so that no person under any pretext whatsoever shall cross the Boundaries and proceed into Caffre country"² A line of blockhouses along the Fish river was planned as a further means of control, but both the length of the boundary and the dense bush of the area made it very difficult to exercise minute supervision.³

Although the frontier trade had always been illicit, its loss, or the reduction in smuggling after 1812, was keenly felt by both tribesmen and colonists. In 1817 at the request of the Xhosa chief Gaika provision was made for a legitimate frontier trade to be established for the first time. It was to operate under official supervision at fairs to be held twice a year at the military post of Grahamstown within the colonial boundary.⁴ Tribesmen would be permitted to enter the colony for this purpose with passes granted to them at the military posts. Similar fairs were subsequently introduced in the Beaufort district to provide legal opportunities for trade between the colonists and the Griqua people settled at missionary stations beyond the northern frontier of the colony.⁵

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1. R.C.C. Vol. VIII, p. 37, Instructions to Cradock, 10/4/1811.
 2. Proclamations, p. 185, Govt. Proc., 2/4/1812.
 3. Cory, Rise of South Africa, Vol. I, pp. 308-11.
 4. R.C.C. Vol. XI, p. 310, Minutes of a conference between Gaika and Somerset, 2/4/1817.
 5. J.S. Marais, The Cape Coloured People, 1652-1937, (Johannesburg, 1962), p. 39.

The Grahamstown fairs enjoyed only limited success. Smuggling still took place and proved more attractive to tribesmen and colonists alike. It was known by officials that ivory exchanged hands in the illicit trade while only trivial items were brought to the Grahamstown fairs by the Xhosa traders.¹

The legal trade at Grahamstown was checked in 1819 when tribal quarrels in which the colonial government had become involved culminated in an attack on Grahamstown by the Ndlambies under the inspiring leadership of the prophet Makana.² Following this violation of the proclaimed boundary the tribesmen living between the Fish and the Keiskamma rivers were again driven eastward, so that an unoccupied area was established as a buffer zone between the Xhosa and the colonists.³ Opportunity for legitimate trading between black and white was again to be restricted, and was not resumed until 1824.⁴

The arrival of the British settlers in Albany in 1820 added to the inducement to trade on both sides of the frontier. It is likely that smuggling took place on a fairly extensive scale but information is patchy and, understandably, elusive. Proclamations of 1822 and 1823 indicate that the government was aware of the illicit trade but unable to prevent it.⁵ The severity of the penalties was clearly not a sufficient deterrent. Inadequate administrative structures, the vast extent of the frontier districts, the infrequency of military posts and the great length of frontier that needed to be patrolled all made it easy to defy the law. From 1821 the legitimate entry of

1. R.C.C. Vol. XII, p. 121, Bird to Brownlee, 30/12/1818.

2. Cory, Rise of South Africa, Vol. I, pp. 385-90.

3. H.A. Reyburn, Studies in Cape Frontier History, From Amalinde to Somerset Mount, The Critic, Vol. IV (1936) pp. 114-5.

4. Infra, p. 312.

5. Proclamations, pp. 569 and 633, Govt. Procs. 13/9/1822 and 28/11/1823. A penalty of 500 rixdollars was imposed in 1822 for a first offence and the later proclamation repeated a former regulation of the Dutch East India Company whereby the death penalty might be imposed.

tribesmen into the colony to collect clay at a site on a farm near the Fishriver boundary, added to the difficulties of the government and increased the occasion for illegal barter.¹ Sometimes arrests were made and the penalties inflicted.² But more often it was only through rumour or hearsay of later years that illegal traders could be identified.³ Officials themselves sometimes fell under suspicion.⁴

In July 1824 the government made a bold attempt to face the situation. Since trade and barter could not be stopped, it should be regulated.⁵ Provision was made for regular fairs to be held three times a week at the military post of Fort Willshire on the Keiskamma River.⁶

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1. R.T. McGeoch, The Reminiscences of Thomas Stubbs, 1820-1877 (M.A. Thesis, Rhodes University, 1965), Section C, Text of the Reminiscences, pp. 26-7; Appendix II.
 2. Ibid., Section A, p. 3; Section C, pp. 41-3.
 3. E.g. "gossip had it that /George Wood/ carried on trading with the natives which at this time was illegal" A.E. Makin, The 1820 Settlers of Salem (Cape Town, 1971), p. 82.
 4. E.g. Harry Rivers, landdrost of Albany, 1821-1825, "was doing a stunning trade himself by sending Boesak, Captain of the Hottentots at Theopolis, to trade under pretense of shooting Elephants." McGeoch, The Reminiscences of Thomas Stubbs, 1820-1877, Section C, pp. 27-8.
 5. In 1821 the acting governor Donkin had planned to inaugurate fairs to be held at the military post of Fort Willshire, but the scheme had not been implemented at that time. Proclamations, p. 513, Govt. Proc., 20/7/1821.
 6. Proclamations, p. 663, Govt. Proc., 23/7/1824.

Traders from the colony were required to obtain licences, and certain articles were declared contraband. These were spirituous liquors, firearms, ammunition, and cattle; it was also stipulated that the buttons and beads so popular with the tribesmen were not to be used as the sole currency in transactions for valuable products like hides and ivory.¹ It is likely that an illicit trade continued, particularly a trade in liquor which was again specifically prohibited in 1825.² The persistence of the Albany settlers in seeking to obtain permission to distil from grain may have been linked with the ready market available through this illegal trade.³

The Fort Willshire fairs were an immediate success. Traders from all parts of the colony applied for licences⁴ and within ten months over 200 licence holders were eligible to trade at the weekly fairs.⁵ Tribesmen came in considerable

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1. Beads were however extensively used in the frontier trade. The import value increased from £478 in 1823 to £4 576 in 1825. It later fell to £1 085 in 1829, £699 in 1830, and £287 in 1831. C.A. C.O. 5965 - 5974, Blue Books, 1823 to 1831.
 2. Proclamations, p. 705, Govt. Proc., 29/4/1825.
 3. Supra, pp. 282-6.
 4. E.g. Gazette, 15/1/1825, Govt. Notice, Licences granted to B. de Klerck of Bruintjies Hoogte; Carlo Brolo, Bruintjies Hoogte; Robert Shaw, Grobbelaar's Kloof; William Deale, Grahamstown; H. Wallbridge, Cape Town; John Tilley, Cape Town.
 5. Gazette, 1824 and 1825, *passim*.

numbers¹ and chiefs themselves were frequently in attendance, often with the intention of demanding a "tribute" from the traders amongst their followers.² The day's activities were organised by the military officials and soldiers were in attendance to keep a close watch on all bartering.³

Many of the 1820 settlers took advantage of the economic opportunities made available by the now legal frontier trade.⁴ For some it was the first lucky break they had had since their arrival in the colony four years previously and the first opportunity of establishing some kind of independence. For others it transformed a clandestine activity into an honest trade.

The rapid turnover at the Fort Willshire fairs indicated the popularity of the trade on both sides of the frontier. In the first seven months 50 000 lbs of ivory, 17 000 lbs gum and 15 000 hides were exchanged for tools, cotton goods, blankets, beads, wire and trinkets.⁵ It was

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1. Three thousand might however be an exaggeration. A. Steedman, Wanderings and Adventures in the Interior of Southern Africa, 2 vols. (London, 1835) Vol. I, p. 8. J.W.D. Moodie, Ten Years in Southern Africa, 2 vols. (London, 1835), Vol. II, p. 236.
 2. Ibid., p. 9. T. Philipps, Scenes and Occurrences in Albany and Cafferland (London, 1827), p. 205.
 3. Ibid. R.C.C. Vol. XX, p. 404, Somerset to Bathurst, 31/3/1825.
 4. E.g. 24 Settlers of the Sephton party at Salem took out licences between August 1824 and April 1825. Makin, The 1820 Settlers of Salem, p. 51.
 5. Hockly, British Settlers, p. 103.

stated in evidence before the Aborigines Committee in 1835 that during the first eighteen months that the fair operated goods to the value of £32 000 were brought into Grahamstown by the Fort Willshire traders and that within a few years the annual turnover of the frontier trade was £34 000.¹

By the time that the Council of Advice was established in the colony in May 1825 the Fort Willshire trade had been in operation for some ten months. It was the popularity of the trade and the number of speculators engaging in it which first brought the question before the council. A letter had been received from the commandant of the frontier, Henry Somerset,² complaining that the contact between traders and tribesmen was leading to a leakage of military secrets to the Xhosa, and requesting a limit on the number of licences issued. The council therefore passed an ordinance making it necessary for annual licences to have an 80 rixdollar stamp attached. Licences already issued were to be recalled and became invalid three weeks after the publication of the new regulations.³ The stamp-duty had the desired effect and in the months that followed there were considerably fewer applications for licences to trade at Fort Willshire.⁴

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1. P.P. 1836, VII (538), p. 27, Evidence of Thomas Philipps.
 2. Henry Somerset (1794-1862), eldest son of Lord Charles Somerset; colonial aide de camp, 1820; commandant of Simon's Town, 1821; commandant of the eastern frontier, 1825-1853.
 3. C.O. 51/1, Minutes, 21/6/1825. (R.C.C. Vol. XXIV, p. 281.) Gazette, 25/6/1825, Ord. No. 4.
 4. Gazette, June to December 1825; January to December 1826, *passim*. Lists of those who had received licences were published in the Gazette from time to time.

Later in 1825 the Council of Advice again gave consideration to the frontier trade. Initially the exchange of cattle at the fairs had been forbidden.¹ But in November 1825 the military commandant of the frontier reported that an extensive illicit trade in cattle was taking place across the boundary and was causing considerable difficulty for the defence force stationed along the border.² He recommended that the restriction should be removed, and that trade in cattle should be allowed at Fort Willshire. The matter was discussed by the council on 14 November 1825 and it was agreed that as this trade could not be prevented it would be more satisfactory for it to be made legal and brought under government supervision. An ordinance was passed to this effect at the following meeting.³

The export trade in hides gives an indication of the benefits accruing to the colony from the opening up of the frontier trade in cattle.

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1. Supra, p. 313.
 2. R.C.C. Vol. XXIII, p. 449, H. Somerset to C. Somerset, 1/11/1825.
 3. C.O. 51/1, Minutes, 14/11/1825 and 17/11/1825. (R.C.C. Vol. XXIV, pp. 332-3.) Gazette, 18/11/1825, Ord. No. 16.

TABLE A¹

<u>Year</u>	<u>Value of Hides Exported from Cape Town</u>	<u>Port Elizabeth</u>	<u>Number of Hides from Cape Town</u>	<u>Estimated Average Price from Cape Town</u>
1823	£11 031		15 011	14/-
1824	£ 9 804		12 126	16/-
1825	£23 544		29 722	15/-
1826	£21 054		40 099	14/-
1827	£27 092		75 210	7/-
1828	£22 675		55 729	8/-
1830	£20 251	£12 124	39 483	16/-
1833	£27 326	£25 137	36 836	14/-

Both the number and value of ox hides exported doubled in 1825. This was probably due at first to the illicit trade complained of by the military commandant. Thereafter the legalisation of the cattle trade made it possible to maintain this high figure and, in time, increase it even further. The increased supply probably explains the drop in price of hides in 1827 and 1828. A small trade in the hides of wild animals from the harbour of Port Elizabeth also developed.²

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1. C.A. C.O. 5965-75, Blue Books, 1823 to 1833. Export Returns.
 2. The figures for all types of hides are generally bracketed together although Buffalo, Elephant, Eyland, Ox, Cow and Sea Cow are all listed. In 1834 the figures are given separately for each type of animal skin. The combined value of hides of wild animals totals £344 against £32 179 for ox and cow hides. C.A. C.O. 5976, Blue Book, 1834, Export Returns, Port Elizabeth.

The aspect of the Fort Willshire fairs most frequently commented on by observers is the purchase of ivory.¹ It is of interest to note that the export value of ivory - Elephants' and Sea Cows' teeth! - increased four-fold in the first year of the Fort Willshire trade and thereafter shows a steady decline until 1833. It only once amounted to more than £10 000 during the decade 1823 to 1833. Much of the ivory did not change hands by barter, but was acquired by hunting.² Scrutiny of the export figures for hides, horns and ivory suggests that the relative importance of ivory has been exaggerated³ - perhaps for romantic rather than economic reasons. A comparison of Tables A,⁴ B and C shows a surprising pattern.

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1. J.C. Chase, The Cape of Good Hope and the Eastern Province of Algoa Bay (London, 1843), p. 203.
R.C.C. Vol. XX, p. 181, Return of Ivory Trade, 13/3/1825.
P.P. 1836, VII (538), p. 27, Evidence of T. Philipps.
 2. Hockly, British Settlers, p. 111. Chase, The Cape of Good Hope and the Eastern Province of Algoa Bay, p. 165.
 3. *Infra*, p. 319.
 4. *Supra*, p. 317.

TABLE B¹

	<u>Value of Ivory Exported</u>		<u>Weight:</u>
	From Cape Town	From Port Elizabeth	From Cape Town
1823	£4 258		19 855 lbs
1824	3 688		20 661 "
1825	16 586		106 778 "
1826	7 796		48 258 "
1827	4 308		38 140 "
1828	2 754		
1829	3 174	£ 585	25 497 "
1830	2 440	622	15 259 "
1831	881	1 851	6 639 "
1833	812	3 323	5 719 "
1834	1 400	1 635	9 225 "

TABLE C²Value of Horns and Ivory Exported.

	<u>Cape Town</u>		<u>Port Elizabeth</u>	
	Ivory	Horns	Ivory	Horns
1823	£ 4 258	£ 1 797		
1824	3 688	1 027		
1825	16 586	1 462		
1826	7 796	3 379		
1827	4 308	2 502		
1828	2 754	3 332		
1829	3 174	5 332	£ 585	£ 657
1830	2 440	4 440	622	1 627
1831	881	4 887	1 851	1 256
1833	812	2 318	3 323	2 322
1834	1 400	4 572	1 635	2 954

1. C.A. C.O. 5965-75, Blue Book, 1823-1834, Export Returns.

2. Ibid.

The first two years of successful trade at Fort Willshire vindicated Somerset's decision of 1824 to legalise a trade which the government had been unable to prevent. Not only in terms of economic development but also in terms of a relationship of co-operation and even confidence this experiment appeared to have proved itself.¹ It was probably for this reason that in 1826 the Council of Advice made further changes in the regulation of the frontier trade, whereby private individuals were enabled to engage legally in trading journeys beyond the colony and to conduct their barter in tribal territory, away from the watchful eye of military personnel. There is nothing in the minutes of the council to indicate what prompted the change in policy but it seems likely that the new measure was put forward by the lieutenant governor, Bourke. Letters had appeared in the press urging the extension of the frontier trade, particularly since the opening of Algoa Bay as a free port had facilitated the coastal carrying trade.² Bourke's policy towards the transfrontier tribes rested on four principles, namely, the restriction of retaliatory raids across the border to retrieve stolen cattle: the encouragement of friendly intercourse and honest trade: the promotion of missionary enterprise: and the admission of tribesmen into the colony as labourers.³ It would thus be in keeping with his general frontier policy to extend the nature and range of commercial contact between black and white.

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1. Cf. "I was irresistably led to contrast the peacable frank and artless behaviour of these late savage tribes with the state in which we found them at the first Caffer Fair, when the assegaai formed an inseparable part of their accoutrements and wariness and suspicion almost prevented the business of the day." S.A.C.A. 18/9/1829, Letter from a correspondent.
 2. E.g. S.A.C.A., 29/7/1826, Letter from Graham's Town, suggesting that trading posts should be established at all the drifts along the existing boundary line.
 3. King, Richard Bourke, p. 110. P.P. 1836, VII (538), pp. 279-81, evidence of Wade. Infra, pp. 405-6.

The new ordinance regulating the frontier trade was passed in September 1826, after discussion at several meetings of the council.¹ It provided for additional border fairs to be arranged at other points along and beyond the frontier, and in other frontier districts of the colony. Earlier proclamations forbidding trade between colonists and tribesmen were repealed, as were the previous ordinances passed by the council, numbers 4 and 16.² Some of the provisions of these two ordinances were re-enacted. Licences costing £6 (80 rixdollars) were still to be procured by all traders attending border fairs. Firearms and spirituous liquor remained contraband. The most important innovation of the ordinance 23 was the provision for private traders of good character to pass the boundary and travel into the tribal areas to conduct their trade. Separate licences were required for this and were also to cost £6. Severe penalties were to be imposed on anyone found beyond the colony without a licence (or a passport from the local landdrost), and on anyone found trading in gunpowder or firearms.³

The new regulations broadened the scope of trading contact both geographically and in terms of personal enterprise. The private traders soon achieved a success that became the envy of the Fort Willshire traders.⁴

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1. C.O. 51/3, Minutes, August and September, 1826, passim.
 2. Supra, pp. 315-6, Proclamations dating from 1739 to 1825 were repealed. These former prohibitions had not been repealed when Somerset had opened the Fort Willshire trade in 1824.
 3. The penalty for a first offence in gunpowder traffic was to be a fine of £100 or 6 months' imprisonment with hard labour.
 4. Infra, p. 323f.

Border fairs were established at a number of places both within and beyond the colony, for instance on the banks of the Orange river. Some were successful, others less so. These fairs usually ran for five days and were under the superintendence of the local landdrost. Tribesmen entering the colony to attend a fair were required to obtain a pass from the landdrost or his deputy.

Immediately after the publication of the new regulations a series of articles appeared in the Cape Town press emphasising the potential benefit of the new trading opportunities to the north of the colony and stressing the value of developing a trade with the Griqua people and others who lived beyond the Orange River.¹ Fairs were soon arranged to cater for this area. In November 1826 the first fair at the Torenberg was held² and subsequently one was arranged to take place at the Zoutpans Drift on the Orange river.³ In the north-east of the colony fairs were also introduced, "on the Klipplaat Drift on the Kaay in Tarka, in the District of Somerset."⁴ Some of the private traders who took out licence to travel beyond the colony's boundary for purposes of trade operated to the north of the colony and penetrated far into the northern interior.⁵

An attempt was also made to establish additional fairs on the eastern frontier. These started in September 1826, at the Chusie⁶ but did not prove successful and after

1. S.A.C.A. September 1826.

2. Gazette, 24/11/1826, Govt. Advt. The Torenberg which later became known as Cradock, was a sub-district of Graaff Reinet, and the fair was to be under the supervision of the landdrost of Graaff Reinet.

3. Gazette, 27/7/1827, Govt. Advt. Publication was given in July of a fair to be held the following September.

4. Gazette, 13/4/1827. Govt. Advt.

5. E.g. Andrew Geddes Bain; J.B. Biddulph; Robert Scoon and William McLuckie. T. Gutsche, The Microcosm, (Cape Town, 1968), p. 52. Hockly, British Settlers, p. 110.

6. Gazette, 22/9/1826. Govt. Advt. The fair was to be held "at the Chusie, Situated on the direct Road from Fort Willshire to Trumpeter's Drift."

two years the effort was abandoned.¹ Meanwhile the weekly Fort Willshire fairs continued to flourish, without appearing to suffer at first from the activities of the private traders. A certain measure of protection had been afforded the fairs by means of a government directive that the private traders were not to cross the boundary south of the Winterberg, or if they did, were not to engage in trade till they had passed beyond the area south of the Winterberg.² They were initially required to enter into a bond for a £100 as a precautionary measure. Some confusion subsequently arose concerning this instruction (which had not been specified in ordinance 23) and the practice was discontinued,

"with the less hesitation as the Traders at the Border fairs were of the opinion that a departure from the practice would not be attended with any injury to themselves and as it was always individuals among their number who applied for such licences and there appeared to be an understanding among them that they were not to dispose of their goods until they had reached a certain distance."³

But this gentlemen's agreement had not been kept and by the middle of 1829 there were complaints from the Fort Willshire traders that the private traders were operating within the vicinity of the boundary, to the detriment of the fairs. The civil commissioner of Albany referred the matter to Cape Town for clarification.

1. Hockly, British Settlers, p. 110.

2. C.A. C.O. 2713, No. 230, Moodie to Bell, 19/11/1829.

3. C.A. C.O. 2713, No. 151, Campbell to Bell, 17/7/1829.

By this time a marked sense of hostility had developed between the private traders and the Fort Willshire traders. Jealousy of the success of their rivals who operated beyond the boundary appears to have been the main motive behind two memorials submitted to the acting civil commissioner by the Fort Willshire traders in 1829. They complained that although there were only four private traders,¹ they were "realising an immense profit" whereas the sixteen traders licensed to deal at the fairs were scarcely able to pay their creditors. They hinted at dark practices on the part of the private traders:-

"there are 5 Wagon loads of Produce brought into Grahams Town this day in a clandestine manner which have been purchased in less than 12 days under one Licence ..."2

"... it is their practise to leave Salt at various Stations beyond the boundaries for salting Hides, whereby the Caffres are enabled to pack their Hides in such way as prevents any Mark being seen, thus giving increased facility in disposing of Stolen Cattle. That at the Public Fair it is easy to prevent the Caffres being supplied with Articles deemed contraband, but no such controul can be exercised over the Private Trader."3

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1. The four were Richard Walker, James Collet, George Wood and Trollope, all 1820 settlers. The claim that there were only four such traders at this time appears surprising in view of the later popularity of the trans-frontier trade. The reason given was the additional expense entailed in travelling with a wagon. "The private Licences being now confined to these four Individuals, they are realising an immense Profit, but should the Trade be thrown open to competition as every Trader must have a separate Waggon the increased expense would throw many of the present Traders out of employment." C.A. C.O. 2713, No. 230, Statement of the Caffre Traders, 25/9/1829, enclosed with Moodie to Bell, 19/11/1829.
 2. C.A. C.O. 2713, No. 230, Fort Willshire Traders to Moodie, 17/11/1829, enclosed with Moodie to Bell, 19/11/1829.
 3. C.A. C.O. 2713, No. 230, Statement of the Fort Willshire Traders, 25/9/1829, enclosed with Moodie to Bell, 19/11/1829.

The Fort Willshire traders suggested either that they should be allowed to engage in trade beyond the colony on their existing licences or that those holding private trader's licences should be subjected to additional regulations. The governor, however, declined to act in the matter immediately,¹ and the following year, 1830, licences were taken out as usual for trading at Fort Willshire.

In October 1830 the fair traders again submitted a memorial, this time, addressing it directly to the governor.² They directed their complaint against Richard Walker,³ of the Wesleyville store, whose successful business, they claimed, was responsible for the decline in trade at Fort Willshire. They alleged that Walker conveyed about 800 rixdollars worth of goods across the Fish river in boats each week, while at the Fort Willshire the weekly turnover amounted to only 400 rixdollars, to be shared between fourteen traders.

1. W.D. Hammond-Tooke, Ed., The Journal of William Shaw (Cape Town, 1972), p. 182.

2. C.A. C.O. 3946, No. 22, Memorial of Fort Willshire Traders, 28/10/1830.

3. This was the same Walker complained about the previous year, *supra*, p. 324, n. 1. He was, strictly, not one of the private licensed traders, but ran a trading store at the Wesleyville mission (and later at other missionary establishments), by special permission of the lieutenant governor, Bourke, without a licence. Legal action had been threatened by the private traders but was dropped when the governor's letter of authorisation was produced in evidence.

D. Williams, When Races Meet (Johannesburg, 1967), pp. 57-8. P.P. 1836, VII (538), p. 93. Evidence of William Shaw. Hammond-Tooke, The Journal of William Shaw, pp. 151; 176 and 182.

The difficulties caused by the Wesleyville store¹ perhaps prompted the next change in the pattern of frontier trade. The new governor, Cole, sought further information from the commissioner general, Stockenstrom, and from Moodie, the acting civil commissioner of Albany and Somerset. In September 1830 the question of the frontier trade was brought to the consideration of the Council of Advice again, and documents from William Shaw,² Stockenstrom, Donald Moodie³ and the frontier traders were laid on the table, as well as a petition from one of the private traders, George Wood,⁴ in which it was claimed that one of the Xhosa chiefs, Ensor, had requested the establishment of a permanent store at his kraal.⁵ The council agreed that the regulations should be modified with a view to opening the trade further while at the same time tightening the laws against smuggling and facilitating the detection of illicit trade.⁶ In dealing with this problem the Council of Advice and local officials faced a dilemma.

1. Supra, p. 325, n. 3.

2. William Shaw (1798-1872), Wesleyan missionary; accompanied Sephton party of 1820 settlers; established a chain of mission stations outside the colony; general superintendent of missions in south east Africa, 1837-56.

3. Donald Moodie (1794-1861), 1820 settler; clerk of the peace, Albany, 1828; slave guardian, 1832; magistrate at George, 1842; colonial secretary, Natal, 1845.

4. George Wood (1805- 1884), member of Sephton's party of 1820 settlers; Grahamstown merchant; member of the Legislative Council after constitutional reforms of 1853, 1854 to 1883.

5. C.O. 51/21, Appendix D, Petition of George Wood. The chief concerned was probably Eno.

6. C.O. 51/20, Minutes, 27/9/1830.

The frontier trade, especially the private trade by wagons, was lucrative and provided a much-needed boost to the economy of the colony. But the frontier area was also the main danger zone of the colony, where rigid control was necessary and where disturbances within the Xhosa structure as well as points of conflict between black and white frequently threatened the peace of the colony.¹ Smuggling and in particular, smuggling in arms and ammunition, was therefore a very serious crime. For the government the dilemma was how to foster and encourage the trade so necessary for economic reasons and at the same time prevent the illicit trade so dangerous for political reasons.

The council sought further advice from the civil commissioner for Albany and Somerset, and on his recommendations amended the regulations of the frontier trade, in terms of ordinance 81.² Provision was made for the extension of the private trade and the reduction of the annual licence fee to £3. Separate licences were still required for trading at border fairs, also on payment of an annual fee of £3.³ The restrictions formerly applicable to the private trade were removed and the significant step taken for the first time of allowing traders to live permanently outside the colony. Additional precautions were introduced against smuggling and misconduct. Two recognizances for good behaviour were to be provided with each application for a licence. Local officials were to

1. *Infra*, Ch. 9, *passim*.

2. C.O. 51/20, Minutes, December, 1830, *passim*. Gazette, 24/12/1830, Ord. No. 81.

3. The fairs at Fort Willshire ceased in 1830.

be notified of each journey into Caffreland and certified statements were to be given regarding the number of persons travelling and the number of guns taken. The right of search was granted to justices of the peace and other authorised persons. The prohibition against bartering with arms and ammunition was re-iterated and the ban on a trade in liquor was kept in force in terms of ordinance 23.¹

The trade beyond the colony expanded rapidly after the introduction of the new regulations in 1830. Within a few years there were between 150 and 200 traders² active beyond the eastern frontier. Most of the Fort Willshire traders now joined the private traders.³ Resident traders as well as itinerant traders were engaged in the business, and trading stations were established as far afield as Gealekaland and Pondoland. With increased trading activity beyond the supervision and control of the frontier patrols there was also the increased risk of abuse and hostility, as well as the increased risk of renewed smuggling.⁴ Private traders had always faced some danger in undertaking their journeys into tribal territory. Acts of aggression towards traders grew in number after the

1. Supra, p. 321.

2. P.P. 1836, VII (538), p.160, Evidence of Captain Bradford.

3. E.g. W. Fowler, J. Ford, E. Ford, J. Timlett and J. Hoole all of whom had signed the letters complaining against the private traders in 1829. Supra, p. 324.

4. Infra, p. 330f.

opening up of the interior trade in 1830 and in 1832 a group of traders petitioned for military protection on their commercial travels.¹ Although the trade itself was greatly desired, the Xhosa attitude towards traders was ambivalent. In the war of December 1834 most traders lost their stock and several lost their lives.² The opening of the trade in 1830 on an unprecedented scale was probably an unwise move.³

The growth and extension of the frontier trade affected the general economic development of the colony in a variety of ways. The increased value of exports has already been noted.⁴ Several items in the import trade were also affected, the most significant of which was gunpowder. Evidence suggests that the opening up of the legitimate frontier trade gave rise to a considerable illicit trade in arms and ammunition. Import figures for guns and gunpowder were as follows:⁵

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1. C.A. C.O. 2735, No. 71, Campbell to Bell, 24/8/1832, with enclosure from ten private traders.
 2. E.g. H.H. Dugmore, The Reminiscences of an Albany Settler (Grahamstown, 1958), pp. 68-73 and 88. C. Brownlee Reminiscences of Kaffir Life and History (Lovedale, 1896), pp. 27-8 and 33-47.
 3. Cf. The ban on the entry of Xhosa into the colony in terms of ordinance 49 from August 1829. *Infra*, Ch. 9, *passim*.
 4. *Supra*, p. 317.
 5. C.A. C.O. 5965-5976, Blue Books, 1823-34, Import Returns.

Value in £ of Annual Imports

	<u>Cape Town</u>		<u>Port Elizabeth</u>	
	<u>Guns</u>	<u>Gunpowder</u>	<u>Guns</u>	<u>Gunpowder</u>
1823	£150	£15		
1824	468	164		
1825	614	178		
1826	309	55		
1827	493	47		
1828	430	25		
1829	832	48	£ 90	£ 40
1830	717	163	20	307
1831	544	992	-	244
1833	867	1547	572	612
1834	999	545	1 261	384

In 1830 the Council of Advice gave consideration to the question of reducing the import duties on gunpowder. The matter was brought to their attention by the secretary of state, Murray, who had received a memorial requesting the abolition of restrictions and duties on this commodity.¹ The council agreed to reduce the duties but were not willing to sanction the private storage of gunpowder.²

A further problem arose two years later, probably as a result of the extension of the frontier trade. In 1832 the customs house in Port Elizabeth notified the governor that an excessive quantity of gunpowder was being imported into the colony by private traders and requested restrictions,

1. C.O. 49/23, Murray to Cole, 22/3/1830.

2. C.O. 51/20, Minutes, 27/9/1830.

especially as it was being "sold in the districts and in the territories of neighbouring tribes".¹ The customs officer stated that in one month 5 000 lbs had been imported.² The council called for returns, but these do not appear to have been received, and the question lapsed.³ However in 1833, some eighteen months later, the acting governor, Wade, gave notice to the council that he intended to introduce an ordinance regulating the trade in gunpowder. This was duly passed by the council as ordinance 101.⁴ Provision was made for licensed traders to deal in gunpowder, and for special permits to be issued for the erection of private magazines. But no trader within forty miles of the boundary would qualify for a licence.

There was then a clear indication of an increase in the importation of gunpowder and of some effort to control the trade. In view of contrary evidence it becomes difficult to accept Neumark's view that,

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1. The allegation is substantiated elsewhere. E.g. C.A. C.O. 2729, No. 48, van Ryneveld to Bell, 23/7/1831 with enclosures concerning a widespread smuggling trade in gunpowder, especially with people living to the north of the colony.
 2. C.O. 51/27, Appendix C, Customs Officer to Bell, 13/1/1832.
 3. C.O. 51/26, Minutes, 6/2/1832.
 4. C.O. 51/32, Minutes, 13/9/1833. Gazette, 15/11/1833, Ord. No. 101. This ordinance was subsequently disallowed by the crown.

"it is interesting to observe how little smuggling was going on between the colonists and the Kaffirs on the eastern frontier ... That the colonists abstained, as they probably did, from trading firearms and gunpowder to the Kaffirs must be attributed to a keen sense of responsibility and self-preservation even among the 'worst description of settlers' "¹

Contemporary accounts of the war refer frequently to armed tribesmen or to tribesmen firing on colonists,² while in some instances direct allegations were made that private traders were selling firearms.³

In its handling of the frontier trade and related questions the Council of Advice sought to fulfil several aims which proved to be incompatible. They tried to encourage a profitable trade, to control an illicit trade known to be practised on an extensive scale, and to establish adequate precautions against trading contacts that might prove dangerous. The problem inherent in the frontier trade question was the conflict of interests between peace and profit. For the safety of the colony the trade was a potential danger. For the economy it was a necessity. In their legislation the Council of Advice and governor tried to eliminate the threat and promote the trade. They were hampered by the fact that, apart from the commissioner general, Stockenström, most members of the council knew very little about the eastern Cape or about the day to day difficulties of controlling this remote frontier zone. As with other measures, the regulations themselves were adequate, but the means of administering and supervising them in the vast country districts and beyond, were ineffective.

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1. Neumark, Economic Influences on the South African Frontier, p. 123.
 2. E.g. Dugmore, Reminiscences of an Albany Settler, ch. 4 and 5. I. Mitford - Barberton, Comdt. Holden Bowker (Cape Town, 1970), pp. 100; 109; 117; 119 and 149.
 3. Ibid., p. 106, "J. House has been illicitly furnishing the Kaffirs with fire-arms. The Kaffirs have great quantities of arms and ammunition."

Chapter 8The Introduction of New Labour Regulations at the Cape

The question of peaceful inter-action between colonists and tribesmen was not limited to their trading contact. Labour provided another area of co-operative activity,¹ and the Council of Advice was called upon to handle this aspect of frontier relations along with others. As in the case of the frontier trade, longstanding prohibitions against the employment of tribesmen had already been partially waived by 1825. It remained for the council to confirm the legalisation of a hitherto forbidden practice, and to extend the scope of the new contact by allowing the regular employment of tribal foreigners from beyond the colony's boundaries. This decision was part of a much wider question concerning the labour supply of the colony as a whole. Measures introduced by the council to regulate tribal labour were therefore closely linked with measures concerning the existing supply of free labour in the colony. Hottentots formed the great majority of the free labouring population, together with a small number of ex-slaves, prize negroes and persons of mixed blood.² All measures concerning these people came under the spotlight of missionary concern in the colony and humanitarian interest in Britain. The question then of labour relations on the frontier was not an isolated topic, but formed part of a broad stream of change, emanating from the colony yet guided by current attitudes and influences in Britain itself.³

At the Cape the first labour question to come before the Council of Advice concerned the employment of tribesmen from beyond the boundaries of the colony. This proposal entailed

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1. Robertson, 150 Years, Part 1, S.A.J.E., Vol. II (1934), p. 403.
 2. In 1825 there were some 30 000 Hottentots in the colony. C.A. C.O. 5967, Blue Book, 1825, Population Returns.
 3. Mellor, British Imperial Trusteeship, p. 239.

the reversal of longstanding government policy, and was therefore given most careful consideration during the period 1825-1828. When finally the new policy was enacted in terms of ordinance 49, measures were introduced at once to ameliorate the condition of the colony's indigenous labourers, the Hottentots, in terms of ordinance 50. This in turn was to be followed by a general vagrancy ordinance, and these three measures together should have formed the basis of future labour regulations. Clearly they were intended as a trilogy of laws, planned to protect both labourers and employers. Unfortunately the third enactment, namely the general vagrancy act, was never passed.¹ As a result, the legal means of control of the labour situation was incomplete. A great deal of the dissatisfaction of employers after 1828 may be attributed to this omission.² At the same time it is necessary to observe that even where the legal means of control existed, as in ordinance 49, the necessary administrative structures for effective implementation were not available.³ ✓

It is intended in this chapter to examine the three complementary ordinances planned to effect a new labour policy in the colony. While other labour questions did arise for the Council of Advice, they were of lesser significance. One notable exception was the rejection by the council of a proposal made in London to introduce into the colony surplus "Government Blacks" from the neighbouring colony of Mauritius.⁴ The plan had been proposed as a solution to the perennial shortage of labour, particularly in the eastern districts of the colony, where it was intended to place the new labourers.⁵ It was duly considered by the

1. *Infra*, pp. 379f.

2. *Infra*, Ch. 9, *passim*.

3. *Infra*, Ch. 9, *passim*.

4. These were slaves presently held by the government of Mauritius. The plan was to bring them to the Cape and engage them as apprentices for ten years, thus providing for their ultimate emancipation.

5. C.O. 49/21, Murray to Cole, 12/6/1828.

council, but rejected, in spite of some persistence in the matter on the part of the Colonial Office,¹ and in spite of the definite want of labourers in almost every district of the colony at the time.

This shortage of labourers was one of the more serious problems of the colony in the early 19th century and is indicated by a wide variety of witnesses in private² and official documents³ and also in contemporary publications.⁴ The situation was exacerbated by the abolition of the slave trade in 1807, at the time when the Dutch colonists of the Cape considered that their labour requirements had been inadequately met during the previous decade, because of restrictions on the trade during both the British and Batavian administrations.

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1. C.O. 51/12, Minutes, 28/11/1828. C.O. 51/13, Appendix G1, Murray to Cole, 12/6/1828. C.O. 51/14, Minutes, 3/1/1829. C.O. 48/130, Cole to Murray, 14/2/1829. C.O. 51/16, Minutes, 10/12/1829. C.O. 51/17, Appendix F, Murray to Cole, 20/7/1829. C.O. 48/136, Cole to Murray, 18/7/1830.
 2. E.g. Keppel-Jones, Philipps, 1820 Settler, p. 252. Mrs Philipps to Mrs Lee, 27/11/1825, "The great want and difficulty of procuring servants and the very high price of labour renders it impossible for us to get on with improvements in our new place ..."
 3. C.O. 48/136, District Returns on Labour and Agriculture showing the comparative situation of labour in 1819 and 1829, enclosed with Cole to Murray, 18/7/1830. These returns had been compiled on the instruction of the Colonial Office in pursuance of the question of Mauritius Government Blacks.
 4. E.g. J.C. Chase, The Cape of Good Hope and the Eastern Province of Algoa Bay (London, 1843), p. 239.

In 1825 the slave population was concentrated mainly in the western districts of the colony, providing skilled craftsmen in Cape Town, domestic workers in town and on the farms, and field workers for agriculture. Viticulture required a greater number of field hands than other types of farming, and the district of Stellenbosch, though small in extent, had the largest number of slaves.¹ In the wheatlands of Swellendam and Worcester there were still a considerable number of slaves but an even larger population of free black labourers.² As the trekboers of the 18th century had moved away from the vineyards and wheatlands of the western Cape³ their need for large numbers of slaves had diminished. To a people on the move, the Hottentots had proved more useful servants, with their skill as herdsmen and wagondrivers. The trekboers had become pastoralists rather than agriculturalists so that even when they had settled on the fringes of the colony their labour requirements had been limited in character and number. In 1825 the population of the vast frontier district of Graaff Reinet reflected the dependence upon Hottentot rather than slave labour, and also the relative reduction in the labour force in proportion to the number of white settlers.⁴ This pattern was even more marked in the eastern frontier district of Albany.⁵

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1. C.A. C.O. 5967, Blue Book, 1825, Population Returns, Stellenbosch : Whites - 5 464; Slaves - 8 564; Free Blacks - 2 418.
 2. Ibid, Swellendam : Whites - 6 464; Slaves - 3 024; Free Blacks - 4 258. Worcester : Whites - 4 136; Slaves - 3 467; Free Blacks - 4 020.
 3. N.C. Pollock and S. Agnew, An Historical Geography of South Africa (London, 1963), Ch. 2, passim.
 4. C.A. C.O. 5967, Blue Book 1825, Population Returns, Graaff Reinet : Whites - 12 782; Slaves - 3 011; Free Blacks - 11 846.
 5. Ibid. Albany : Whites - 1 838; Slaves - 414; Free Blacks - 414. In both Graaff Reinet and Albany the free black population in 1825 included a small number of apprenticed refugees from beyond the northern boundary of the colony. *Infra*, p. 353.

In the early years of the settlement at the Cape the Dutch East India Company had attempted to prevent contact between the white colonists and the indigenous Hottentot peoples. The first commander of the refreshment station had even planned to separate the Cape peninsula from the mainland by means of a canal or a hedge,¹ but the futility of this attempt had soon become apparent, for the Dutch settlers themselves were not willing to remain confined beneath the shadow of Table Mountain. They had moved across the Cape flats and then over the Hottentots Holland mountains to the hinterland beyond.² Nor had the theory of separation been acceptable, either to the Dutch colonists or to the Hottentots themselves for both had realised the benefits of economic contact, whether by trade or by employment.³ The Hottentot clans of the interior had offered only feeble resistance to the forward movement of the trekboers, and by the beginning of the 19th century almost the entire Hottentot population had been absorbed into the labour market of the colony.⁴

In the process they had been reduced to a state of landlessness and of abject servitude, lacking even the minimal security that slaves enjoyed, for they did not have value as "property".⁵

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1. O.H.S.A. Vol. I, pp. 189-90.
 2. Pollock and Agnew, An Historical Geography of South Africa, Ch. 2. P.J. van der Merwe, Die Trekboer in die Geskiedenis van die Kaapkolonie (Cape Town, 1938), Ch. 3.
 3. M.L. Hodgson, The Hottentots in South Africa to 1828 : a problem in Labour and Administration, J.S.A.A.A.S., 1924, p. 596.
 4. *Ibid.*, pp. 601-3.
 5. P.P. 1836, VII (538), p. 287. Evidence of Wade.

There were very few skilled workers amongst the Hottentots, and this had led to a severe shortage of artisans in the frontier districts, particularly as the Dutch colonists regarded themselves as landowners rather than labourers, and tended to despise all forms of manual work.¹ Early in the 19th century a number of mission stations had been established for Hottentots and at these there was an attempt to introduce practical training in a variety of crafts.² The result was the development of small independent Hottentot communities, rather than the increase of skilled workers on the labour market. The missionary institutions had also provided the Hottentots with an alternative to employment, and were accordingly disliked by local white inhabitants.³

The lack of skilled workers had been partly offset by the introduction of groups of white immigrant labourers, a plan favoured by the Batavian and the British administrations alike.⁴ The first batch of some 50 workers had been brought to the colony in 1804, under the aegis of Baron von Hugendorp.⁵ In 1817 another private immigration scheme had introduced 200

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1. J.S. Marais, The Cape Coloured People (Johannesburg, 1962), p. 4.
 2. R.C.C. Vol. XXXV, pp. 330 and 336, Report of J.T. Bigge upon the Hottentot and Bushman Population ... and of the Missionary Institutions, 28/1/1830.
 3. The antipathy between missionaries and colonists was more complex than this, but the complaint against the mission establishments as places of refuge where Hottentots might find an escape from toil was one manifestation of it. W.M. Macmillan, The Cape Colour Question (London, 1927), Ch. 11, passim.
 4. E.g. J.A. de Mist, The Memorandum of Commissary J.A. de Mist, Ed. and Translated by K.M. Jeffreys (Cape Town, 1920), pp. 196-8.
 5. P.J. Idenburg, The Cape of Good Hope at the Turn of the 18th Century (Leiden, 1963), pp. 62-4.

Scottish workers to the colony, under apprenticeship to Benjamin Moodie.¹ Although the indenture system had not proved as successful as anticipated, the addition to the labouring population had been useful.² In the major immigration scheme sponsored by the British government in 1819 encouragement had been given to the inclusion of labourers in the settler parties to be sent to the Cape.³ Most of the 4 000 settlers who arrived in 1820 had been established in the frontier district of Albany, and their coming had brought a welcome increase in the number of white labourers. But it had also increased the demand for labourers, particularly as many who came as apprentices were subsequently released from their terms of service and in many cases were able to set themselves up in some kind of independence, either in their own trade or in some new calling.⁴ Land grants made to the British settlers of 1820 carried a prohibition against slave labour⁵ so that there was an added need for free labour. The Hottentot population was already absorbed into the labour market and was, in the main,

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1. J.W.D. Moodie, Ten years in South Africa, 2 Vols, (London, 1835), Vol. I, p. 50. Benjamin Moodie (1789-1856), soldier from Orkney islands; in 1817 brought a party of 200 Scots, mainly labourers, to the Cape.
 2. R.C.C. Vol. XVIII, p. 255, Evidence of Stoll before the Commission of Inquiry.
 3. Edwards, The 1820 Settlers in South Africa, pp. 171-2, Appendix A. One third of the total number of the settlers were artisans, but there were some for whom the colony would offer little prospect of employment, e.g. umbrella maker; mathematical instrument maker. There were a few farm labourers among the 1820 settlers, e.g. gardeners, herdsman, ploughmen and vine dresser.
 4. E.g. U. Long, Ed., The Chronicle of Jeremiah Goldswain, Albany Settler of 1820, 2 Vols. (Cape Town 1946) Vol. I, passim. U. Long, Ed., An Index to Authors of Unofficial Privately Owned Manuscripts relating to the History of South Africa, 1812-1910 (London, 1947), pp. 85-96, Letters of William Edward Crout.
 5. Duly, British Land Policy at the Cape, 1795-1844, Ch. 6, passim. *Infra*, p. 366.

immobilised by the terms of contract under which they were employed.¹ In the interior districts of the colony there were very few prize negroes available as labourers.² Tribesmen living beyond the boundaries of the colony came to be regarded as a potential labour force for the frontier districts.

For most of the 18th century the vanguard of the trekboers had been in constant contact with the Xhosa tribesmen whose migration westwards from the Fish river had coincided with the eastward expansion of the Dutch colonists. By 1778 there had been common occupation of the zuurveld area, with sporadic outbursts of hostility between white and black occupants indicating the problems of such contact and the rivalry over land.³ Proclamations forbidding intercourse between colonists and tribesmen had been issued regularly in Cape Town from 1727, but the remoteness of the frontier had made it impossible to enforce the ban.⁴ By the end of the 18th century there was not only a regular trading contact⁵ but also the frequent employment of Xhosa servants. In 1792 war had suddenly flared up in the frontier district of Graaff Reinet, which had been established as the seat of a landdrost only six years previously, in 1786.⁶ The outbreak of hostilities had been attributed in part to the way in which Xhosa servants were being treated by their employers.⁷

1. *Infra*, p. 377.

2. *Supra*, p. 30 n. 3.

3. Robertson, *150 Years*, Part I, *S.A.J.E.*, Vol. II (1934), p. 405.

4. *Ibid.*, p. 404.

5. *Supra*, p. 309.

6. Walker, *History*, p. 116.

7. Robertson, *150 Years*, Part I, *S.A.J.E.*, Vol. II (1934), p. 406.

Prohibitions against the employment of tribesmen had subsequently been reiterated but again with little effect. Frontier farmers had continued to derive "great benefit" from the engagement of Xhosa servants.¹

The British and the Batavian administrations had also forbidden the employment of tribesmen. In 1797 the British governor, Macartney, had instructed the landdrost of Graaff Reinet "to use his utmost endeavours to stop the intercourse between our Inhabitants and the Caffres."² He had also directed that all colonists employing tribesmen were to release them within the space of 12 months.³ Continuing hostilities on the frontier had given added justification to the efforts for creating a boundary line which would serve as a clear demarcation between white colonists and Xhosa tribesmen. In theory the "hedge and canal" policy of van Riebeeck's time was still being applied⁴ but with as little success in practice. After the retrocession of the colony in 1803 the Batavian governor, Janssens,⁵ had added yet another proclamation to the many already prohibiting the employment of tribesmen, with one concession, namely that native servants already engaged for more than a year might remain in the colony.⁶ He had also directed that all Xhosa children were to be returned to their kraals. This suggests that the "apprenticing" of native children, whether acquired in war or in some other way, had already become common practice. Though it may be true that

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1. P.P. 1835, XXXIX (50), p. 174, Statement of Mrs Maretz, 13/1/1825.
 2. R.C.C. Vol. II, p. 98, Instructions for the landdrost of Graaff Reinet, 20/6/1797.
 3. Ibid.
 4. *Supra*, p. 337.
 5. Jan Willem Janssens (1762-1838), governor of the Cape of Good Hope, 1803-6.
 6. S.D. Naude, Kaapse Plakkaatboek, Deel VI (Parow, 1951), p. 30.

there were mutual advantages to be gained from such apprenticeships, nevertheless as Robertson has pointed out "the possibilities of abuse were enormous and the temptations strong."¹

British forces had re-occupied the Cape in 1806 and in 1809 a detailed report of conditions on the frontier was prepared by Colonel Collins² after an official tour of the area. Collins had found that Xhosa tribesmen were still widely employed as servants and he recommended their dismissal and removal from within the colony, and also the establishment of a fortified boundary as a means of implementing the ban on contact between colonists and tribesmen.³

Collins' proposals had been adopted and in 1812 all Xhosa tribesmen had been cleared from the zuurveld and removed beyond the Fish river boundary, thus curtailing the opportunities for contact of any kind.⁴ The loss of their Xhosa servants had been regretted by many frontier farmers, particularly at a time when the newly established mission stations within the colony were allegedly affecting the availability of Hottentot labour.⁵

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1. Robertson, 150 Years, Part I, S.A.J.E. Vol. II (1934), p. 408.
 2. Colonel Richard Collins, His Majesty's Special Commission for the frontier districts of Graaff Reinet and Uitenhage, 1808-9.
 3. R.C.C. Vol. VII, p. 106, Report of Colonel Collins, 6/8/1809.
 4. C.W. Hutton, Ed., The Autobiography of Sir Andries Stockenström, 2 Vols. (Cape Town, 1887), Vol. I, Ch. 3. Cory, Rise of South Africa, Vol. I, Ch. 8.
 5. P.P. 1835, XXXIX (50), p. 174, Statement of Mrs Gardner, 13/1/1825.

When the Council of Advice was established in May ^{ship} 1812 the legal ban on the employment of tribesmen was still in force in terms of government proclamations of June 1797 and May 1812.¹ Meantime the frontier war of 1819 had resulted in yet another expedient to prevent contact between black and white. The whole belt of land between the Fish and the Keiskamma rivers had been cleared of its occupants and declared a neutral territory in an attempt to create a buffer zone between the colonists and the tribesmen.² Military patrols would continue to provide a form of protection and vigilance along the Fish river boundary, while a new post was established at Fort Willshire on the western bank of the Keiskamma river. At the same time the more densely settled population introduced in 1820 on the colonial side of the Fish river was, in part, intended to strengthen the defences of the frontier zone against further disturbances.³

The attempt to establish a buffer zone between black and white was doomed to failure. In the first place both coveted the hunting area in the land between the two rivers; both sought land and grazing, and there was a certain amount

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1. R.C.C. Vol. II, p. 107, Proclamation, 27/6/1797. Proclamations, p. 186, Govt. Proc., 2/4/1812.
 2. O.H.S.A. Vol. I, p. 243. E.A. Walker, Historical Atlas South Africa (Oxford, 1922), p. 10. W.M. Macmillan, Bantu, Boer and Briton, 2nd Ed., (Oxford, 1963), pp. 81-3. Walker, History, p. 155. It was always claimed by the governor, Somerset, who had been responsible for negotiating this arrangement with the Xhosa chief Gaika, that the territory between the two rivers should rightfully have been called the Ceded Territory. Williams, When Races Meet, p. 26, n. 45.
 3. Cory, Rise of South Africa, Vol. II, p. 47.

of illicit trading. This last had increased as the hardships of the early years of the Albany settlement had driven more adventurers beyond the boundaries of the colony, until in 1823 a legal trade had been initiated.¹ The increased population in the Albany district had also created a new labour market and opportunities for this form of economic contact had likewise increased, in spite of the legal ban operative in 1825.

The prohibition on the employment of tribesmen had been specifically aimed at preventing contact with the Xhosa tribes to the east of the colony.² But there were other tribal groups settled beyond the colonial boundaries, whose activities sometimes had repercussions within the colony.

Beyond the northern boundary there were settlements of Griqua people, established in communities with a resident official who represented the colonial government.³ Further north still there were various Sotho and Tswana societies.⁴ From 1822 the stability of these tribes was threatened by the series of migrations or "volk verwanderung" set in motion by the rise to power of the chiefs Dingiswayo and Shaka.⁵ The intertribal hostilities that followed were to affect the colony in many ways, one of which was to be the ultimate removal of the prohibition against the employment of tribesmen.

1. Supra, pp. 311-2.

2. Supra, p. 340.

3. Marais, Cape Coloured People, pp. 34-7. Infra, Appendix G, Tribal Designations.

4. L. Thompson, Ed., African Societies in Southern Africa (London, 1969), Ch. 5, and p. 191.

5. W.F. Lye, The Difaqane : The Mfecane in the Southern Sotho Area, 1822-24, Journal of African History, Vol. VIII (1967), pp. 107 and 117.

As in the case of the frontier trade the colonial government was forced in the long run to legalise what it had hitherto tried to prevent, namely the acceptance of tribesmen as labourers within the colony. Just as an illicit trading contact had frequently jeopardised peace in the frontier districts, so too an uncontrolled labour contact entailed risks. It therefore became necessary to amend the legal situation so that previous abuses and malpractices in the labour relationship between white and black might be prevented, by adequate regulation and supervision.

The events which led to this change in policy began in 1823. In June of that year a horde of wandering refugees who had been displaced by the attack of other tribes, themselves the victims of Zulu aggression,¹ approached the area near the confluence of the Vaal and Orange rivers. Rumour of their coming and a reputation for great ferocity and even cannibalism had preceded them.² The Griqua people under the leadership of the government agent, James Melville,³ and the Bechuanas⁴ with whom another

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1. C.A. A.C. 12, Moffat to his parents, 23/7/1823, "We learned from the prisoners that they with other marauding Tribes, have been driven from their Country, by a people they call Matabel ..." Thompson, African Societies; p. 193.
 2. G. Thompson, Travels and Adventures in Southern Africa, 2 Vols., Ed. by V.S. Forbes (Cape Town, 1967), Vol. I, pp. 79-80.
 3. James Melville (1787-1852), assistant government surveyor at the Cape, 1811; inspector of buildings and surveyor, 1815; government agent at Griquatown, 1822; missionary of the London Missionary Society at Philippolis, 1827.
 4. *Infra*, Appendix G.

missionary, Robert Moffat,¹ resided, were able to prepare in advance and soon put the marauders to flight. Many women and children were left behind and were brutally attacked by the triumphant Bechuana. The missionaries attempted to save the stragglers from this slaughter. Some were taken to the mission stations² and others were distributed among the Griqua.³ Melville also arranged for thirteen women and children to be sent to the frontier district of Graaff Reinet for safety and suggested that they "will make good servants, which I believe are much wanted in the colony."⁴ He reported that other tribes were known to be on the move and that the Griqua Captain Andries Waterboer⁵ intended moving north with his mounted followers to drive them away. Melville continued,

"It would be a very humane act if any person would come from the Colony with Waggon to take away the many women and children who

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1. Robert Moffat (1795-1883), missionary of the London Missionary Society from 1816, first in Namaqualand, then at Lattakoo, then at Kuruman.
 2. C.A. A.C. 12, Moffat to his parents, 23/7/1823,
"Four of the prisoners are inmates of our family ... Mary has made Mahum Cook, and Moshanee Nurse and Washerwoman, and the boy who seems clever I shall find very useful ..."
 3. P.P. 1835, XXXIX (50), p. 226, Extract of a letter from John Melville to the landdrost of Graaff Reinet, 31/7/1823.
"Nearly a hundred were rescued after the battle ... and have been distributed among the Griquas."
 4. C.A. C.O. 2649 No. 134, Melville to Stockenstrom, 20/7/1823, enclosed with Stockenstrom to Bird, 11/8/1823.
 5. Andries Waterboer (? - 1852), ordained assistant missionary of the London Missionary Society, elected chief or captain of the Griqua in 1820.

will probably be left behind to perish of hunger - This is a thing the Griquas will not trouble themselves with."¹

The landdrost of Graaff Reinet immediately referred the question to the governor at Cape Town, asking directions concerning the thirteen refugee women.² Before he could receive a reply a further communication arrived from Melville, informing him that there were hundreds of starving and destitute women on the road between Old Lattakoo and New Lattakoo,³ and expressing the wish that some farmers might come and take them away "from the most miserable of deaths,"⁴

"Although the conveying a number of these women to the colony will be attended with expense, a few years' service will amply repay both trouble and expense; and would not Government meet the difficulty, if the expense should be an objection, in a case of saving the lives of our fellow-creatures."⁵

For the government in Cape Town, to whom the matter was again referred, the question was not simply one of saving the lives of a few fellow-creatures, but involved also the

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1. C.A. C.O. 2649, No. 134, Melville to Stockenstrom, 20/7/1823, enclosed with Stockenstrom to Bird, 11/8/1823.
 2. C.A. C.O. 2649, No. 134, Stockenstrom to Bird, 11/8/1823.
 3. The London Missionary Society had originally started work at Old Lattakoo, or Dithakong, but in 1817 had moved to New Lattakoo, or Kuruman. I. Schapera, Ed., Apprenticeship at Kuruman (London, 1951), p. 76, n. 5.
 4. Rumour had it that they were "living upon one another for want of other food." P.P. 1835, XXXIX (50), p. 226, Extract from letter of Melville to landdrost of Graaff Reinet, 31/7/1823.
 5. Ibid.

reversal of a longstanding policy of non-intercourse between colonists and tribesmen. The acceptance into the colony of a handful of needy women and children in 1823 was to have far-reaching consequences, culminating in a decisive change of policy in 1828.

In Cape Town the governor, Somerset, exercised his own judgement on the question of the thirteen women and children first sent to Graaff Reinet by Melville. He arranged for them to be "placed as apprentices for Seven years ... with ... respectable Persons resident in the Town of Graaff Reinet."¹ But he warned that he did not wish to encourage the admission of tribesmen from outside the colony into the frontier districts; yet if circumstances rendered it expedient, or compulsory as in the present instance, he would expect the same procedure of apprenticeship to be followed.

When Somerset learned of the great number of refugees for whom Melville had requested protection in the colony, he sought the opinion of the commissioners of inquiry, as they had had "opportunities of knowing more recently the Sentiments of H.M.'s Government respecting persons of this Description."² Somerset himself suggested admission to the Moravian missionary institutions,³ or apprenticeship for seven years as already arranged for the first batch of women and children. The commissioners were cautious, and were particularly anxious to avoid even the appearance of

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1. C.A. C.O. 4848 No. 463, Bird to Stockenstrom, 27/8/1823. (R.C.C. Vol. XVI, p. 223) The terms of apprenticeship were the same as those under which prize negroes were engaged, but their indenture lasted for fourteen years.
 2. C.A. C.O. 4848, Somerset to Bigge and Colebrooke, 4/9/1823.
 3. i.e. Genadendal, Groenekloof and Enon, W.M. Macmillan, The Cape Colour Question (London, 1927), p. 149.

any action which might be misinterpreted as promoting slavery.

"The situation of these people may ... be said to constitute a peculiar ground of claim to the scrupulous forbearance of the British Government, to whom at the present moment, it has become a matter of so much importance, to avoid the remotest imputation of interested motives, in the performance of the sacred duties of humanity, or of placing in a state of bondage, even in its most mitigated form, the victims of the wars of Southern Africa ... it will be desirable in the first instance that the Government should take on itself, the charge and expense of removing these unfortunate people to the colony, as objections would certainly apply to holding out the slightest encouragement to the farmers to proceed so far beyond the frontier with so questionable a motive as that of obtaining servants ..."¹

Bigge and Colebrooke favoured the plan of sending the refugees to missionary institutions, either of the Moravians or of other societies, as a temporary measure of relief, which would allow them time for deciding whether to return to their own tribes beyond the colony or to remain permanently within its bounds. It would also allow time for planning suitable measures to deal with the new situation.

The proposal to admit refugees to mission stations does not appear to have been implemented. Instead, as such persons drifted in to the frontier district of Graaff Reinet they were apprenticed to farmers and others willing

1. C.A. C.O. 202, No. 13, Bigge and Colebrooke to Somerset, 8/9/1823.

to take them, in terms of the authority granted to the landdrost on 27 August 1823.¹ In October 1823 seventeen persons were so indentured, and a few more early in 1824.² In September 1824 a sudden influx of another twenty refugees³ was reported by the landdrost and in March 1825 Stockenstrom wrote to Cape Town again to say that many so-called Mantatees⁴ were arriving in his district, and that he was arranging for their children to be apprenticed in the town itself so that they might attend school and also be trained in some useful trade.⁵

By March 1825 there were nearly fifty adult Mantatees * apprenticed in the district of Graaff Reinet, and probably many more wandering at will in the district or taken into service without the formality of apprenticeship.⁶ The refugees had also wandered into other districts, and became a matter of concern even to the landdrost of Swellendam.⁷ But it was only in March 1825 that Somerset informed the

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1. Supra, p. 348.
 2. C.A. C.O. 2667, No. 77, List of Mantatees apprenticed in the district of Graaff Reinet according to Government Letter dated 27th August 1823, enclosed with Stockenstrom to Plasket, 1/6/1825.
 3. Ibid.
 4. Infra, Appendix G.
 5. C.A. C.O. 2667, Nos. 52 and 53, Stockenstrom to Plasket, 24/3/1825 and 29/3/1825.
 6. Infra, p. 353.
 7. C.A. A.G. 44, p. 78, Dennyssen to landdrost of Swellendam, 17/2/1825. C.A. C.O. 4852, p. 402, Brink to Dennyssen, 22/3/1825.

* actually Batlokwa by Manthatisi

secretary of state of this incursion of tribesmen from beyond the northern boundary into the colony, which had begun more than eighteen months previously. The delay is surprising in view of the unsettled state of the area beyond the northern boundary, the longstanding prohibition against employing tribesmen and the cautious attitude of the commissioners of inquiry.¹ The belated report did not discuss wider issues of policy but referred mainly to the eastern frontier where the governor had made a tour in February and March 1825.² Somerset reported in detail to Bathurst in London, and concluded by referring to the Mantatees, *

"I have only one more subject to add to this long Recital, which is, that about a year since an immense Tribe called Mantatees were impelled by Famine into the Territories of the Inhabitants North or North East of this Colony, the Griekwas. Being defeated by the latter, they retreated and left numbers of their women and children in a state bordering on Starvation behind them. Many of these have since wandered into the Graaff Reinet District, and it became a question how to dispose of them. I have therefore taken upon me to direct that they should be apprenticed to the English Settlers in Albany for terms (none exceeding Seven years) according to their ages, under very strict conditions as to good treatment &. I have decided upon this measure as the best means of disposing of these unfortunate beings, because the British Settlers are prohibited from employing Slaves, which state renders it impossible that any of them can merge into that or be substituted for them."³

1. Supra, p. 349.

2. Keppel-Jones, Philipps, 1820 Settler, pp. 224-37.
Hockly, British Settlers, p. 104.

3. C.O. 48/68, Somerset to Bathurst, 31/3/1825. (R.C.C.
Vol. XX, p. 405.)

* Manthatisi

In preparation for the transfer of some of the Mantatees to Albany, the landdrosts of Graaff Reinet and Somerset were requested to ascertain as accurately as possible the number of these tribesmen, or others, who had entered their respective districts since 1823.¹

It was at this juncture that the question of labour came before the newly-formed Council of Advice. At their meeting held on 12 July 1825 they received the letters of reply sent from the two landdrosts. From Graaff Reinet it was reported that in addition to the 49 apprenticed Mantatees, there were at least 300 others known to be in the district, while many more were wandering about in search of lost relatives "and others perhaps without so good a reason", so that an accurate estimate could not be made. The landdrost had tried to assess the success of the apprenticeship scheme already initiated but had found communication with the Mantatees difficult because of "a want of good interpreters."² A return from the district of Somerset indicated that sixty six tribesmen, mainly Mantatees and Goes,³ had already been apprenticed and that a late report from an outlying field cornetcy indicated a fresh incursion of over sixty Goes, "and the numbers are almost daily increasing."⁴ Thus the situation which came before the Council of Advice in July 1825 was quite different from that of July 1823, when thirteen starving women and children had been admitted on humanitarian grounds into the colony.⁵

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1. C.A. C.O. 4852, p. 460, Plasket to landdrost of Graaff Reinet, 8/4/1825. C.A. C.O. 4852, p. 498, Plasket to landdrost of Somerset, 15/4/1825.
 2. C.O. 51/1, Minutes, 12/7/1825, Stockenstrom to Plasket, 1/6/1825. (R.C.C. Vol. XXIV, p. 293).
 3. *Infra*, Appendix G.
 4. C.O. 51/1, Minutes, 12/7/1825, Mackay to Plasket, 23/6/1825 (R.C.C. Vol. XXIV, p. 295) Cf. The round number of 1 000 refugees given by Thompson, Travels and Adventures in Southern Africa, Vol. I, p. 186.
 5. *Supra*, p. 348.

First reports showed over 400 tribesmen in the frontier districts of Graaff Reinet and Somerset, and indicated too that it was difficult, if not impossible, to prevent their entry into the colony and free movement within it. The council deferred consideration of the matter.

Almost at once another letter arrived from the landdrost of Somerset, Mackay,¹ stating that a further 207 Goes had crossed the north-east boundary of the colony, "from want and that they have divided themselves among the inhabitants, or rather were divided by them ..." ² Small parties of the newly-arrived Goes had already begun to arrive at farms in the vicinity of the village of Somerset, some miles from the border.

The governor did not wait to refer the matter again to the council. He replied immediately, requiring that temporary arrangements be made to accommodate the incoming tribesmen, who were only to be received into the district "upon one plea, and that is upon their being totally destitute and unable to provide themselves with the means of subsistence elsewhere." ³ Those wishing to return to their own people were to be given safe conduct across the boundary. Those wishing to remain in the colony were to be allocated, in families, to farmers willing to take them into service,

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1. William Mackay, landdrost of the sub-district of Cradock; landdrost of Somerset, 1825-8; civil commissioner for Cape district, 1828-34.
 2. C.A. C.O. 2672, No. 33, Mackay to Plasket, 30/6/1825.
 3. C.O. 51/1, Minutes, 18/7/1825, Plasket to Mackay, 14/7/1825. (R.C.C. Vol. XXIV, p. 297.)

until the ensuing opgaaf which would be 8 months later in March 1826.¹ By then terms of apprenticeship would have been prepared and those tribesmen willing to engage in further service would be indentured "under proper Deeds of Apprenticeship, and will then become subject to the laws relating to Apprentices in this Colony."² Slave-owners were precluded from engaging Mantatee or Goes servants. Somerset added,

"should you feel difficulty in finding Persons of good character, not being Slave Owners, to take charge of these people, you will be good enough to forward those who may remain undisposed of, and who may be anxious to stay in the colony, to the Landdrost of Albany, who will receive Instructions as to their future provision."³

In this way Somerset was fulfilling the purpose he had had in mind earlier in 1825, when he had informed the secretary of state of his intention to relieve the labour shortage in Albany by moving some of the refugee tribesmen there.⁴

At the next meeting of the Council of Advice the governor informed them of the measures he had proposed. These were approved by the council and it was resolved,

"that the adoption of these measures be recommended in the other Frontier Districts of this Settlement into which these Tribes have taken or may take refuge, until the pleasure of His Majesty's Government (to whom His Excellency proposed to submit the case) be known on the subject."⁵

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1. The opgaaf was a local district tax based on property and payable in March each year. B.J.T. Leverton, Government Finance and Political Development in the Cape, 1806-1834, A.Y.B., 1961, p. 316.
 2. C.O. 51/1, Minutes, 18/7/1825. (R.C.C. Vol. XXIV, p. 298).
 3. Ibid.
 4. Supra, p.351, n. 3.
 5. C.O. 51/1, Minutes 18/7/1825. (R.C.C. Vol. XXIV, p. 299.)

Somerset wrote at the end of July 1825 explaining the situation to Bathurst, and pointing out that it had been decided to allow the tribesmen to be apprenticed to Dutch colonists in Somerset rather than have them sent on to Albany.¹ Once the needs of the Somerset district had been met other refugees could be sent on to Albany. Several did in fact reach Albany and were considered to be better servants than the Hottentots and in some instances served long and usefully those who had engaged them.²

In March 1826 Bathurst's reply to Somerset was tabled in the Council of Advice.³

"I have also by this opportunity to signify to you my approbation of the way in which you have disposed of those unfortunate people who being deserted by their own Tribes, had wandered from the Country lying to the North East of the Colony into the District of Graaff Reinet by apprenticing them to the English Settlers in Albany."⁴

Although this referred to a situation which had preceded the establishment of the council, it was accepted as tacit approval of the arrangements made the previous July,⁵ and the council therefore proceeded to draw up terms of apprenticeship for the tribesmen. An indenture form similar

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1. C.O. 48/69, Somerset to Bathurst, 30/7/1825. (R.C.C. Vol. XXII, p. 419 f.)
 2. Keppel-Jones, Philipps, 1820 Settler, pp. 251; 252-4; 257; 301; 314-5; 335. The family employed by Philipps were designated Bechuanas, and were described in most favourable terms. E.g. "our new servants the Bechuanas ... go on extremely well and are exceedingly attached." "our Bechuanas are going on remarkably well ... they are daily improving in English and make themselves extremely useful."
 3. C.O. 51/3, Minutes, 20/3/1826. (R.C.C. Vol. XXIX, p. 256.)
 4. C.O. 49/16, Bathurst to Somerset, 20/8/1825. (R.C.C. Vol. XXII, p. 499.)
 5. *Supra*, p. 353.

to that in use for prize negroes was approved but with a seven year period of indenture in place of the fourteen years served by prize negroes. Slave-owners were not to be allowed to engage apprentices.¹

Thus by April 1826 landdrosts were able to proceed with the indenture of tribesmen willing to remain in service with the colonists. This was slightly later than had been intended,² but as early as the council could act in the matter; they had in any case not waited for the secretary of state's approval of the scheme put forward the previous July. This arrived in May 1826 and was noted by the Council of Advice. Bathurst particularly commended the way in which the "humane object of granting asylum to these people" had been coupled with measures to prevent their being reduced to a state of slavery, and which at the same time provided a labour supply to the settlers of Albany who were precluded from owning slaves. He suggested that similar assistance should be given to other tribesmen deserving of aid, but at the same time warned against allowing the practice to become widespread. He wrote,

"It will be proper, therefore, that you should continue to grant similar assistance to other unfortunate persons who may be driven by similar causes into the Colony; although I do not think that it would be expedient to receive large bodies of them, as this could not fail to have the effect of inviting other Savage Tribes to follow their example."³

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1. C.O. 51/3, Minutes, 20/3/1826 and 28/3/1826. (R.C.C. Vol. XXIX, pp. 256-60.)
 2. The time of the opgaaf, March 1826, had been intended, *Supra*, p.354.
 3. C.O. 49/16, Bathurst to Somerset, 3/12/1825. (R.C.C. Vol. XXIV p. 53.)

Within a year Bathurst had changed his mind on the question of not inviting tribesmen into the colony as labourers. At the end of December 1826 the Council of Advice tabled a despatch on the subject, but consideration was deferred because the council was preoccupied with an inquiry into the state of the corn laws.¹ The matter of labour was resumed in February 1827, when the council gave consideration to the new proposal of the secretary of state, namely that tribesmen from outside the colony should be specifically invited and encouraged to enter the frontier districts to seek work.²

Bathurst had been brought to this new view of the situation by a letter from the governor, Somerset (then in London) recommending such a scheme. Somerset had repeatedly concerned himself with the problem of the scarcity of labour, and had been disappointed that none of the plans put forward by him for introducing more labourers from Britain into the colony had been accepted by the Colonial Office.³ He had, therefore, written in July 1826,

"I take the liberty of again soliciting His Lordship's attention to the evils that are felt from the great scarcity of labourers, and to recommend that such individuals of these Tribes (i.e. Mantatees, Goes &) as are not disqualified from age or infirmity should be invited to enter the Colony with the understanding that they are to be apprenticed for a term of years (7 or 10) and children until they attain the age of 18, the same as the Hottentots."⁴

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1. Supra, pp. 300-1.
 2. C.O. 49/19, Bathurst to Bourke, 20/8/1826. (R.C.C. Vol. XXVII, p. 275 .)
 3. E.g. R.C.C. Vol. XXVI, p. 90, Somerset to Bathurst, 27/2/1826.
 4. C.O. 49/19, Somerset to Hay, 27/7/1826, enclosed with Bathurst to Bourke, 20/8/1826. (R.C.C. Vol. XXVII, p. 160.) Somerset's letter was also tabled by the council.

The Council of Advice gave careful and prolonged consideration to this important question which involved the complete reversal of traditional policy at the Cape, and the negation of decisions taken in 1821 and 1819 to keep tribesmen and colonists apart. The final outcome of the council's deliberation, in consultation with officials in the frontier districts and in the Colonial Office, London, was the promulgation of ordinance 49, in July 1828, which embodied and extended the plan put forward by Somerset in July 1826. The genesis of this ordinance appears to lie with Somerset, and not with Bourke, to whom it has generally been attributed.¹

In 1836 Wade stated before the Aborigines Committee,

"the measure originated with Lord Charles Somerset, had been proposed by him to His Majesty's Government, was referred back by Lord Bathurst to the lieutenant-governor and council, where the ordinance was at length completed as it now stands ..."²

In February 1827, the Council of Advice decided to refer the subject to the landdrosts of Albany, Graaff Reinet, Uitenhage and Somerset respectively, in order to ascertain from them the conduct of the tribesmen already serving as apprentices, and the likely success of the proposed scheme to invite tribesmen into the colony as labourers.³ They also sought their opinion on a pension scheme proposed by Somerset whereby a fund for aged and infirm tribesmen would be established from contributions made by employers during the years of apprenticeship;⁴ and on the most suitable period of apprenticeship, if, indeed, such a system were preferable to short-term contracts.

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1. E.g. Cory, Rise of South Africa, Vol. II, p. 341. Walker, History, p. 182. C.H.B.E. Vol. VIII, p. 311. Macmillan, Bantu, Boer and Briton, p. 87. King, Richard Bourke, pp. 118-9. Robertson, 150 Years, Part I, S.A.J.E., Vol. II (1934), p. 410. C.F.J. Muller (Ed.), 500 Years A History of South Africa, (Pretoria, 1969), p. 119.
 2. P.P. 1836, VII (538), p. 281, Evidence of Wade.
 3. C.O. 51/6, Minutes, 2/2/1827. (R.C.C. Vol. XXXIV, p. 340.)
 4. C.O. 51/7, Appendix D2, Somerset to Hay, 27/7/1826.

Replies from the four districts were received during March and April and reflected a strong measure of agreement, but also some significant divergencies of opinion. Only one of the landdrosts, Stockenstrom of Graaff Reinet, rejected the scheme, which he considered to be "pregnant with mischief and likely even to counteract the object in view." He disapproved of the idea of inviting tribesmen into the colony, and was hostile also to the apprenticeship system. The whole scheme appeared to him to be,

"irreconcilable with the character of the natives and our relation with them, and calculated only to crowd us with worthless subjects, who soon after the completion of the Indenture will shew their impatience of restraint, prove to us how little they are susceptible of that refinement of Philanthropy of devoting the whole produce of their labour to a charitable fund, and leave the master, the indenture, and the Colony, after having perhaps learnt the use of our arms, being entrusted with these, and knowing the weakness of our Frontier ...

the best policy we can adopt relative to the said savages is not to invite them, and when they do come to admit them, to apprentice the unprotected children as is now done, without the least tax on the Master beyond the obligations already in force, to restrict the adults merely to a most positive rule that they shall have some fixed abode and honest occupation, on pain of being taken up and severely punished as vagabonds if they go about or collect in gangs without the means of subsistence, beyond which they should be left to dispose of their labour as dear as they can, and to whom they please ...

They should be made to work, unless they can prove that they can live without, and in this respect they should be closely watched, for in a Country where property, particularly large flocks of sheep and cattle, are so much exposed, it is easy to live by theft; but provided they do work, to apprentice them or their children, if they can maintain them, or to say where, with whom, or for how much they shall work or how apply their earnings, is as impolitic as it is unjust ..."¹

Stockenstrom's views seem to express the underlying dilemma of the whole frontier situation, of how to act justly

1. C.O. 51/7, Appendix D5, Stockenstrom to Plasket, 20/2/1827. (R.C.C. Vol. XXXIV, pp. 378-81.)

in a situation in which mutual suspicion and distrust, bred over many years of hostility, had poisoned relationships between black and white.

The landdrosts of the other three districts favoured the plan to invite tribesmen into the colony, and also the apprenticeship system. Suggestions for the period of indenture varied from two to seven years, and Mackay of Somerset suggested that apprenticeships should only begin after a temporary period of employment, and that "those individuals who may be found to have remained without compulsion with their employers during such stated time, should be indentured ..."¹ He had been brought to this opinion by the disappointing outcome of the employment of Mantatees and Goes from 1825. Only a half of those who had originally entered service had been willing to be indentured, in spite of the considerable care that had been taken to keep families intact and to place them with suitable masters.

Reports on the suggested pension scheme varied. Cuyler² of Uitenhage, who had discussed the whole question at a meeting of the "best-informed of the inhabitants", stated that the local inhabitants would be happy to pay the sum of three shillings per month for such a scheme, provided it was the only payment made in respect of the labourers! But he pointed out that when tribesmen had previously been in service (i.e. illegally), it had been customary to pay at the rate of about £1-16 p.a., payment usually being made in cattle. The landdrost of Somerset proposed that the pension scheme should apply to men only, while from Albany Dundas³ reported that in his view, present payment would be better than an offer of future benefits, particularly as he

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1. C.O. 51/7, Appendix D4, Mackay to Plasket, 20/2/1827. (R.C.C. Vol. XXXIV, p. 373.)
 2. Jacob Glen Cuyler (1775-1854), an immigrant from America who settled in frontier district of Uitenhage in 1806; landdrost of Uitenhage 1806-1828.
 3. Major William Bolden Dundas, landdrost of Albany, 1825-8.

supposed that tribesmen would want to return to their own lands after the termination of their periods of service. He recommended payment at the rate of four cows per annum.¹

The three landdrosts of Uitenhage, Albany and Somerset also commented on the suitability of the various tribes who might be invited into the colony. In Uitenhage the Gonnas² had previously been found the best adapted to work especially as herdsmen, and it had been resolved at the meeting held³ that "the labourers are much wanted, particularly Herdsmen, and more so from the uncertainty and difficulty of procuring Hottentots under the present system."⁴ From Albany it was reported that Bechuanas, Tambookies and Caffres⁵ were all well-suited to service, but for relatively short periods, as the aim of all three groups was to acquire some wealth in the form of cattle and then return to their respective countries. In the Somerset district the Tambookies and Bechuana had also been found to be suitable servants, and the latter were considered more industrious than the Mantatees or "Gous" - "who devote their time chiefly to hunting and war"⁶ The Bushmen⁷ were also recommended,

1. C.O. 51/7, Appendix D3, 4 and 6, passim.

2. Gonaqua. *Infra*, Appendix G.

3. *Supra*, p. 360.

4. C.O. 51/7, Appendix, D3. Report of Roselt, 19/2/1827. (R.C.C. Vol. XXXIV, p. 369.)

5. *Infra*, Appendix G.

6. C.O. 51/7, Appendix D4, Mackay to Plasket, 20/2/1827. (R.C.C. Vol. XXXIV, p. 372.)

7. *Infra*, Appendix G.

and the landdrost added "The operation of the proposed measure is not of course I suppose intended to extend to the Caffres"¹ thus expressing in a single sentence the longstanding hostility, distrust and fear of the colonists towards the neighbouring tribe who had most effectively threatened their presence and livelihood in the eastern districts of the colony. Although the warning of the landdrost was disregarded by the Council of Advice, within a year of permission being granted for tribesmen to enter the colony as work-seekers, a ban was imposed on the entry of Caffres, or Xhosa, into the frontier districts.²

It is of interest to note the reports given by the landdrosts on the state of the apprenticeship scheme introduced in 1826. A general sense of disappointment is evident. From Somerset it was reported that many had deserted their employers as soon as their immediate needs of food and rest had restored them to health. Similar complaints were received from Graaff Reinet and Albany, although it was admitted that they made excellent herdsmen and, if well treated, were cheerful and loyal servants.³ It seems clear that in all three districts there was difficulty in seeing that the terms of indenture were fulfilled, and in practice it had proved better to disregard the breach of contract than to sue, or pursue, absconders.⁴ Equally, in all three districts there were tribesmen at large who had quit service and were, allegedly, returning to their own country beyond the boundary of the colony.

1. C.O. 51/7, Appendix D4, Mackay to Plasket, 20/2/1827. (R.C.C. Vol. XXXIV, p. 373.) *Infra*, Appendix G.

2. *Infra*, Ch. 9, *passim*.

3. C.O. 51/7, Appendix D4, 5 and 6, *passim*.

4. C.O. 51/7, Appendix D4, Mackay to Plasket, 20/2/1827. (R.C.C. Vol. XXXIV, p. 371.)

With no specific instructions from the government in this regard, other than the need for safe conduct to the border,¹ and with very inadequate administrative structures in the districts there was little that the local landdrost could do to curb vagrancy or even plundering by the tribesmen, or to curtail the propensity to wander about within a district. The same problem was to occur after the promulgation of the new ordinance admitting tribesmen into the colony as labourers.²

The last of the landdrosts' reports was received by the Council of Advice on 18 April 1827, and at their next meeting the whole matter was considered, in the light of three questions.

"1st. Whether it be expedient to invite into the Colony the natives of the interior, by the offer of employment on such advantageous terms as the Colonists may feel it in their interest to grant?

2ndly. If the first question be answered in the affirmative, whether a system of apprenticeship, or, in other words, of compulsory service with the same employer, for a fixed period of time, be the terms most likely to attract those foreigners, and thus secure to the Colony the desired accession of useful labour.

3rdly. How far it may be advisable for the Government to interfere in fixing the nature or the quantity of remuneration for the labour of these people, or in causing any portion of the same to be appropriated to a fund for the future support of such as might otherwise become a burthen to the Colony."³

Taking into account the views of the several landdrosts, the council were of the opinion that a favourable answer might be given to the first question, three landdrosts having

1. Supra, p. 353.

2. Infra, Ch. 9, passim.

3. C.O. 51/6, Minutes, 21/4/1827. (R.C.C. Vol. XXXIV, p. 399).

expressed their approval, and the fourth (Stockenstrom) having admitted that the conduct of those apprenticed in his district "cannot in general be complained of."¹ It was claimed that Stockenstrom's criticism of the proposed scheme was based on the existing provisions for apprenticed labour, but the Council realised that an alternative scheme might be devised which would "secure to the native an adequate return for his labour, and provide against any unnecessary interference with his natural love of personal liberty"² It was therefore decided not to introduce an apprenticeship system with its corollary of compulsion in case of desertion, but to plan instead a scheme of contractual labour for periods of up to twelve months. The reports from the districts of Somerset and Albany on the difficulties of the existing apprenticeship system had helped to shape this view.³

Having decided against a system of apprenticeship, the council realised that the third question had largely fallen away, "as it is not to be expected, that without the premium of an apprenticeship for some years, their masters would consent to make any payments to Government on this behalf."⁴ The council was influenced too by the view of the landdrost of Albany that all tribesmen would desire ultimately to return to their own country. On the question of wages the council decided that it would not be advisable to stipulate the manner or quantity of payment.

The lieutenant governor was requested to arrange for a draft ordinance to be prepared incorporating the decisions of the council. At four subsequent meetings this draft was considered and amended.⁵ It was finally referred again

1. Ibid.

2. C.O. 51/6, Minutes, 21/4/1827. (R.C.C. Vol. XXXIV, p. 400.)

3. Supra, p. 360.

4. C.O. 51/6, Minutes, 21/4/1827. (R.C.C. Vol. XXXIV, p. 402.)

5. C.O. 51/6, Minutes, 25/4/1827; 28/4/1827; 2/5/1827; 7/5/1827. (R.C.C. Vol. XXXIV, pp. 401-6.)

to the fiscal and the four landdrosts previously consulted, for further comment.

Replies were received in June 1827. In general the landdrosts agreed with the provisions of the draft ordinance and welcomed the prospect of additional labourers in their respective districts. The clause abolishing apprenticeship for Hottentot children was favourably commented on by three of the four landdrosts,¹ one of whom claimed that the provision for this apprenticeship had seldom been acted upon in his district.² Another expressed the hope that

"the time may not be distant when the other restrictions, such as requiring passes &c, under which they labor, may also be done away with and they may be placed in every respect under the very same regulations as other inhabitants of the colony."³

The council noted that various amendments had been suggested by Stockenstrom and agreed to consider these and to make a final revision of the draft ordinance at the ensuing meeting.⁴

A point of some importance upon which the council made no comment was the conviction of the landdrost of Somerset that the measure ought not to apply to the Caffre or Xhosa tribe.⁵ While he agreed with all the other provisions of the ordinance, he stressed that he could not "avoid again expressing my doubts as to the expediency of allowing the Kaffers to enter the service of the Farmers

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1. The draft ordinance made provision for the repeal of a proclamation dated April 1812, regulating the apprenticeship of Hottentot children. *Infra*, p. 370.
 2. C.O. 51/7, Appendix D9, Mackay to Plasket, 28/5/1827. (*R.C.C.* Vol. XXXIV, p. 430.)
 3. C.O. 51/7, Appendix D7, Cuyler to Plasket, 23/5/1827. (*R.C.C.* Vol. XXXIV, p. 419.)
 4. C.O. 51/6, Minutes, 27/6/1827. (*R.C.C.* Vol. XXXIV, p. 425.)
 5. *Supra*, p. 362.

on the Frontier."¹ This anxiety was not shared by the landdrost of Albany, whose only suggestion regarding the proposed ordinance was that,

"as a proper classification of the Tribes had not been attended to in the Draft it would be better to make the necessary alteration by placing them in the following order:

Caffres, Gonaqua, and Tambookies, Griquas and Bosjesmen, Bechuanas and Mantatees (a tribe of Bechuanas under the Chief Mantatesie.)"²

It was not surprising then, that the Council of Advice considered themselves free to disregard the warning of the landdrost of Somerset on the question of debarring the Caffres from the provisions of the proposed ordinance. Moreover, in another context the lieutenant governor had received direct permission from the secretary of state for the admission of Caffres into the district of Albany as labourers. The matter had arisen in the course of correspondence on the question of land grants in the frontier districts.

With the large-scale immigration scheme to the frontier districts undertaken by the British government in 1819 to 1820, it had been decided that the new settlers should be prohibited from the use of slave labour on their lands, although domestic slavery was to be permitted.³ The secretary of state had written to the lieutenant governor, Donkin, accordingly. Within the colony Donkin had acted as if the restriction was to apply only to lands granted to the new British settlers, although it had been the intention of the secretary of state to apply the restriction to all new land grants within the frontier districts. The fact that the prohibition had been limited to the newly-created district of Albany, and the area of Somerset where the Scottish settlers had been located, was

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1. C.O. 51/7, Appendix D9, Mackay to Plasket, 28/5/1827. (R.C.C. Vol. XXXIV, p. 430.)
 2. C.O. 51/7, Appendix D10, Dundas to Plasket, 5/6/1827. (R.C.C. Vol. XXXIV, p. 432.) Infra, Appendix G.
 3. Duly, British Land Policy at the Cape, 1795-1844, Ch. 6.

only discovered by the Commission of Inquiry in 1825. In the same year Somerset proposed to annex part of the Ceded territory to the district of Somerset¹ and to allocate land grants there to Dutch colonists but the commissioners of inquiry had raised the question of attaching the prohibition against the use of slave labour to the new land grants. The governor had not expected the prohibition to apply in this instance and had written to the secretary of state to explain why he thought the restriction unjust in the case of the Dutch colonists chosen to receive land in the Ceded territory. He also stated that he had stopped the issue of grants, pending further instructions.² The question was still unresolved when Bourke became lieutenant governor, and was further complicated by a proposal to form a chartered company for the settlement of the area³ and by applications from various chiefs for occupational rights in other parts of the Ceded territory.⁴ It was Bourke who received the despatch from the secretary of state confirming that the restriction was to apply to all persons receiving land grants in the frontier districts of the colony. Bourke's own suggestion that those persons whose grants had already been completed and who had received their land without knowledge of the prohibition, should be exempted from its operation, was refused, as was his suggestion that the prohibitive clause should be operative only within an area stretching approximately thirty miles into the colony from the boundary.⁵ However permission was given for grantees already on their land to remain there provided that they were willing to subscribe to the prohibitive clause.

1. Walker, History, p. 181.

2. C.O. 48/70, Somerset to Bathurst, 1/10/1825. (R.C.C. Vol. XXIII, p. 291.)

3. R.C.C. Vol. XXIII, pp. 198-216, Commissioners of Inquiry to Bathurst, 30/7/1825.

4. Walker, History, p. 181.

5. C.O. 48/82, Bourke to Bathurst, 3/7/1826. (R.C.C. Vol. XXVII, p. 62.)

In a despatch dealing mainly with the claims of the chiefs to reoccupy land in the Ceded territory, Bourke had suggested that the scarcity of labourers in Albany might be satisfactorily met by the introduction of Caffres into the district. He had written,

"The good conduct of these Caffres when experiencing kind treatment from our hands, and their proximity to the farms of the British Settlers in Albany where labour is so scarce and expensive, induce me to submit to Your Lordship the propriety of allowing such of these persons as offer, to engage as labourers with the neighbouring farmers. I have never yet heard any reason to satisfy me of the inexpediency of this measure. I can neither see any risque of endangering the security of our possessions by admitting a certain number of Caffres as labourers nor any apprehension of the settlers retaining these Caffres as Slaves ...

I understand that the Caffres on the Eastern part of the Albany frontier are anxious to get employment with the neighbouring farmers, and the farmers are no less anxious to engage them. I would therefore request Your Lordship's authority for granting permission to the employment of Caffres as labourers in the district of Albany under such regulations as may be likely to preserve the equitable relation between Master and Servant."

This letter was written at roughly the same time that Somerset was writing to recommend the scheme for inviting refugee tribesmen into the colony as labourers.² But Somerset was in London at the time, and his letter naturally arrived at the Colonial Office before Bourke's. Bathurst's despatch giving cover to Somerset's letter was sent in July 1826 just over a month after Bourke had written the above-mentioned letter on the subject of native labourers.

1. C.O. 48/82, Bourke to Bathurst, 14/7/1826. (R.C.C. Vol. XXVII, pp. 69-70.)

2. *Supra*, p. 357.

In October 1826 Bathurst replied to Bourke's letter and expressed his approval of the general plan outlined for bringing tribesmen into the colony as workseekers.

"As you state that you have in pursuance of my instructions of the 9th of January removed all those Boors from the Frontier who have already been permitted to settle there, through a misconception of my instruction on this subject, with permission to employ slave labour, I have no hesitation in authorizing you to adopt measures for allowing the Settlers in Albany, who may not possess Slaves, to employ under proper regulations, a certain number of Caffres as Labourers."¹

This letter does not appear to have been presented to the Council of Advice at all and had probably not arrived in the colony by the end of December 1826 when the council first noted the recommendation of Somerset that displaced refugees should be invited into the colony as labourers.² Nevertheless it gave a general permission for Bourke to effect a change in the labour pattern of the frontier districts and to extend to the Caffres the benefits of Somerset's proposed scheme, notwithstanding the opposition of the landdrost, Mackay, of the Somerset district.³

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1. C.O. 49/19, Bathurst to Bourke, 26/10/1826. (R.C.C. Vol. XXVIII, p. 278.)
 2. Supra, pp. 357-8. Cf. the view that "Bourke did not, however, take immediate advantage of the permission which Bathurst had given him in /October/ 1826 to admit Kaffirs. By the time it was received he had had longer experience in the Colony and thought that the system might well be established in other frontier districts as well as in Albany. Therefore he took the advice of the Landdrosts of the districts concerned, who thought the proposal unobjectionable. During 1827 he placed their views, together with a draft Ordinance, embodying the proposals before the council which approved and passed it." King, Richard Bourke, pp. 115-6.
 3. Supra, pp. 362, 365.

At their meeting held on 30 June 1827 the council considered the amendments suggested by the respective landdrosts and incorporated some minor changes. Having ordered the reprinting of the ordinance and its transmission to the secretary of state in reply to his despatch of 20 August 1826, the council resolved that "the promulgation of this Ordinance be suspended until His Majesty's pleasure be made known."¹

The declared objective of the ordinance as passed by the Council of Advice on 30 June 1827 was,

"to augment the amount of disposable Labour, by affording the greatest facility compatible with the public safety, to the admission of Foreigners from the Tribes beyond the borders of the Settlement, who may be desirous of migrating to and sojourning in the Colony as Herdsmen, Field Labourers, House Servants, or in whatever capacity may be most suitable to their several inclinations and abilities."²

To this end the proclamations of 27 June 1797, 8 August 1817, 28 January 1820 and parts of that of 14 May 1812, prohibiting the employment of tribesmen, and providing for the apprenticeship of orphan children, were to be repealed. The new ordinance provided for the governor to authorise the admission into the colony of members of the different tribes living beyond the colonial boundary, and to regulate the terms of admission and of employment, which might vary from tribe to tribe and from district to district.³ Tribesmen

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1. C.O. 51/6, Minutes, 30/6/1827. (R.C.C. Vol. XXXIV, p. 433.)
 2. Ibid. Draft ordinance.
 3. Tribes listed in clause 2 of the ordinance were "Caffres, Gonaquas, Tambookies, Griquas, Bosjesman, Bechuanas, Mantatees and Namaquas or other natives of the Interior of Africa." In addition to the above, passes or contracts have been found for persons described as Fingo, Fetcanie, Masouta, Zoolah, Mackwana and Masee. Infra, Appendix G, Tribal designations.

entering the colony were to obtain written passes from the local field cornet, details of which were to be recorded at the office of the landdrost and submitted to the colonial secretary's office twice a year. Passes were not transferable, and anyone attempting to deprive a pass-holder of his document, or trying to prevent a foreigner from obtaining such a document would be subject to a penalty of up to £10 fine, or six months' imprisonment.

Tribesmen carrying passes were to be eligible for employment within the colony, and any colonist taking into service a foreigner not in possession of a pass would also be liable to a fine (maximum £5) or imprisonment (maximum three months.) Engagements to work were either to be for one month at a time, renewable monthly, whether by verbal or written agreement between the parties concerned; or, if for more than a month, by written contract agreed before a local official. Such contracts were not to last for more than a year, but were to be renewable. The contract was to include a provision that the employer would be bound "amongst other things" to provide the Foreigner ... and such of his or her family as may be present with him or her, sufficient food and decent clothing" during the period of the contract. Neither liquor nor tobacco were to be given "as payment for money due for wages or in any manner charged in account against any such foreigner." There was to be no detention of the cattle or goods of the employee on the expiration of a contract as a means of retaining his service.

Contracts were to be made out in triplicate, one copy to be kept by the employer, one for the employee and one to be filed at the local district office, whence copies would be forwarded in January and July each year to the office of the colonial secretary in Cape Town. When a tribesman entered into a contract his pass was to be "given up by him into the custody of the person before whom the contract shall be made, to be kept by him until the expiration of such

contract, and then restored to the Foreigner on demand." This was obviously intended to prevent a newcomer from absconding from the place of employment and moving off to another field cornetcy or district, and seeking a fresh contract. No precaution seems to have been taken, however, to guard against the possibility of such a person moving into a new area and requesting a pass, as if he had just entered the colony.

All persons concerned in a contract were to be mentioned by name in the document, and employers were prohibited from demanding service from or detaining the children of the contracting parties beyond the period of the contract, on any pretext whatsoever. Information regarding minor children (girls under 16, boys under 18) left abandoned by their parents, or orphaned, was to be transmitted to the nearest official within a month of the circumstance occurring, and this official was to be responsible for arranging for the apprenticeship of such children, with the proviso that should the parents of the child return and claim their offspring within two years, restoration of the child was to be made, notwithstanding the indenture. Bushmen children abandoned or left in the care of the inhabitants might similarly be apprenticed to their 18th year if male, and 16th year if female. Failure to report such a circumstance within a month would lead to a fine of 20s/= for every month that had elapsed in the interim. Provision was also made for the apprenticeship of children deliberately left in the care of an employer, if this should be the wish of native parents.

Those tribesmen who had been admitted into the colony and apprenticed from 1823 to 1826¹ were to complete the period of their indentures and then become eligible to receive a pass in the terms of the new ordinance. All native foreigners allowed into the colony would "be held amenable to the laws thereof and be liable to the normal

1. Supra, passim.

penalties for breach of the law." Any found wandering in the colony without a pass, or without a letter of authority from an employer or, having received a pass, "discovered wandering without any certain occupation or honest means of livelihood ... or having been absent from his or her last Employer for a longer period than fourteen days", were to be apprehended and taken to the nearest landdrost for inquiry. If in employment, the vagrant was to be returned to the former employer, or with the consent of the latter, to be placed in service with another inhabitant for a period of twelve months; otherwise the wanderer was to be removed beyond the bounds of the colony, having had his pass withdrawn. Should such a person return to the colony and again be found wandering there would be the risk of a sentence of imprisonment with hard labour, for a period of twelve months. The very severe penalty of seven years' transportation was to be imposed on any master convicted of enslaving a free labourer. Judges on circuit would be required to report on the operation of the ordinance.

Such was the ordinance approved by the Council of Advice on 30 June 1827. The measure may be regarded as an adequate means of introducing new workers into a colony acknowledged to be seriously short of labourers of every kind. But the possibility of the efficient operation of the ordinance in a colony whose frontier districts were vast in extent, which was thinly populated and possessed virtually none of the administrative machinery necessary for the control of people and their movements was very remote. Such a measure required a closely-knit administrative structure, with full time officials able to attend to the details of implementation and enforcement. The frontier districts did not possess such a structure, and indeed it is questionable whether even those districts nearer to the centre of government at Cape Town did. The records of passes and contracts to be submitted biannually to the

colonial secretary at Cape Town were also to be laid before the Council of Advice "for their information", but it would seem unlikely that any close scrutiny of these papers would be undertaken. Moreover, the ordinance itself made no provision for the correlation of passes with contracts, or for any record to be kept of casual employment, month by month, nor for reference from one district to another of passes and contracts. When it was finally introduced in 1828 the ordinance worked fairly well in the initial stages, but the difficulties soon became apparent, and within a short time it was clear that no adequate check could be kept on numbers or activities of tribesmen entering the colony.¹

On the same day that the council had approved the draft ordinance a copy was prepared for transmission to London. In his covering letter the lieutenant governor, Bourke, explained that the council had deviated from the plan put forward in 1826 by Somerset for specified refugee tribesmen to be admitted as apprenticed labourers into the colony.² Because the proposed measure allowed for a general permission to enter the colony and for casual or annual employment the Council of Advice had decided to obtain the prior consent of the secretary of state before promulgating the ordinance locally.³ Bourke felt induced "strongly to recommend to Your Lordship to sanction the promulgation without delay."⁴

1. *Infra*, Ch. 9, *passim*.

2. *Supra*, pp. 357-8.

3. This was meant to be the normal procedure of enactment but was seldom observed. *Supra*, p. 79.

4. C.O. 48/109, Bourke to Bathurst, 30/6/1827. (R.C.C. Vol. XXXII, pp. 53-4.)

In spite of Bourke's appeal for urgency it was not until March 1828 that a reply was sent from the secretary of state approving the proposed new labour regulations.¹ This despatch reached the colony in July 1828 and was acted upon at once. In the interim important changes had been introduced into the judicial and administrative structures of the colony, which necessitated verbal alterations in the draft ordinance.² These were approved by the Council of Advice on 14 July 1828 and the new measure was then promulgated as ordinance 49, coming into effect immediately.³ The changes in local government meant that familiar if inadequate structures had been abolished and replaced by theoretically efficient ones. In practice even these were to prove unsuited for the minute supervision required for the effective implementation of ordinance 49. When the new labour regulations came into operation the new administrative structures were still in the process of establishment.

At the council meeting preceding that held on 14 July 1828, at which ordinance 49 was finally passed, the lieutenant governor had given notice to the council that he intended to bring before them another matter of great importance affecting the labour question within the colony.

"His Excellency stated that he proposed to lay before the Council in a few days, an ordinance for the improvement of the condition of the Hottentots and other Free Persons of Colour in the Colony. The situation of the Hottentots had engaged his attention soon after his arrival in the Colony, and he would have proposed at an earlier period some remedial measure such as that of which he now gave notice, but that he conceived His Majesty's Commissioners of Inquiry had taken the matter into consideration

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1. C.O. 49/21, Huskisson to Bourke, 15/3/1828.
 2. Supra, Ch. 3 passim. Hunt, Sir Lowry Cole, Ch. 10. King, Richard Bourke, Ch. 7.
 3. C.O. 51/12, Minutes, 14/7/1828. Gazette, 18/7/1828, Ord. No. 49.

and intended to report upon it. Not finding anything to have come from them he would no longer delay proposing what he hoped would prove beneficial to the free Coloured Population of the colony."¹

At the following council meeting, immediately after the necessary alterations to ordinance 49 had been made, Bourke introduced the draft of an ordinance, on the condition of Hottentots and other free persons of colour within the Colony. No amendments were made at the first reading, and the order was given for the draft to be printed. The council met again in two days' time for the second reading and on this occasion several clauses were amended, and the amended draft was referred to the attorney general.² The following day the council met once again and the ordinance was passed, as ordinance 50, "For improving the condition of the Hottentots and other Free Persons of Colour at the Cape of Good Hope and for consolidating and amending the laws affecting those persons." Immediately afterwards, the lieutenant governor gave notice that he intended preparing a general vagrancy act for the colony.³

Ordinance 50 provided legal equality for the Hottentots and other free persons of colour within the colony. It repealed several earlier enactments of the Dutch East India Company, the Batavian administration and the British administration and provided an entirely new approach to the status and condition of Hottentots.⁴ Regulations introduced between 1809 and 1823 by the British governors, Caledon, Cradock and Somerset had been intended to afford protection

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1. C.O. 51/12, Minutes, 3/7/1828. Supra, pp. 96-7 and 104-5.
 2. C.O. 51/12, Minutes, 14/7/1828 and 16/7/1828.
 3. C.O. 51/12, Minutes, 17/7/1828. Supra, p. 334. Infra, p. 379f.
 4. Gazette, 25/7/1828, Ord. No. 50.

by limiting the authority of white masters over their Hottentot servants but in effect the Hottentots had still been restricted and subjected to discriminatory measures.¹ The proclamation of 1809 had required that all Hottentots were to have a fixed place of abode, registered at the office of the local landdrost, and that they were to carry passes when moving from one place to another.² Passes were issued for a limited period of time only, during which the holder was expected to seek employment.³ If found without such a pass, or with one that had expired, a Hottentot became subject to penalties for vagrancy. Theoretically all inhabitants of the colony were required to register their place of domicile, and to obtain a certificate of permission to move from one district to another, but in practice only Hottentots were penalised in this matter. As explained by the landdrost of Uitenhage,

"The Landdrost may imprison and punish Hottentots at his discretion, whereas he cannot legally imprison, much less punish, a Burger without a decree of a court of justice."⁴

Ordinance 50 repealed these provisions so that from July 1828 Hottentots were no longer required to carry passes. They were thus released from the summary imposition of punishment as vagrants.

The regulations introduced by Caledon in 1809 had also provided for labour contracts between Hottentot workers and their white employers, to be drawn up in triplicate and registered by local officials. The ordinance of 1828 repeated the requirement for contracts of service for more

1. Marais, The Cape Coloured People, Ch. 4, passim.
Macmillan, The Cape Colour Question, Ch. 12, passim.

2. Proclamations, p. 119, Govt. Proc. 1/11/1809.

3. The length of time varied from district to district and might be as short as three days. R.C.C. Vol. XXXV, p. 317, Report of J.T. Bigge upon the Hottentot and Bushman Population of the Cape of Good Hope, 28/1/1830.

4. *Ibid.*, p. 313.

than a month, with the same modification introduced in ordinance 49, namely that they were to last no longer than 12 months, but were renewable annually. Provisions concerning the apprenticeship of children were also altered in favour of the Hottentots.¹ Remuneration given to servants was not to include tobacco or spirits, and any debts contracted by the employee were to be recoverable through the normal channel of the courts only, as had legally been the case since 1809. Ordinance 50 also stated explicitly that Hottentots were legally entitled to own land. There had previously been no legal barrier, but traditionally they had been considered, even by some local officials as "incapacitated by law from holding lands."²

In considering the two consecutive ordinances, 49 and 50, as complementary,³ it becomes clear that the labour policy introduced by Bourke in 1828 aimed at creating a free labour force within the colony, protected by law and enjoying equality before the law with all other inhabitants of the colony. It was also to provide the admission of tribal foreigners into the colony for limited periods, subject to contract regulations identical to those applicable to the Hottentots, and subject also to a pass system similar to that from which the Hottentots had just been released. The intention may well have been to prepare the tribesmen for subsequent admission to the colony as lawful and permanent inhabitants. This was certainly the way Dr Philip construed the possibilities. In a letter to the secretary of state on the new labour regulations he argued that as there was no provision for the naturalisation of

1. The most significant change was that they could now only be apprenticed with the permission of their oarents.

2. R.C.C. Vol. XXXV, p. 313, Report of J.T. Bigge upon the Hottentot and Bushman Population of the Cape of Good Hope, 28/1/1830.

3. *Supra*, p. 334.

native foreigners admitted into the colony in terms of ordinance 49, "It would seem expedient, therefore, that a clause should be introduced admitting this class of people to the rights of Citizens and free subjects, after a quiet and orderly residence in the Colony, of a certain period, say seven years."¹ Philip's suggestion was not adopted. Although tribesmen in service in the colony were to be subject to its laws they were not brought into the state of legal equality provided by ordinance 50 which was to apply only to "Hottentots, and other free persons of colour lawfully residing in the colony." They would however have been brought under the control of a general vagrancy law had this been introduced as planned in 1828. Such a law might have served as a deterrent against the abuses of ordinances 49 and 50 that were subsequently to occur.²

Bourke himself was well aware that the new situation called for new measures concerning vagrancy. When he notified the Council of Advice, which had just passed ordinance 50, that he intended introducing a general vagrancy act, he stated,

"that after the passing of this Ordinance and that marked No. 49 ... it had now become more than ever necessary that measures should be taken for passing a general Vagrant Act, and His Honor expressed his intention to instruct the Attorney-General to prepare the draft of such an act without loss of time."³

In the ensuing weeks the government was preoccupied with a threatening situation on the eastern frontier of the

1. C.O. 48/127, Philip to Murray, 3/12/1828.

2. *Infra*, Ch. 9, *passim*.

3. C.O. 51/12, Minutes, 17/7/1828.

colony. It had been reported in June 1828 that Shaka was advancing from Natal to attack the Xhosa chief, Hintsa.¹ It was feared that there would be repercussions on the colony if Hintsa's tribe and others situated between the colony and Natal were to be dispersed by further Zulu aggression. The Council of Advice agreed with Bourke that Hintsa should be supported, by force if necessary, to ward off the invaders.² This support was given, both to Hintsa's people and to the Tambookies³ under their chief Vosanie, who were being attacked by the chief Matiwane and his marauding followers of the Ngwane tribe, themselves the victims of Zulu aggression. Matiwane and his followers were routed by colonial troops aided by Xhosa and Tambookie auxiliaries.⁴ Reports of these events were received by the Council of Advice in August and September 1828.⁵

The distraction of the frontier problems may in part explain why Bourke did not act with his customary promptness in following up his intention to introduce a general vagrancy act as a sequel to ordinances 49 and 50. The matter did not come before the council again in 1828. This omission is baffling as it is so uncharacteristic of Bourke. He did not entirely ignore the question, but seems to have left it

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1. Shaka apparently hoped to receive aid from the British government of the colony in the execution of these plans. J.D. Omer-Cooper, The Zulu Aftermath (London, 1966), pp. 46-7.
 2. C.O. 51/12, Minutes, 21/6/1828. Cory, The Rise of South Africa, Vol. II, pp. 355-63. King, Richard Bourke, pp. 117-8.
 3. *Infra*, Appendix G.
 4. J.D. Omer-Cooper, The Zulu Aftermath, pp. 46-7; 92.
 5. C.O. 51/12, Minutes, 11/8/1828; 27/8/1828; 16/9/1828.

too late for completion before the arrival of the new governor, Sir Lowry Cole. At the beginning of September Bourke requested a report from the attorney general on the "State of the laws of the Colony respecting vagrants, as they now stand - the insufficiency of these laws being much complained of by the Country Magistrates."¹ He was planning to have stringent penalties introduced for second or third offences of prostitution and vagrancy in Cape Town itself, for which he suggested that indictment should be by the attorney general and in the Supreme Court,

"in order that (offenders) may be sentenced to a heavier punishment than the Judge of Police can by law award - appropriate hard labour can be provided at Robben Island for females, and for males in the streets.

If the state of the law does not allow of such a procedure His Honor is desirous that you shall either frame a short Ordinance for the purpose of meeting such cases, or provide for them in a general vagrancy act:"²

Within three weeks of making this request Bourke had left the colony, following the arrival on September of the new governor, Sir Lowry Cole.³ Whether Cole received a report from the attorney general or not is uncertain; he was aware, however, of Bourke's intention to introduce a general vagrancy ordinance but decided to shelve the question temporarily.⁴ Thus the labour legislation passed by the

1. C.A. A.G. 73 No. 42, Bell to Attorney General, 1/9/1828.

2. Ibid.

3. Supra, p. 67.

4. Infra, p. 388.

Council of Advice in 1828 was left in a state of incompleteness. If the main reason for this was the arrival of a new governor, this does not exonerate those council members who were aware both of Bourke's intention, and of the very real need for vagrancy regulations.¹ The Council of Advice may be legitimately criticised for having provided inadequate legislation for the transition from a free labour system based on Caledon's proclamation of 1809 and its supplementary enactments, to a system based on ordinances 49 and 50.

The failure to complete the legislation which had been envisaged by Bourke as a trilogy of complementary laws was to have serious long-term repercussions on the colony. Had a vagrancy act been passed in 1828 there would at least have been the legal machinery necessary for exercising sanctions against the vagrancy that followed in the wake of ordinance 49 and ordinance 50, however defective the administrative machinery might have been for putting those sanctions into operation. The two labour ordinances were submitted to the secretary of state for confirmation on 22 July 1828 together with ordinances 46, 47 and 48. In his despatch covering these Bourke explained, as he had done to the council, that the measures contained in ordinance 50 had been under his consideration since his arrival in the colony, but that he had deferred enactment in the expectation of some recommendation from the Commission of Inquiry on the subject. He went on to say,

1. E.g. Stockenstrom who was thoroughly familiar with the situation in the frontier districts and who had himself advocated the need for stringest vagrancy regulations to operate in conjunction with the new regulations for Hottentots ". and the laws against vagrants would undoubtedly require to be rigorously enforced." Hutton, Autobiography of Sir Andries Stockenstrom, Vol I, p. 289, Memorandum, 3/4/1828.

"The present enactment has been framed after much consultation with those persons whom I consider to be best acquainted with the condition of the people for whose benefit it has been passed. I thought it right to promulgate it immediately after the Ordinance Number 49, lest it should seem that more care was taken for the protection of Foreigners than for the welfare of the ancient Inhabitants of the Colony."¹

No mention was made in this despatch of the intended vagrancy act, which, had it been rushed through the Council of Advice in the same way that ordinance 50 had been, might have been submitted at the same time. If this had happened it is just possible that such a vagrancy act might have been confirmed by the secretary of state, as forming part of a set of laws collectively designed to alter the regulations governing the status and position of all free persons of colour within the colony. Clearly the vagrancy act planned by Bourke was to be of general application.² Had it been passed in the colony in 1828 and been confirmed by the British government, much bitterness might have been avoided in the colony in later years.

But only the two ordinances on labour were transmitted. And of these only ordinance 50 received official confirmation from the British government. The other four ordinances transmitted at the same time were never formally allowed or disallowed,³ probably because of the overbearing significance attached to the ordinance providing Hottentot liberties. Of this enactment the secretary of state wrote to Cole,

"I have under consideration Major Bourke's dispatch No. 35 of the 22nd July last and the Ordinance there enclosed for regulating the conditions of the Hottentots; and I have much pleasure in acquainting you that His Majesty's Government highly approves the regulations contained in that Ordinance; which I propose immediately to submit for the consideration of the King in Council, with such amendments as may be necessary."⁴

1. C.O. 48/125, Bourke to Huskisson, 22/7/1828.

2. Supra, p. 379.

3. E.g. Ord. No. 47, Supra, pp.305-6 . Ord. No. 49, Macmillan, Bantu, Boer and Briton, p. 88.

4. C.O. 49/23, Murray to Cole, 10/1/1829.

The contents of ordinance 50, were of particular interest to the secretary of state and the government because of a resolution which had been passed by the House of Commons on 15 July 1828 just two days before the final reading of the ordinance in the colony. The plight of the Hottentots had been brought to the attention of the Colonial Office from time to time,¹ and in April 1828 Philip's "Researches in South Africa" had been published in London. Philip had collected material on the condition of the Hottentots during his stay in the colony from 1819 till January 1826, as superintendent of the London Missionary Society stations. He returned to Britain determined to secure for the native peoples of South Africa the same freedom and rights as any other inhabitant of the colony enjoyed. Although Philip's book may not have been widely read there was sufficient humanitarian and evangelical interest in the whole question to bring it before parliament, and to exert some pressure on the Colonial Office itself. Philip was on leave in Britain between 1826 and 1829, and it has been claimed that it was his influence during these years that led to the House of Commons resolution of 15 July 1828, calling for "directions to be given for effectively securing to all the natives of South Africa the same freedom and protection as are enjoyed by other free persons residing at the Cape, whether they be English or Dutch."² It was at this time that Bourke's despatch with the ordinances 49 and 50 was received, and it was found that the governor had already put into effect a new law which embodied the principles for which the London Missionary Society directors had been campaigning. It has been stated that after the House of Commons resolution

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1. E.g. C.O. 49/16, Bathurst to Somerset, 9/9/1823, enclosing a memorial from the London Missionary Society on the Hottentots; Bathurst to Somerset, 12/10/1825, concerning land for Hottentot mission and establishment of Theopolis.
 2. Quoted by Macmillan, The Cape Colour Question, p. 218. For the influence of Philip, *ibid.*, pp. 212-8. Marais, The Cape Colour People, p. 155. The claim has even been made that Philip was solely responsible for ordinance 50 itself, H. Gailey, John Philip and Hottentot Emancipation, Journal of African History, Vol. III (1962), *passim*.

Philip had begun ...

"to press for an Order in Council to put the motion of 15th July into operative effect. Before he had made further progress a copy of the newly enacted 50th Ordinance reached him from Downing Street, with a request to give his opinion and indicate how far this satisfied his demands."¹

The correspondence on this matter went through Dr Hankey, the London Director of the London Missionary Society.² Philip's views were, however, forwarded directly to the Colonial Office in December 1828. While conceding that the ordinance granted important liberties to the Hottentots, Philip regretted that these were embodied in a law applicable only to the "Hottentots, and free persons of colour", who thus remained "in the hands of the colonial government", and were still "in the state of a separate and degraded class of labourers".³ He considered that in terms of the recent Charter of Justice all persons in the colony should be under the same law.⁴ Yet Philip himself went on to specify certain areas in which he considered additional protection necessary for the Hottentots.⁵

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1. Macmillan, The Cape Colour Question, p. 219.
 2. William Alers Hankey, Treasurer of the London Missionary Society, 1816 to 1832.
 3. C.O. 48/127, Philip to Murray, 3/12/1828.
 4. Supra, Ch. 3, passim.
 5. C.O. 48/127, Philip to Murray, 3/12/1828. Philip's own views appear to be curiously confused and inconsistent.

Either because of additional pressure from the London Missionary Society¹ or at the suggestion of the legal adviser to the Colonial Office, James Stephen,² the decision was taken to secure ordinance 50 by embodying it in an order in council. This was done on 15 January 1829 and on 17 March 1829 the secretary of state, Murray, transmitted the order in council to the governor of the colony, Cole, and it duly appeared in the Cape of Good Hope Government Gazette on 3 July 1829, almost a year after the ordinance had come into operation in the colony.³ The order in council "ratified, confirmed, and allowed, and finally enacted" the ordinance, and further declared,

"that all Hottentots and other free Persons of Colour, lawfully residing within the said Colony, are and shall be in the most full and ample manner entitled to all and every the rights, privileges and benefits of the law to which any other His Majesty's Subjects lawfully residing within the said Colony, are and can be entitled."⁴

It also specifically prohibited the detention of any Hottentot, or other free person of colour for debt due to the employer or the master of an apprentice. The most significant clause of the order in council stated that,

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1. Macmillan The Cape Colour Question, p. 219. There is no reference given for the two documents quoted by Macmillan so that it has not been possible to verify their origin. Elsewhere the view that Philip's influence carried weight has been attributed to a document written almost twenty years afterwards. E.g. King, Richard Bourke, p. 274, n. 45. J.S. Galbraith, Reluctant Empire (California, 1963), p. 83. Philip seems to have made this claim for himself as early as 1830, *infra*, p. 389.
 2. King, Richard Bourke, pp. 274, n. 45.
 3. C.O. 49/23, Murray to Cole, 17/3/1829. Gazette, 3/7/1829, Order in Council, 15/1/1829.
 4. Gazette, 3/7/1829, Order in Council, 15/1/1829.

"This present Order, and the Ordinance hereby confirmed, shall not in any wise be altered, repealed, or amended by any Law or Ordinance to be hereafter made by the Governor ... with the Advice of the Legislative Council ... unless such Ordinance shall have been first and expressly confirmed and allowed by His Majesty, with the Advice of His Privy Council; and that every such Ordinance, or pretended Ordinance, until so ratified, confirmed and allowed, shall be void and of no effect, and shall not be enforced, or carried into execution by any of His Majesty's Courts, Judges, Justices, Officers and others, within the said Colony."¹

This last clause was later to become a stumbling block to the introduction of a vagrancy act within the colony, in spite of the fact that the second clause of ordinance 50 had implied the existence of such a law in the words, "under the pretence that such Person has been guilty of vagrancy or any other offence, unless after trial in due course of law."²

The vagrancy question had been shelved by Cole in 1828³ It was resumed in 1831 when the governor received a joint petition on the matter from the districts of Albany and Somerset. Ordinance 50 had been in operation for two and a half years and it was claimed that during this time depredations had increased alarmingly in the frontier districts, following the introduction of the new law which allowed Hottentots to leave the service of their employers and wander about the countryside without visible means of subsistence.⁴ The petitioners pleaded for the introduction of a vagrancy law similar to that in force in England.⁵ They based their plea on the grounds that,

1. Ibid.

2. Gazette 25/7/1828, Ord. No. 50. My emphasis. Cf. Magna Carta, clause 39, 'vel per legem terrae'.

3. Supra, p. 381.

4. Infra, Ch. 9, passim.

5. This provided for convicted vagrants to be punished for the offence e.g. of "wandering and begging", and then forcibly conveyed back to their parish of birth, where provision could be made for their employment or support. M.D. George, London Life in the 18th Century (London, 1925), pp. 151-3. E.N. Williams, Ed., The Eighteenth Century Constitution, 1688-1815 (Cambridge, 1960), p. 264, Removal Certificate.

"depredations have not only been more frequent of late but have been practised with a greater degree of audacity than before and with a consciousness of impunity in the Depredators, (arising from the known difficulty of conviction in a country circumstanced as this is) which cannot fail, if unopposed by some new legal enactments, to be attended with ruinous consequences to property throughout the Colony.

That the only adequate remedy in the opinion of Your Petitioners is the Enactment of a law for the suppression of Vagrancy."¹

The petitioners also suggested that the erection of a treadmill at the prison of Grahamstown (presumably to be worked by the offenders convicted under the proposed vagrancy law) would "be more than adequate to defray the expenses which would be incurred in enforcing the proposed law."²

When the governor presented this petition to the Council of Advice at their first meeting in January 1831, he referred to Bourke's proposal to introduce such a law in 1828,

"he believed it had been the intention of the late Lieutenant Governor ... to have brought out simultaneously with /Ordinance 507/, a new law on the subject of vagrancy, but on his assuming office he felt desirous that the Ordinance /507/ should have full scope to work, and he therefore refrained from enacting any new law which might be supposed to control or affect any of its provisions, indulging the hope that in the course of time cases of vagrancy would become less frequent. In this hope he had not been altogether disappointed; still vagrancy was common enough to warrant the enactment of some law on the subject as the objection to such an act being now made did not apply with the same force that it did about two years and a half ago."³

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1. C.O. 51/23, Appendix A, Memorial by several Inhabitants of the Districts of Albany and Somerset, signed by 363 persons.
 2. Ibid.
 3. C.O. 51/22, Minutes, 6/1/1831.

The Council discussed the matter and were of the opinion, "that it was desirable that the opinion of His Majesty's Attorney-General should be sought as to the vagrant laws at present in force and how far they are applicable to the present circumstances of the Colony."¹

The question did not come before the council again, although Cole had become more than ever convinced of the need for such a measure. He seems, however, to have realised that the order in council of January 1829 stood in the way of a local enactment. Writing to the secretary of state some months later on quite another issue,² Cole criticised Dr Philip for his repeated claims that the order in council had been due to his efforts alone.

"Since his return to this country he has openly declared that the Order of the King-in-Council which deprived the local Government of the power to alter in any respect the Law contained in the 50th Ordinance without the previous consent, and approval of His Majesty's Government was made at his solicitations alone.

... Unhappily the very act which rescued them from oppression /i.e. Ordinance 50/ made no provision for that wholesome degree of restraint by which a great proportion of them can alone be induced to labour for their maintenance, and cease to be a scourge upon their neighbours.

The difficulty of framing any Vagrant Law, which would not affect the wandering Hottentots to a much greater extent than any other idlers in the community (since they are so much more numerous), is very apparent but the state of society in most of the districts points out the necessity of such a law."³

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1. Ibid.
 2. In reply to a question concerning the grant of further lands to the mission station of Theopolis.
 3. C.O. 48/142, Cole to Goderich, 10/5/1831.

Cole did not, however, ask specifically for permission to introduce a vagrancy law, nor does he seem to have referred for the secretary of state's consideration the memorial received from the frontier districts. Yet the need for such an act persisted and indeed increased in the ensuing years with the greater frequency of disturbances in the frontier districts, and with the Act of Emancipation, passed in Britain in 1833 and promulgated in the colony in January 1834.¹ Colonel Wade who was responsible as lieutenant governor for promulgating this act in the colony was himself convinced of the need for a vagrancy act, especially in view of the pending emancipation. Although he did not bring the matter before the Council of Advice, he wrote on the subject to the secretary of state in December 1834, when he received the first draft of the emancipation bill.² His letter showed, as his evidence before the Aborigines Committee was later to show, that Wade was a man of broad sympathy and understanding, who could see the problems of the colony from the points of view of all parties concerned.³ Acknowledging the Resolution and draft bill for the abolition of slavery, Wade wrote,

"very many slaves will hereafter be found who will not understand or abuse both the probationary period of apprenticeship and subsequent perfect Emancipation; but, in my humble opinion at least, an augmentation, a very considerable one however, to the numbers, and almost as considerable an extension of the powers of the Magistracy, and in well digested Apprentice and Vagrant Laws, and carefully adapted to the various local and other peculiarities of the Colony and the people, will be found a perfectly sufficient remedy for any or all the evils which, it is obvious, will arise, and are indeed inseparable from this entire change in the frame of society.

1. Supra, p. 264.

2. Supra, p. 264.

3. P.P. 1836, VII (538), passim, evidence of Wade.

... The prejudices which very generally exist in regard to a 'Free labouring Population' and the fears entertained as to the consequences of extensive Vagrancy, are as regards this Colony, certainly not unnatural, the Inhabitants having daily before their eyes the effect of both in the persons of the "Free Blacks" and "Hottentots", who, since the promulgation of the law (No. 50) ... have been left to the uncontrolled use, or rather the abuse, of their liberty, and of whom, although many have acquired habits of industry and a relish for civilized life, infinitely the majority are wandering about the Colony subsisting on plunder and depredation, to whose idle and profligate character the Records of the Courts of Justice bear ample testimony. Never having witnessed the effect of any other system of Free Labour than this, the farmer cannot, or will not, comprehend how it is possible that the evils above alluded to may be corrected, and the agricultural wants of a country, as far as hands are concerned, be altogether supplied by any other means than compulsory labour, with mutual benefit to the owner and cultivator of the soil; and it will be utterly useless to endeavour to convince them of their error; experience alone can remove it ...

It is not improbable that the far distant farmers may experience some difficulty in procuring labourers at the expiration of the apprenticeship; But I am not of the opinion, that this will generally be the case; for, were a Vagrant Act at this moment in force, it will be the means of adding to the present working classes several thousands of Free Blacks and Hottentots who are at present scattered over the Colony, without occupation; and although a law compelling these and all other Vagrants to work for an honest livelihood, will have to contend here with difficulties of no ordinary description, arising from the vast extent of territory occupied by a scanty population, and of the natural inclination of a large portion of the lower orders to a wandering independent life, I do not conceive the difficulties are insurmountable."¹

A month later when he had received the Emancipation Act itself and had promulgated it in the colony, Wade issued a circular to all clergy and public functionaries asking for

1. C.O. 48/151, Wade to Stanley, 6/12/1833.

their assistance in maintaining tranquillity in the colony.¹ So confident was he that a vagrancy act would be introduced that he gave the assurance,

"that long before the period of the expiration of Apprenticeship arrives, other Laws will be enacted, having in like manner for their object the prevention and punishment of Vagrancy after that period, and for securing a sufficiency of Labourers to the Colony, by compelling, not only the liberated Apprentices to earn an honest livelihood, but all others, who, being capable of doing so, may be inclined to lead an idle and vagabondizing life."²

The need for such an act was so deeply felt in some of the interior districts that local officials began immediately to exercise sanctions against vagrancy as if such a law had already been promulgated.³

Wade's period of administration was terminated almost immediately after the above-mentioned document had been circulated, with the arrival in the colony of Sir Benjamin D'Urban on 13 January 1834. But Wade remained in the colony with the office of second in command until December 1834, being an ex-officio member of the Executive Council and Legislative Council introduced in 1834.⁴ In June 1834 a vagrancy ordinance was introduced in the Legislative Council by Colonel Wade and for several months its clauses were debated by the council. The final draft of the amended ordinance was presented to the judges of the Supreme Court for comment, whose ruling, given in September 1834 was that,

1. Supra, p. 264.

2. C.O. 48/154, Wade to Stanley, 14/1/1834.

3. Macmillan, The Cape Colour Question, p. 244.

4. Supra, p. 40.

"there would be no legal impediment to its execution by the Colonial Tribunals: but that in consequence of the provisions of His Majesty's Order-in-Council, dated 15th January, 1829, this Ordinance, in so far as it in any wise alters, repeals, or amends, the Ordinance (No 50) ..., dated 17th July, 1828, will be void and of no effect and cannot be enforced, or carried into execution, by any of the Colonial Tribunals until the same shall have been first and expressly, ratified, confirmed and allowed by His Majesty, with the Advice of His Privy Council."¹

The ordinance was therefore passed by the colonial government subject to confirmation by His Majesty's government, but this confirmation was not given and the ordinance was disallowed.² Propaganda organised by the London Missionary Society in Britain and in the colony by Philip and his son-in-law Fairbairn, who was the editor of The South African Commercial Advertiser, appear to have influenced this decision.³ The disallowance of the vagrancy ordinance and the consequent inability to control vagrancy was one of the main grievances leading the Dutch trekkers to leave the colony in large numbers from 1837.⁴

From December 1838 the need for a vagrancy law became more apparent, as the period of apprenticeship for ex-slaves drew to a close.⁵ The liberties provided in terms of ordinance 50 were also to apply to ex-slaves once they had become free. By July 1839 vagrancy had greatly

1. Graham's Town Journal, 2/10/1834. Report of proceedings in the Legislative Council, 8/9/1834.

2. Marais, The Cape Coloured People, p. 182.

3. Macmillan, The Cape Colour Question, p. 243. C.H.B.E. Vol. VIII, p. 295.

4. Walker, History, p. 199. Marais, The Cape Coloured People, pp. 160-1. Cory, Rise of South Africa, Vol. III, p. 396.

5. Marais, The Cape Coloured People, pp. 190-2.

increased in the colony and steps were taken to introduce new labour regulations that would repeal ordinance 50 and introduce stricter terms of contract labour and also machinery for the control of vagrancy.¹ Once again the order in council of January 1829 stood in the way of such legislation, so that it was only in December 1842 that a new masters and servants act was promulgated in the colony. This had been passed at Cape Town in March 1841, but on the decision of the judges was referred to London to be "confirmed, ratified and allowed" by the queen in council, as required by the order in council of 15 January 1829.² The required allowance of the masters and servants ordinance was embodied in an order in council dated 27 August 1842, published in the colony in December 1842.³ Although ordinance 50 was itself repealed, the essential liberties which it had provided, notably access to the courts of law, were embodied in the new act.⁴

In recent years there has been an attempt to modify the traditional view that missionaries, and Philip in particular, were largely responsible for the humanitarian concern which culminated at the Cape in the passing of ordinance 50 in July 1828, and in London in the embodiment of this ordinance in the order in council of January 1829.⁵ Bourke's contribution in planning and preparing this important ordinance has been given greater prominence.⁶

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1. Gazette, 12/7/1839, Extract from Minutes of the Legislative Council.
 2. Gazette 5/3/1841, Ord. No 1 of 1841; 19/3/1841, Govt. Advt.
 3. Gazette, 16/12/1842, Govt. Advt.
 4. Macmillan, The Cape Colour Question, pp. 255-7.
 5. E.g. G.M. Theal, History of South Africa from 1795 to 1872, 4th Ed., (Facsimile Reprint, Cape Town, 1964) Vol. I, pp. 502-3. Marais, The Cape Coloured People, p. 155. Macmillan, The Cape Colour Question, pp. 212-9. Gailey, John Philip and Hottentot Emancipation, Journal of African History, Vol. III (1962), passim.
 6. E.g. King, Richard Bourke, pp. 119-22. Galbraith, Reluctant Empire, pp. 83-4. O.H.S.A. Vol. I, p. 304.

This is in keeping with the opinion of Bourke's successors at the Cape. In 1831 Cole wrote that ordinance 50 was

"the act of the local government alone - the object /of Philip/ was obtained, but not through his exertions ... On no occasion has he been known to teach /the Hottentots/, that the Local Government under which they live was the first to render justice to them"¹

In 1836 Wade stated,

"... it is but an act of justice to Major-General Bourke to state the fact, that to him, and him alone are /the Hottentots/ indebted for that charter of their liberty, and not to any instructions from the Home Government, to the interference of the Legislature, nor, as has been over and over again asserted, to the publication by Dr Philip ... of his "Researches in South Africa," a point on which I deem it the more necessary to disabuse the Committee because I am well aware that not only the Hottentots have been taught to ascribe to the exertions of that gentleman in their behalf, and not to the spontaneous act of the colonial government, both that measure and every other benefit since its promulgation has been conferred on them, but that very many influential persons in this country partake of this most erroneous and, as regards the people of colour themselves, most mischievous opinion, one which, I must add, the public declarations of Dr Philip ... have been but too well calculated to confirm."²

There remains however the need to place ordinance 50 in its original context. Too often it has been examined in

1. C.O. 48/142, Cole to Goderich, 10/5/1831.

2. P.P. 1836, VII (538), p. 287, evidence of Wade.

isolation as if it were a single act intended for introducing a new policy for Hottentots and free persons of colour alone. This may in part be the result of viewing ordinance 50 as a local enactment by which, fortuitously, the requirements of the House of Commons resolution of 15 July 1828 were fulfilled. What has not been sufficiently emphasised is that this ordinance was only one of three designed together to provide an entirely new labour situation in the colony. Ordinance 49 which had grown out of the protracted deliberations arising from the critical state of the northern and north-eastern frontier between 1823 and 1825,¹ was complemented by ordinance 50, providing for "the welfare of the ancient Inhabitants of the Colony." The close association between the two measures is indicated not only in the minutes of the Council of Advice but also in other official documents. The corollary to both of these ordinances was the vagrancy act which Bourke had planned in 1828, Cole considered necessary in 1831, and Wade had introduced in the Legislative Council in 1834. Because the new labour regulations had been designed as a collective body of three laws, only two of which were passed, the whole system disintegrated, although the two ordinances enacted were kept in operation for between twenty and thirty years. Nevertheless the decisive turning point in policy towards both the tribesmen from beyond the colony's boundaries and the Hottentots within its bounds came about in 1828.

Another important aspect of the new policy which has not hitherto been adequately stressed was the part played by a number of other officials at the Cape. Reference has

1. Supra, p. 346.

frequently been made to the fact that Ordinance 50 was based on a memorandum drawn up in April 1828 by the commissioner general of the eastern districts, and former landdrost of Graaff Reinet, Stockenstrom.¹ Other government officials had also had a hand in shaping the ordinance. Shortly after his arrival in the colony in November 1824 the colonial secretary, Plasket, had planned improvements in the prison regulations and at the same time,

"wished to ameliorate this system of taking up loose Hottentots,² by regulating the circumstances under which they were to be considered as in a state of vagrancy and liable to Imprisonment - I had a conversation with Mr Bigge on the subject and submitted to him my proposed Prison Regulations - but he thought the subject of vagrancy as applicable to the Hottentots so important that he did not wish it to be touched upon, as I understood him, until the Report of the Commission of Enquiry on the whole question had been sent in to Government."³

Clearly Plasket's concern for the Hottentots had preceded even that of Bourke, who had arrived in the colony only in March 1826 and had intended from that time to introduce new regulations.⁴ There had been a close and harmonious relationship between the lieutenant governor and the colonial secretary until the latter half of 1827,⁵ and it seems likely that the question of Hottentot liberties were discussed from time to time, particularly when the provisions of ordinance 49 were being hammered out by the

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1. Hutton, Autobiography of Sir Andries Stockenstrom, Vol. I, pp. 282-291. Cory, Rise of South Africa, Vol. II, pp. 368-71. O.H.S.A. Vol. I, p. 304. Macmillan, The Cape Colour Question, p. 213. King, Richard Bourke, p. 120.
 2. .e. Hottentot vagrants.
 3. C.O. 48/127, Memorandum relative to the Hottentots, by Plasket.
 4. Supra, p.105.
 5. Supra, p.63.

Council of Advice in consultation with district officials. It is significant that in 1827 when the draft ordinance was submitted to landdrosts for further comment,¹ a post-script was added to the circular.

"It is also in contemplation of government to relieve Hottentots henceforward from the necessity of apprenticing their children until the age of 18 years when born in service and maintained a certain time under the provisions of the Proclamation of 23rd April 1812."²

Clearly then, as early as May 1827, Bourke and Plasket had discussed the plan to introduce new regulations for the Hottentots as a sequel to the new measures for admitting tribal foreigners into the colony. The draft for the Hottentot ordinance was drawn up in April 1828, shortly after Stockenstrom's memorandum had been submitted to the lieutenant governor. It has been stated that the draft was prepared by William Burton,³ one of the puisne judges, although it was customary for the attorney general to perform this task.⁴ Late in April Stockenstrom commented on the draft, and said,

"I fully agree with Your Honor that the Mantatee /ordinance? must come out, before we have another very well digested ordinance about Passes, Vagrancy etc; but I still hope that all these may appear before we hear of your successor."⁵

It would seem that Bourke (and Stockenstrom) were

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1. Supra, p. 364.
 2. C.A. G.R. 8/18 No. 26. Plasket to Stockenstrom, 8/5/1827.
 3. William Westbrooke Burton (1794-1888), puisne judge at the Cape of Good Hope, 1828-32; appointed to the bench in N.S.W., 1832; and in Madras, 1844; president of Legislative Council in N.S.W., 1858-62.
 4. Cory, The Rise of South Africa, Vol. II, p. 370. Macmillan, The Cape Colour Question, p. 213.
 5. Bourke Papers, Vol. 7, folio 77, Stockenstrom to Bourke, 21/4/1828.

anxious to have the three complementary laws in operation together, before the impending departure of the lieutenant governor, whose successor, Cole, had been appointed in March 1828.¹ The failure to pass the vagrancy ordinance appears all the more baffling.

Burton was asked to comment on the draft ordinance for Hottentot liberties in June 1828, which would seem to indicate that he had not been its author.² He suggested some minor alterations, mainly concerned with the phrasing of the measure. The former chief justice, Truter, was also asked for his opinion on the draft, and an important innovation was introduced on his recommendation, namely the extension of liberties intended originally only for Hottentots, to all "free persons of colour".³ Truter had proposed that the same liberties should be extended to Bushmen,⁴ and it would seem that the additional phrase had been inserted as a result of this. Truter had also suggested that a pension scheme for aged and infirm Hottentots might be established by charging a registration fee for contracts, but this idea was not adopted, perhaps because a similar scheme had already been considered and rejected in respect of tribal foreigners.⁵ Truter's general approval of the new measure may be gauged from his remark that,

1. Supra, p. 67.

2. Bourke Papers, Vol. 7, f. 138, Burton to Bourke, 22/6/1828.

3. King, Richard Bourke, p. 121.

4. Bourke Papers, Vol. 7, f. 146, Truter to Bourke, 28/6/1828.

5. Supra, passim.

"The objects thereby in view are so clear and perceptible, that I congratulate this Class of my fellow inhabitants with the beneficial and humane Regulations under which they are in future to be placed."¹

It has frequently been noted that ordinance 50 marked a turning point in the history of the Cape colony,² and that from it the later liberal tradition of Cape politics had its origin. While this is undoubtedly true, it is also clear that ordinance 50 was never intended by its authors, particularly Bourke and Stockenstrom, to stand alone. In the April Memorandum Stockenstrom had declared,

"The law I would propose would necessarily enact strict prohibitions against such an abuse of the liberty generally conceded, as would endanger the peace of the community. It would become absolutely necessary that a person travelling to any distance from where he is known should be provided with a pass, or be able to satisfy the local authorities that his pursuits are legal ... the laws against vagrants would undoubtedly require to be rigorously enforced."³

It was his intention then that vagrancy regulations should be introduced, just as it was Bourke's. That Cole was culpable of neglect on this point seems clear, but the Council of Advice must share any blame for the omission, for they were aware of both the need for such an ordinance and of Bourke's intention to pass it prior to his departure

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1. Bourke Papers, Vol. 7, f. 145, Truter to Bourke, 28/6/1828.
 2. E.g. Marais, The Cape Coloured People, pp. 155-9. C.H.B.E. Vol. VIII, p. 295.
 3. Hutton, Autobiography of Sir Andries Stockenstrom, Vol. I, p. 289.

from the colony. As a measure of legal equality ordinance 50 was notable:¹ but as a measure of social control it was inadequate. Its embodiment in an order in council prevented its amendment and removed the competence of the local Council of Advice to complete the legislation that had been begun in July 1828. Similarly ordinance 49 was useful in providing and regulating a new labour supply, but was inadequate as a measure of social control. Both required the additional control that a vagrancy act and a stronger structure of local government would have provided. The operation of the two ordinances furnishes proof of the inadequacies, both legal and administrative.

1. Ordinance 50 appears to have provided the model for similar regulations introduced by order in council into other slave colonies, e.g. Trinidad, March 1829; St Lucia and Mauritius, June 1829. Hunt, Sir Lowry Cole, pp. 87 and 94, n. 75. Cf. A. Burns, History of the British West Indies (London, 1954), p. 625, where it is stated that such orders in council were issued in 1828.

Chapter 9

The Implementation of the New Labour Regulations in the Colony.

The implementation of the new labour regulations in the colony was not strictly a concern of the Council of Advice. Nevertheless the council was supposed to share in the supervision of the new regulations insofar as they were to receive lists of passes and contracts twice a ✓ year. The council was also involved through its general oversight of the frontier districts, particularly as the peace and security of these areas appeared on occasion to be threatened by the operation of the new labour laws.

Many difficulties surrounded the introduction of the new labour regulations in the colony. ³Two problems in particular hampered their smooth operation. On the one hand the legislation itself, as devised by Bourke, had not been completed, so that there were peculiar legal difficulties in the new system. And on the other hand the success of the measures introduced in July 1828 was dependent on efficient and closely co-ordinated administrative structures, whereas the available machinery of local government was inadequate both in structure and experience, notwithstanding the reforms introduced in 1828 prior to the passing of ordinances 49 and 50. For the implementation of both of these measures, but particularly in the case of ordinance 49 for admitting tribesmen into the colony as workseekers, the assistance of a vast number of unpaid officials would also be required. This further complicated the enforcement and supervision of the ordinance in operation.

Moreover entry into the colony proved to be far more popular than had been anticipated, particularly among the Xhosa, or Caffre, tribes to the east. Many more Caffres came into the frontier districts of Albany and Somerset than could be absorbed into the labour market or, it was alleged, wished to be. Fears grew that the presence of so many tribesmen in the colonial side of the boundary would lead to frontier disturbances. The increasing incidence of cattle theft gave

substance to these fears and by August 1829 both colonists and officials were adamant that some limitation on the number of tribal foreigners entering the colony was necessary. The question was referred to the Council of Advice who arranged for the partial suspension of ordinance 49 insofar as it was no longer to apply to Caffres. A temporary lull in the influx of native foreigners from all tribes seems to have occurred during the years 1830 to 1831 but this was followed by a rapid increase from 1832.¹

Lists of passes and contracts issued under ordinance 49 were presented to the Council of Advice twice a year but do not appear to have been scrutinised either in Cape Town or in London where they were received along with other appendices to the minutes of the council. By 1833 the practice of submitting such lists to the council appears to have fallen into abeyance, despite the stipulation for this procedure in the ordinance itself.² Thus administrative weaknesses on the periphery had their counterpart in the breakdown of supervision at the centre.

The frontier zone of the colony had always been subject to tension and conflict.³ Although there was sometimes a temporary abatement in the overt hostility, rivalry over land needed for hunting and grazing continued to operate as a hidden force in all frontier relationships between white and black.

When ordinance 49 came into operation the colonists were in theory separated from the Xhosa tribesmen by the buffer zone known as the Neutral or Ceded Territory.⁴ In practice however both colonists and

1. *Infra*, Appendix I, Table of passes issued in the years 1828-1834.

2. *Gazette*, 18/7/1829, Ord. No. 49.

3. Robertson, 150 Years, Part I, *S.A.J.E.*, Vol. II (1962) *passim*. Macmillan, *Bantu Boer and Briton*, Chs. 3 and 5. *O.H.S.A.* Vol. I, Ch. 6.

4. *Supra*, p. 343, n. 2.

tribesmen had been allowed back into the area.¹ During the period that the Council of Advice was active in the colony tension on the frontier was heightened by recurrent crises that had their origin in events far removed from the colony itself. The area to the east of the Fish river boundary was subject to the same disruptive chain of events that had led in 1823 to the battle between the Griqua and the Mantatees and which had resulted ultimately in ordinance 49 itself.² The intrusion of the wandering hordes of refugee people into territory already occupied by the Xhosa tribes and the resultant pressure on land and resources were to have further repercussions on the colony. In 1827 an attack made by a group of Fetcanie³ had caused an influx of Tambookie tribesmen into the colony, creating a situation of crisis and panic. The matter had come before the Council of Advice who had recommended that the Tambookies should be given protection on this occasion even to the point of driving away the Fetcanie by force if necessary. At the same time the council had recognised that as a matter of general principle it was well to avoid all interference with the concerns of native tribes living beyond the colony.⁴ In the event the proposal of the council had been followed, and the frontier military force, assisted by a citizen force, had driven back the invading Fetcanie and reinstated the Tambookie in their own territory.⁵ The lieutenant governor, Bourke, had visited the frontier himself during this crisis and taken command of the operations.⁶

1. Walker, History, p. 181.

2. Supra, Ch. 8, passim.

3. Infra, Appendix G.

4. C.O. 51/8, Minutes, August, 1827.

5. Cory, The Rise of South Africa, Vol. II, pp. 346-50. Hockly, British Settlers, p. 117. E.J.C. Wagenaar, A Forgotten Frontier Zone - Settlements and Reactions in the Stormberg Area between 1820 and 1860 (M.A. Thesis, Rhodes University, 1973), p. 20.

6. King, Richard Bourke, pp. 116-7. An interesting procedural point arises from this whole situation. The Council of Advice had been consulted when the crisis had arisen. Bourke then left for the frontier and was away for some six weeks. Strictly, he should have reported to the council on his return as they were required to give retrospective approval of measures introduced by a governor during an emergency situation. This was not done however.

In 1828 just prior to the promulgation of ordinance 49 rumours of impending attack on neighbouring tribes had again unsettled the frontier. The Council of Advice had recommended that support should be given to the Xhosa tribesmen under threat of attack and that the aggressor, thought this time to be Shaka himself, should be informed of the intention of the colonial government.¹ These proposals had been carried out but the tribesmen attacked by the colonial forces had proved to be not Zulus under Shaka but another tribe, the Ngwane, under their chief Matiwane.² When the situation was reported to the Colonial Office the secretary of state gave his approval but also urged the new governor Cole, to cultivate a good understanding with the Zulu Chief.³ The assassination of Shaka at this time had rendered it unnecessary to make a direct approach to him and had, to a certain extent taken the tension out of the frontier situation.

The events of August and September 1827 and 1828 were in effect the crisis points in a frontier zone which was always fraught with risk and danger. To introduce a major change in policy in such a situation was to take a calculated risk. Bourke himself was aware of this but was planning an entirely new approach to the problems of the frontier. His long-term objectives of peace and co-operation were based on a four-point plan of preventing retaliatory raids across the boundary in pursuit of stolen cattle; the encouragement of trade between colonists and tribesmen; the promotion of missionary work; and "the gradual and cautious admission of Kafirs to the service of the Boers under proper regulations."⁴ It had been clear to Bourke that the creation of a labour market for the Xhosa tribesmen should be effected only gradually, and that their entry into the colony should be on a small scale initially. In March 1827 he had rejected a suggestion that the proposed new labour regulations should be explained to a

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1. C.O. 51/10, Minutes, 21/6/1828. C.O. 51/12, Minutes, August and September 1828, *passim*.
 2. Omer-Cooper, The Zulu Aftermath, pp. 40-1 and 92. *Supra*, p. 380.
 3. Hunt, Sir Lowry Cole, p. 99. King, Richard Bourke, p. 117.
 4. Bourke Papers, Vol. 9, f. 24, Memorandum on Frontier Policy. King, Richard Bourke, pp. 109-10. P.P. 1836, Vol. VII (538), pp. 279-81, Evidence of Wade, who clearly identified three of the four points defined by Bourke.

gathering of Xhosa Chiefs, in order that the terms of employment in the colony might be deliberated.

"... I think that to act upon Mr Shaw's suggestion might be disadvantageous. I conceive that a meeting of the Chiefs to discuss a subject of this sort would be very likely to excite suspicion and fears of that wary people, and that little more need to be done by authority than to remove the prohibition to employing Caffres by the Colonists and to ensure that local Magistrate a correct return of any engagements that may be made, and of the terms of the Contracts, leaving it to the Judgement of the Parties to make their agreement ... I look upon it that the advantages we anticipate can only be obtained very gradually, and that if anything like a regular and general arrangement with the Caffre Chiefs is proposed, the thing will fail altogether."¹

The fact that Bourke left the colony shortly after the introduction of ordinances 49 and 50 was probably unfortunate. Not only had he intended introducing a vagrancy ordinance to complement the other two measures, but he had also planned for a gradual absorption of labourers into the colony. It is possible that the Council of Advice would itself have exercised greater vigilance over the application of the labour regulations had Bourke still been a member of the council.

Immediately after the passing of the two labour ordinances 49 and 50 in July 1828, preparations were made for their implementation. Ordinance 49, for admitting tribal foreigners into the colony as workseekers was to entail a lot of administrative work and to involve a whole network of minor officials. This in itself added to the problems of implementation and of supervision. In July 1828 all district clerks of the peace were notified of the two ordinances and requested to publicise them as widely as possible, especially clause 2 of ordinance 49, providing for the admission of tribesmen into the colony.² Procedures to be followed at a local level were outlined.³ These had

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1. Bourke Papers, Rhodes House, Vol. 2 pp. 46-7, Bourke to Dundas, 1/3/1827.
 2. C.A. G.R. 17/46, Circular, Bell to clerk of the peace, Graaff Reinet, 23/7/1828.
 3. Ibid.

not been defined in the ordinance itself which had simply authorised the governor to "make and publish such Rules and Regulations ... and Restrictions ... as to him may seem fit."¹ The procedures devised by the lieutenant governor were complex and proved to be impractical. They are however of interest as they reflect the careful control and supervision of the measure that was intended but which, in practice did not operate successfully.

Applications for servants from beyond the colony were to be made in the first instance through the local justices of the peace. They in turn were to transmit such applications to the district clerk of the peace who was to forward them to missionaries residing with the respective tribes beyond the frontier. Persons of good repute residing near the rural justices of the peace or in towns or villages were to be the first to receive servants, so that the relationship between master and servant might be closely supervised. Initially encouragement was not to be given to engagements for a year at a time, but the more flexible arrangement of monthly engagements was to be promoted.² Justices of the peace were to have the responsibility of counter-signing contracts made between employers and tribal foreigners, or Hottentots, or free persons of colour. In addition each clerk of the peace was required to compile a list of other persons suitably qualified for this task who would "see that a fair bargain is made between a servant and his Master."³ Field cornets were considered to be likely candidates for this duty, and the list drawn up was to be approved by the civil commissioner.⁴ Missionaries stationed beyond the colony were also notified of the two labour ordinances, 49 and 50, and were requested to explain their provisions of the former to the neighbouring native tribesmen, stressing that labourers would be,

"paid for their labor either in Money or in Cattle, if they choose to bargain for the latter, and that the period of their engagement may be as short as they can agree

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1. Gazatte, 18/7/1828, Ord. No. 49.
 2. Reflecting perhaps the insights gained from the experience of apprenticing Mantatees and Goes, whose waywardness had made it difficult to enforce the terms of the engagement.
 3. C.A. A.Y. 8/16, p. 115, Circular, Bell to civil commissioner of Albany and Somerset, 24/7/1828.
 4. C.A. G.R. 17/46, Circular, Bell to Clerk of the Peace, Graaff Reinet, 23/7/1828.

for with the Master, but not exceeding one year. During their service they will be entitled to sufficient food, if duly contracted, to a sufficiency of decent Clothing from the Master, and will be protected by the Magistrates ... while they remain in the colony they will be required to obey its laws which are strict and severe against theft and violence of all kinds."¹

Once again the emphasis was to be placed on short-term engagements rather than annual contracts and natives were to be warned that a period of employment would not entitle such a labourer to permanent residence in the colony.

"It will be desirable especially at the commencement of the attempt that you should endeavour to select single Young Men for service, holding out to them this inducement, that at no great length of time they may return to their own country with Money or Cattle, and may thus be enabled to marry and settle, whenever the period for which they engage to serve a Master shall have expired."²

The missionaries were advised of the procedures to be followed by clerks of the peace in receiving applications for servants and forwarding them to the mission stations. Missionaries themselves were to supply letters of recommendation to tribesmen willing to enter the colony, and were provided with printed blank forms for this purpose. These were not intended to serve as passes, but would entitle the bearer to obtain a pass,³

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1. C.A. C.O. 4890, No. 114, Bell to Miles, 25/7/1828, and enclosure. The following missionaries were designated to receive the circular but it is probable that it was sent to others as well (e.g. William Shaw): - Moravian missionary in Tambookie country, Mr M. Wimmer - Steinkopff-Little Namaqualand - Mr H. Schmelen - Bethany, Great Namaqualand - Mr P. Wright - Griquatown - Mr. R. Moffat - Lattakoo - Mr J. Bartlett, Campbell - Mr J. Melville - Philippolis - Mr J. Clarke - Caledon River - Mr. J. Brownlee, Buffalo River - Caffreland, Mr J. Ross, Lovedale, Caffraria. Mr Shrewsbury, Butterworth, Caffraria Edwards, Camiesberg - Clanw'm.
 2. C.A. C.O. 4890, No. 114, Bell to Miles, 25/7/1828.
 3. Ibid.

"When you find any Foreigner desirous of taking service in the colony, you will send him with a written recommendation to the nearest Justice of the Peace or Field Cornet, from whom he will obtain the necessary pass ...

The Lieut. Gov. knowing the benevolent disposition of the Missionaries and their anxious desire for the improvement of the Native Tribes as well as for the general welfare of the Colonists places the fullest reliance on your exertions towards the successful accomplishment of the objects contemplated by the two Ordinances referred to."¹

Missionaries were thus to form an important link in the chain of administrative personnel involved in implementing ordinance 49. In practice the letters of recommendation given by them appear to have been accepted in place of passes issued by other officials,² so that they participated even more directly than had been intended. This was to prove detrimental to the scheme as a whole, for the great number of tribesmen who entered the colony with so-called passes from missionaries do not appear to have found employment. Certainly this number bears no relation to the applications for servants received at the office of the respective clerks of the peace.³

Several problems arose in the practical application of ordinance 49 in the frontier districts, some of them concerned with questions of personnel. In the district of Somerset the clerk of the peace reported in September 1828 that he could not find suitable persons to recommend for the duty of countersigning contracts "who will see that a fair bargain is made between such foreigner and his employer."⁴ This was all the more necessary because wages and conditions in the district of Somerset were generally very depressed,

"The wages allowed to Hottentots are at present so disgracefully low, that persons should be appointed without any prejudice against that race of people to make the Contracts, and who will refuse to make the contract if the Servant should appear to merit better wages than those agreed upon.

We have already refused many persons to insert in their contracts the wages offered by them, and in that manner procured better wages for such servants - and we have

1. Ibid.

2. *Infra*, p. 421.

3. *Infra*, p. 422.

4. C.A. C.O. 2705, Onkruydt to Bell, Pte., 20/9/1828.

invariably inserted in the contracts that the servants should be decently clothed.

I believe that the late Landdrost of Somerset has in his report on one of his annual Visits through the District remarked on the state of nakedness of some of the natives in the service of the Colonists."¹

The clerk of the peace therefore requested that conscientious and qualified persons should be appointed as justices of the peace for the field cornetries of Tarka and Brakke river as such appointments would be serviceable not only in the operation of ordinances 49 and 50 but would also be "of the utmost utility to the Farmers who reside at the greatest distance from the seats of magistracy."² He also reported that the justice of peace for the sub-district of Cradock was incapable of performing the duties of his office - "the documents which he has transmitted to me from time to time are so informal and incorrect that I have been obliged to cause the parties to appear at Somerset..."³

Only one field cornet for the district of Somerset could be recommended for the duty of countersigning contracts, namely S.J. van Wyk of the field cornetcy of Brakke river and Agtersneeuberg.⁴ The question was therefore referred to a former landdrost of the district, Mackay, who suggested that members of the Scots party of 1820 settlers be asked to serve in this capacity.⁵ They however refused to do the work because there was to be no remuneration!⁶

The problem of finding persons both qualified and willing for the task of countersigning contracts was only one aspect of the administrative difficulties of implementing ordinance 49. Recurring complaints of the

1. Ibid.

2. Ibid.

3. C.A. C.O. 2705 Onkruidt to Bell, Pte., 20/9/1828.

4. C.A. C.O. 2705 No. 215, Onkruidt to Bell, 20/9/1828. This was the official reply to Bell's letter.

5. C.A. A.Y. 8/16, Bell to Civil Commissioner for Albany and Somerset, 10/10/1828, and enclosure.

6. C.A. C.O. 2712 No. 22, Onkruidt to Bell, 17/1/1829.

non-arrival of the necessary printed blank forms¹ and repeated requests for additional supplies of these² indicate another area of difficulty. Cape Town was slow to send the required blank forms to the interior districts and even when these arrived they were insufficient in quantity. Either there had been serious miscalculations about the number of tribesmen who would avail themselves of the opportunity to enter the colony, or else officials in Cape Town had been unimaginative about the supply of forms necessary for distribution among the many persons involved in putting the labour legislation into operation in the frontier districts. Justices of the peace, clerks of the peace and all those nominated on the special lists as qualified to countersign contracts required blank forms. In the absence of forms they sometimes had to improvise.

Other difficulties also arose in the execution of the two ordinances. Provision had been made in ordinance 49 for orphaned or deserted children to be apprenticed until their 16th year if girls, and 18th year if boys.³ The form of indenture stipulated that such apprentices should be taught a trade and also instructed in the Christian Religion and in the English language.⁴ Yet some colonists who engaged apprentices under ordinance 49 were unable to fulfil the latter obligation, not having "the means or opportunity to get them so instructed and can consequently not undertake to do it although they may be perfectly able and willing to perform all the other conditions of the contract."⁵ When the question was referred to the government at Cape Town instructions were given that no child was to be apprenticed to a master who could not fulfil obligation to have instruction given in the English language.⁶ This reflects a problem that was to be noted in another context by the governor, Cole, in 1830. Commenting on the requirement that all slave

1. E.g. C.A. C.O. 2705, No. 205, Philipps to de Villiers, 6/9/1828, enclosed with de Villiers to Bell, 8/9/1828. C.A. C.O. 2712, No. 28, de Villiers to Bell, 23/1/1829.

2. E.g. C.A. C.O. 2705, Onkruydt to Bell, Private, 20/9/1828. C.A. C.O. 2712, No. 29, Ziervogel to Bell, 26/1/1829. C.A. C.O. 2712, No. 68, Ziervogel to Bell, 25/3/1829.

3. Gazette, 18/7/1828, Ord. 49.

4. E.g. C.A. G.R. 15/76, Indenture of Apprenticeship of an Orphan Bootchuana Child, 15/6/1830.

5. C.A. C.O. 2712, No. 30, Ziervogel to Bell, 27/1/1829.

6. *Ibid.* Pencilled note on cover page.

children were to be sent to school, Cole had pointed out that compulsory school attendance had not been introduced for children of colonists themselves.¹ While the encouragement of instruction for slave and native children was a laudable object, there was a certain degree of naivete in the assumption that colonists would be able, and willing, to provide for them what they could not yet provide for their own children.

In the administration of ordinance 50 a curious temporary snag occurred. It was reported in January 1829 that in the Dutch translation of the ordinance it was stated that only resident magistrates could handle disputes between master and servant whereas in the English version such disputes were cognizable before a justice of the peace.² The matter was soon rectified, and pencilled instructions on the cover page directed the colonial secretary to "blow up Mr Bridekirk about this...!"

The practical difficulties that arose in the operation of the new ordinances reflect also the problems of supervision. Ordinance 49 had provided that any tribal foreigner found wandering in the colony without a pass, or if employed, without a note of authorisation from his employer, or with a pass that had been issued more than two weeks previously and without proof of employment or honest means of livelihood, might be apprehended by a justice of the peace field cornet, constable or landholder and taken to the nearest resident magistrate "who shall inquire summarily into the case." Vagrant tribesmen were then to be returned to their employers, if already engaged, or placed under contract for twelve months, or removed beyond the colonial boundary.³ Thus even without the additional vagrancy ordinance planned in 1828⁴ there were legal procedures which, if followed, would have provided for strict supervision over the operation of ordinance 49. But few local officials had the time or interest to pursue these measures.

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1. C.O. 48/136, Cole to Murray, 28/8/1830. Hunt, Sir Lowry Cole, p. 116.
 2. C.A. C.O. 2712, No. 23, Onkruidt to Bell, 20/1/1829.
 3. Gazette, 18/7/1828, Ord. No. 49.
 4. Supra, p. 379.

In consequence both the careful administration of the ordinance itself and the necessary vigilance in its operation were lacking.

It is also clear from the incompleteness of the lists presented to the Council of Advice during the period 1828 to 1834¹ that the legal procedures provided for supervising the operation of ordinance 49 were not working altogether successfully. This may in part have been due to the complex procedures involved in the application of the ordinance. There was a high possibility of administrative breakdown in the transmission of lists of passes and contracts to the Council of Advice. Before being presented to the council the documents had to pass through the hands of four sets of officials, in a colony where local government and administrative machinery were at an unsophisticated level. Rural officials had to send copies of the passes and contracts they had issued to the office of the district clerk of the peace. At his office lists of such passes and contracts had to be prepared and sent to the office of the colonial secretary at Cape Town, whence in turn they had to be sent to the clerk of the Council of Advice for presentation to the council and inclusion in the appendices to the minutes. Little wonder that the documents sometimes did not reach their final destination! By 1833 the practice of transmitting the lists to the council appears to have lapsed. Yet it was just at this point that the entry of tribesmen into the frontier districts escalated to an alarming extent.² ✓ 9.

The Council of Advice took no steps to remedy the position. There was not a single occasion when the lists tabled at council meetings were scrutinised, or evoked even a casual official comment. The omission is surprising in view of the long and careful deliberations which had preceded the enactment of ordinance 49 and also the number of occasions when questions concerning the peace and security of the frontier districts were under discussion.³

1. Infra, p. 414.

2. Infra, p. 415. Infra, Appendix I, Table of passes issued.

3. Only one instance has been found of an official inquiry into the operation of ordinance 49. This was prompted by a rumour that in the outlying field cornetries of the Somerset and Graaff Reinet districts tribesmen entering the colony as workseekers were being enslaved by the inhabitants. The civil commissioner wrote a detailed reply denying the allegations. This document reflects many of the difficulties of implementing ordinance 49, and is printed in full, infra, Appendix J. The question of the alleged enslavement was not brought to the attention of the Council of Advice.

The lists of passes and contracts received by the council and appended with the minutes do not comprise a full set for the years 1828 to 1833. In the following table the righthand column indicates additional lists of passes or contracts which did not reach the office of the clerk of the council while the left and centre columns reflect those lists appended to the minutes.

	<u>Passes</u>	<u>Contracts</u>	<u>Additional Lists</u>
1828 July - Dec.	Albany Uitenhage Somerset Graaff Reinets Clanwilliam	Albany Uitenhage Somerset Graaff Reinets -	
1829 Jan. - June	-	Somerset	Somerset-passes ¹ Albany-passes Albany-contracts ²
July-Dec.	Albany Somerset Worcester Beaufort George Graaff Reinets Clanwilliam	Albany Somerset Worcester Beaufort George - -	
1830 Jan. - June	Graaff Reinets Somerset -	Graaff Reinets Somerset Albany	
July - Dec.	Somerset Graaff Reinets -	Somerset - Albany	Beaufort-contracts ³

1. C.A. C.O. 2713, No. 133, Ziervogel to Bell, 1/7/1829. The passes themselves have not been found but there is reference to them in the covering letter. "I have the honor to transmit herewith a list of passes granted ... under the provisions of the Ord. No. 49 ... also a list of the contracts between such persons and their employers ..."
2. C.A. C.O. 2712, Nos. 129 and 130, O'Reilly to Bell with enclosures, 30/6/1829.
3. C.A. C.O. 2729, No. 6, Kinnear to Bell, 19/1/1831.

	<u>Passes</u>	<u>Contracts</u>	<u>Additional Lists</u>
1831 Jan. - June	Graaff Reinet Somerset Beaufort -	Graaff Reinet Somerset - Albany	
July - Dec.	Graaff Reinet Worcester -	Graaff Reinet Worcester Albany	
1832 Jan. - June	Graaff Reinet Worcester -	Graaff Reinet Worcester Somerset	
July - Dec.	Somerset - Graaff Reinet	Somerset Albany Graaff Reinet	
1833 Jan. - June	-	-	Somerset-passes ¹ Graaff Reinet- passes ² Albany-contracts ³
July - Dec.	-	-	Somerset-passes ⁴ Albany-contracts ⁵

The lists for the period July to December 1833 would have arrived in Cape Town too late for reference to the Council of Advice whose last meeting was held on 7 January 1834.⁶ They have however been included because they are of importance in the period of the council's intended supervision of the operation of ordinance 49. During this time 437 passes were issued in the district of Somerset and 107 contracts were registered in Albany, being the highest number of passes and contracts respectively for any

1. C.A. C.O. 2742, Ziervogel to Brink, 17/7/1833 with enclosures.
2. C.A. C.O. 2743, No. 57, Berrange to Brink, 15/7/1833, with enclosures.
3. C.A. C.O. 2742, No. 52, McRosty to Brink, 18/7/1833, with enclosures.
4. C.A. C.O. 2749, No. 25, Clerk of the peace for Somerset to Acting secretary to government, 5/2/1834, with enclosure.
5. C.A. C.O. 2749, No. 20, McRosty to Brink, 25/1/1834, with enclosure.
6. C.O. 51/34, Minutes, January 1834.

district during the period under consideration. It is of interest that the council did not at any time in 1833 raise questions about the entry of native tribesmen into the colony or query the absence of district returns for the first half of the year. One of the more crucial questions brought to the attention of the council in the latter half of 1833 was a large-scale intrusion of tribesmen, described as Bechuana, who had fled into the colony allegedly seeking refuge from the Corannas and Bastards who were attacking them.¹ It was reported that the Bechuana had refused to take service with the farmers and the civil commissioner of Albany and Somerset requested instructions.² As in the case of the Tambookie invasion of 1827³ the council advised that the tribesmen should be removed from the colony, and that the Corunna and Bastard communities should be warned, with force if necessary, that the colonial government would not ignore such violence beyond its borders.⁴ The trans-frontier disturbances of 1833 may in part account for the considerable number of passes issued in the district of Somerset during that year.⁵

Although the returns lodged with the minutes of the Council of Advice are incomplete, if taken together with those found in the correspondence of the colonial secretary's office they provide useful material for an examination of ordinance 49 in operation. From a scrutiny of lists of contracts alongside lists of passes it is possible to venture some cautions generalisations.

The permission for tribal foreigners to enter the colony affected most districts of the interior but the number of persons admitted varied greatly from district to district. In Worcester, Beaufort, George and

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1. The same problem had arisen in 1829, but was not brought before the Council of Advice. *Infra*, Appendix J.
 2. C.O. 51/32, Minutes, 20/8/1833.
 3. *Supra*, p. 404.
 4. C.O. 51/32, 29/8/1833.
 5. C.A. C.O. 2749, No. 25, List of passes for the district of Somerset, July to December 1833. The great majority of pass holders are described in these lists as Mantatees.

Clanwilliam the numbers were negligible. Those who came were Mantatees, Bushmen, Bastards and Caffres - but the latter description is given for persons entering the Camiesberg sub-district of Clanwilliam and seems unlikely to refer to Xhosa tribesmen. It is probably in this instance used in the general sense of an African as distinct from a Hottentot, Bushman, or person of mixed blood. What is surprising is that anyone designated a Mantatee should have reached as far West as Worcester and as far south as George.¹ Except in Clanwilliam, the few tribesmen who entered these districts were generally engaged by contract for a year at a time.

The two districts of Graaff Reinet and Uitenhage admitted a greater number of tribesmen during the first year that ordinance 49 was in operation, but in subsequent years very few appear to have obtained passes. For the district of Uitenhage passes and contracts were received only for the period July to December 1828, when 21 passes were issued admitting 53 Caffres² into the district all of whom were engaged by contract.³ Two things are notable in relation to the situation in Uitenhage. Firstly it is the only district where out of a considerable number of tribesmen admitted all were employed by contract. And secondly the lack of passes and contracts in subsequent years is surprising, particularly in view of the fact that Dutch inhabitants of this district had been accustomed to employing tribesmen from the late 18th century.⁴ It seems likely that the lack of returns reflects an

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1. E.g. C.O. 51/19, Appendix A1, Return of passes issued in the district of Worcester, July to December 1829 - 2 mantatees. C.A. C.O. 2729, Return of passes issued in the district of Beaufort, July to December 1830 - 1 Bushmen and his wife and 4 children. C.O. 51/19, Appendix A2, Return of passes issued in the district of George, July to December 1829 - 1 Mantatee. C.O. 51/15, Appendix A4, Return of passes issued in the sub-district of Camiesburg, July to December 1828 - 3 Bastards, 3 Caffres.
 2. C.O. 51/15, Appendix A6, Passes issued in district of Uitenhage, July - December 1828. Only one pass was issued to a family. Details of wives and children were supposed to be stated.
 3. C.O. 51/15, Appendix A7, List of Contracts entered into in District of Uitenhage.
 4. P.P. 1835, Vol. XXXIX (50), p. 174, statement of Mrs Gardner, 13/1/1825.

administrative breakdown rather than the termination of employment of tribesmen in the district, particularly as a labour return for 1829 states that there were 50 tribal foreigners in the district.¹ It is possible that as all those who had entered the district of Uitenhage were Xhosa tribesmen they were removed from the district after August 1829 when the partial suspension of ordinance 49 precluded the entry of Xhosa into the colony.²

In the district of Graaff Reinet 30 native foreigners were admitted with passes during the first six months that the ordinance was in operation, only one of whom was engaged by contract.³ Thereafter the number of tribesmen who entered the district each year dwindled⁴ and the number of contracts remained very low, never exceeding two in each period of six months.⁵ This pattern may reflect either disillusionment with the scheme as a whole⁶ or else that the labour needs of the district had already been met by the employment of the Mantatees and Goes who had entered the area since 1823.⁷

Tribesmen entering the district of Graaff Reinet were mainly Bechuana, though there were occasional entries in pass lists for Corana, Bushmen, Mantatee and Bastards. Three unusual tribal designations are also given, namely Maralong, Masee and Mackwana.⁸ The different tribesmen entering this district reflect the ingress from

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1. C.O. 48/136, van der Riet to Bell, 2/1/1830, enclosure with Cole to Murray, 18/7/1830.
 2. *Infra*, p. 425.
 3. C.O. 51/15, Appendix A6 and 7, Lists of passes and contracts granted in the district of Graaff Reinet, July to December 1828.
 4. E.g. C.O. 51/21, Appendix B2, ten for the period January to June 1830. C.O. 51/23, Appendix B1 three for the period July to December 1830. C.O. 51/25, Appendix C1, three for the period January to June 1831.
 5. E.g. C.O. 51/23, Appendix B5, one for the period July to December 1830. C.A. C.O. 2743, No. 57, two for the period January to June 1833.
 6. *Supra*, p. 359.
 7. *Supra*, p. 353.
 8. *Infra*, Appendix G.

across the northern frontier of the colony, which was in a state of disturbance as a result of the Mfecane for most of the period under consideration.¹

In the eastern frontier districts of Albany and Somerset the position was quite different.

It was these two districts which felt the main impact of ordinance 49. From the start the number of tribesmen crossing the eastern boundary was high. Within a year so many tribal foreigners had entered the two frontier districts of Albany and Somerset that the right of entry had to be limited, not only because the situation had become uncontrollable in sheer terms of numbers but also because of the alleged increase in cattle theft.²

When ordinance 49 was first introduced there was a favourable response in the eastern frontier districts, and the first six months augured well for the future of the scheme, although it had not worked out quite as the government had intended. The intention had been to create initially a labour situation characterised by casual labour rather than by fixed contracts of service.³ Yet for the first six months that ordinance 49 was in operation it is possible to establish a close correlation between passes and contracts. The evidence indicates that approximately two thirds of the tribesmen who entered the district of Albany were engaged by contract rather than on a casual basis. Cross reference between the lists of passes and contracts is relatively easy.

Pass issued 27/10/1828 by Field-Cornet C. Dale of Albany District to Tutu, aged 20 years, Caffre of Eno's Tribe.

Contract made between George Lee and Tutu, Caffre, 27/10/1828, Albany District.

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1. Thompson, African Societies, Ch. 9, passim.
 2. *Infra*, p. 431.
 3. *Supra*, p. 407.

Pass issued 17/12/1828 by Field Cornet C. Dale of Albany to Dodwana, aged 45, Caffre of Botman's tribe.

Contract made between M.D. Delport and Dodwana, 18/12/1828, Albany district.

Pass issued 9/9/1828 by D. Campbell Clerk of the Peace, Albany, to September, aged 27, a Bechuan.

Contract made between H.E. Ulyate and September Bechuana, 10/12/1828, Albany district.¹

A similar pattern can be traced for the district of Somerset in the period July to August 1828, where 35 families out of 41 were engaged by contract. For example,

Pass issued 7/11/1828 by R. Hart, J.P. of Somerset district, to Booy, aged 35, and wife and child, Bechuana.

Contract between L.J. Meyer and Booy and his wife Dolphina and providing also for the upkeep of their child, Somerset district, 7/11/1828.

Pass issued 12/11/1828 by R. Hart, J.P. of Somerset district to Bompekata, aged 28, and wife and child, Caffre.

Contract between N. Greef and Bomapakato, and his wife and 2 children, Somerset district, 12/11/1828.

Pass issued 3/12/1828, by R. Hart, J.P. of Somerset district to Matroos, aged 34, Caffre, and 2 wives and 2 children.

Contract between F. Prinsloo and Matroos, with wife and child, Somerset district, 3/12/1828.²

Other evidence supports the view that at the start the districts of Albany and Somerset. In January 1829 Thomas Philipps wrote,

"The number of Caffres who have come in to this part of the Country under the 49th Ordinance have proved of the greatest service and generally their conduct is excellent."³

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1. C.O. 51/15, Appendix A4 and 5, Lists of passes and contracts issued in the district of Albany, July to December 1828.
 2. C.O. 51/15, Appendix A8 and 9, Lists of passes and contracts issued in the district of Somerset, July to December 1828.
 3. C.A. C.O. 2713, No. 258, Philipps to Bell, 29/1/1829.

During the first half of 1829 the pattern changed. There was an increase in the number of passes issued by officials within the colony,¹ but a decrease in the number of contracts,² and it becomes almost impossible to correlate passes and contracts. More tribesmen were either employed on a monthly basis or not employed at all. Legally they were allowed only two weeks to find work, but there is no evidence to suggest that any action was taken by local officials to ensure that tribesmen who had entered the colony with passes returned to their own territory after a fortnight spent in the colony looking for work.³ The large geographical area of the frontier zone, the fairly sparse settlement and the unfenced farms all increased the difficulties of a strict enforcement of the legal requirements. The number of native foreigners who entered the colony could neither be adequately checked nor controlled. In addition to the many admitted by field cornets and justices of the peace there were those who entered via the military posts with letters of recommendation or passes issued by missionaries.⁴ By August 1829 military officials estimated that there were over 1 000 foreigners from various tribes in the district of Albany alone as well as many who had entered illegally.⁵

Lists of passes issued by missionaries were not forwarded to the Council of Advice so did not receive even the perfunctory attention given

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1. C.A. C.O. 2712, No. 130. O'Reilly to Bell, 30/6/1829, enclosing list of passes issued in Albany, Jan. - June 1829. 141 Passes had been issued. C.A. C.O. 2713, Ziervogel to Bell 1/7/1829, transmitting lists of passes and contracts, but this list of passes has not been found and is not recorded with the minutes of the Council of Advice. *Supra*, p. 414, n. 1.
 2. C.A. C.O. 2712, No. 129, O'Reilly to Bell, 30/6/1829, transmitting list of contracts for Albany, Jan. - June, 1829. There were 35 contracts for this period, and nearly all the tribesmen concerned can be traced in the list of passes for the same period. C.O. 51/17/1 Appendix C1, List of contracts for district of Somerset, Jan. - June, 1829. There were 18 contracts, 3 of which can be correlated to passes issued for the previous six months.
 3. *Supra*, p. 412, Gazette, 18/7/1828, Ord. No. 49.
 4. *Supra*, p. 408.
 5. *Infra*, p. 424.

to those lists transmitted by district clerks of the peace.¹ Thus the council had little or no idea of the extent to which the implementation of ordinance 49 was being affected by the involvement of missionaries until this was brought to their notice in August 1829.² This involvement was crucial but is difficult to assess with precision. Since no written contracts were required where labour was hired by the month, there is ✓ no means of checking the number of natives who entered the colony on a missionary pass and were employed on a monthly basis. The plan of applying to missionaries with specific requests for servants appears to have failed, probably procedures were too complicated.³ Applications were not always promptly met.⁴ Indeed in April 1829 the clerk of the peace for Albany reported that during the preceding three months no requests for servants had reached his office.⁵ Near the boundaries however farmers took matters into their own hands and made a direct approach to the mission stations. In October 1828 William Shaw noted in his journal,

"We have frequent visit from Dutch Boors who come in order to engage Caffres in their service, the Govt. having lately issued an Ordinance allowing of the Natives beyond the Colonial boundaries to enter into the service of the Colonists. Here are three Boors here today for this purpose, and I have had to write passes for several Caffres who have agreed to go with them. I am sorry to say that Mama has been induced by their flattering promises to enter into the service of one of them, and will thus be removed from the means of grace. I did not know of this untill it was impossible for me with propriety to interfere in preventing it."⁶

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1. Supra, p. 413. There was no irregularity in the omission to transmit missionary passes to the council. Ordinance 49 had required that lists of passes granted by district officials should be sent to the council. But the arrangements to obtain the co-operation of the missionaries ✓ had been made after the promulgation of the ordinance and on the legitimate authority of the lieutenant governor. No such requirement had been stipulated. Supra, p. 413.
 2. Infra, p. 424.
 3. Supra, p. 407.
 4. E.g. C.A. C.O. 2705, No. 204, de Villiers to Bell, 6/9/1828 and enclosures. C.A. C.O. 2712, No. 16, de Villiers to Bell, 10/1/1829, and enclosure. One such applicant complained in December 1828 that his request of the previous August for five Bechuana servants had not yet been met. He therefore offered to pay something towards the cost of their journey to Albany. C.A. L.G. 2, p. 47, Crause to Stockenstrom, 8/12/1828.
 5. C.A. C.O. 2712, No. 75, de Villiers to Bell, 1/4/1829.
 6. Hammand-Tooke, The Journal of William Shaw, p. 141. A week later Shaw again recorded, "Busy writing passes for Caffres to go to the colony." Ibid.

Mama duly received a pass on 1 November 1828 and was engaged by contract to serve Daniel Rensburg for one year, receiving a wage of 2s/= per month and a cow worth £1-4-6d at the end of his year's service.¹ On the same list of contracts Daniel Rensburg's name appears again, as the employer of one Daai, a Caffre of Pato's tribe, and Martin Rensburg is recorded as the employer of Kaai and Yeaya, whose names also appear in the list of passes. It seems likely that all four tribesmen were originally from Shaw's mission station. The journal entry concerning the departure of Mama was on 29 October 1828, the passes were issued on 1 November 1828, and registered at the office of the clerk of the peace on 4 November 1828.²

It appears that later in November 1828 the legal procedures were by-passed and permission was given for a natives carrying a letter of recommendation from a missionary to enter the colony at a military post without further formality.³ The letter of recommendation given by a missionary then came to be accepted in place of an official pass, provided that the bearer gave notice at a military post of his intention to enter the colony. The number of such passes was recorded but without the careful entry of details like those entered by the clerks of the peace. Hence it became impossible to keep a check on particular individuals who had entered the colony, and passes issued cannot now be related to contracts.

The great majority of native foreigners who entered Albany and Somerset in 1829 seem to have come with so-called missionary passes, notwithstanding the breakdown of the "application system."⁴ Clearly many Xhosa were eager to regain admission to the zuurveld area from

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1. C.O. 51/15, Appendix A4 and 5, Lists of passes and contracts issued in the district of Albany, July to December 1828. It was quite usual for payment to be made in cattle.
 2. Ibid.
 3. C.O. 48/131, Campbell to Bell, 21/8/1829 enclosed with Cole to Murray 2/9/1829.
 4. Supra, p.407 and p. 422.

which they had been removed in 1812. They came spontaneously, not waiting to be "invited" into the colony by means of a specific request or application for labourers.¹ By August 1829 more than 750 native foreigners had passed the military posts on their way to Albany.² In addition to these there were some 300 who had obtained passes through the legal channels provided for in ordinance 49 itself, i. e. through the district officials.³ It was also known that a great many natives were entering the colony without having obtained a pass at all.⁴ A series of letters on the subject passed between the military commandant of the frontier, Colonel Henry Somerset, and the civil commissioner of the districts of Albany and Somerset, Duncan Campbell.⁵ The situation was then reported urgently to Cape Town.⁶

Details of the procedures to be followed in implementing ordinance 49 had not been reported to the Council of Advice. They had however received the required lists of passes and contracts from time to time

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1. Cf. Somerset's suggestion that natives should be invited into the colony as labourers, *supra*, p. 357, n. 4.
 2. C.O. 48/131, Return of Kaffers passing the posts, enclosed with Cole to Murray 2/9/1829.
 3. C.O. 51/15, Appendix A4, list of 84 passes issued for Albany between July and December 1828; A8, list of 41 passes issued for Somerset, July to December 1828. C.A. C.O. 2712, No. 130, list of 141 passes issued for Albany district between January and June 1829. C.O. 51/19, A7, list of 36 passes issued between May and August 1829 in Albany district and sent forward to Cape Town in December 1829. In addition to all these there were passes for the district of Somerset in the period January to June 1829, which have not been traced, *Supra*, p. 414, n. 1.
 4. C.O. 48/131, Campbell to Bell, 21/8/1829, enclosed with Cole to Murray, 2/9/1829.
 5. Duncan Campbell, leader of an 1820 settler party from Hampshire; special heemraad for Albany, 1821; civil commissioner for Albany and Somerset, 1828-33; acting commissioner general for eastern districts, 1833-36.
 6. C.O. 48/131, Numerous letters enclosed with Cole to Murray, 2/9/1829.

and those had been tabled and recorded with the appendices to the minutes,¹ but apparently without close scrutiny by the council.² When the governor, Cole, received the reports from the frontier in August 1829 concerning the very large number of tribesmen who had entered the colony he took immediate action. The Council of Advice was summoned to discuss the matter and decided in the light of the disturbed state of the frontier districts to halt the entry of Caffres into the colony.³ Accordingly on 25 August a proclamation was issued announcing that "no Passes should be henceforth granted to any Caffre, until further Proclamation be made to that effect:" and that all Caffres presently found unemployed or wandering about in the districts of Albany, Somerset or Uitenhage were to be removed to the frontier "there to be dealt with in such manner as to me shall seem expedient, and the circumstances of the case may require."⁴

Confusion has sometimes arisen over whether the proclamation of 25 August 1829 suspended or repealed ordinance 49. Theal, for example, wrote that Cole had "suspended the ordinance for the admission of Kaffir servants."⁵ Cory stated, "On August 25th therefore, Sir Lowry Cole repealed the 49th Ordinance."⁶ Walker claimed that "Without actually repealing Bourke's Ordinance, [Cole] virtually suspended it by forbidding field cornets to issue any more passes..."⁷ It would seem however that what was intended by the proclamation of 25 August was the suspension of ordinance 49 in so far as it had applied to Caffres.⁸ The

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1. C.O. 51/14, C.O. 51/15, C.O. 51/16, C.O. 51/17, *passim*.
 2. *Supra*, p. 431.
 3. C.O. 51/16, Minutes 22/8/1829. No other business was discussed at this meeting so that it would appear to have been called especially to deal with this particular crisis. *Infra*, Appendix HI, Extract from the Minutes of the Council of Advice.
 4. *Gazette*, 28/8/1829, Govt. Proc. *Infra*, Appendix H II.
 5. Theal, *History of South Africa from 1795 to 1872*, Vol. II, p. 11. Theal writes on ordinance 49 as if it applied only to Kaffirs: hence the confusion when he states that the ordinance had been suspended.
 6. Cory, *Rise of South Africa*, Vol. II, p. 382.
 7. Walker, *History*, p. 182.
 8. Government Proclamation, 25/8/1829, *Infra*, Appendix H II.

complaints that had been received from the frontier districts concerned the influx of Caffres into the colony and it was in respect of these tribes that the partial suspension was introduced. This interpretation would seem to be confirmed by the fact that the Council of Advice which had authorised the restriction in August 1829¹ continued to table lists of passes and contracts from various districts.² In the districts themselves local officials continued to issue passes after 1829 but, initially at least, they appear to have excluded Caffres.³ Cole himself reported emphatically that the suspension applied to the Caffre nation⁴ and Wade who was in the colony at the time told the Aborigines Committee in 1836 that on the representations of the civil and military authorities and with the advice of the council, Cole had "suspended the operation of [ordinance 49], in so far as the Caffres were concerned leaving it in full force as regarded the other native tribes."⁵ Similar evidence was given by Thomas Philipps who explained that the Caffre servants had been obliged to leave the colony after a very short while but that "Bechuana tribes and others are still allowed, and we experienced very great benefit from their labours, as they are most faithful servants."⁶

The problem that had been presented to the governor and council in August 1829 was not concerned solely with the question of the great number of tribesmen entering the colony. The more serious aspect was the increase in lawlessness in the frontier districts, particularly the proliferation of stock theft. From the earliest days of contact between

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1. C.O. 51/16, Minutes, 22/8/1829 *Infra*, Appendix H I.
 2. E.g. C.O. 51/18, Minutes, 13/1/1830. C.O. 51/19, Appendix A, Lists of passes and contracts for the period July to December 1829.
 3. E.g. C.O. 51/19, Appendix A6, passes issued in the district of Somerset to Isaac, Tambookie, 29/9/1829; Marattie alias April, Bechuana, 26/9/1829; and Boote alias April, Masouta, 14/10/1829.
 4. C.O. 48/131, Cole to Murray, 2/9/1829, "I have with the advice of council suspended by proclamation the issue of Passes to the Caffre Nation and have authorised those not in service to be sent out of the colony..."
 5. P.P. 1836 Vol. VII (538), p. 284, Evidence of Wade.
 6. P.P. 1836 Vol. VII (538), pp. 35-6, Evidence of T. Philipps.

colonists and tribesmen cattle theft had been one of the main problems. Caffres were alleged to be adept rustlers and over the years a pattern of theft and reprisal had developed, becoming one of the main characteristics of the relationship between white and black in the remote and restless frontier zone of the colony.¹ For their defence the trekboers of the 18th century had developed the commando system, but this had frequently contributed to the pattern of attack and counter-attack rather than facilitated peace-keeping.² In 1817 the governor Somerset had introduced a new system for reclaiming stolen cattle. Known as the reprisal system, this permitted colonists to follow the track, or spoor, of stolen stock across the boundary to the nearest homestead, or kraal. If the stolen beasts were not found the occupants of the kraal became answerable for reparation, and were then obliged themselves to seek the real thieves and recoup their own losses.³ Although based on an understanding of communal responsibility familiar to the tribesmen, the reprisal system was open to abuse and had undoubtedly led to hardship and injustice.⁴ Farmers were not obliged to identify their own cattle and it was alleged that they tended to take from the kraals a greater number of beasts than they had lost.

When the governor, Somerset, left the colony in 1826 the reprisal system had been in operation for nearly ten years. It had not proved to be a deterrent to crime, and the problem of cattle theft was still rife in the eastern districts of the colony. Indeed, the occasion for cattle thieving and its incidence had increased with the settlement of the area by the British immigrants who had arrived in 1820.⁵ Almost immediately after Somerset's departure from Cape Town in March 1826

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1. Although the real grievance of the tribesmen may have been the loss of the land, as suggested by Macmillan, stock theft became a convenient means of protest. Macmillan, Bantu Boer and Briton, p. 49.
 2. The term commando was used to describe a group of colonists called together into a militia unit for purposes of defence, and also was used to describe the military operation. Walker, History, pp. 69-70.
 3. H.A. Reyburn, Studies in Cape Frontier History: Reprisals, The Critic, Vol.IV. (1935), pp. 52-4.
 4. E.g. Bourke Papers, Rhodes House, Vol. 22, f.10, Mackay to Plasket, 23/12/1826. Macmillan, Bantu Boer and Briton, pp. 77-9.
 5. Memorial of the 1820 settlers submitted to Lord Bathurst, 1823, quoted by Hockly, British Settlers, pp. 86-7.

the lieutenant governor, Bourke decided to modify the existing arrangements for the recovery of stolen cattle. On his own initiative he issued new orders to local officials in the frontier districts and also to the commandant of the frontier, Colonel Henry Somerset. Bourke's new orders forbade any individual to cross the boundary for the recovery of stolen cattle, or to obtain cattle from a native kraal. Thieves might be apprehended and stolen cattle re-taken while still within the colony, or pursued across the boundary if still in sight and close enough to make capture certain.¹

These orders were issued by Bourke without reference to the Council of Advice, although he had discussed the matter with the commissioners of inquiry. As they entailed no legislative enactment there was no problem concerning the form of publication. Bourke issued them as military orders in terms of his supreme executive and military authority. Nevertheless, on a matter of such importance, involving as it did the reversal of existing arrangements for the security and stability of the frontier, he exposed himself to criticism by not bringing the question before the council. In reply to Bourke's despatch informing him of the changes the secretary of state expressed only qualified approval and asked what measures were being taken to indemnify farmers who had lost cattle and to punish those tribesmen guilty of theft.² Meanwhile news of the change had reached the governor, Somerset, who was in London and had not yet resigned. He became alarmed at the possibility of danger to the frontier districts and urged reversal of Bourke's innovations.³ The new system was widely criticised in the colony, and the colonial secretary, Plasket, was among those who condemned it, writing privately to Hay on the matter to say that in his view it was a matter that should have been brought to the attention of the Council of Advice. This opinion was endorsed at the Colonial Office,

"I quite agree with Sir Richard Plasket that the system of Frontier Defence is a subject of so much importance in a political point of view that all matters relative to it should

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1. R.C.C. Vol. XXVI, pp. 282-4, Bourke to Bathurst, 21/4/1826 and enclosures. King, Richard Bourke, p. 111.
 2. C.O. 49/19, Bathurst to Bourke, 2/7/1826. King, Richard Bourke, p. 111.
 3. C.O. 323/144, Somerset to Hay, Pte., 8/9/1826, Somerset to Hay, 9/9/1826. King, Richard Bourke, p. 111.

be discussed at the Council and not be treated simply as military operations."¹

It was decided to caution Bourke against the "derangement of [the existing] schemes for the defence of the frontier."² This is the only instance that has been found of a reprimand being issued to the governor of the Cape for not having consulted with the Council of Advice as required in terms of the Additional Instructions of February 1825.³ Unfortunately the caution was sent obliquely, in a private letter from Hay to Plasket.⁴ The implied rebuke conveyed thus indirectly brought to light Plasket's criticism of Bourke's plans which ended the cordiality hitherto obtaining between the two men and caused that strained relationship which led finally to the quarrel of December 1827.⁵

However coolly Bourke may have received the news of Plasket's critical comments to London, he did introduce minor modifications into his system for the recovering of stolen cattle.⁶ But he did not bring the matter to the attention of the Council of Advice. Still trusting his own judgement in the matter he wrote, soon after Plasket had shown him the series of letters between himself and Hay on the subject, to

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1. C.O. 323/144, unsigned note, 14/3/1827.
 2. C.O. 324/77, Hay to Plasket, Pte., 12/9/1826. King, Richard Bourke, p. 112. Somerset's interest in frontier defence arose not only from his general concern for the colony. His son, Henry Somerset, was commandant of the frontier, *supra*, p. 315, n.2. It may have been from his son that Lord Charles had learned of the change in frontier policy.
 3. *Supra*, p. 38.
 4. C.O. 324/77, Hay to Plasket, Pte., 12/9/1826. King Richard Bourke, p. 112.
 5. *Supra*, pp. 61-3. R.C.C. Vol. XXXIV, pp. 255-6, Plasket to Hay, 22/12/1827, "You will recollect a private letter you wrote to me about his having interfered with Lord Charles' system of Frontier Defence which you left at my discretion to show him or not... I thought it but fair to the General to shew him both my letters to you and your replies. All these he received very coolly, and never entered into the subject of them again, and it is from this period I think that his official behaviour to me has altered."
 6. King, Richard Bourke, p. 112. Military patrols were to be allowed to cross the boundary in pursuit of stolen cattle, provided the prior consent of a local magistrate had been obtained.

say,

"With regard to "System of frontier defence" I do not think it possible to adopt any regular system where circumstances are constantly changing. I have therefore attempted nothing more than to check unnecessary and fruitless irritation and to save the too frequent loss of life by putting a stop for the present to the "retaliatory" expeditions of the Boers and the Cape Corps."¹

Although Bourke himself was satisfied with his experiment in controlling cattle theft across the frontier, other officials were not. Soon after his departure from the colony in September 1828 reports were presented to the Council of Advice from the military authorities on the frontier complaining of the bad effects which had resulted from Bourke's order forbidding parties in pursuit of cattle to cross the colonial boundary.² As a result of these representations and after further discussion with the council in February 1829 Cole cancelled Bourke's frontier orders and the reprisal system established by Somerset in 1817 was resumed.³ Four years later in response to continued cattle raiding and partly because of the incursion of Bechuanas into the colony in 1833,⁴ it was again revised, this time by Cole. But ordinance 99 of 14 June 1833 which was drafted by Cole in close co-operation with the Council of Advice was disallowed by the crown in 1834.⁵

Cole's resumption of the reprisal system in 1829 had not✓ solved the problem of cattle thieving. Farmers who in 1828 had complained that they could not farm because the labour shortage denied them

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1. C.A. G.H. 26/17, Bourke to Hay, Pte., 5/7/1827.
 2. C.O. 51/12, Minutes, 4/12/1828. C.O. 51/13, Appendix I 1 and 2, H. Somerset to Bell, 28/11/1828 and H. Somerset to Military Secretary, 28/11/1828.
 3. P.P. 1836, Vol. VII (538), p. 283, Evidence of Wade. C.O. 51/14, Minutes, 29/1/1829.
 4. *Supra*, p. 416.
 5. C.O. 51/30, Minutes, January to June, 1833, *passim*. Gazette, 14/6/1833, Ord. No. 99. Hunt, Sir Lowry Cole, pp. 104-6. The ordinance had provided for the more effective use of the commando system for the recovery of cattle, but reports of atrocities committed by commandoes had discredited the system at the Colonial Office. The disallowance despatch was written in November 1833 but reached the colony only in 1834 when the Council of Advice had already been superseded. C.O. 49/25, Stanley to D'Urban, 9/11/1833.

the herdboys necessary to protect their cattle,¹ by 1829 were complaining, despite the reprisal system, that they could no longer farm because of the excessive number of Caffres who had entered the colony ostensibly as workseekers but in fact as spies or thieves.² Those in employment were as much suspect as those who merely roamed within the colony on the legal security of a pass.³ The problem was aggravated by the expulsion of the chief Macomo and his followers from the Kat river lands in May 1829⁴ and by the effects of ordinance 50. It was widely alleged that Hottentots were deserting their employers and becoming idle and shiftless vagrants.⁵ Evidence indicates a sharp rise in the number of Hottentot convictions for cattle theft. In a statement drawn up by the clerk of the peace for Albany the following figures are given:⁶

Convictions of Hottentots by the Court of
Landdrost and Heemraden

1821	-	1 cattle stealing
1822	-	2 cattle stealing, 3 sheep stealing
1823	-	none
1824	-	1 sheep stealing
1825	-	2 cattle stealing
1826	-	none
1827	-	1 cattle stealing, 2 sheep stealing

Convictions before the resident magistrate

1828	January to June	-	none
	July to December	-	4
1829	January to June	-	11
	July to December	-	9

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1. E.g. C.A. L.G. 2, Crause to Stockenstrom, 8/12/1828.
 2. E.g. C.A. C.O. 2713, No. 175, Currie to Campbell, 2/8/1829, and Currie to Campbell, 5/8/1829. C.A. C.O. 2713, No. 175 Return of stock reported stolen.
 3. Ibid. C.O. 48/131, Cole to Murray, 2/9/1829, with enclosures. P.P. 1836, Vol. VII (538), pp. 281-4, Evidence of Wade.
 4. Marais, The Cape Coloured People, Ch. 7. Williams When Races Meet, Ch. 8.
 5. Cory, Rise of South Africa, Vol. II, p. 373. S.A.C.A., 1828, and 1829, passim, Letters to the Editor. Marais, The Cape Coloured People, pp. 180-3.
 6. C.A. C.O. 2713, No. 262, Return of Court Cases, 27/11/1829.

Convictions before the Circuit Court

1828	November	-	1
1829	May	-	6
	November	-	13

In addition to the considerable increase in court convictions for stock theft, there were probably numerous occasions of thieving in which no charge could be made because the culprits had not been caught. The problem of finding an alternative means of livelihood for Hottentots who no longer wished to remain in service after 1828 was in part solved by the granting of the Kat river lands as a Hottentot settlement in May 1829, following the expulsion of the Xhosa chief Macoma from the area.¹ Initially this experiment prospered but overcrowding and the problem of Caffre squatters amongst other difficulties led subsequently to the deterioration of the settlement. In 1833 the Council of Advice appointed a justice of the peace for the Kat river area in an attempt to bring more order into its administration.²

The partial suspension of ordinance 49 brought temporary relief from the problem of increased cattle theft.³ There was also a temporary reduction in the number of passes issued.⁴ This may have been due in part to a smallpox scare, which resulted in stringent regulations to prevent any persons from crossing the boundary in either direction.⁵ By 1833 however considerable numbers of native foreigners were again entering the frontier districts. In the lists of passes issued there are occasional references to Caffres receiving passes.⁶ The large numbers

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1. Marais, The Cape Coloured People, Ch. 7. Hutton, Autobiography of Sir Andries Stockenstrom, Vol. I, Chs. 13, 14, and 16.
 2. C.O. 51/32, Minutes, 30/12/1833.
 3. P.P. 1836, Vol. VII (538), p. 284, Evidence of Wade.
 4. Supra, p. 403, Infra, Appendix J, Return of passes issued from 1828 to 1834.
 5. Gazette, 2/12/1831, Govt. Proc; and 16/12/1831, Govt. Advertisement.
 6. E.g. C.O. 51/31, Appendix A2, list of passes issued in the district of Somerset, July to December 1832 - pass issued to August, Caffre, on 17/11/1832: pass issued to Intail, Caffre, on 24/11/1832. C.A. C.O. 2749, No. 25, List of passes issued in the district of Somerset, July to December 1833, Andries and Jonas, Caffres, 20/7/1833; Hendrik, Caffre 21/9/1833. C.A. C.O. 2749, No. 20 List of Contracts in the district p of Albany, July to December 1833, contract between J.F. King and Nosana, Caffre, 27/8/1833; contract between M. Keevy and Sasanna, Caffre, 9/9/1833.

of tribesmen in the colony contributed to the growing feeling of anxiety and distress in these districts during 1833 and more particularly 1834, prior to the outbreak of war in December of that year.¹ In spite of the hostilities during 1835 and the persistent suspicion and mistrust in the years after the war,² there is evidence that considerable numbers of tribesmen, including Caffres, remained within the colony during and after the hostilities.³ In later years the admission of all tribesmen including Caffres into the colony was resumed, although legally the prohibition of August 1829 does not appear ever to have been repealed. In 1832 it was still being enforced.⁴

Ordinance 49 itself remained legally on the statute book of the colony until 1867 when it was repealed by Act 22 of that year.⁵ It had been partially repealed ten years previously, when the Xhosa Cattle-killing had resulted in a large-scale influx of natives to the colony which had necessitated new regulations for the issuing of passes.⁶ Doubts had arisen on occasion concerning the continuance of ordinance 49, probably because of the partial suspension in August 1829, and the uncertainty created by the fact that this proclamation does not appear to have been repealed. In 1836 the governor D'Urban gave an assurance that ordinance 49 was still legally in operation.⁷ An interesting ruling was given in 1849 by the attorney general, William Porter,⁸ to the effect

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1. Walker, History, pp. 184-5.
 2. E.g. Long, The Chronicle of Jeremiah Goldswain, Albany Settler of 1820, Vol. II, pp. 7-8 and 10-11.
 3. C.A. L.G. 7, Return of Native Foreigners in the different field cornetries of the frontier districts, 1838. Many natives had been in the colony continuously for ten years, i.e. since 1828 when ordinance 49 had made their entry legal.
 4. Gazette, 12/10/1832, Govt. Notice repudiating rumours that the proclamation of 25 August 1829 was no longer in force.
 5. Statutes of the Cape of Good Hope passed by the Third Parliament, 1864-1868, p. 322, Act 22 of 1867.
 6. Statutes of the Cape of Good Hope passed by the First Parliament, 1854 to 1858, pp. 306f. Acts 22 and 23 of 1857.
 7. Macmillan, Bantu Boer and Briton, p. 88.
 8. William Porter (1805-1880), attorney general of the Cape of Good Hope, 1836-65.

that although acknowledged in,

'Harding's Ordinances' as 'allowed' by the Home Government [ordinance 49] had not really been so allowed. It therefore fell under a clause of the Royal Instructions and lapsed after three years. But, [Porter] concludes, 'The cessation of the 49th ordinance it is not desirable to proclaim.'"¹

This opinion itself seems open to doubt, as there was no three year proviso concerning the king's allowance when ordinance 49 was introduced in 1828. While it is true that the allowance of the crown had not been received in respect of this ordinance² the instructions from Bathurst in 1825 had merely provided that the governor was to transmit a copy of every ordinance or legislative enactment to London for the crown's allowance.³ The stipulation that if the allowance of the crown had not been received within three years an enactment would be deemed to have been disallowed came into effect when the two-tier conciliar system was introduced in 1834.⁴

By 1834 when the Council of Advice at the Cape was superseded the new labour regulations introduced in 1828 were fully operative within the colony but the difficulties of implementation were still very obvious. The absence of a vagrancy law at a time when the emancipation of slaves was going to bring some 34 000 more people into the liberties provided by ordinance 50 has already been noted in chapter 8,⁵ as well as the attempts from 1838 to enact some further measures of control in terms of a masters and servants act.⁶ This was finally done in the masters and servants ordinance passed in the colony in 1841 and promulgated in 1842.⁷ This act was itself superseded by the masters and servants act of 1856, which further tightened control in favour of the employers.⁸

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1. Macmillan, Bantu Boer and Briton, p. 88.
 2. Supra, p. 383, and pp. 305 - 6.
 3. R.C.C. Vol. XX, p. 14, Bathurst to Somerset, 9/2/1825. This directive was not contained in the Additional Instructions but in an explanatory letter. Supra, p. 307.
 4. J.L. McCracken. The Cape Parliament, 1854 - 1910 (Oxford, 1967), p. 5.
 5. Supra, p. 392.
 6. Supra, p. 393.
 7. Supra, p. 394.
 8. Marais, The Cape Coloured People, pp. 196-204.

However even if there had been a vagrancy act it is doubtful whether more effective control could have been established over the unemployed population of free persons of colour. Legally there were some means of control, but in practice the structures of local government were inadequate to enforce the existing laws. Regulations to control vagrancy were written in to ordinance 49¹ but in the circumstances of the frontier districts it had proved impossible to enforce these. Ordinance 32 for creating the office of justice of the peace also provided a legal weapon against vagrancy in terms of clause two which empowered such justices of the peace to,

"quell all riots, brawls or other disturbances, and to lodge all rioters, brawlers, vagrants and disturbers of the peace, in any prison within their respective jurisdictions, to be dealt with according to law."²

But even these powers do not seem to have been used effectively as was noted by the editor of The South African Commercial Advertiser.³ The demand made in 1831 to control vagrancy in a manner comparable to that practised in England at the time,⁴ would also have proved difficult. In England there was a dual structure, namely vagrancy control and parish relief but in the colony there was no equivalent of the latter.

However great the difficulties of implementing the new labour regulations provided by the governor and Council of Advice in 1828, that year marked a turning point both in respect of the labour pattern of the colony and in respect of the legal equality of all free persons within the colony. The practical difficulties of implementation were, in the last analysis, not the responsibility of the Council of Advice. The legal provision of the new measures was within their competence and this they had undertaken, with as much careful consideration as they could give to the questions at the time.

1. Gazette, 18/7/1828, Ord. No. 49. Supra, p. 373.

2. Gazette, 21/12/1827, Ord. No. 32.

3. E.g. S.A.C.A., 7/2/1829, Editorial.

4. Supra, p. 387, n. 5.

Chapter 10
The Campaign for a Free Press and the Demand for
Other Political Rights.

The establishment of a free press at the Cape and the demand for other political freedoms have rightly been associated with the efforts of the British Settlers who had arrived in the colony in 1820. Although relatively few of these immigrants would have been in a position to exercise a vote before, or even after, the Reform Bill of 1832, they were nonetheless conscious of their rights as citizens and of those liberties to which they had been accustomed in Britain. The tremendous hardships of the early years in Albany¹ gave them much cause for complaint and even the humblest among them were not diffident to voice their grievances.²

The settlers considered themselves the victims not only of natural disasters such as crop failure and flood but also the victims of an officialdom that seemed indifferent to their fate and of a plan of settlement which appeared in retrospect to have been based on faulty premises and inadequate information both in London and Cape Town. Settlers had been attracted to the immigration scheme partly by the expectation of a new and better life than Britain seemed able to offer at the time and by the prospect of land of their own - one hundred acres to each adult male settler.³ Within a few years they had discovered that the new and better life of a settler entailed difficulties and dangers undreamt of in Britain and that the land grant of a hundred acres that had seemed so ample amidst the green fields of England was hardly sufficient for the upkeep of one family in the vastly dissimilar conditions of the zuurveld, "where it still appears necessary to the subsistence of the Cape Dutch farmer to grant him 4 000 acres."⁴ In addition to all the problems and

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1. E.g. The failure of the wheat crop for four years; flood in 1823; initial lack of homes and building material; unsuitability of the zuurveld region for agriculture. Hockly, British Settlers, Chs. 7, 8, 9.
 2. E.g. Woods, The Case of James Erith, 1820 Settler, and His Struggle for Compensation (M.A. Thesis, Rhodes University, 1968.)
 3. W.A. Maxwell, Reconsiderations (Grahamstown, 1970), p. 7. G. Butler, Ed., The 1820 Settlers, An Illustrated Commentary (Cape Town, 1974), p. 66.
 4. Hockly, British Settlers, p. 85, petition from 171 settlers to the secretary of state, 10/3/1823.

disappointments arising from natural causes and false hopes, the settlers had found that the patterns of local government in the colony were quite inadequate for the supervision and care needed to nurture such a large-scale settlement project through its first hazardous years. The lack of officials, or their incompetence, the distance between administrative centres, the personal quarrels that seemed to disrupt relationships and efficiency at all levels of official activity and, above all, the apparent disregard of their legitimate grievances and the high-handed action of most government officials, and more particularly, of the governor Somerset, himself - these served to underline the distance between Britain and the Cape, and the discrepancy between the familiar and the new experiences of the immigrants.

Settlers were not tardy in bringing their many grievances to the attention of the government but had been frustrated in their first efforts. As early as 1821 the Albany settlers had demanded the right to meet in order to discuss their problems,

"but to their amazement and indignation the settlers learned that by the old Dutch law of the Colony meetings for the discussion of public affairs were not allowed except with the express permission of the Governor and constituted a grave misdemeanour punishable with severe penalties"¹

Various stratagems were then adopted. The establishment of a "cultural society" had been mooted and at its only meeting a petition was drawn up for presentation to the acting governor, Donkin,² outlining settler grievances.³ Although he had sympathised with the settlers, Donkin had been required to act in terms of the existing law and to quell the incipient civil disobedience by appropriate action.⁴ In 1822 official

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1. Hockly, British Settlers, p. 68.
 2. Sir Rufane Donkin (1773-1841), acting governor of the Cape, 1820-21, during Somerset's absence on leave.
 3. Hockly, British Settlers, p. 68. Butler, The 1820 Settlers, An Illustrated Commentary, p. 158.
 4. *Ibid.*

permission had been sought to hold a public meeting to discuss some of the problems of the Albany settlement but this had been refused by the governor, Somerset, now back in the colony after his leave of absence during 1820 and 1821. By 1822 settler dissatisfaction had increased in proportion to the growing and continuing difficulties experienced. As attempts to work openly and through the existing establishment were thwarted the Albany settlers began to look to other sources of help, both in London and at the Cape. In March 1823 a petition to the secretary of state was prepared, stating settler grievances and in the same year a movement was begun at Cape Town for the establishment of an independent press.

The petition to the Colonial Office gave added justification to the decision already taken in 1822 to send a Commission of Inquiry to the Cape.¹ The state of the Albany settlement and the circumstances of the settlers were added to those topics already detailed for special investigation by the commissioners at the Cape.² By 1823 then the secretary of state was already aware of some of the problems of government that had been exposed by the fearless endeavours of the British settlers. The move for a free press was to bring those even more under the spotlight of public criticism in the House of Commons and in the colony itself, and was to make the Colonial Office more sensitive to the needs of the colony as a whole.

The connection between the establishment of a private press at the Cape and the granting of a Council of Advice has already been noted in chapter one.³ To a certain extent the constitutional reform introduced in 1825 may be regarded as the triumph of Pringle, Greig and Fairbairn, the protagonists of civil and political liberties, and of those Albany settlers who had been daring enough in 1823 to appeal directly to London when their attempts to obtain a hearing had been obstructed locally. They were however unaware of the crucial influence that they had exerted in

1. Supra, p. 24.

2. R. C. C. Vol. XVI, p. 438, Commissioners of Inquiry to Bathurst 29/10/1823.

3. Supra, pp. 29-34.

the situation of 1824, when action taken by the governor Somerset in Cape Town had led to the rapid decision to introduce a council of advice at the Cape without waiting any longer for the report of the commissioners of inquiry.¹ As in 1822 when a request for a public meeting had been met with a firm refusal followed by a public reminder that meetings were forbidden,² so in 1824 when the editorial and printing activities of Pringle, Greig and Fairbairn had been curtailed it looked as if autocracy was in the ascendant. But those who had begun the campaign for a free press were determined to persevere and to demand not only this liberty but also others which they considered to be concomitant, namely trial by jury and a legislative assembly. To some extent the way had already been prepared for them by the very measures taken by Somerset in 1824 to control their activities.³ The setback proved to be only temporary and provided a springboard for further action. By 1829 a free press controlled only by the regular law of libel had been gained.

Newspapers themselves were to provide a further vehicle for protest and for persistent attack on the existing government, along with frequent demands for a new constitution. The growth of political awareness and articulation in Cape Town during the period 1825 to 1834 owed much to the vigorous lead given by the press. At the same time the problems and difficulties of the period, particularly over questions of slavery and the economic situation,⁴ provided a breeding ground generally for dissatisfaction and complaint. Protest was lodged not only against the policies that were unpopular, some of which had originated in Britain, but also against the government called upon to implement them at a local level. Grievance and dissatisfaction over many causes then gave added vehemence to the demand for constitutional change. Nevertheless when the Colonial Office did decide in 1833 to introduce a new constitution

1. Supra, pp. 35-6.

2. Proclamations, p. 554, Govt. Proc., 24/5/1822.

3. As pointed out by Bathurst in his private letter to Somerset on the matter, *infra*, Appendix B, p. ii.

4. Supra, Chs. 4, 5, 6 and 7.

it was planned in conformity with recent constitutional developments elsewhere in the empire rather than in response to the local clamour for political representation. But the campaign for another form of government was linked with a constant barrage of attack on the Council of Advice. Thus the council which had been the agency through which press freedom was granted became also the target of biting criticism ✓ by local editors and private correspondents to the press. Little that was said in the newspaper would serve to enhance the reputation of the Council of Advice. It is an indication perhaps of the tolerance of Cole as governor that he did not at any time bring matters directly concerning the press to the attention of the Council of Advice, once the situation of press freedom had been finally resolved in 1829. This situation may also reflect something of his inherent dislike of the conciliar system itself.

During the years that the colony had been a Dutch possession the laws of Holland had applied locally, thereby preventing the establishment of a free press.¹ There had in fact been no printing equipment in the colony at this time.² Moreover, in 1800 the British governor, Yonge,³ had issued a proclamation stipulating that all printing required a government licence and thereby virtually creating a government monopoly.⁴ These restrictions remained in force after the British occupation of 1806. In that year publication of a weekly government gazette began and for nearly twenty years this remained the sole paper of the colony. By 1822 it ran to 1 600 copies per week and, because it was distributed free to all office holders throughout the colony, was considered by one observer to blight the chances of a free press.⁵ Another described it as "this miserable weekly gazette containing little else but mercantile advertisements ... and a few garbled extracts from the London papers."⁶

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1. C.O. 48/80, Somerset to Bathurst, 8/2/1826, enclosing Laws of Holland on the press. (R.C.C. Vol. XXVI, p. 5.)
 2. T.E.G. Cutten, A History of the Press in South Africa (abridged M.A. Thesis, Cape Town, 1935), p. 2.
 3. Sir George Yonge, governor of the Cape of Good Hope, 1799 to 1801.
 4. Cutten, A History of the Press in South Africa, pp. 5-6.
 5. Bird, Cape, 1822, p. 60.
 6. E. Blount, Notes on the Cape of Good Hope (London, 1822), p. 113.

With the arrival of the British settlers in 1820 there were predictions that a free press would emerge in the eastern districts of the colony, "the numerous settlers on our Eastern coast will not long be content to bear their fancied or real grievances without the English luxury of grumbling in print" !¹ This prognostication was to prove correct. The Albany settlers did not long remain passive under their numerous hardships and difficulties. When the right of public meeting and discussion was denied them they appealed directly to the secretary of state and subsequently to parliament.²

Although the attempts to establish a free press were concentrated in Cape Town several settler personalities were closely involved. It is of interest to note that in a booklet published in 1819 providing hints for those planning to immigrate to the Cape, it was suggested that in addition to agricultural implements and a variety of tools and equipment for a forge and a watermill, a printing press should be taken to the colony.³ There were in fact four printers among the settlers,⁴ and one printing press, but this was confiscated in Cape Town on its arrival.⁵ In 1823 "a remarkable combination of circumstances appeared to favour the establishment of a Free Press".⁶ Thomas Pringle one of the Scottish settlers of 1820 who had had previous editorial experience, had moved to Cape Town the previous year to accept the position of librarian

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1. Bird, Cape, 1822, p. 60. During the decade of the 1820s the struggle to gain full liberty of the press in Britain was taking place. W.H. Wickwar, The Struggle for the Freedom of the Press, 1819-1832 (London, 1928).
 2. Supra, p. 438. They complained particularly of "the unlimited control of one individual" and the difficulty of communicating with a government "situated at the opposite extremity of the colony." Hockly, British Settlers, p. 84, petition of 171 settlers to the secretary of state.
 3. W.J. Burchell, Hints on Emigration to the Cape of Good Hope (London, 1819), p. 31.
 4. L.H. Meurant, Sixty Years Ago (Cape Town, 1885, fasimile reprint, 1963), p. 8. The printers were Robert Godlonton, Thomas Stringfellow, William Cock and Samuel Mollet.
 5. Hockly, British Settlers, pp. 94-5.
 6. Meurant, Sixty Years Ago, p. 13.

and also with the hope of starting both a school and a monthly publication. In 1823 he was joined at the Cape by a former friend from England, John Fairbairn, who came to assist in these two new ventures. In the same year George Greig, formerly a printer at the king's printing office in London, arrived at Cape Town, bringing with him his own press.

In February 1823 Pringle and another colleague, the Rev. Abram Faure,¹ made application to begin publishing a monthly magazine. The governor was cautious and chose to refer the question to London. In July the prospective editors sought the advice of the newly arrived commissioners of inquiry but they declined to become involved.² In October 1823 Pringle and Faure published a prospectus for their intended publication in anticipation of a favourable reply from the secretary of state. Their optimism was justified and in December, on the authorisation of Bathurst, they were given a somewhat grudging permission to start publication. They were warned to avoid all subject matter of personal or political controversy, "which might be detrimental to the peace and safety of the Colony."³

Two editions of the magazine, which was to be issued alternately with Faure's Dutch journal, were issued in March and May 1824. In the latter an article appeared written by Pringle on "The Present State and Prospects of the English Emigrants in South Africa with particular reference to the hardship suffered since the founding of the settlement in 1820 and the Measures that might be adopted to avert further disaster." The author was considered by the governor to have overstepped the bounds of the permission given and on 13 May Pringle was summoned to the office of the fiscal. The interview was a lively one, and Pringle

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1. Abram Faure (1795 - 1875), minister of The Dutch Reformed Church, in Graaff Reinet, 1818, and Cape Town, 1822; started a Dutch magazine Het Nederduitsche-Zuid-Afrikaansche Tydscrif.
 2. A. M. L. Robinson, The Life and Death of the South African Journal, Q. B. S. A. L., Vol. XII (1958), p. 102. T. Pringle, Narrative of a Residence in South Africa (London, 1835), p. 179.
 3. Ibid., p. 180.

was asked for a pledge that the editors would keep within the limits of the prospectus published by them the previous October, undertaking "to guard against any abuse of [their] design by strictly excluding all topics of Political or Personal Controversy."¹ Pringle preferred to terminate the publication pending the outcome of a petition he planned to submit to the British government appealing for freedom of the press.²

Meanwhile another journalistic venture had begun almost simultaneously in Cape Town. In July 1823 the printer, Greig, had submitted a memorial to establish a newspaper,

"which will combine the ordinary topics of a magazine, and more particularly such as are interesting to the commercial and agricultural parts of the community, but rigidly excluding personal controversy, and all discussion relating to the policy or administration of the Colonial Government."³

In August 1823 Greig had been informed that numerous other applicants had a prior claim "whenever a Printing Press shall be established in the colony."⁴ But by December no other newspaper had emerged and Greig decided to risk publication, having ascertained that there was no legal prohibition against his proposed newspaper. He printed a prospectus in which he again engaged to avoid all matters of personal controversy or matters of government.⁵ A copy of this was sent to the governor but elicited no response. Publication of The South African Commercial Advertiser began on 7 January 1824. Initially the paper appeared in English only but in March became a bilingual publication in Dutch and English. It also came under the editorship of John Fairbairn and Thomas Pringle.

In spite of the guarantee to avoid all matters of a personal nature or relating to the government, The South African Commercial Advertiser began publishing accounts of local trials, including the criminal proceedings

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1. R.C.C. Vol. XVI, p. 323, Prospectus of the South African Magazine.
 2. Hockly, British Settlers, p. 96. The decision was related to events connected with the newspaper the S.A.C.A., *infra*, p. 444.
 3. Meurant, Sixty Years Ago, pp. 15-16. Memorial of Greig to the governor, July 1823, quoted in full.
 4. Meurant, Sixty Years Ago, p. 17.
 5. *Ibid.*, p. 19. Cf. Memorial of July 1823, *supra*, n. 3.

in the cases of Edwards and Carnall, both charged with seditious libel involving government officials, including the governor, and both subjected to very heavy punishments of transportation to New South Wales.¹ Carnall's sentence was subsequently commuted to banishment and he travelled at once to England to petition against the severity even of this sentence. On the recommendation of James Stephen the sentence was remitted.²

Because of the detailed reporting of legal cases Greig was required early in May 1824 to submit his newspaper to the fiscal for censorship and to enter into a bond of 10 000 rixdollars that he would abide by the terms of his prospectus. On the advice of his editors, Pringle and Fairbairn, Greig decided instead to halt publication rather than submit to censorship. He advertised his intention by placing placards in front of his premises announcing that The South African Commercial Advertiser would cease publication. When a government official tried to remove the placards Greig prevented him from doing so because he had found that the official carried no warrant. Stringent measures were then taken against Greig himself. He received an order of banishment requiring him to leave the colony within one month and his printing press was to be sealed up. Greig managed to publish a sheet of "Facts connected with the stopping of the Press, and the Censorship of the Fiscal" before this could be done.³

A fortnight after his banishment order had been served on him Greig was told that it would not be carried out. He chose however to leave the colony and travelled to Britain where he immediately began to plead for a free press in the colony. These events took place in May at the same time as the strictures were issued against Pringle's other publication. The whole situation had created a "strong sensation" in Cape Town and soon a petition had been prepared appealing to the king in council for a free press. Of the 209 colonists who signed it 40 bore Dutch names.⁴

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1. Supra, p. 30. King, Richard Bourke, pp. 67-8.
 2. King, Richard Bourke, p. 68.
 3. Butler, The 1820 Settlers, An Illustrated Commentary, p. 156. Meurant, Sixty Years Ago, p. 65.
 4. Robinson, The Life and Death of the South African Journal, Q. B. S. A. L., Vol. XII (1958), p. 109.

Meanwhile the government printer, Bridekirk, had purchased Greig's equipment from the government and inaugurated a new paper, The South African Chronicle and Mercantile Advertiser which ran from August 1824 until December 1826. The views expressed in this publication were pro-government and the venture did not prove a success.¹

It will be recalled that Greig's case had caused considerable embarrassment to the secretary of state at the end of 1824 and was closely linked with the decision to introduce constitutional reform.² Arrangements for the establishment of a council of advice having been finalised early in February 1825, before the matter could come before the House of Commons for discussion, a similar plan seems to have been followed in regard to the arrangements concerning the press.³ In February 1825 permission was given for Greig to return to the colony and resume publication of The South African Commercial Advertiser, on the strict understanding that he would abide by the terms of his prospectus.⁴ Greig started publishing again in August 1825, with Fairbairn as sole editor of the paper.

By the end of 1825 then colonists seemed to have advanced their stand for liberties on two fronts. On the one hand Bathurst had allowed Greig to return to the colony and resume publication of The South African Commercial Advertiser, on the other hand in various ways Greig, Fairbairn and Pringle had drawn attention to autocracy in action and this was a contributory factor in the prompt establishment of the Council of Advice. There was to be repeated inter-action between the press and the Council of Advice which, important though it was, fell far short of the liberal dreams of civil rights and political representation that were to be canvassed at the Cape in the ensuing years.

From August 1825 when The South African Commercial Advertiser resumed publication it became clear that it was the editor's intention

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1. Cutten, A History of the Press in South Africa, p. 14.
 2. Supra, p. 29f.
 3. Cf. Infra, Appendix B.
 4. C.O. 49/16, Bathurst to Somerset, 14/2/1825. Prolonged negotiations ensued over the return of Greig's equipment which the government had sold to Bridekirk. C.O. 49/16, passim. C.O. 48/80, passim.

to follow up what he regarded as only a first round victory in a long campaign. The part that the press could play was emphasised,

"we must speak honestly and truly to [the King's] representatives here. The Governor and Council invite information ... Here we have also the Press - a tower of strength, from the top of which a trumpet can make itself heard on both sides of the Atlantic Pshaw! We are in a flourishing way."1

During the remaining months of 1825 the tenor of editorial articles remained the same, urging the importance of a free press and pleading for other liberties,² notwithstanding the undertaking given in the prospectus of December 1823 to avoid all subjects of personal or political controversy.³ In January 1826 Fairbairn took his cause a step further by inaugurating another publication. It was this action which first brought the subject of the press before the Council of Advice and which brought into the open Fairbairn's aim of an entirely unfettered press for the colony.

At a council meeting held on 10 January 1826 it was noted that two new journals The New Organ and De Verzamelaar had begun publication without a government licence.⁴ The respective editors and printers were summoned before the council and questioned regarding their neglect.⁵ In the case of De Verzamelaar the editor claimed that he had applied for such a licence but had received no reply.⁶ In the case

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1. S.A.C.A., 7/9/1825, Editorial.
 2. E.g. S.A.C.A., 4/10/1825, Editorial comparing the state of the press at the Cape and in Britain; 19/10/1825, Editorial, commenting on the memorial for a free press submitted to the king the previous year. 5/8/1825 and 8/8/1825, Editorial comment on the government of the colony, which had come under discussion in the House of Commons in May 1825. Reports of these proceedings had reached the colony in July. Hansard, Parliamentary Debates, New Series, Vol. XIII, c. 903 and c. 1166.
 3. *Supra*, p. 443.
 4. C.O. 51/1, Minutes, 10/1/1826. (R.C.C. Vol. XXIX, p. 232.)
 5. Greig and Fairbairn, printer and editor respectively of The New Organ which had first appeared on 7 January 1826 and Bridekirk and de Lima, printer and editor respectively of the Dutch journal, De Verzamelaar which ran from January to November 1826 and from February 1827 to January 1829.
 6. This was subsequently denied by the colonial secretary. C.O. 51/1, Minutes, 7/2/1826. (R.C.C. Vol. XXIX, p. 248.)

of The New Organ the editor, Fairbairn, stated that he had not considered a licence necessary. Questioned further he declared that he was not willing to subscribe to the same conditions laid down in the prospectus of The South African Commercial Advertiser which he also edited, because he considered them too restrictive. He would prefer to submit a new prospectus and defer publication until the views of the secretary of state could be obtained.¹

Fairbairn subsequently submitted a prospectus which was examined by the council and found to describe "only the general nature of the proposed publication, without specifying any particular restrictions or limitations which the Publisher would agree to ..."² This was considered inadequate and Fairbairn was therefore summoned to appear before the council again and was advised that in terms of the existing law he would have to submit a specific not a general prospectus.³ This he refused to do and instead made application again to have the matter referred to the Colonial Office. Asked what precisely the purpose of such application would be Fairbairn stated,

"I would wish to see a general Law, and not particular provisions against Individuals. Question. It appears then to Council that your object in applying to Earl Bathurst is to secure a free Press in this colony, subject only to the Colonial Laws. Is this your meaning? Answer. Yes, subject of course to the laws existing."⁴

As requested, Fairbairn's general prospectus was sent to the secretary of state, together with an account of the council's proceedings on the question.⁵

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1. C.O. 51/1, Minutes, 12/1/1826. (R.C.C. Vol. XXIX, p. 235.)
 2. C.O. 51/1, Minutes, 23/1/1826. (R.C.C. Vol. XXIX, p. 237.)
 3. C.O. 51/1, Minutes, 26/1/1826. (R.C.C. Vol. XXIX, p. 239.)
 4. Ibid. The council also took advantage of Fairbairn's attendance to admonish him for the tone of recent editorials in the S.A.C.A.
 5. C.O. 48/80, Somerset to Bathurst, 29/1/1826 and 8/2/1826, enclosing the Press Laws of Holland formerly operative in the colony.

It was shortly after this in March 1826 that the governor, Somerset, left the colony to face his critics in London. The lieutenant governor, Bourke, held liberal views on the press, which he considered should be left as free as possible, to be controlled only by the law of libel.¹ He did however appeal to the editor of The South African Commercial Advertiser to refrain from attacking Somerset's regime during the governor's absence in England, indicating at the same time that he would not be over-sensitive to criticism of his own administration.² The request went unheeded. Challenging and provocative articles soon appeared regularly, criticising the existing institutions of the colony and the absent governor, Somerset. Not only were there frequent references to the need for liberty of the press and other political rights in the colony, there was also outright criticism of almost every existing establishment, including the Council of Advice. The Orphan Chamber, the system of taxation, the cost of the establishment and need for economy, the whole structure of government - all were condemned by the editor of The South African Commercial Advertiser as obsolete or unwieldy:-³ "the intermeddling, presumptuous and ruinous system is the thing we must get rid of."⁴ Fairbairn also denounced the Council of Advice, to which he had earlier looked for the source of enlightened reform.⁵ He suggested that it was difficult to know whether the council had been intended to protect the colonists against the governor, or the governor against the colonists.

"For a Check they are too dependent; as Advisers they are too few and too little under the eye of those on whose interests they may be called upon to deliberate. The people have no voice directly or indirectly in their election, no means of knowing their principles, or their opinions, no control over their conduct, and consequently think very little about them."⁶

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1. King, Richard Bourke, p. 104.
 2. Ibid.
 3. E.g. S.A.C.A., 26/4/1826; 3/5/1826; 10/5/1826; 14/6/1826; 18/7/1826, Editorials.
 4. S.A.C.A., 1/7/1826, Editorial.
 5. Supra, p. 446.
 6. S.A.C.A., 7/6/1826, Editorial.

The sentiments of the editor were echoed by many of the correspondents who wrote letters to the press. The fact that council business was confidential and council members were sworn to secrecy seemed particularly offensive.

"What is the council about? What are its duties? Has it any? Is it a mere quíz - a pure unadulterated hoax?"¹

"Until the Nature of the Council's work is known, they may rest assured that however estimable in private life - however honorable, wise and upright in Council, they will receive no praise for what is good, and they will have to bear the odium of all that is bad in the Government."²

Occasion was also frequently taken by the editor to compare the Cape with other colonies. The conditions of government and of the press in New South Wales were discussed many times³ particularly as ships travelling from Australia to Britain usually called at Table Bay and direct communication between the two settlements was relatively easy. A similar situation obtained in regard to India where the state of the press was a lively topic⁴ and its development was closely watched by the editor of The South African Commercial Advertiser.⁵ As the leading journalist of the colony Fairbairn certainly showed considerable flair and even brilliance. Throughout 1826 his attack on the government had been made by means of two quite separate methods. On the one hand he attacked boldly and directly those institutions or conditions of which he did not approve. On the other hand with shrewdness and subtlety he quoted relevant examples from other colonies thus indirectly drawing or implying a comparison with the Cape.

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1. S.A.C.A., 12/4/1826, Letter from X.
 2. S.A.C.A., 12/4/1826 Letter from Albany Correspondent.
 3. E.g. S.A.C.A., 23/11/1825, Editorial on N.S.W.
 4. Supra, p. 31, n. 2.
 5. E.g. S.A.C.A., 3/5/1826, Editorial on lack of press freedom in India.

Nor was the absent governor, Somerset, spared from the barrage of criticism that flowed from the skilful pen of Fairbairn. At first the denunciation was oblique, though scarcely veiled. Later it was made with more audacity, especially once it was known that Somerset's administration had been under discussion in the House of Commons in May 1826.¹ A derogatory report on the governor that had appeared overseas in The Morning Chronicle was also printed by The South African Commercial Advertiser,²

"If England is determined to use us only as a depot for the dregs of her Aristocracy - if her surplus Idlers are to be quartered upon us at this rate - we would not only advise our countryman to avoid these shores, but would . . . point out . . . the propriety of abandoning the Settlement."³

"Our present distress is to be attributed . . . First, to an originally bad, arbitrary and expensive system of Government, rotten to its very foundation: - secondly, to the last ten years' administration of that system by Lord Charles Somerset: - and thirdly, to the frequent partial or total failures of our crops for some years back, and the decline of the demand for our wine."⁴

"Lord Charles Somerset will certainly never revisit the Cape in the Capacity which even his friends must now regret he so long filled in it and the Colonists will feel no further interest in His Lordship's future fortunes . . ."⁵

Bourke's tolerance during this unremitting campaign of vituperation was remarkable. He kept a close watch on the situation and discussed with the fiscal the possibility of prosecution but resolved that he would only take legal action in the event of an infringement of the English law of libel.⁶ In August 1826 he decided to issue a warning to the proprietors

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1. Hansard, Parliamentary Debates, New Series, Vol. XV, c. 961-7.
 2. S.A.C.A., 7/6/1826, Report from The Morning Chronicle.
 3. S.A.C.A., 26/4/1826, Editorial.
 4. S.A.C.A., 17/5/1826, Editorial.
 5. S.A.C.A., 1/8/1826, Editorial commenting on reports from overseas papers that because of the parliamentary debate on his government, Somerset had decided to resign from office.
 6. King, Richard Bourke, pp. 104-5. According to the fiscal there was a case for libel in terms of the Dutch law.

of The South African Commercial Advertiser. The lieutenant governor was probably brought to this decision by the arrival of Bathurst's despatch dealing with the question of The New Organ and the application for a free press.¹ This had arrived in July 1826 and was tabled at a council meeting held on 31 July. The secretary of state had supported the stand taken by the council in January 1826, namely that a general prospectus was inadequate. Fairbairn and his supporters were thus checkmated.²

With the weight of the Colonial Office now behind them the Council of Advice took action to curtail the presumption and contumely of the editors of The South African Commercial Advertiser. The printer, Greig, in whose name the licence for The South African Commercial Advertiser was registered, was summoned to the council to be warned that he had been abusing the terms of his prospectus. Greig had also recently started publishing another journal for which he had not obtained the required licence. He was advised to apply for a licence or desist from publishing the second paper and was warned that the continuation of his original publication was also in jeopardy. The tone of the newspaper, both in its editorial comment and in the letters that had appeared on its pages during the preceding months, was construed to have violated the terms of the licence granted.³ Articles that were particularly offensive had been published on 31 May,⁴ 28 June,⁵ 1 July⁶ and 1 August.⁷

The warning made little difference to the tenor of writing in The South African Commercial Advertiser. The editor and private correspondents continued undaunted in their attack on various departments and

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1. Supra, p. 447.
 2. C.O. 49/19, Bathurst to Somersset, 11/4/1826. (R.C.C. Vol. XXVI, p. 250.) C.O. 51/3, Minutes, 31/7/1826. (R.C.C. Vol. XXIX, p. 354.)
 3. C.O. 51/3, Minutes, 4/8/1826. (R.C.C. Vol. XXIX, p. 259.)
 4. S.A.C.A., 31/5/1826, Editorial on the Cape government.
 5. S.A.C.A., 28/6/1826, Editorial comparing D.E.I.C. rule with British rule, "our pockets are now picked much more ceremoniously and particularly than formerly."
 6. S.A.C.A., 1/7/1826, Editorial complaining that the colony was over-taxed and under-protected especially in the eastern districts.
 7. Supra, p. 450, n. 5.

activities of the government. Critical questions of the day supplied them with useful material. Slave amelioration and currency in particular had fostered discontent locally¹ and provided grist to the editorial mill. Such questions served to augment local support for Fairbairn's campaigns which were really on quite another level and concerned with questions of a different character. Fairbairn's aims were, firstly, to discredit the existing establishment and, secondly, to demand political rights, notably a representative assembly. Week after week he hammered these two themes in his forceful editorial articles.² From the middle of August he challenged the inhabitants of the colony to appeal directly to parliament for redress of their many grievances and for a legislative assembly which was their due as citizens of the empire.³ The call for a petition gained wide support and by December such a petition was lying for signatures at the hall of the Commercial Exchange in Cape Town. By January there were over 1 000 signatures appended. This had increased to 1 600 by the time that the petition was transmitted to London in February 1827. It was presented to the House of Commons by Alexander Baring in June 1827 but consideration was deferred.⁴

Throughout the months of Fairbairn's discrediting campaign and the canvassing of signatures for the petition to parliament Bourke and the council again showed commendable restraint. This was all the more remarkable as they were engaged at the time in another controversy involving the press in the course of which they received from Greig letters

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1. Supra, Chs. 4 and 6.
 2. E.g. S.A.C.A., 2/9/1826. Editorial on free press; 20/9/1826, Editorial on countries of Europe where freedom existed; 7/10/1826, Editorial on government by the "eyes and the ears" - "but at the Cape we are led chiefly by the nose"; 14/11/1826, Editorial on taxes.
 3. S.A.C.A., 12/8/1826 and 15/8/1826 Editorials on free press and need to petition parliament for representation; 26/8/1826, Editorial on local grievances and need to petition parliament for redress.
 4. Fryer, *The Government of the Cape of Good Hope, 1825 - 1854*, A.Y.B. 1961, Vol. I, p. 7. Supra, pp. 162-6.

of an extremely offensive character.¹ In view of the prevailing attitude of both the editor and the printer it must have come as something of a relief to Bourke and the Council of Advice to receive clear instructions in March 1827 directing that Greig's licence to print The South African Commercial Advertiser should be cancelled.²

The reason for this intervention went back to May 1826 when The South African Commercial Advertiser had published an account of legal proceedings involving Buissine,³ a former government official at the Cape who had been convicted of embezzlement in 1823. The newspaper report had implied that Buissine's treatment at the hands of the governor Somerset had been harsh and oppressive.⁴ This and other material from The South African Commercial Advertiser⁵ had come to the attention of Somerset in London, and he had begun "badgering Bathurst to give instructions for Greig's prosecution"⁶ the matter had been referred to Stephen for advice who had not recommended legal action.⁷ But because of Somerset's importunity Bathurst had decided to cancel Greig's licence and instructions were sent to the Cape accordingly.⁸ The order was carried

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1. The question concerned the introduction of a stamp duty on newspapers, which had been proposed by Bathurst in April 1826, considered by the Council of Advice in consultation with local printers from August and enacted in terms of ordinance 25 in October 1826. Greig had then written two strongly worded letters denying the government's right to impose such a duty and denouncing "this unjust and most inexcusable measure." C.O. 49/19, Bathurst to Somerset, 11/4/1826. C.O. 51/3 and 51/5, Minutes, 1826, *passim*. Gazette, 20/10/1826, Ord. No. 25. A similar stamp duty was operative in England at the time and served to keep the price of newspapers high and thus limit circulation. Wickwar, The Struggle for the Freedom of the Press, pp. 29-30.
 2. C.O. 49/19, Bathurst to Bourke, 3/12/1826. (R.C.C. Vol. XXVII, p. 397.)
 3. Petrus Buissine, landdrost of Swellendam, 1810; acting inspector of lands, 1819; receiver of land revenue, 1820.
 4. S.A.C.A., 24/5/1826, Report of Buissine's Case.
 5. *Supra*, p. 450.
 6. King, Richard Bourke, p. 105.
 7. C.O. 48/95, Stephen to Hay, 16/9/1826.
 8. C.O. 49/19, Bathurst to Bourke, 3/12/1826. (R.C.C. Vol. XXVII, p. 397.)

out on 10 March 1827 and was reported to the Council of Advice a few days later.¹ There was an immediate outcry in Cape Town when the order of suppression was enforced and on 12 March the governor received a memorial requesting permission for a public meeting to be held to discuss the matter.² This was tabled at the same meeting as the report of the action taken against The South African Commercial Advertiser. The council met the situation with some dignity. The government, they said, had usually granted permission to hold meetings provided they concerned the general interests of the colony. For the present situation there was no precedent as the object was to deliberate upon an act of His Majesty's Government.³ As a result of this refusal for public discussion of the suppression of the newspaper Fairbairn made direct application to the secretary of state for the matter to be reconsidered.⁴

For the government of the Cape there followed a short respite from press criticism. During 1827 the Council of Advice received several applications from prospective editors wishing to start new papers or journals but most of these ventures do not seem to have got off the ground. In April the council granted permission to one Herbert Pugh to establish The Cape of Good Hope Herald.⁵ In May the request of the Rev. Richard Miles⁶ to begin a monthly paper, The South African Missionary Herald was favourably received.⁷ By November the council had received further instructions from London concerning the press⁸ and in terms of these a licence was granted to William Beddy⁹ to begin a weekly newspaper, The Colonist¹⁰ and to Hugh Huntly to launch another weekly paper, The South

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1. C.O. 51/6, Minutes, 13/3/1827. (R.C.C. Vol. XXXIV, p. 375.)
 2. C.O. 51/7, Appendix H4, Memorial requesting permission to hold a public meeting, 12/3/1827.
 3. C.O. 51/6, Minutes, 13/3/1827. (R.C.C. Vol. XXXIV, p. 375.)
 4. *Infra*, p. 457.
 5. C.O. 51/6, Minutes, 10/4/1827, (R.C.C. Vol. XXXIV, pp. 390-3.)
 6. Richard Miles, missionary of the London Missionary Society, acting superintendent of the South African missions during the leave of absence of Dr. Philip, 1826-9.
 7. C.O. 51/6, Minutes, 28/5/1827. (R.C.C. Vol. XXXIV, p. 415.)
 8. *Infra*, p. 457.
 9. William Beddy, lawyer from Dublin recently settled at the Cape; editor of The Colonist, 1827 - 9.
 10. C.O. 51/8, Minutes, 5/11/1827. (R.C.C. Vol. XXXIV, p. 473.)

African Herald.¹ Of all of these proposed publications only The Colonist appears to have materialised. It proved to be less given to invective and calumny though not necessarily pro- government. The Colonist frequently published articles criticising the administration and the Council of Advice but the tone of these was mild and reasonable. For example,

"The proceedings of such a body [i.e. a legislative assembly] would be open, not secret as are those of the Council. Every measure would be publicly discussed before it became a law, and the Colonists would thus have an opportunity of objecting to a bad project..."²

Meanwhile as soon as Greig's licence for publishing The South African Commercial Advertiser had been cancelled, Bourke had informed the secretary of state of this action and also of the request for a public meeting to discuss the issue, which had been refused by the Council of Advice.³ Bourke knew that Fairbairn intended to proceed to London with a view to petitioning parliament on the matter. In his official despatch to Bathurst and in a private letter written a few days later to Hay, Bourke urged the introduction of a free press controlled only by the law of libel.⁴ He was confident that this would be the most satisfactory method of control at the Cape and would prove adequate once the new judiciary was established in fulfilment of the recommendations of the Commission of Inquiry later that year.⁵ Bourke thought that the members of the Council of Advice shared these views; yet he recognised the need for conformity in press regulations throughout the empire and had not wished to bring the subject prematurely before the council. Whether the secretary of state favoured a licensed press or control by prosecution for libel, Bourke recommended that,

"the legislative Ordinance which it will be necessary to publish in either case should be prepared under Your Lordship's instructions at home and sent hither to be promulgated in the usual form."⁶

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1. C.O. 51/8, Minutes, 18/12/1827. (R.C.C. Vol. XXXIV, pp. 523 and 533.)
 2. The Colonist, 5/8/1828, Editorial.
 3. *Supra*, p. 454.
 4. C.O. 48/107, Bourke to Bathurst, 17/3/1827. C.A. G.H. 23/17, Bourke to Hay, 23/3/1827. This was the existing position in Britain in 1827. Wickwar. The Struggle for the Freedom of the Press, pp. 18-28.
 5. *Supra*, p. 110.
 6. C.O. 48/107, Bourke to Bathurst, 17/3/1827.

This proposal is interesting as it has generally been considered that the draft press ordinance which emanated from the Colonial Office was the direct result of Fairbairn's efforts in London.¹ The proposal for such an ordinance was clearly Bourke's.² In a private letter to Hay on the subject of The South African Commercial Advertiser the colonial secretary, Plasket, further stressed the need for a definite ruling on the state of the press in the colony and justified the Council of Advice for their refusal to allow a public meeting to discuss the suppression of the paper.³

By the middle of 1827 then the Colonial Office had received a number of separate communications from the colony on the topic of the press from Bourke, Plasket and Fairbairn,⁴ as well as the petition of December 1826 appealing for a general extension of political liberties to the colony including a free press.⁵ In Britain Lord Liverpool's government in which Bathurst had served for fifteen years, ended in April 1827. The old stability had gone. Between April 1827 and January 1829 when a draft ordinance was finally prepared, Goderich, Huskisson and Murray successively held office.⁶ Each in turn brought the position of the press at the Cape a step nearer to the liberty desired by Fairbairn. General principles for the regulation of the press were mooted by Goderich in July 1827, elaborated by Huskisson and finally formulated by Murray in 1829 in the form of a draft ordinance as requested by Bourke in March 1827.

Goderich favoured a general extension of political rights to the colonies.⁷ On the matter of the press he wrote,

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1. E.g. Meurant, Sixty Years Ago, p. 73. Hockly, British Settlers, p. 99. O.H.S.A. Vol. I, p. 316.
 2. King, Richard Bourke, p. 105, n. 14.
 3. Supra, p. 454, R.C.C. Vol. XXXI, p. 123, Plasket to Hay, 23/3/1827.
 4. Fairbairn left the colony in 1827 and spent more than a year negotiating with the Colonial Office. C.O. 48/96.
 5. Supra, p. 452.
 6. Infra, Appendix A.
 7. W.D. Jones, Prosperity Robinson (New York, 1967), p. 219.

"Amongst the various matters connected with the Government at the Cape of Good Hope, there is none which appears to me to be of more importance than the State of the Press and the degree to which it may be prudent to relax the restrictions under which it has hitherto been invariably conducted."¹

But he realised that even with the existing control at the Cape, exercised by means of a licensing system and the required prospectus, the government had not been spared embarrassment and humiliation at the hands of local editors. Goderich was reluctant therefore to grant an entirely free press. He suggested that a general prospectus should still be required from publishers as well as testimonials to their good character. But the government should not have the right to withhold the requested licence if these requirements had been met. Thereafter control should be exercised only through the normal process of law with the cancellation of a publisher's licence the ultimate penalty for a conviction of libel.

These new regulations were put into effect unobtrusively at the Cape with the grant of a publisher's licence to William Beddy in November 1827, on which occasion Goderich's despatch was read to the Council of Advice.² Meanwhile in London Fairbairn had sought permission to resume publication of The South African Commercial Advertiser and in January 1828 this was given by the new secretary of state, Huskisson.³ Fairbairn was back in the colony within six months and in July 1828 the printer, Greig, applied once again for a publisher's licence. This was granted by the Council of Advice in terms of the new regulations. Three members of the council, Bell, Stockenstrom and Stoll testified to the good character of the applicant. As soon as publication was resumed in October 1828 the regular onslaught of criticism against the existing government was revived. This tirade was directed more specifically now against the

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1. C.O. 49/19, Goderich to Bourke, 28/7/1827. (R.C.C. Vol. XXXII, p. 230.)
 2. *Supra*, p. 454. C.O. 51/8, Minutes, 5/11/1827.
 3. C.O. 49/22, *passim*, Hay to Fairbairn, December 1827 and January 1828. C.O. 49/21, Huskisson to Bourke, 19/1/1828 and 20/1/1828.

Council of Advice, particularly as the results of the Commission of Inquiry had been so disappointing as far as political change was concerned.¹

Other developments in the colony had aided the reform movement. The final outcome of the protracted negotiations concerning the rate of the rixdollar had become known in the colony at the beginning of 1828, following the attempts of Caledon and Baring to arrange redress for creditors with long outstanding debts due to them.² Disappointment had naturally been felt in the colony that not even these seemingly legitimate claims for a better rate of exchange had been met sympathetically by the Treasury Board and Colonial Office.³ Throughout 1828 a sense of grievance over the currency issued had found expression locally in Beddy's paper The Colonist, the tone of which though mild at first had gradually become more strongly anti-government.⁴ Disillusionment over other matters had been added to dismay over the fixed rate of exchange.⁵ By June 1828 a decision had been taken to petition parliament once again. Public meetings had been held to discuss the question and two petitions were finally drawn up, one from Cape Town the other from the eastern districts of the colony.⁶ Dutch and English inhabitants had shown a united front on the issues involved. These were mainly concerned with the proposals of the commissioners of inquiry, many of which had by now been implemented in the colony.⁷ Gratitude was expressed for what

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1. Supra, p. 106. E.g. S.A.C.A. 11/10/1828, 1/11/1828, 22/11/1828 and 6/12/1828, Editorials on the government and the inadequacy of the changes introduced earlier that year.
 2. Supra, p. 167f.
 3. E.g. The Colonist, May 1828, passim, Editorials and letters to the press. The rate of exchange remained a sore point for many years, e.g., infra, Appendix K. Letter of Edward Chiappini.
 4. Supra, p. 455. E.g. The Colonist, 22/11/1827 and 21/3/1828, Editorials, criticising the government and suggesting that much benefit was lost to the colony by the want of a representative assembly.
 5. E.g. The loss of the Burger Senate and boards of landdrost and heemraden; the requirement of the judges that jurors needed to be able to understand English; the heavy taxation. The Colonist, 1828, passim.
 6. The Colonist, June and July, 1828, passim. The petition from Cape Town was published on 24/6/1828, that from Albany and the eastern division of the colony on 15/7/1828.
 7. Supra, Ch. 3, passim.

had been achieved as a result of the commissioners' labours, but the limited nature of the changes was condemned,

"With the exception of the Judges having been made independent of the Government, and the partial introduction of Trial by Jury in criminal cases; little improvement appears to have resulted from the Commission."¹

The heavy tax burden still to be borne by the colony was particularly criticised, together with the continuance of the "unnecessary and expensive establishments."² The abolition of the Burger Senate and the boards of landdrost and heemraden were deplored, particularly as these had served as a channel of expression for local grievance or protest. In the time of the Dutch administration, it was claimed,

"the inhabitants then (exclusive of a Council to assist the Governor in the legislative and executive branches of Government) possessed a constitutional mode of representing their wishes and complaints by means of a board, denominated the Burger Senate, instituted as early as the year 1665, and so constituted of Citizens as to have been, at that period, of some utility and efficiency in protecting their interests; but the powers of this board having subsequent to the last capture of the colony, been greatly reduced, it degenerated to a mere office for the administration of financial affairs ... and has recently been entirely abolished."³

In both petitions the plea was made that the colony was ready for a representative system of government. The Albany petitioners grounded their plea in the fact that the commissioners of inquiry themselves had proposed such a form of government for the colony "when a sufficient time has elapsed to admit of a more perfect acquirement of the English language by the native Inhabitants." Somewhat naively the petitioners claimed that

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1. The Colonist, 24/6/1828, Petition of the ... Inhabitants.
 2. *Ibid.* One cause of frequent complaint was the colony's responsibility for paying the pensions of retired civil officers. Plasket's pension of £500, after only 3 years' service at the Cape, was so severely criticised that arrangements were finally made for part of his pension to be paid by the Malta government, where Plasket had served for 10 years. C.O. 48/127 and C.O. 49/22, *passim*.
 3. The Colonist, 24/6/1828, Petition of the ... Inhabitants. Cf. *Supra*, p. 114 n. 3.

the judicious establishment of public schools after 1822 had led to such a rapid and general diffusion of the English language that this time had already arrived.¹

By October 1828 when The South African Commercial Advertiser re-appeared in Cape Town, canvassing for signatures for the petitions was well under way. Fairbairn added to the publicity and used his editorial columns to promote the campaign.² Also by October much had been done by the Council of Advice to implement the proposals of the Commission of Inquiry and to introduce other new measures.³ This gave a whole new field for negative attack on the government, an opportunity which was not lost on the respective editors of The Colonist and The South African Commercial Advertiser.

The petition of 1828 was tabled by the House of Commons in 1829 but not discussed. The following year yet another petition was presented but in parliamentary debate it was rejected by the secretary of state, Murray, mainly on the grounds that while slavery still existed in the colony it would be inexpedient to grant a legislative assembly.⁴

Meanwhile in January 1829 a draft ordinance for regulating the press had at last been prepared in London on the instruction of Murray, now secretary of state. It had been requested by Bourke in March 1827:

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1. Cf. *Supra*, p. 125, n. 4.
 2. E.g. S.A.C.A., 11/10/1828; 3/12/1828; 6/12/1828, Editorials. Comparison was frequently made between the Council of Advice and the former Council of Policy which had shared the legislative authority of the governor. *Supra*, pp. 27-8. In June 1828 the petition was allegedly stolen from the Commercial Exchange and this provided the best publicity of all! The Colonist, 29/7/1828, Editorial.
 3. E.g. Ordinance 49 and 50.
 4. Eybers, Select Constitutional Documents Illustrating South African History, 1795 - 1916, p. 30, Debate in the House of Commons, 24 May, 1830. *Supra*, p. 263, n. 3.

the draft arrived in the colony in April 1829 when Cole was governor of the colony and he arranged at once for its promulgation locally, as ordinance 60,

"For preventing the Mischiefs arising from the printing and publishing of Newspapers ... by persons not known, and for regulating the printing and publication of such Papers in other respects; and also for restraining the abuses arising from the publication of blasphemous and seditious libels."¹

The new regulations appear to have been modelled on those introduced in England in 1798 for the control of the press.² Editors, publishers, printers and proprietors were required to furnish the government with an affidavit stating their intention to publish. Publications had to carry the name and address of the editor and printer and a specimen copy of each edition was to be delivered to the government within six days of being printed. Recognizances were to be given that no seditious or blasphemous libel would be published under penalty of £300. A conviction for such libel would incapacitate the editor, printer and proprietor from exercising their respective callings and the ultimate penalty for a second such conviction would be banishment.

Ordinance 60 conferring "the liberty of the press" on South Africa was initially hailed as a victory by The South African Commercial Advertiser. But the triumph was not complete. A free press was to be regarded as a stepping stone towards other freedoms. The tribunal of "public opinion" could now become the great judgement seat at which all public measures might be weighed in the balance. One of the most powerful instruments of this great Tribunal, public opinion, was the Press.³

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1. C.O. 49/23. Murray to Cole, 4/1/1829. C.O. 51/14, Minutes, 30/4/1829. Gazette, 8/5/1829, Ord. No. 60.
 2. Wickwar, The Struggle for The Freedom of the Press, p. 31. 38 Geo. III, c. 78.
 3. S. A. C. A., 9/5/1829, Editorial.

"It will be the fault of the Colonists themselves if their wishes remain unknown, or their grievances unredressed. Government has opened up a channel of communication to which all have free access. It has done its Duty in this respect; the People should not forget theirs."¹

A more explicit call was made in subsequent editorials to encourage colonists to campaign for other political freedoms. It was pointed out that the weapons which had been used so successfully in the battle for a free press had been Argument, Petition and Remonstrance, and that the same weapons would serve in the struggle for political freedom. Throughout the following months, and indeed years, the editor of The South African Commercial Advertiser continued to give a lead in calling for civil and political rights for the colony.² Questions of trade, taxation and slave amelioration still provided the main grounds of grievance and dissatisfaction, expressed in letters to the press,³ private letters,⁴ editorials and, finally, in yet further petitions drawn up in 1831, 1832 and 1833 for submission to parliament.⁵ Time and time again the claim was made that the colony was both ready for and entitled to the boon of a legislative assembly and that the alleged mismanagement of the existing administration would vanish once the colony had representative government. A legislative assembly was claimed as the panacea for all ills, and little constructive criticism or suggestion was put forward for solving the very real and deeprooted problems of the colony, particularly those concerned with the

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1. S.A.C.A. 9/5/1829, Editorial. The Colonist had ceased publication at the end of 1828.
 2. E.g. S.A.C.A., 16/5/1829; 15/7/1829; 29/7/1829; 10/7/1830; 31/8/1830; 19/1/1831; 26/10/1831, Editorials, criticising government and calling for a representative government.
 3. E.g. S.A.C.A., 10/2/1830, Letter from A Colonist on the value of the press in exposing abuses; 3/3/1830, Letter from Scalpel on taxation.
 4. E.g. Infra, Appendix K. Letter of Edward Chiappini.
 5. C.O. 48/142, Cole to Goderich, 18/4/1831 and enclosures. C.O. 48/146, Cole to Goderich, 6/1/1832 and enclosures. C.O. 48/149, Cole to Goderich, 21/3/1833. Supra, p. 262. Hunt, Sir Lowry Cole, p. 121. Fryer. The Government of the Cape of Good Hope, 1825 - 1854, A.Y.B. (1964) Vol. I, p. 7.

unfavourable trade balance and the need to find new markets and new products; the continuing discrepancy between revenue and expenditure; the procedures for abolishing slavery, now acknowledged to be unjust; and the difficulties of maintaining peace and good order in the frontier districts of the colony. The later petitions to parliament like those of 1826 and 1828 were ineffective in obtaining the desired representative government for the colony.

Petitions to parliament were not the concern of the Council of Advice. Nevertheless the fact of this continual agitation within the colony reflected on the council which was constantly under criticism in the local press.

In 1832 a matter arising indirectly from the press occasioned the only instance between 1825 and 1834 when a governor acted contrary to the expressed opinion of the Council of Advice, and led to a further declaration of the penalties for seditious libel. The penalties applicable under ordinance 60 had been criticised by Fairbairn in 1830.

"Transportation for printing a few words, which .. may be ... seditious .. is .. a very detestable sentence and we cannot envy the feelings of the gentlemen who ventured to convey such power to the governors of our colonies."¹

Yet within two years the governor was to claim that the existing legislation was inadequate for suppressing a threatened rebellion instigated partly by the editor of De Zuid Afrikaan and Fairbairn, editor of The South African Commercial Advertiser, was to uphold this view. The sequence of events connected with the incitement precipitated the only occasion on which a governor enacted an ordinance in the name of the council without having obtained the support of the council.

De Zuid Afrikaan had been launched in 1830 under the editorship of Brand² partly to counter-balance the pro-British, pro-Hottentot and pro-

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1. S.A.C.A., 25/9/1830.
 2. Christoffel Brand (1797-1875), advocate in Cape Town; one of the founders of De Zuid Afrikaan; speaker of the Legislative Council, 1854.

emancipist views of the English press at Cape Town. Most of the colony's slave owners were Dutch. The British policy of slave amelioration had caused a rift between Dutch and English colonists who had stood solidly together over the currency crisis and the problems of the wine trade.¹ When in April 1832 unofficial copies of the latest measures devised in Britain to regulate the relationship between master and slave had arrived prematurely in the colony and had appeared in the local press there had been an immediate outcry amongst Dutch slave owners against what appeared to be the latest encroachments on the legitimate rights of property owners.² They were not in a position to know that a modified order in council was being prepared for the Cape.³ Without waiting for the local government to enact any new regulations farmers and slave owners of the village of Koeberg, some fifteen miles from Cape Town, had issued a call to defiance and, if necessary, rebellion should the government attempt to enforce the measures most recently devised in Britain. The declaration, signed by 105 farmers, was published in De Zuid Afrikaan early in May 1832 whereupon Fairbairn, commenting in The South African Commercial Advertiser, labelled the Koeberg farmers "firebrands" and called upon them to retract their statement with all possible speed.⁴ Ninety of the original signatories then allegedly met together to pledge their support of the stand already taken.⁵ This second statement of the would-be rebels was also published in De Zuid Afrikaan. The main tenor of this document was one of antagonism towards the editor of The South African Commercial Advertiser and support for the editor of the Dutch paper, "the friend of our country". It reflected rivalry between the newspapers as much as defiance of the government over slave amelioration. Yet the governor, Cole, was alarmed. A pledge of support for the Koeberg farmers from Stellenbosch gave some justification to his anxiety. After some delay or hesitation he planned strong measures to curb the incipient rebellion.

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1. Hunt, Sir Lowry Cole, p. 122. *Supra*, Ch. 4, *passim*, and Ch. 7, pp. 273-6.
 2. *Supra*, p. 259.
 3. *Supra*, p. 259.
 4. S.A.C.A., 16/5/1832, Editorial.
 5. C.O. 51/17, Appendix H, report of a meeting of Agriculturists held at Koeberg on the 22nd May.

On 6 June 1832 the Council of Advice met and were notified by the governor of his intention to introduce emergency legislation because he had been advised by the law officers that the existing law was inadequate for the present crisis. Cole therefore presented to the council a draft ordinance "for the prevention and suppression of meetings whereby the peace and good order of the Colony might be endangered."¹ In terms of this ordinance it was necessary to obtain the permission of local officials before holding any public meeting, for whatsoever purpose, and it became an offence to discuss any matter which might bring the government into hatred or contempt. Publication of any matter so tending was also to be cognizable. In sum, the ordinance repeated in unmistakable terms the provisions of Somerset's proclamation of 1822 forbidding public meetings without prior consent and repeated those sections of ordinance 60 concerned with indictment for libel.² Cole intended to issue with the ordinance a proclamation declaratory of his lawful powers of banishment and, as a warning to those implicated in the threatened rebellion, that he would not hesitate to use these powers.

The council was divided on the question of the need for such a measure. Stockenstrom considered that existing legislation was adequate and that the governor was already empowered to act, even to banish, in terms of ordinance 60, and the proclamation of May 1822. At the request of Wade, the attorney general, Oliphant, was called before the council to give his opinion. He supported the statements already made by Cole, namely that additional powers were necessary. When the ordinance was read a second time three of the five council members present, Wade, Stockenstrom and Brink, "were of the opinion that more time for its consideration was requisite." The council then moved on to other business.³

The following day Cole called another meeting. He then informed the Council that he had withdrawn the proposed ordinance and proclamation from their consideration because he had considered it necessary to publish them without any delay.⁴ He had also considered it necessary to publish the measure in the usual form, as an ordinance of the governor

1. C.O. 51/26, Minutes, 6/6/1832.

2. *Supra*, 461.

3. C.O. 51/26, Minutes, 6/6/1832.

4. Delay would have meant missing the weekly posts to the interior.

in council. Cole knew it was in order for him to do this as he had at last received the assurance, so long requested from the secretary of state, that the term "with the advice of the council" meant no more than having heard that advice, whether it be in support of a measure or against it.¹ This point was one on which doubts had several times arisen and clarification had frequently been sought by Bourke and Cole.² The matter had been neglected by the Colonial Office for over three years but in December 1831 the ruling of James Stephen on the question had at last been conveyed to the Cape and had arrived just in time to give Cole the necessary authority.³ He therefore reminded the council that,

"On this occasion the Council only exercised that discretion which is their undoubted right, and His Excellency trusted they would feel convinced that nothing but a strong necessity could have induced him to act as he had done in the present instance."⁴

Cole also explained to the secretary of state that he had taken the matter before the council although it would have been competent for him to deal with it on his own authority to act without delay in times of emergency. When the council had tried to stall the measure, he had decided to over-ride their objections because he did not consider them of sufficient weight to have absolved him from the heavy responsibility of the consequences of delay.⁵

At the next council meeting Wade drew attention to the practice that had been introduced originally by Bourke in 1826 of providing in advance an abstract of council business for members to peruse before a meeting so that they could be the better equipped to deal promptly and responsibly with the measures under discussion. This procedure had been allowed to lapse and Wade requested that it be resumed.⁶ In the case of the draft ordinance brought before the council on 6 June 1832 members had requested more time to consider the proposed measure;

1. Supra, pp. 83 and 88.

2. Supra, pp. 81-89.

3. Supra, p. 88.

4. C.O. 51/26, Minutes, 7/6/1832.

5. C.O. 48/146, Cole to Goderich, Conf'l. 19/6/1832.

6. C.O. 51/26, Minutes, 9/6/1832. Supra, p. 71.

they had been "totally unprepared . . . not having had the slightest previous intimation of the intention of the government" to take action against the Koeberg farmers.¹ Cole's decision to enact the ordinance without waiting for the full consent of the council might have been rendered unnecessary if members had been given preliminary notification.

Ordinance 90 for suppressing public meetings was published on 8 June 1832 together with the accompanying proclamation.² Both were to last for one year. Somewhat surprisingly the editor of The South African Commercial Advertiser expressed his approval,

"Both are intended to protect the dignity of the laws, the efficiency of the government and the security of the peaceable, well-disposed and loyal inhabitants of the Colony."³

"So far from blaming the Government for having at last bared its arm and flashed the lightning of the Masters sword into the eyes of those who can see or understand no softer manifestation of Justice, we think that Ordinance 90, and the accompanying Proclamation were delayed up to the very latest hour that duty permitted. In principle neither of these documents contains anything new."⁴

Matters of the press did not come before the Council of Advice again and in the period between 1829 and 1834, as from 1825 to 1828, the government showed itself remarkably tolerant of press criticism and of agitation led by newspaper editors. In December 1831 The Graham's Town Journal had begun publication with Robert Godlonton as one of its regular contributors and, from 1834, its editor.⁵ This paper championed the rights of colonists in the eastern districts, particularly the British settlers of 1820 who still faced tremendous difficulties and challenges, although the extreme hardships of the early years of the settlement had been overcome. Problems of the frontier districts, particularly questions of peace and security, were sharpened by

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1. C.O. 51/26, Minutes, 9/6/1832. Grounds of opinion of P.G. Brink.
 2. Gazette, 8/6/1832, Ord. No. 90 and Govt. Proc.
 3. S.A.C.A., 9/6/1832, Introduction to the full text of the ordinance.
 4. S.A.C.A., 27/6/1832, Editorial.
 5. Robert Godlonton (1794-1884), 1820 settler; editor of The Graham's Town Journal, 1834; member of the Legislative Council, 1854.

the difficulties arising from ordinances 49 and 50 in operation.¹ The interests and anxieties of colonists in the frontier zone thus differed from those of the more secure and longer settled western districts of the Cape. This divergence was reflected in the respective newspapers. In Albany The Graham's Town Journal expressed the viewpoint of the frontiersmen, becoming in time an agent in the campaign for eastern separatism.² In Cape Town The South African Commercial Advertiser continued to criticise the government and to urge constitutional reform.³

When reform came however it had little to do with the campaign for representative government that had been waged through press and petition since 1826. The Colonial Office had been engaged in the question of constitutional reform for crown colonies since 1825.⁴ In 1833 provision was made to introduce at the Cape the two-tier conciliar system already established in New South Wales, in a number of West Indian colonies and in Ceylon.⁵ The appointment of a new governor for the colony in November 1833 gave occasion for introducing the change and when Sir Benjamin D'Urban arrived at the Cape in January 1834 he brought with him Instructions prescribing the new constitutional structure.⁶ The Instructions provided for an Executive Council of four official members and a Legislative Council composed of the same four

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1. Supra, Ch. 9, passim.
 2. D. B. Sole, The Separation Movement and the Demand for Resident Government in the Eastern Province (M.A. Thesis, Rhodes University, 1939), Ch. 1, passim.
 3. Fairbairn, editor of the S.A.C.A. was a son-in-law of Dr Philip and championed the cause of slaves, Hottentots and Xhosa. This at once brought him into conflict with the general trend of opinion among colonists in Albany and other frontier districts which Fairbairn had visited only once.
 4. Supra, pp. 36 and 53-4.
 5. Supra, pp. 53-4.
 6. C.O. 49/25, Instructions to D'Urban, 24/11/1833; Letters Patent, 23/10/1833. It had been reported in the S.A.C.A. as early as January 1833 that the constitution of the colony was to be revised and there had been occasional editorial speculation concerning the changes to be introduced. E.g. S.A.C.A. 2/1/1833; 3/7/1833, Editorials. When the form of new constitution became known it was welcomed as a beginning of change. E.g. S.A.C.A. 18/1/1834, Editorial. Some aspects soon came under attack, e.g. the initial attempt to meet behind closed doors, Fryer, The Government of the Cape of Good Hope, 1825-1854, A.Y.B. (1964), Vol. I, p. 8. S.A.C.A., 29/1/1834, Editorial.

officials together with the attorney general and from five to seven non-official members, to be chosen by the governor from among the "Chief Landed Proprietors and Principal Merchants." With the proclamation announcing the creation of these two councils the Council of Advice ceased to exist.¹ Its last meeting had been held on 7 January 1834.²

The Council of Advice was superseded in 1834 in accordance with a pattern of constitutional development now becoming familiar within the empire and to officials of the Colonial Office. The council's nine years of activity were ended with neither a formal ceremony of closure nor any expression of appreciation to its members. They had served well and faithfully and had helped to steer the colony through a difficult decade. On the council there were those whose acquaintance with the colony was of recent years as well as those who had been born at the Cape. Each appears to have served conscientiously as an advisor, seeking a real understanding of the problems of the colony and the needs of its diverse population. Relationships within the council chamber were generally harmonious, even when opinion was divided. The influence of each governor, as presiding officer, was of considerable significance. During its nine years the council owed much to the efficiency and competence of Bourke in particular, who planned not only far-sighted measures for the colony as a whole but whose meticulous care for the smooth and successful operation of the council served to mould this body into an effective instrument of government.

The problems handled by the Council of Advice from 1825 to 1834 were both diverse and complex in character. Many were rooted deeply in the past, for which there were no facile or swift remedies. Others arose as new and unexpected situations occurred within the colony. Some problems came before the council as a result of newly-devised British policy in a decade when far-reaching and important decisions were being made in London for implementation throughout the empire through the agency of the now well-established Colonial Office. As the Council of Advice dealt with the important issues brought to their consideration a serious and responsible effort was made to adopt solutions that would be both acceptable and

1. Gazette, 24/1/1834, Govt. Proc.

2. C.O. 51/34, Minutes, 7/1/1834. *Supra*, p. 264.

workable in the circumstances of the colony. On occasion this meant disagreeing with the governor or even the British government. Although at times they were uncertain of the degree of their independence and discretion, council members did not hesitate to affirm what they believed to be in the best interests of the colony and its inhabitants. Unfortunately their efforts in this regard could not be made public because of the oath of secrecy introduced by Somerset in 1825. It was partly for this reason that the council was so scathingly attacked in the local press. Yet this body of advisors was by no means merely subservient to the will or whim of its superiors, and was in no wise merely a rubber-stamp to official policy devised elsewhere. Whether of British or Dutch extraction, whether newly arrived in the colony or long familiar with its problems, whether serving for only a short period of time or for most or all of the nine years of the council's existence, council members applied themselves diligently to the task committed to them.

The work of the colonial government was often hampered by distance and delay. Sometimes the Council of Advice was itself the cause of delay. More often it was the victim of delays in London, caused usually by inter-departmental consultation and sometimes by negligence or oversight. These in turn were generally connected with changes in the British ministry. Between 1825 and 1834 the third secretaryship was held successively by six incumbents.¹ Although the personnel of the local Council of Advice changed from time to time,² the very fact of the council's existence gave a continuity on some questions that was crucial for their resolution in the colony. Matters which might have been relegated to the limbo of incompleting business in Colonial Office files, were brought to a firm conclusion by the persistence of the Council of Advice.

On occasion council members stood their ground in face of quite considerable opposition. This occurred for instance over the question

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1. *Infra*, Appendix A. There were in fact only five individuals who held the office from 1825 to 1834 as Goderich served for two separate terms.
 2. *Infra*, Appendix C II.
 3. E.g. *Supra*, Chs. 7 and 5. The question of the corn laws and the introduction of a sterling paper currency. These matters owed much to the activity of Bourke, yet the support of the Council of Advice gave added weight to his representations to London.

of the slave tax and slave amelioration. The problem of the slave tax highlights the difficulties and tensions created for the Council of Advice by the presence of the Commission of Inquiry in the colony. Although they co-operated to a certain extent, the purpose and function of the two bodies overlapped in some ways. The work of the one was bound to have repercussions on the work of the other. The comprehensive programme of reform proposed by the commissioners provided the origin of much of the council's business during 1827 and 1828. Council and commission were not always in agreement and this added to the difficulty of implementing some of the proposed changes.

Not all of the enduring work of the Council of Advice is attributable to the recommendations of the commissioners of inquiry. The thorough-going reform of the judicial and administrative structures undertaken from 1828 to 1834 may be seen mainly as the outcome of the commissioners' work. Two other major concerns dealt with by the Council of Advice were derived from policy decisions made in Britain, namely the currency and slavery questions. Other notable developments during the decade under consideration had their genesis in propositions put forward in the first instance by the governor or lieutenant governor and presented to the Council of Advice for formulation into practical measures. These included the regulation of the corn trade; the opening up of the frontier trade; the admission of native foreigners into the colony as labourers; the granting of equality before the law to Hottentots and other free persons of colour; and the establishment of a free press, although in this case the suggestion made by the lieutenant governor, Bourke, was channelled through the Colonial Office to the Council of Advice.

In all of their work, but more particularly in those areas concerned with new measures originating in the colony itself, the council proved to be a valuable team of advisors well able to assist the governor in the exercise of his executive and legislative authority. In 1828 James Stephen stated that the object of instituting the council was "to relieve the governor from the odium and responsibility of legislating alone."¹

1. C.O. 48/112, Stephen to Hay, 2/3/1828. *Supra*, p. 81.

Yet authority remained vested in the governor alone. This was the crucial problem for any council of advice and at the Cape, as elsewhere, the fine distinction between a sharing of responsibility without a sharing of authority was to prove a razor's edge. Added to this difficulty was the fact that the council's work could not be made public. Council members therefore had to bear not only the tensions of responsibility without authority but also the trial of public condemnation without defence. As long as their vigorous exertions on behalf of the colony and its inhabitants remained a secret it could be said of them that however wise honorable and upright they might be as advisors, "they will receive no praise for what is good and they will have to bear the odium of all that is bad in the government."¹ James Stephen had rightly summed up their role in 1828.

The Council of Advice at the Cape of Good Hope had been established by the secretary of state for war and colonies partly as a means of checking the autocratic governor, Somerset, and partly in order to bring the Cape into line with other conquered and ceded colonies captured during the wars against France at the beginning of the 19th century. The Council of Advice was superseded in 1834 by the dual conciliar pattern that was also the result of experience and experiment elsewhere in the empire. In 1854 this too was to be replaced and a form of representative government instituted. Such a system had been strongly urged by some of the more precocious of the British settlers during the period of the Council of Advice,[^] but the Colonial Office in London retained control over both the form and the pace of change. The Council of Advice served as one stage in the path of constitutional development that was clearly emerging for crown colonies of the British empire in the 19th century. At the Cape that council served both honorably and ably - a fitting precursor to later governments of the colony.

1. S.A.C.A., 12/4/1826, Letter from Albany Correspondent. *Supra*, p. 449.

Appendix A

Political Officials in Great Britain During the period 1825 to 1834

I. Prime Minister

Earl Liverpool	-	June 1812 to April 1827
George Canning	-	April 1827 to August 1827
Viscount Goderich		September 1827 to January 1828
Duke of Wellington		January 1828 to November 1830
Earl Grey	-	November 1830 to July 1834

Elections were held in:

September	1812	
June	1818	
February	1820	- following the death of George III
June	1826	
July	1830	- following the death of George IV
April	1831	- preceding the Reform Bill
December	1832	- following the Reform Bill

II. Secretary of State for War and the Colonies

Earl Bathurst	-	June 1812 to April 1827
Viscount Goderich	-	April 1827 to September 1827
William Huskisson	-	September 1827 to May 1828
Sir George Murray	-	May 1828 to November 1830
Viscount Goderich	-	November 1830 to March 1833
Hon. E.G. Stanley	-	March 1833 to June 1834
Thomas Spring Rice	-	June 1830 to November 1834

III.

Political Under Secretary

Henry Goulburn	-	August 1812 to December 1821
R.J. Wilmot Horton ¹	-	December 1821 to January 1828
Hon. E.G. Stanley	-	October 1827 to February 1828
Lord F. Leveson Gower	-	February 1828 to May 1828
Horace Twiss	-	May 1828 to November 1830
Viscount Howick	-	November 1830 to April 1833
J.G. Shaw-Lefevre	-	April 1833 to June 1834

IV.

Permanent Under Secretary

R.W. Hay	-	June 1825 to February 1836
James Stephen:		
Legal Adviser	-	1813 to 1847
Assistant Under Secretary		September 1834
Under Secretary	-	February 1836 to 1847

1. Robert Wilmot, took the name Wilmot Horton in 1823.

Appendix B

Letter from Bathurst to Somerset

Private and Confidential, 29/10/1824.

Dear Lord Charles.

You will receive two public letters from me on the subject of Mr Edward's business and another from me on that which relates to Mr Greig. From all these you will collect that I apprehend that the two Cases, as they at present stand, are not satisfactorily explained, and that something more must be known before either will be in a defensible State. I have (word illegible) for a private letter dealing more openly, lest those doubts which I cannot but entertain of the merits of each case, might, if found expressed in a public dispatch which Parliament might call for, become prejudicial to you, unless they were more entirely removed than I am afraid will turn out to be the case.

To begin with the case of Edwards. He was employed by a person of the name of Cooke to draw up some charges against the conduct of Mr Blair with regard to the /indenture,7 of black apprentices. In this, Edwards acted in his professional character and he expressly stated it, when he submitted those charges to be forwarded by you to the Treasury. As the Comptroller is a Revenue Officer he is under the Board of the Treasury, and the charges were therefore properly addressed to that Board. You appear to have refused sending those charges to their Lordships. Fortunately it was stated at the time that another copy had been sent to the Treasury and I have availed myself of this in my public letter, for if that had not been the case, I should have been under the necessity of at once expressing the King's displeasure at your intercepting representations made by His Majesty's subjects, properly addressed to that office whose special duty it is to take cognizance of the subject, to which those representations related. Your converting the charges into a libel, and ordering a prosecution against the individual who made them is certainly not as at present explained, what could be wished; but if it had ended there, the falsehood of the charges which you say have been proved, would sufficiently cover that part of the proceedings, as far as impression goes. But I am afraid that this would not justify your proceeding also, if you did proceed against Edwards for having acted in his professional character. I say if you did also proceed against him, for, I still flatter myself that you did not include him in the original proceeding and I have taken care so to understand it, when writing in my public letter on this part of the subject. The next

proceeding against Edwards had for its result a much more questionable termination. The punishment of Transportation for seven years for a libel sounds very harsh to English Ears; and you yourself seem to be aware of it, for you add that the Severity of the Punishment arose from his conduct at the trial. You will, I am sure, see that it is very necessary to have a Report of the Trial before I can confirm what you yourself think nothing but his conduct at it could justify.

I come now to the much graver question, that which relates to Greig. In this you have unfortunately stirred two most delicate questions to which every English feeling is most likely to be alive. The one, the freedom of the Press, the second, the power of expulsion without Trial, without Conviction, by the exercise of your own individual authority.

This question respecting the freedom of the Press will come for Parliamentary discussion at a moment particularly inauspicious. This question has been stirred in India and although every reflecting Man must see that a Free Press in that Country is incompatible with those Principles of Government by the maintenance of which we can alone hope to retain that Empire, yet still there will be found many who will attempt to argue in favour of a free Press even there, and those arguments can alone be met by stating the peculiar Situation of those Possessions. I regret to say that the Address from some of the inhabitants of the Cape drew the distinctions between that Colony and the East and West Indies (the latter of which stand upon a separate ground) in a manner which I am afraid will make many Converts, among whom probably will be a large proportion of those who will argue and vote against this liberty either in the East or the West Indies; they may even be glad to avail themselves of this opportunity of redeeming the popularity which they may imagine they have lost in supporting a more arbitrary System in the other British Possessions, in which they are individually interested, by shewing an extraordinary zeal for a free Press at the Cape and anywhere else.

But you have unfortunately surrounded the agitation of this Question with every possible degree of unpopularity by the seizure of the Press of the individual and the expulsion of him from the Colony. There was not, as I understand any conviction against him; you seized his Press, his private property by your own Authority. I am much relieved by what you have said that you have the legal sanction of the Chief Justice for this Act. It will form an essential part of your defence to have this document to lay before Parliament, and you will see that I have, therefore, applied for it. But it will be very difficult to know how to deal with the measure of expelling him from the Cape - I am aware that under your instructions you have that

extraordinary power given you; but it is one which even under those instructions you are not warranted to exercise except under circumstances of a much graver nature than in the present instance. The continuance of such a man as Greig in the colony could not be immediately dangerous to the State. It will argue ill, indeed, for your Government and of the estimation in which you are deservedly held in it, if this were possible.

I am bound to apprise you that the right of the Crown to give this power is by some persons questioned. It can alone be justified by the Supposition of some extreme Case of danger where the ordinary Administration of the Law will not admit of timely Assistance. I believe in my conscience that the possession of such power in the government of our distant possessions is necessary; but its salutary effect is rather in the knowledge that there is such a power, than in its exercise; and one instance of its improvident use will go a long way to deprive our Foreign Governments of this valuable, if not necessary, Instrument of Authority.

I will confess to you that I am very much afraid that what has passed lately at the Cape will bring on a jealous enquiry and revision of the powers vested in the Governors of ceded Possessions and unless precautions are taken, it will end in their being curtailed in a manner very prejudicial to their real interests. There has been indeed a strong disposition to question their powers, on other occasions, in other colonies; and I have for some time intended to protect them by giving to each of those Governors a Council, under certain restrictions, similar to those which it has long been thought prudent to establish in the East Indies. I have been willing to wait for the Report of the Commission at the Cape before I established such a Council there, thinking that probably they would recommend it. But if the arrival of their Report should be deferred to the meeting of Parliament I shall think it most prudent to establish it at once, as I am sure that it will be of great use in the discussion which will take place, if such a system is already adopted.

Command of temper is the most serviceable of all qualities of men vested with Authority, and one of the great Advantages of a Council is, that it comes in Aid of a Governor by giving him time to reflect, when, from human infirmity, he may lose that Command of which they who are opposed to him normally try, by provocation, to deprive him and Parliament will more willingly trust Authority to a Governor, when they have this security against its abuse.

You must from what I have written conclude that my impression is that your opponents have known how to irritate you and will take advantage of it. I do not doubt that if

I had been in your Situation, I should have been equally provoked. What you have done appears, probably, at the Cape little more than what might be expected from such provocation. Unfortunately here, these Questions will not be so judged, they will appear harsh and arbitrary; and you have not even furnished me with all the provocations you have received. Neither the outrageous language of Edwards at his trial, nor the substance of the gross abuse published against your private character, which has so revolted the feelings of a large Majority of the inhabitants has been sent, and all that is stated is that something was said on one occasion, and something published on another, which was very offensive.

I suppose my sense of libellous matter is so blunted by what is daily published in this country, that I am not sufficiently alive to the bundle of periodical papers which you sent me - but I am afraid that as the same cause will probably operate on others, it will not strike many that these publications required such strong measures to put them down.

You will I trust excuse my having written what I am afraid will be a very unwelcome letter. Do not imagine by this that I am the less anxious for your defence. Personal regard for yourself, long established attachment to your family, a conviction that you have served the King ably and faithfully and that as you will be attacked upon party principles, you are entitled to Party support, make me anxious to put before you what is to be apprehended and the necessity of bringing everything forward which can justify the late proceedings.

Believe me to be

My dear Sir Charles

Yours very faithfully

(Signed) Bathurst.

Appendix C. I.

Proclamation by HIS EXCELLENCY THE RIGHT HONORABLE GENERAL
LORD CHARLES HENRY SOMERSET, one of His Majesty's
Most Honorable Privy Council, Colonel of His
Majesty's 1st West India Regiment, Governor and
Commander in Chief of His Majesty's Castle, Town,
and Settlement of the Cape of Good Hope, in South
Africa, and of the Territories and Dependencies
thereof, and Ordinary and Vice-Admiral of the same,
Commander of the Forces, &c., &c., &c.

Whereas His Majesty has been graciously pleased, by
Instructions issued under His Signet and Sign Manual, with
the Advice of His Privy Council, bearing date at Carlton
House, the Ninth Day of February, 1825, to order and direct
that a Council shall be established in this Colony, to advise
and assist in the Administration of the Government thereof:-

And whereas His Majesty has signified His Pleasure that the
said Council shall be composed as follows, viz. :-

PRESIDENT

His Excellency the Governor, or the Officer administering
the Civil Government of the Colony, for the time being.

MEMBERS

The Chief Justice,
The Colonial Secretary,
The Officer next in Command, for the time being,
to the Commander of the Forces,
Lieutenant-Colonel Bell,
Walter Bentinck, Esq., Auditor-General,
J.W. Stoll, Esq., Receiver-General.

I do hereby make known and publish the same for the
Information of all the Inhabitants of this Colony, and of all
others whom it may concern.

God save the King!

Given under my Hand and Seal, at the Cape of Good Hope,
this 2nd Day of May, 1825.

(Signed) C.H. SOMERSET.

Appendix C 11

Changes in the Composition of the Council of Advice,
1825 to 1834.

The following persons served on the Council of Advice:

Lord Charles Somerset
Sir John Truter
Sir Richard Plasket
Lieutenant Colonel John Daniell
Lieutenant Colonel John Bell
Walter Bentinck
Joachim Willem Stoll
Sir Richard Bourke
Sir Andries Stockenstrom
Sir John Wylde
Sir Lowry Cole
Lieutenant Colonel Richard Cary
Lieutenant Colonel Harry Smith
Pieter Gerhard Brink
Sir Thomas Wade

The following changes were made in the composition of the
Council of Advice:

May 1825	Council established (7 members including the governor as president.)
March 1826	Somerset left and <u>Bourke</u> became acting governor.
May 1826	<u>Bentinck</u> left on overseas leave, then resigned. (6 members)
October 1827	Bourke received instructions that the colonial secretary and auditor general were no longer to be ex officio members (the auditor general never had been) and that two colonists were to be appointed to the council. He did not act on this at once.
January 1828	<u>Plasket</u> resigned after a quarrel with Bourke. He was about already to go on long leave. Bell became acting secretary. (5 members)
January 1828	<u>Wylde</u> - the new chief justice - was admitted to the council.
January 1828	<u>Stockenstrom</u> was admitted as a colonial member. <u>Truter</u> , no longer chief justice and ex officio, retained his seat as the other colonial member. (7 members)

September 1828	<u>Cole</u> was sworn in as governor. Bourke retained his seat as officer next in command.
November 1828	<u>Cary</u> was sworn in as officer next in command. A despatch was read dispensing with the services of the chief justice as a member of the council, therefore <u>Wylde</u> was no longer present. (6 members)
March 1829	<u>Smith</u> officer next in command, was admitted to the council.
September 1831	<u>Brink</u> , auditor general was given an ex officio seat on council. (7 members)
January 1832	<u>Wade</u> officer next in command, was admitted to the council.
March 1833	<u>Stockenstrom</u> resigned and <u>Bell</u> went overseas on long leave. (5 members)
July 1833	<u>Cole</u> left the colony and in August <u>Wade</u> was sworn in as acting governor, and Smith returned as officer next in command.

Three men served on the council for the full period of its existence. These were Truter, Bell and Stoll, but Bell was overseas on leave from March 1833. Bell and Brink each held an ex officio seat on the Legislative Council established in 1834, and Wade served on it as officer next in command for one year.

Appendix D

Remarks upon some questions relating to the Constitution and Proceedings of the Council at the Cape of Good Hope.

To Mr Stephen.

June 1828.

Questions

1. The best number?
 2. The best persons?
 3. The means of reducing the present number?
 4. How to make the Council Independent, yet prevent them Interfering?
 5. Should the Attorney-General be a member?
 6. Should the oaths of secrecy be preserved?
- I. Should the Council be maintained at its present number (six members) or diminished or increased?

If it were possible to find a dozen or twenty men of weight, respectability, education and manners befitting so high a station in the colony, a council of that number would doubtless answer the purpose of ensuring the full and fair discussion of measures affecting the community, better than at present. But it must still be remembered - so long as the Cape is deemed unfit to govern itself - that so large a body of men, especially if their proceedings were known to the public, would soon engross so much consideration that the Government would be exposed to most of the evils attached to an independent Colonial Legislature, without its advantages; and especially to Cabals and captious opposition, from which even the small number of six has not entirely secured the present Council.

The fact however being quite indisputable that no such body of men are to be found at the Cape, the proposal of an encrease to the number may be dismissed as premature and impracticable.

The present number is too small for much independence, too large for much unanimity, and singularly ill adapted for the despatch of business. The forms of debate (which a meeting of twelve or more would render necessary) would be ridiculous with five or six - yet this number is just considerable enough to cause the absence of such forms to be inconveniently felt; and half of their time is wasted in long rambling conversations, which often introduce perplexity and depart into the very simplest discussions.

I would submit that it is expedient to diminish the number of members.

II. How many and what members should be retained?

No more than three. The first of whom should be the Colonial Secretary. This is so plain to me that I would not add my reasons, did I not know that the Commissioners' suggestion to the contrary had been attended to. The absence of that officer would in the first place deprive the Council of the very individual most qualified to explain and comment upon the measures of government. - secondly, it would throw a very unnecessary weight of business upon the Governor - and thirdly, it would derange the whole system of official subordination.

The second member should be the Treasurer or Auditor - whichever of the two for the time being had the best claim. The whole details of the Colonial Finance are in the hands of these officers, and therefore the presence of one of them would be very advantageous. At this moment Mr Stoll, the Treasurer is perhaps the most useful member in the Council, and would be more so were he not often restrained by diffidence from advancing his opinion among so many. The third member should be such officer or other individual as might appear from time to time most eligible, for rank, services and talents. And as such the late Chief Justice, Sir John Truter, if not already a Councillor, might stand first at present. He is very useful from his experience in the Dutch Laws and Practice, and although somewhat backward in expressing a decided opinion, yet, on the other hand a most safe and well disposed person. My reasons for not proposing the Attorney General as third member will appear hereafter.

III. How is the reduction to three members to be effected?

The present opportunity is particularly favourable, if this measure be adopted. First, there is the Chief Justice who should be put out at all events, and as his rank is secured by the Charter there can be no delicacy about removing him when the Council is remodelled. Next is the Second in Command, Col. Daniell of the 49th, whose Regiment I believe is to leave the Colony. It is every way desirable to cancel an arrangement by which the Council may constantly be changing Members, for no reason but the date of a Commission. The seat in Council was given to the Second in Command because he might, by accident, succeed to the Government for a time. But now that a Council exists it is ridiculous to allow the Civil Government to fall into the hands of a chance Lt. Col. at any sudden vacancy. - That the military command must do so is surely evil enough. The Council should be authorised to do all necessary acts of Executive and Administrative Power in the King's name on such emergencies, but absolutely restricted from all grants of land, new appointments, and in short any disposal of public property.

Desider-
atum 1,
see note.

The Junior Member, Captain Stockenstrom, was provisionally appointed by General Bourke, only just before I left the Cape, and I suppose can not yet have been confirmed. General Bourke's wish was to have him placed at the Head of the Land Department, for which he is peculiarly qualified. But even in the situation which he now holds (Commissioner General of the Easter Districts) the use of which nobody can see, it was thought that it would be convenient if he were made a Member of Council. The sooner he is made Commissioner of Land Revenue the better. The office is much wanted; for without it the Auditor will have no check upon the collectors and assessors of this great branch of the revenue. But this officer should by no means be stationary, and there is not the least reason for combining a seat on the Council with its other duties. As the junior, he could not complain at losing his seat if a reduction were decided upon.

There is therefore nothing in the situation of these three Members to impede the measure - but the contrary, and, I presume, His Majesty's Pleasure, in whatever way signified, is quite sufficient to alter the arrangements for any of his Councils. Though, as this was formed by Instructions under the Signet and Sign Manual perhaps the same might be necessary to alter its constitution in any degree.

- IV. How to ensure to the Council the greatest degree of Independence compatible with the Governor's Supremacy - and the greatest opportunity of giving him the best advice on any subject submitted to them, compatible with the greatest security against their interference in matters on which he may not choose to consult them?

Advantage may now be taken of Sir John Wylde's claim to initiate motions. Let the Council be reminded that their office is merely to advise the Governor: and in no degree to participate in the legislative power delegated to him by the Crown. It was this mistaken idea that led so many of the Members to declare themselves bound to advise the enactment of laws directly contrary to their recorded and unaltered opinion, because the Secretary of State had given orders to that effect. This would perhaps have been true if their consent had been necessary to give effect to an Ordinance of the Governor in Council, and if the orders to the Governor were imperative.

No doubt can remain upon this subject, after Mr. Stephen's clear explanation of the effect of that title.

But I will take the liberty of pointing out the remote cause of this error into which they have all fallen - even General Bourke: as appears from his statement that the Clerk of the Council could not sign an ordinance disapproved of by the majority - the mistake has originated in the improper form adopted (before I arrived at the Cape) for the signature of that Officer, viz: by order of the Council, which of course implies that he could not sign without such order whereas I apprehend that the Clerk's signature is required merely to authenticate the instrument, whilst the enacting power is entirely expressed by the Governor's Seal and signature at the head of the Ordinance; and the Colonial Secretary affixes his name "by order of the Governor" to give complete formality to the act, and to express the will of the Governor for its publication. I should therefore submit that the signature of the clerk of the Council should in future be affixed, without any form of words, at the foot of the ordinance; and, at the opposite side of the page the words of promulgation, "given at the Cape of Good Hope and date" - together with the signature of the Colonial Secretary "by order of the Governor".

Desider-
atum 2
see note.

It would then be clear that the clerk of the Council could sign an Ordinance if necessary, even though all the Council voted against it (i.e. advised the governor not to enact it) and the form of the legislative acts would never vary.

All pretence to direct legislative power being thus removed, it follows that the Governor's voting in Council is useless - it was always objectionable. Nothing can be more absurd than for a man to vote advice and applications to himself - and yet the present mode of proceeding involves this absurdity every day. The Governor should preside, and take the opinions of his Council: and act as he sees fit afterwards. But now he is made a party to the discussions and divisions, and a measure on which he wants advice, is carried perhaps by his own voice! This is not only unbecoming to his station, but mainly tends to prevent independence in the Council. I have frequently observed opposition dropped from a natural dislike to vote against the Governor, where the Members would certainly have divided amongst themselves. It should therefore be declared that the Governor does not vote, as a Member of Council but only presides there.

This leads me to another point of practice, whereby the independence of the council is injuriously affected in appearance, and might be in reality. The power of Council being so loosely conceived of, it was thought very necessary ...

(page missing from volume)

... being intercepted. Especially as perhaps the chief advantage of a Council existing at all, consists in the certainty of His Majesty's Government at Home being acquainted (by the Minutes and papers periodically transmitted) with a true bearing of the measures discussed there.

It should therefore be provided that in all such cases the request of a majority (margin: or perhaps of any Member. For when once the Council is called upon by the Governor to give their opinion on a subject, each of them ought to see all papers really and fairly connected with it. And the more independently each can act, the less likely are the whole to be made tools of) should be recorded on the Minute of the day, and if the Governor agree to it, his assent should be signified by the word "Ordered". - in pursuance of which the Clerk of the Council should give the necessary directions in writing to the officer or Department concerned - "by order of the Governor in Council" - and the answers received by him should be laid before the Council at the next meeting.

Whenever the Governor should think proper to refuse, he should be instructed to enter the grounds of his refusal upon the Minutes; or, in cases where this might be inexpedient, to despatch the same with a copy of the request, by the earliest conveyance, for the satisfaction of His Majesty's Government.

By these means, in addition to the existing regulations, I venture to assert that a Council of three Members would be ensured precisely that degree of moral controul over the mind of a governor which is desirable, without the least danger of cabal, or of any clashing of authority, whereas at present it depends pretty much on the Governor himself for all its efficiency as a check upon him.

V. Ought the Attorney General to have a seat in the Council ex officio?

I differ entirely from General Bourke on the necessity for this arrangement. All its advantages may be secured by ordering and authorising his attendance at the board on the reading of Drafts or Ordinances, which he proposes. And so long as he is allowed private practice (without which no lawyer of talents can be expected to take the place) his presence as a Member would surely be undignified and improper. No. 6
Desider-
atum
Note

As I am also quite convinced that the precedency of Council over the Puisne Judges should be declared and maintained - especially if the reduction be effected - and as I am convinced that the contrary principle may have a very bad effect both upon the Court and the Government, this would at once exclude the Attorney General.

As in this point I differ from an authority, which I most respect (Mr. Stephen) I must take the liberty to subjoin my reasons.

1. The Legislative body (though this in fact is only quasi-legislative, yet ? rather that it is so) should always in the nature of things precede the Judicial - whose office it is to enforce the Acts of the former. If the example of the House of Commons be objected, I would observe that what is true of the whole does not always follow of the part: and besides that the growth and power of the House of Commons was and is so anomolous that it may be well expected to form an exception to all general rules.

2. That Rank in a colony tells exceedingly, and implies Power. Now the Court has quite power enough - the old one had too little, but excess is quite as bad as deficiency. On the other hand the Council have, and must have (so long as they do not actually legislate) hardly any power. They therefore the more require all the consequence that rank can give them.

3. The Charter does not give the Puisne Judges the title of Honourable. They wished to assume it, but the Governor said very properly that he had not power to confer titles. But the Secretary of State has signified His Majesty's Pleasure that the members of the Council should have that distinction; and it is clear that such a title must be meant to give them to whom it was granted precedence in the Colony over all those to whom it was not.

4. Although I cannot dispute the accuracy of Mr. Stephen's interpretation of a clause probably drawn by himself yet I will venture to remark that the words of the Charter are so clearly in favour of the precedence of the Puisne Judges over the Council as to preclude the Secretary of State from declaring the contrary. The words are "and (except) all such persons as, by law or custom in England, take place before our Chief Justice of the Court of King's Bench." Now as His Majesty's Privy Council precede the Chief Justice of England, surely His Majesty's Council in the Colony may be held excepted by the strict meaning of those words, which seem rather to imply relative than actual rank; as may be seen at once by using a positive form, - thus "all persons who by law etc." - which is a very different thing. Besides, unless a distinction was intended what purpose do the words "in England" serve. The simplest construction of the clause would be to except "all such persons as" hold similar rank in the Colony to those who in England precede the Chief Justice of the King's Bench and such are the King's Councillors.

VI. Should the Oath of Secrecy be preserved?

If the number of Members be reduced it will be far less objectionable, and more useful. And as I see no other way of releasing those who have taken it from their obligation, but to dissolve the Council and reconstitute de novo, (a very strange process) and as the old Members could never sit with others unsworn, upon the whole the best way may be to leave it as it is.

Note. The Paragraphs marked in the margin Desiderata contain points which I humbly think should be established without delay whether alterations in the Council be accepted or no. Number 1 is speculative - that the Council should be authorised to carry on the Civil Government in case of sudden vacancy. The others are practical. No. 2 would provide that the Clerk of the Council should no longer sign Ordinances "by order of the Council" but simply as an attesting officer. No. 3 that the Governor should be released from the necessity of voting. No. 4 that the Clerk of the Council should in future write for all documents ordered for the board by the Governor in Council, who should be bound to give reasons for refusing to grant such documents on subjects regularly brought before the Council by himself. No. 5 that the Attorney General should attend and be present at the reading of all Drafts of Ordinances prepared by himself. No. 6 that the precedency of the Council over the Puisne Judges should be declared by the Secretary of State. Nos. 2, 3 and 4 I think absolutely essential to keep the Governor and Council in their proper places and 5 for the despatch of the most important portion of the Council business: and Nos 1 and 6 for common sense.

All which however I submit to better judgements.

Ealing, June 21, 1828.

D.M. Perceval.

Appendix E

Calendar of Council Meetings

In the following calendar, the days on which the Council of Advice met are marked by brackets. Instead of the date being given for such days, the number of members present is given, with a cross indicating that this was a full complement of council meetings. When the council was established in May 1825 there were seven members including the governor, who acted as president.

MAY

S	M	T	W	T	F	S
1	2	3	(7)	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	(7)
29	30	31				

JUNE

S	M	T	W	T	F	S
			1	2	3	4
5	(7)	7	8	9	10	11
12	(7)	14	15	16	17	18
19	20	(7)	22	23	24	25
26	(7)	28	29	30		

JULY

S	M	T	W	T	F	S
					1	2
3	(7)	5	6	7	8	9
10	11	(7)	13	14	15	16
17	(5)	19	20	21	22	23
24	(7)	(7)	27	28	29	30
31						

AUGUST

S	M	T	W	T	F	S
	(6)	2	3	4	5	6
7	(7)	9	10	11	12	13
14	15	16	17	(7)	19	20
21	(6)	23	24	25	26	27
28	(6)	30	31			

SEPTEMBER

S	M	T	W	T	F	S
				1	2	3
4	(4)	6	7	8	9	10
11	12	13	14	15	16	17
18	(6)	20	21	22	23	24
25	(3)	27	28	29	30	

OCTOBER

S	M	T	W	T	F	S
						1
2	(7)	4	5	6	7	8
9	10	11	12	(7)	14	15
16	(6)	18	19	20	21	22
23	(7)	25	26	27	(5)	29
30	(6)					

NOVEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	(6)	8	9	10	11	12
13	(7)	15	16	(6)	18	19
20	(6)	22	23	24	25	26
27	(7)	29	30			

DECEMBER

S	M	T	W	T	F	S
				1	2	3
4	(6)	6	7	8	9	10
11	(7)	13	14	15	(5)	17
18	19	20	21	22	23	(7)
25	26	27	28	29	30	31

34 council meetings between May and December 1825

1826

JANUARY

S	M	T	W	T	F	S
1	2	(7)	4	5	6	7
8	9	(6)	11	(7)	13	14
15	16	(5)	18	19	20	21
22	(7)	24	25	(7)	27	28
29	(6)	31				

FEBRUARY

S	M	T	W	T	F	S
			1	2	3	4
5	6	(7)	8	9	10	11
12	13	(7)	15	16	17	18
19	20	(6)	22	23	24	25
26	27	28				

MARCH

S	M	T	W	T	F	S
			1	(7)	3	4
5	(7)	7	8	9	10	11
12	13	14	15	16	17	18
19	(6)	21	22	23	24	25
26	27	(6)	29	30	31	

Bourke - Acting Governor
6/3/26

APRIL

S	M	T	W	T	F	S
						1
2	(6)	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	(7)	26	27	28	29
30						

MAY

S	M	T	W	T	F	S
	(6)	2	3	4	5	6
7	(5)	9	10	11	12	13
14	15	16	(6)	18	19	20
21	(5)	23	24	25	26	27
28	(5)	30	31			

JUNE

S	M	T	W	T	F	S
				1	(6)	3
4	(4)	6	7	8	9	10
11	(5)	13	14	15	16	17
18	(5)	20	21	22	23	24
25	26	27	28	29	30	

JULY

S	M	T	W	T	F	S
						1
2	(4)	4	5	6	7	8
9	(4)	11	12	13	14	15
16	(6)	18	19	20	21	22
23	(6)	25	26	27	28	29
30	(6)					

AUGUST

S	M	T	W	T	F	S
		1	2	3	(6)	5
6	7	8	9	10	11	12
13	(6)	15	16	17	18	19
20	(6)	22	23	(3)	25	26
27	(4)	29	30	(6)		

SEPTEMBER

S	M	T	W	T	F	S
					1	2
3	(6)	5	6	7	8	9
10	(6)	12	13	14	15	16
17	(6)	19	20	(4)	22	23
24	25	26	27	28	29	(5)

OCTOBER

S	M	T	W	T	F	S
1	2	(5)	4	(4)	6	7
8	(5)	10	11	(5)	13	14
15	(4)	17	18	19	20	21
22	(4)	24	25	26	27	28
29	30	31				

NOVEMBER

S	M	T	W	T	F	S
			1	2	3	4
5	(5)	7	8	9	10	11
12	13	(6)	15	16	17	18
19	20	21	22	23	(6)	25
26	(6)	28	(6)	30		

DECEMBER

S	M	T	W	T	F	S
					(6)	2
3	4	(6)	(6)	7	(6)	9
10	11	(6)	(6)	14	(5)	(6)
17	18	19	20	21	(6)	23
24	25	26	(6)	28	(5)	30
31						

63 council meetings between January and December 1826

1827

JANUARY

S	M	T	W	T	F	S
	1	(+6)	3	4	(+6)	6
7	8	(+6)	10	11	(+6)	13
14	15	(+6)	17	18	19	20
21	(5)	23	24	25	(+6)	27
28	29	(+6)	31			

FEBRUARY

S	M	T	W	T	F	S
				1	(+6)	3
4	5	(+6)	7	(5)	9	10
11	12	(5)	14	15	16	17
18	19	(+6)	21	22	23	24
25	26	(+6)	28			

MARCH

S	M	T	W	T	F	S
				1	(+6)	3
4	5	(5)	7	8	(+6)	10
11	12	(+6)	14	15	16	17
18	19	(+6)	21	22	23	24
25	26	(+6)	28	29	30	31

APRIL

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	(+6)	11	12	13	14
15	16	17	(+6)	19	20	(5)
22	23	24	(4)	26	27	(+6)
29	30					

MAY

S	M	T	W	T	F	S
		1	(5)	3	4	5
6	(5)	8	9	10	11	12
13	(5)	15	16	17	18	19
20	(5)	22	23	24	25	26
27	(+6)	29	30	31		

JUNE

S	M	T	W	T	F	S
					1	2
3	4	5	(+6)	7	8	9
10	(5)	12	13	14	15	16
17	18	19	(5)	21	22	23
24	25	26	(5)	28	29	(+6)

JULY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	(4)	10	11	12	13	14
15	(+6)	17	18	19	20	21
22	(5)	24	25	26	27	28
29	30	31				

AUGUST

S	M	T	W	T	F	S
			1	2	3	4
5	(+6)	7	8	9	(+6)	11
12	13	14	15	16	17	18
19	(4)	21	22	(5)	24	25
26	27	28	29	30	31	

SEPTEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

OCTOBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	(5)	23	24	25	26	27
28	29	30	31			

NOVEMBER

S	M	T	W	T	F	S
				1	2	3
4	(+6)	6	7	(+6)	9	10
11	12	(5)	14	15	16	(+6)
18	19	(6)	21	22	23	(+6)
25	26	(+6)	28	29	(+6)	

DECEMBER

S	M	T	W	T	F	S
						1
2	(5)	4	(+6)	6	(+6)	(+6)
9	(+6)	(+6)	12	13	(+6)	(5)
16	17	(+6)	(5)	20	(5)	22
23	(5)	25	(5)	27	(5)	(4)
30	(4)					

67 council meetings between January and December 1827

1828

JANUARY

S	M	T	W	T	F	S
		1	(+5)	(+5)	4	(+5)
6	7	(+6)	9	10	(+6)	12
13	(+6)	15	(5)	17	(4)	(+6)
20	(5)	22	(5)	24	(+6)	26
27	28	(+7)	30	31		

FEBRUARY

S	M	T	W	T	F	S
					(+7)	2
3	(+7)	5	(+7)	7	8	(+7)
10	11	(+7)	(6)	14	(6)	16
17	(+7)	19	(+7)	21	(+7)	23
24	(+7)	26	27	(3)	29	

MARCH

S	M	T	W	T	F	S
						1
2	3	(6)	5	(6)	7	8
9	10	11	12	(5)	14	15
16	17	(6)	(+7)	20	21	(+7)
23	24	25	26	27	28	29
30	(6)					

APRIL

S	M	T	W	T	F	S
		1	2	(6)	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	(5)	26
27	28	29	30			

MAY

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	(6)	14	15	16	17
18	19	20	21	22	23	24
25	(6)	27	28	29	30	31

JUNE

S	M	T	W	T	F	S
1	2	3	4	5	6	(4)
8	9	10	11	12	13	(4)
15	16	17	(5)	19	20	(6)
22	(5)	24	(6)	26	27	(6)
29	30					

JULY

S	M	T	W	T	F	S
		1	2	(5)	4	5
6	7	8	9	10	11	12
13	(6)	15	(5)	(5)	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

AUGUST

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	(5)	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	(3)	28	29	(5)
31						

SEPTEMBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	(+7)	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

OCTOBER

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Cole - Governor 16/9/28

NOVEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	(+6)
23	24	25	26	27	28	(+6)
30						

DECEMBER

S	M	T	W	T	F	S
	1	2	3	(+6)	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

54 council meetings between January and December 1828

JANUARY

S	M	T	W	T	F	S
				1	2	(+6)
4	5	6	(4)	8	9	10
11	12	13	14	15	16	17
18	(+6)	20	21	22	23	24
25	26	27	28	(+6)	30	31

FEBRUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	(+6)	10	11	(+6)	13	14
15	16	17	18	(+6)	20	21
22	23	24	25	(+6)	27	28

MARCH

S	M	T	W	T	F	S
1	2	3	4	(+6)	6	7
8	9	10	11	12	13	14
15	16	17	18	(+6)	20	21
22	23	24	25	(+6)	27	28
29	30	31				

APRIL

S	M	T	W	T	F	S
			1	(+6)	3	4
5	6	7	8	(5)	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	(5)	29	(5)		

MAY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

JUNE

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	(3)
14	15	16	17	18	19	(4)
21	22	23	24	25	26	27
28	29	30				

JULY

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	(+6)	30	31	

AUGUST

S	M	T	W	T	F	S
						1
2	3	4	(+6)	(+6)	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	(+6)
23	24	25	26	27	28	29
30	31					

SEPTEMBER

S	M	T	W	T	F	S
		(5)	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

OCTOBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

NOVEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	10	21
22	23	24	25	26	27	28
29	30					

DECEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	(5)	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

23 council meetings between January and December 1829

JANUARY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	(5)	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

FEBRUARY

S	M	T	W	T	F	S
	1	2	(5)	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	(5)	23	24	(5)	26	27
28						

MARCH

S	M	T	W	T	F	S
	(5)	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	(5)	19	20
21	22	23	24	(5)	26	27
28	(5)	30	31			

APRIL

S	M	T	W	T	F	S
				(5)	2	3
4	(4)	6	7	(5)	9	10
11	12	13	14	(5)	16	17
18	(5)	20	21	22	23	24
25	26	27	28	29	30	

MAY

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	(4)	25	26	27	28	29
30	31					

JUNE

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

JULY

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

AUGUST

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	(3)	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

SEPTEMBER

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	(6)	28	29	30		

OCTOBER

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	(5)	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

NOVEMBER

S	M	T	W	T	F	S
	1	2	(5)	4	(5)	6
7	8	9	10	11	12	(5)
14	(5)	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

DECEMBER

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	(5)	14	15	16	17	18
19	(5)	21	22	(5)	24	25
26	27	28	29	30	31	

JANUARY

S	M	T	W	T	F	S
						1
2	3	4	5	(6)	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

FEBRUARY

S	M	T	W	T	F	S
		1	2	(6)	4	5
6	7	8	9	(5)	11	12
13	14	15	16	(6)	18	19
20	21	22	23	(6)	25	26
27	28					

MARCH

S	M	T	W	T	F	S
		1	2	3	4	5
6	(6)	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	(5)	25	26
27	28	29	30	(6)		

APRIL

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	(5)	15	16
17	18	19	20	21	22	23
24	(4)	26	27	28	29	30

MAY

S	M	T	W	T	F	S
1	2	3	4	(6)	6	7
8	9	10	11	12	13	(6)
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

JUNE

S	M	T	W	T	F	S
			1	(4)	3	4
5	6	7	(3)	9	10	11
12	13	14	15	16	17	18
19	20	21	22	(4)	24	25
26	27	28	29	30		

JULY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	(4)	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

AUGUST

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

SEPTEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	(6)
11	12	13	14	15	16	17
18	19	20	21	22	23	23
25	26	27	28	29	30	

OCTOBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

NOVEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

17 council meetings between January and December 1831

1832

JANUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	(+7)	24	25	26	27	28
29	30	31				

FEBRUARY

S	M	T	W	T	F	S
			1	2	3	4
5	(+7)	7	8	9	10	11
12	13	14	15	16	17	18
19	(6)	21	22	23	24	25
26	(+7)	28	29			

MARCH

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	(5)	14	(6)	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	(+7)					

MAY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	(+7)	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

JUNE

S	M	T	W	T	F	S
					1	2
3	4	5	(6)	(6)	8	(6)
10	11	12	(+7)	(5)	15	16
17	18	19	(6)	(6)	22	(4)
24	25	26	(+7)	28	29	30

JULY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	(+7)	20	21
22	23	24	25	26	27	28
29	30	31				

AUGUST

S	M	T	W	T	F	S
			1	2	3	4
5	6	(+7)	8	9	10	11
12	(+7)	14	15	(+7)	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

SEPTEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

OCTOBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

NOVEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

DECEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	(6)	18	19	(6)	21	22
23	24	25	26	27	28	29
30	31					

23 council meetings between January and December 1832

1833

JANUARY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

FEBRUARY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	(5)	12	13	(5)	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

MARCH

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	(4)	22	23
24	25	26	27	28	29	30
31						

APRIL

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

MAY

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	(+5)
19	20	21	22	23	24	25
26	27	(+5)	29	(+5)	31	

JUNE

S	M	T	W	T	F	S
						1
2	3	(+5)	5	(+5)	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	(4)	28	29
30						

JULY

S	M	T	W	T	F	S
	1	2	3	4	(+5)	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

AUGUST

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	(+5)
11	12	13	14	15	16	17
18	19	(4)	21	22	23	24
25	26	27	28	(+5)	30	31

Wade - Acting Governor, 10/8/33

SEPTEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	(+5)	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

OCTOBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	(+5)	19
20	21	22	23	24	25	26
27	28	29	30	31		

NOVEMBER

S	M	T	W	T	F	S
					1	2
3	(+5)	5	6	7	8	9
10	(+5)	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

DECEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	(3)	14
15	16	17	(4)	19	20	21
22	23	24	25	26	27	28
29	(+5)	31				

20 council meetings between January and December 1833

1834

JANUARY

S	M	T	W	T	F	S
			1	2	3	4
5	6	(+5)	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

The total number of meetings held
between May 1825 and January 1834
was 326

Appendix F

Summary of Attendance at Meetings of
the Council of Advice, May 1825 to January 1834

<u>Name</u>	<u>Office</u>	<u>Possible Number of Meetings</u>	<u>Number of Times Present</u>	<u>Absent</u>
<u>Somerset</u>	governor	45	45	-
<u>Truter</u>	chief justice	176	154	22
	colonial member	150	112	38
<u>Plasket</u>	colonial secretary	158	151	7
<u>Daniell</u>	second in command	212	174	38
<u>Bell</u>	deputy quarter master			
	general	158	140	18
	colonial secretary	149	149	-
<u>Bentinck</u>	auditor general	50	50	-
<u>Stoll</u>	receiver general	326	310	16
<u>Bourke</u>	second in command	3	3	-
	lieutenant governor	169	169	-
<u>Wylde</u>	chief justice	48	26	22
<u>Stockenstrom</u>	colonial member	131	99	32
<u>Cole</u>	governor	101	100	1
<u>Cary</u>	second in command	13	12	1
<u>Smith</u>	second in command	56	50	6
<u>Brink</u>	auditor general	45	41	4
<u>Wade</u>	second in command	33	33	-
	lieutenant governor	11	11	-

This summary has been made as accurate as possible from the information available in the minutes of the Council of Advice. For the period between July 1832 and June 1833 the names of those present at meetings were not recorded. During this period 14 meetings were held, at 9 of which there was a full attendance of council members.

Appendix G

A Mini-Code of Tribal Designations used with reference to ordinance 49.

Tribal designations in the early 19th century reflect contemporary knowledge of the great number of tribes living in the interior of Southern Africa and an attempt to distinguish between them. Spelling of the different tribal names shows considerable variation and ingenuity. In the list below, as well as in the main text of the thesis, the form most commonly found in contemporary manuscripts has been used and variations are bracketed. The modern form used in the Oxford History of South Africa is bracketed at the end of each description. The list is planned in two parts, firstly those tribes distinguished in clause 2 of ordinance 49, and then other tribal names which occur in lists of passes and contracts issued in terms of ordinance 49.

PART I

1. Bechuanas (Boothchuana, Bochwanas, Boothuana)

This was a descriptive term for the Sotho-Tswana people living in settlements based on large town communities in the area north of the Orange River and west of the Vaal-Harts river. It has been suggested that the term derived from a misunderstanding or mispronunciation of the word Abetswana, a Xhosa reference to the Bantu-speakers of the interior.¹ Although the Bechuana form part of the widespread Sotho group of tribes, the term was commonly used by the beginning of the 19th century to refer to the natives of the area mentioned.² Modern study has shown that Tswana chiefdoms comprise a nuclear Tswana community together with wards or groups of attached alien peoples. It is thought that these attachments originated at the time of the Mfecane. (Tswana)

2. Bosjesmen (Bushman)

Together with Hottentots, Bosjesmen formed the original indigenous inhabitants of the colony, being scattered throughout the interior. They were neither hunters nor herders, but lived on "veldkos" and game.³ This precarious existence had been seriously threatened by

1. Thompson, African Societies, p. 95.

2. E.g. W.J. Burchell, Travels in the Interior of South Africa, 1822 (reprint, London, 1953).

3. Marais, The Cape Coloured People, p. 13.

the intrusion of white settlers, and a bitter hostility developed between the Dutch and the Bosjesmen.¹ By the 19th century Bosjesmen had been considerably reduced in numbers. (San)

3. Caffres (Caffers, Kaffirs, Kaffres)

The use of this term to describe the dark-skinned Nguni people inhabiting the eastern part of southern Africa seems to date from 1552 when a shipwrecked party of Portuguese encountered them near the Mzimvubu river.² The term was descriptive and not derogatory and meant heathen or unbeliever. By the 19th century it was generally used to distinguish the pastoralist/agriculturalist tribal communities encountered by the Dutch trekboers in their expansion eastward during the 18th century; these people are today known as the Xhosa tribes. In the context of ordinance 49 this was the meaning of the word Caffre, but contemporary use also applied it indiscriminately to all tribal people other than Bosjesmen and Hottentots. In lists of passes and contracts issued under ordinance 49 the tribal designation is often given as "Caffre of Eno's (Botman's, Hintza's, Gaika's) tribe." (Xhosa)

4. Gonaquas (Ghonaquas, Gonas, Gonna, Gonoqua, Gona Kwaybie, Amagona quarobie, Gonaqua Caffre.)

These were people of mixed descent deriving from Xhosa and Hottentot intermingling and living together with the Xhosa in the zuurveld area until 1812, and then beyond the Fish river.³ (Gqunukwebe, Gona.)

5. Griquas (Briqua, Bastard Hottentot)

The Griqua people were established in settled communities, partly through the influence of missionaries who settled with them, by the beginning of the 19th century, and situated north of the Orange river and west of the Vaal-Harts confluence on a line of natural springs. In origin they were derived from Boer and Hottentot unions, and from the linking up of these bastard people with the Grigriqua or Chariguriqua tribes of Hottentots formerly living in the area of the Camiesberg.⁴ Griqua leaders were given recognition by the colonial government and vested with some symbol of authority. The Griqua were themselves in a position to employ servants, and there is evidence

1. O.H.S.A. Vol. I, pp. 70-1.

2. O.H.S.A. Vol. I, p. 78.

3. O.H.S.A. Vol. I, p. 103.

4. Marais, Cape Coloured People, p. 32.

that many of the "tribeless, hearthless, homeless" wanderers who subsequently attached themselves to the Sotho chief Mosheshwe had spent part of their period of displacement under the protection of the Griquas.¹ (Griqua.)

6. Mantatees (Mantitee, Mantatu, Mantotoo)

It has been suggested that the terms Mantatee, Makatee and Goes were general designations for the refugees from the trans-Orange, to distinguish them from the Caffres beyond the eastern frontier of the colony.² The term may have been derived from the name of the Tlokwa chieftainess, Ma Ntitisi, who led her people during the period of the Mfecane and during the minority of her son, Sikonyela;³ or it may have been used as an appellation meaning invader or marauder, as alleged to mean in the Bechuana language.⁴ The use of the term Mantatees to describe the refugees who were first taken into the colony in 1823 appears to derive from the descriptions given by Moffat and Thompson of the battle of Dithakong but in recent years it has been established that the Tlokwa under Ma Ntitisi were not involved with those events.⁵ (Mantatees.)

7. Namaquas

Hottentot people living in the semi-desert region north of the western districts of the colony where they had settled probably at the beginning of the 18th century.⁶ (Namaqua.)

8. Tambookies (Emboen, Imboe)

The name appears to be that of an early group of the Tembu tribe, settled around the Tsomo river, with whom the 'Tam' buki Bushmen had intermingled. By the 19th century the term seems to have been used for all clans of Tembu tribesmen.⁷ (Thembu.)

1. Thompson, African Societies, p. 204.

2. Thompson, African Societies, p. 203, n. 37.

3. Ibid. p. 196. O.H.S.A. Vol. I, pp. 393-6.

4. Thompson, Travels and Adventures in Southern Africa, Vol. I., p. 177.

5. Ibid. Schapera, Ed., Apprenticeship at Kuruman, p. 105. Cf. Omer-Cooper, The Zulu Aftermath, p. 95, n. 1.

6. O.H.S.A. Vol. I, Ch. II, passim.

7. E.J.C. Wagenaar, A Forgotten Frontier Zone - Settlements and Reactions in the Stormberg Area between 1820 and 1860 - (M.A. Thesis, Rhodes University, 1973), p. 4.

PART II

1. Coranna (Koranna)

Hottentot clans who had moved away from the western Cape in advance of the white settlers. The Coranna had moved across the Orange river and were encountered there by whites in the 18th century. (Kora.)

2. Fingo (Mfengu, Venko)

Refugees put to flight directly or indirectly by the rise of Dingiswayo and Shaka in Natal, the Fingo appear to have been derived from a variety of tribes, mainly the Hlubi, Zizi and Bhele of Natal. They reached the area between the Kei and Umzimvubu rivers around 1822 and attached themselves as 'clients' to the Xhosa tribes already settled there.¹ In 1835 they were offered protection by the colonial government and some 17 000 were brought to the area between the Fish and the Keiskamma river, and the area was included in the colonial boundary.² There were Fingo engaged as servants as early as 1829. (Mfengu)

3. Goes (Gous)

The term seems to have applied to the people otherwise known as Ghoya, Leghoya, Coija, Ma Coija and Koes.³ Together with the Fokeng the Ghoya are thought to have moved southwards from central Africa some time in the mid-15th century. The path of their migration has partly been traced by means of the ruins of the low, stone-walled corbelled huts which distinguished their villages⁴ in the area between the Vaal and Caledon rivers. By about 1812 the Ghoya had been overcome by the Taungs and were completely subjugated by them, although retaining a separate identity.⁵ Thereafter they moved with the Taungs, in 1837 to Mequatling, near the mission station of Francois Daumas of the Paris Evangelical Mission, and later, in 1869, to land between

1. O.H.S.A. Vol. I, p. 249.

2. Ibid, p. 244.

3. J. Walton, Comp., Early Ghoya Settlement in the Orange Free State (Bloemfontein, 1965)

4. Ibid., p. 1. Infra, Map of Ghoya settlement.

5. Thompson, African Societies, p. 114.

Mafekeng and Mohale's Hoek, where the Ghoya assumed the tribal name of Kobeng.¹ Descriptions of the Ghoya are found in the 19th century works of Arbousset and Daumas;² John Bennie; and Thomas Baines;³ and in more recent works by Ellenberger and Walton.⁴ The earliest reference found was from Burchell who did not meet Ghoya people himself in 1812 but mentioned amongst the neighbours of the Bachepin the "Kojas or Lukojas, farther eastward, of which little is known."⁵

4. Mfecane (Fetcani, Ficani, Vetkanie, Fetcanie, Fitkani, Fekanie)

Used to describe the population disruption of the 1820s that followed the rise to power of the Zulu people, i.e. as an alternative to Lifaquane and Difaquane which are comparatively recent terms. (Difaquane - a word meaning forced migration⁶)

5. Other descriptions are occasionally found on passes and contracts, as given below with the probable modern equivalent used in the Oxford History of South Africa bracketed:

Marolong (Barolong)

Massouta, Mazouta, Masoota (Sotho)

Mattawana (probably belonging to Matiwane, the chief)

Zoolah (Zulu)

Omyomyo (?)

Shoosha (?)

-
1. V. Ellenberger, A Century of Mission Work in Basutoland, 1833-1933 (Moriya, 1938) pp. 27-8.
 2. T. Arbousset and F. Daumas, Narrative of an Exploratory Tour to the North East of the Colony of the Cape of Good Hope (Cape Town, 1846), Chs. 20, 21, 22.
 3. J. Bennie, An Account of a Journey into Trans-Orangia and the Potchefstroom-Winburg Republic in 1843, Ed. by D. Williams, (Cape Town, 1956.) W.B. Lord and T. Baines, Shifts and Expedients in Camp Life, Travel and Exploration () p. 280, where there is a good drawing of a corbelled hut.
 4. Supra, ns. 1 and 2.
 5. W.J. Burchell, Travels in the Interior of South Africa, 1822, Ed. by I. Shapera (London, 1953) Vol. II, p.
 6. O.H.S.A. Vol. I, p. 391.

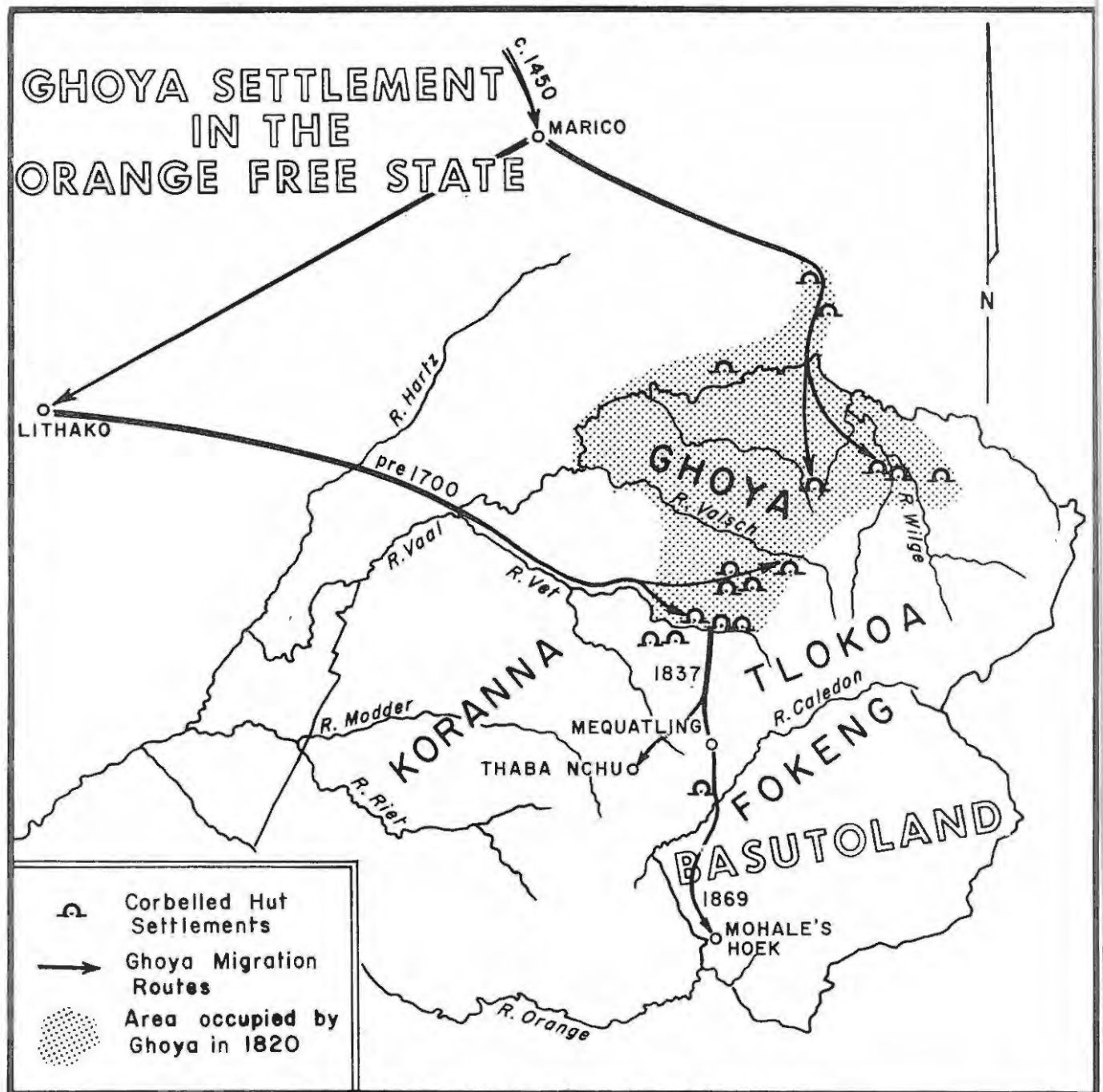


Fig. 2 Ghoya Settlement in the Orange Free State.

Map taken from J. Walton, Early Ghoya Settlement in the Orange Free State (Bloemfontein, 1965.)

Appendix H 1

Extract from the Minutes of a Council Meeting held on 22nd August 1829.

His Excellency the Governor was pleased to state to Council, that he had received communications from the Civil Commissioner of Albany and Somerset, and from the Commandant of the Frontier, representing the disturbed state in which the Frontier Districts were, owing to the depredations which were daily committed by the Caffres on the Cattle of the Farmers. His Excellency added that, in many instances, the offenders appeared to be those Caffres who had been admitted into the Colony under the Provisions of the 49th Ordinance. Some of those persons had entered the Colony from curiosity, but a greater number for the purpose of stealing Iron &c. and those who had engaged in the service of the Colonists had, with the exception of a very few, broken their Contracts and were now wandering about the Country committing depredations.

The Council having taken this subject into consideration,

It was resolved,

That, for the present, the issuing of passes to the Caffres be discontinued: And that the 12th clause of the 49th Ordinance be rigidly enforced with the addition, that if any Caffre shall be found without a pass or wandering, it shall be lawful for any Justice of the Peace, Field Cornet, Constable or Landholder, to apprehend and convey such person, as well to the nearest Military Post as to the nearest Resident Magistrate.

Appendix H II

PROCLAMATION

BY HIS EXCELLENCY

Lieutenant-General the Honorable Sir GALBRAITH LOWRY COLE

WHEREAS it has been represented to me, that there are at this present time, great numbers of armed Persons, belonging to Tribes beyond the Frontiers of this Colony, chiefly Caffres, wandering about in the Districts of Uitenhage, Albany, and Somerset, by means of Passes which they have obtained from the several Missionary Stations beyond the Borders, by virtue of the Ordinance No. 49, but without having obtained, or sought to obtain service with the Colonists; - And whereas these Foreigners have already committed, and are daily committing great depredations on the Cattle and other Property of the Colonists residing in the Districts aforesaid, and it has become necessary to put a stop to the continuance of the same, and to make due provision for the security and protection of the Lives and Property of His Majesty's Subjects: NOW, THEREFORE, I do hereby order and direct, that no Passes shall be henceforth granted to any Caffre, until further Proclamation be made to that effect: And I do hereby further ordain and direct, that all Caffres found wandering about in any of the Districts aforesaid, not being under Contracts of Service and actually residing upon the Place of their Master, or actually employed in his Service, shall be apprehended and disarmed by any Field-Cornet, Constable, or Landholder, and forthwith conducted to the nearest Magistrate or Military Post, towards the Frontier, there to be dealt with in such manner as to me shall seem expedient, and the circumstances of the case may require.

GOD SAVE THE KING!

Given under my Hand and Seal, this 25th Day of August, in the Year of our Lord One Thousand Eight Hundred and Twenty-Nine.

(Signed,) G. LOWRY COLE

By Command of His Excellency the Governor

(Signed) JOHN BELL,
Secretary to Government.

Appendix I

Table of Passes issued in the Eastern Frontier Districts
in terms of Ordinance 49, 1828-1833

		<u>ALBANY</u>		<u>SOMERSET</u>		<u>GRAAFF REINET</u>	
		Passes	Contracts	Passes	Contracts	Passes	Contracts
1828	July-Dec	84	53	41	35	16	1
1829	Jan-June	141	35	-++	18	-	-
	July-Dec	36+	18	12	7	9	-
1830	Jan-June		12	7	9	10	1
	July-Dec		4	2	1	3	1
1831	Jan-June		21	2	1	3	2
	July-Dec		36	-	2	2	1
1832	Jan-June		-	-	2	-	2
	July-Dec		60	144	15	2	2
1833	Jan-June		37	29+++	11	1	2
	July-Dec		107	437			

+ Up to the end of August.

++ Passes were issued but have not been found, supra,
p. 414, n. 1.

+++ The records are incomplete. There were probably
more than 29.

Appendix J

Letter Reporting on Operation of Ordinance 49

Civil Commissioner's Office
Graham's Town. June 12th 1829

The Honble
Lt. Col. Bell C.B.
Secty. to Govt.

Sir,

I have the honor to acknowledge the receipt of your Communication (marked Confidential - sic -) of the 29th Ulto. acquainting me that it has been represented to Govt. that the farmers on the Frontier are not unfrequently in the habit of purchasing the services of Betchuanas, and other nations of neighbouring countries, and detaining them in their Service for an unlimited length of time without regular contracts, and in a state not differing very materially from Slaves; and that this practice is said to obtain chiefly among the farmers on the Zwart River, or in the Northern parts of Tarka and Graf Reinet.

I have the honor to state, in reference thereto, and for the information of his Excellency the Governor, that I am compelled to doubt the truth of the representation which has been made to Government on this matter.

My attention to the Condition and treatment of the Betchuanas and other natives of the adjacent countries who have lately entered the Colony, has been without intermission, and I have had so many opportunities of making minute inquiries, during my different journies, and that from sources on which I could securely rely, that it is by no means probable such irregularities as you have described, could have been practiced, even to a slight degree, within my jurisdiction, without my having obtained some intimation of them.

Before proceeding to lay before His Excellency some facts respecting the present Condition of the Betchuanas, and other tribes beyond the Orange River, who occasionally enter the Colony, I beg leave to remark that I am quite at a loss to imagine what means a farmer possesses to coerce, or detain these people in his service a single day longer than suits their inclination. It is notorious that even those Betchuanas who have been regularly contracted, do not hesitate to quit their employers on the Slightest Cause of Complaint, either real or imaginary, and having so done, they wander about the Country until they find a master more to their liking, whom they again desert, when prompted thereto by Caprice or ill treatment; and the instances are very rare indeed where the employee has sought by legal means to enforce the conditions of the contract. If then the farmers cannot, or, at least,

do not, compell those who have been regularly contracted to remain in their service, it may be justly assumed that they have fewer means, and less inclination to coerce those over whom they have no legal control.

The Field Cornetcy of Braak River is the only one in the District of Somerset, the inhabitants of which are in immediate contact with the Betchuanas and other tribes beyond the Orange River, which unfortunate people are now reduced to the lowest state of human misery by the Griquas (or Bastards) who have robbed them of the few Cattle that had been spared in their intestine wars; and I have been informed by Abraham Pretorius, the active and intelligent Field Cornet of Braak River, that all the farmers within a certain distance of the Orange River have been greatly distressed by the frequent demands made on their humanity to provide food for succeding bands of these wretched people who come to them in a state of Starvation, and eagerly request to be taken into their Service, but which they are obliged to refuse as they have already more of them in their Service than they require.

It is not from the Field Cornet alone that I have received this information, but likewise from numerous other individuals who have witnessed the facts I have just stated. It is therefore evident that it is the absence and the cessation of their frequent visits (which have become a grievous tax) that the Frontier Farmers are disposed to purchase, and not their services, which are each month, if not each week, proffered and rejected.

As the Northern part of Tarka is particularly alluded to in your communication, I am induced, even at the risk of trespassing too long on His Excellency's attention, to relate a circumstance which occurred there, and under my own immediate observation. I give the matter in detail, concieving that by so doing, I shall convey to his Excellency a clearer view of the effect produced by the 49th Ordinance on the inhabitants of the Frontier, than by any general observation of my own.

I had occasion to visit the Northern parts of the Tarka about nine months back to inspect lands, and reaching the house of Christian Hatting at Schappen Kraal, I had hardly entered when Mrs. Hatting (the husband being from home) brought before me two young Tambookie children belonging to a minor chief (or Captain of a Kraal) of that nation who had brought them to her with a request that she would take them into her service, as the drought had killed all his cattle, and the children must die if she refused his request. Although Mrs. Hatting had as many slaves and other Servants as she required, she would have taken charge of the children from motives of humanity, but her oxen had been sent beyond the limits of the Colony for grass, and she had no means of conveying them to Somerset within the period prescribed by the 49th. ordinance, and she consequently declined receiving them. The father offered

the Children to several other farmers in the neighbourhood, but they declined to take them for the same reasons. Two months afterwards both the father and mother came to Schappen Kraal with the Children and earnestly entreated that they might be received as two younger ones had perished of hunger since the last visit, and these must share the same fate if she persisted in her refusal, and finally added that they were determined to leave the children at all hazards, as they preferred they should die at a distance from them, rather than see them die a lingering death before their eyes. Mrs Hatting seeing no alternative consented to receive them.

It was three weeks after this period that I visited Schappen Kraal, and Mrs. Hatting was under great alarm that she would incur the penalties specified in the 49th Ordinance, as not only her own cattle, but also those of every individual in the Field Cornetcy were beyond the limits of the Colony, and it would be impossible to convey the children to the Village of Somerset within the time prescribed by the provisions of the above Ordinance; She therefore requested that I would give her a written document explaining the unavoidable cause of the delay which had taken place, in order that she might lay it before the Clerk of the Peace at Somerset when the children were taken there to be put under Contract. I could not, under the circumstances I have described, hesitate to comply with her request, and immediately furnished her with the document she required, but so apprehensive was Mrs. Hatting that she did not consider it sufficient for the intended purpose, and I was obliged, to allay her fears, to write a second more full and explanatory than the first, which at length satisfied her.

The above narration of matters which came under my own observation will serve to prove that the 49th. Ordinance is fully understood, and adhered to on the Frontier. Should it have happened, however, that any of its provisions have been contravened in the manner represented to the Government, I shall have no difficulty in discovering the authors, and shall not fail, should I succeed therein, to lay the particulars before His Excellency the Governor.

I have the honor to be Sir,

Your Most Obedient Servant,

Dun. Campbell

Asst. Comm. for Albany and Somerset.

In the above letter the spelling is in accordance with the original manuscript.

Appendix K

Edward Lorenzo Chiappini to his cousin, Spencer, younger
brother of Baron Newborough.

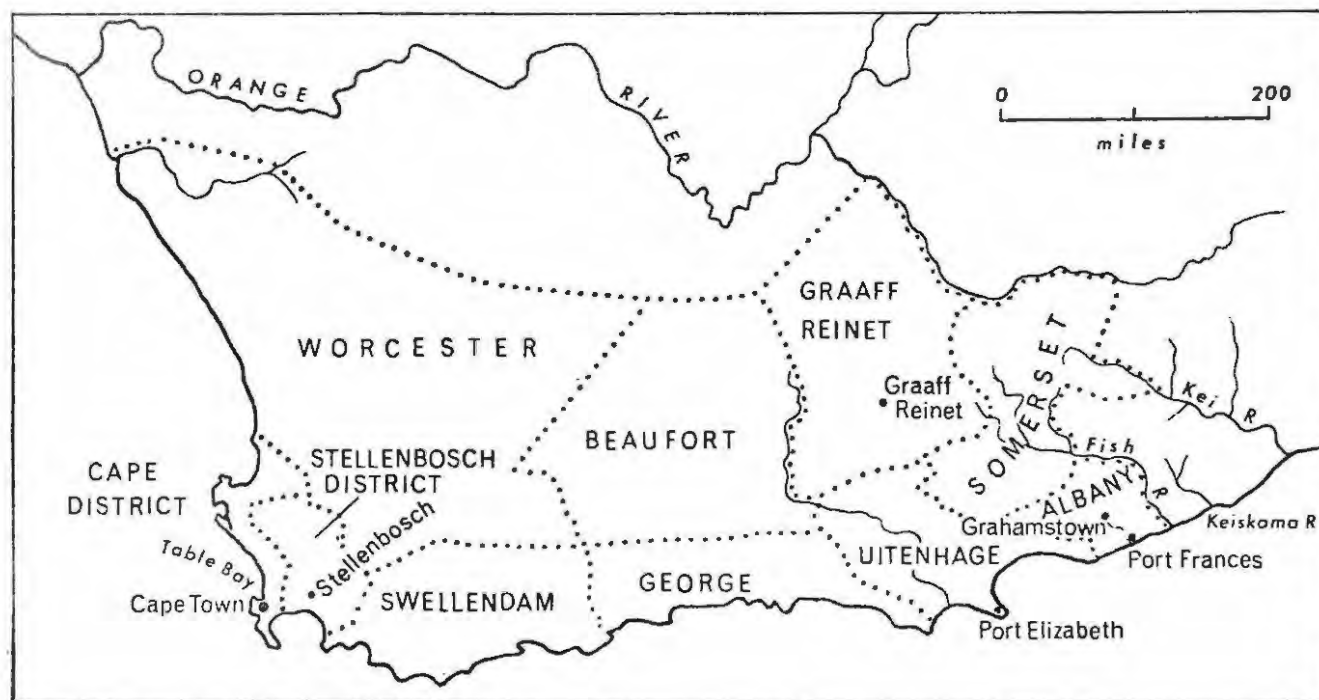
12 January 1831 +

... I rather think that at the expiration of the present year my father will retire from business, leaving the management of it to my brother and myself. I never expect to become a Baring or a Roschild, but should fortune smile upon me, I hope some day or another to be worth Seven or Eight hundred a year.

I see by the English papers that several of the new members have pledged themselves to vote for the abolition of slavery in the colonies - The government by a series of impositions and taxes on slaves has already brought them into such a state of insubordination that I almost wonder that we are not all long since murdered or poisoned by them. Why go on pegging as you have done for the last twenty years, harassing the slave owners first by one act of Parliament and then by another. - If slavery is to be abolished why not name a period at which all female slaves born subsequently to that period shall be considered free - That slavery is a disgrace to human nature, I admit, but really John Bull thinks that all "Blacks" are Angels, and all his brother Englishmen, when they settle in the Colonies Monsters. We are all here more or less anxious for the abolition of slavery, but let it be done justly. Do you know that we have a philanthropic society here that, although only established three years, has purchased the freedom of about 100 female children. - This speaks volumes. Abolish slavery if you please by purchasing the female children with the money which the government has picked our pockets of by issuing the Rixdollar at 4/6 and calling them in at 1/6, or give us in lieu a Legislative Assembly, so that we might sweep out with one stroke of the pen, a whole host of pensioners, with which this unfortunate colony is burthened. Is it not too bad that Sir Richard Plasket who only remained among us for two years as Secretary to Government at a salary of £2 000!! per annum should destroy our vitals by enjoying a pension in England of £500 per annum. In fact if nothing is done in Downing Street to assist us, and that now, speedily, go to the devil the colony must, nothing else can save it, we are taxed up to our eyes already, and yet it is in contemplation at home to tack on another 6d per gallon Duty on wines, for which the grower gets, I can assure you, at the present moment only £1-7-6 per pipe. If Cape wines can not now compete with other wines in the London market, what must become of them, when merely the increase of duty, is more than double the value of the wine here.

If you are in Parliament pray give your vote against this damnable proposition. ...

+ Mss Letter in the South African Library, Cape Town.



The Divisions of the Colony of the Cape of Good Hope in 1826.

Map taken from H. King, Richard Bourke (Oxford, 1971.)

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