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Pt 1

Agitation for the Separation of the Port Phillip District from the Colony of New South Wales, 1838-1850*

A. G. L. SHAW†

On Monday 11 November 1850 Melbourne heard the long expected news that the Port Phillip district — now to be called Victoria — was to be a separate colony from New South Wales. So the years of the tyranny of the Sydney-siders were over. Beacon-fires, illuminations, fireworks, cannons, decorations, thanksgiving services, games, and other festivities which lasted nearly a week, signified the feeling of the inhabitants at the successful conclusion of a campaign that had lasted more than a decade. Of the ensuing Wednesday, Garryowen was to write, in 1888, that 'never before or since has there been a night of such revel in Melbourne', and two days later the fortunate coincidence of the official opening of the new Prince's Bridge over the Yarra Yarra River by Superintendent La Trobe gave a further opportunity for a grand procession of pensioners, Rechabites, journeymen, the German Union, St Patrick's Society, printers, the ancient independent order of Oddfellows, the ancient and honourable fraternity of free and accepted Masons, magistrates and officials, and for 'a general ovation which touched a sympathetic chord in every heart' among the crowd estimated at 15,000 assembled to witness the scene.¹

Of course, independence would not be formally proclaimed until the following July, and the accident that within another month the discovery of gold was to transform the nature and prospects of the new colony has tended to put these earlier events in the shade, but the campaign for an ultimate achievement of colonial independence is none the less interesting and important, raising as it does questions concerning the proper place of local or municipal government in a political society, the proper method of allocating the public expenditure between different parts of a political unit and the proper size of the latter, with the related problem of the possibility of separate neighbouring states co-operating through what was then the rather strange and unfamiliar notions of federalism. While in Sydney during the 40s W. C. Wentworth had been declaiming against the iniquities of Sir George Gipps, Lord Stanley and Earl Grey, most Melburnians felt that the sins of the Sydney administration were greater than those of Downing Street, and though it must be admitted that there were occasions when London seemed as anxious as Sydney

* Based on a paper read before the Society 28 October, 1980.

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to thwart the desires of the settlers at Port Phillip, on the whole the venom of the latter was directed more at the mother-colony than at the mother-country, and the resultant ill-will played no small part in the intercolonial jealousy and antipathy of the next half century.

As Professor Ward has noticed, 'the desire of the Port Phillip district for separation from the rest of New South Wales was almost as old as the beginnings of permanent settlement there'. It appears in the correspondence of George Mercer, of the Port Phillip Association, with the Colonial Office as early as 1836, though at that time the Under-Secretary of State, Sir George Grey, insisted that the question of dividing the colony was 'one of great importance and difficulty', which the government would 'think it right to postpone ... until it should have been maturely considered'; in any case, he added, 'a very considerable time must elapse before the establishment of such a new Colony, even if it should be ultimately thought right so to abridge the limits of the Colony of New South Wales'.² Almost certainly the British government was worried by the need for economy — had not Hay just noticed that such schemes as Batman's continually led to 'fresh expense'? — but though a separate government would be expensive — and the Treasury was to object on this ground even to the appointment of Collector of Customs at Port Phillip, despite the recommendation of Sir Richard Bourke, then governor of New South Wales — the latter quickly noticed that the great distance between Sydney and Melbourne would cause extreme difficulty in keeping up 'those frequent references on ordinary as well as important subjects' which had to be made to the seat of government.³ Next year we find some of the colonists objecting to the selling in Sydney of land at Port Phillip and to the expense of bringing emigrants from Sydney to Melbourne, and in May 1839, when the Port Phillip population was still less than 6000, the *Port Phillip Patriot* was protesting against the district having to submit to the Sydney authorities and to suffer from the 'parsimony of the New South Wales Legislative Council'.⁴

Earlier that year, the Colonial Office had agreed to the appointment of a Superintendent — C. J. La Trobe — though with restricted powers, but the previous November, when giving instructions that land sales should be held locally, Glenelg had drawn attention to a future cause of conflict, when he observed that although keeping separate accounts might be inconvenient, it was 'but reasonable that a fair proportion of the revenue derived from the Sale of Land should be applied in facilitating Emigration to Port Phillip'; his request for returns indicated a greater sympathy with the demands of the Melburnians than the new Governor, Sir George Gipps, was to show.⁵ By that time, writing from Hobart Town, Sir John Franklin had raised the question of the disposition of the land revenue, for faced with its virtual elimination in his colony, owing to the cessation of sales when the price was raised to 12s. per acre, he had suggested that it should receive some of the proceeds from Port Phillip, arguing that a great deal of the purchases there were made from 'the capital of settlers belonging to Van Diemen's Land'. The Colonial Office thought an intercolonial transfer such as this was quite impossible, but the debate on expenditure within New South Wales over the question whether the land revenue should be used to help those who needed it (if they did) or those who paid it was to embitter relations between Sydney and Melbourne for a decade.⁶

This was perhaps the greatest single cause of the demand for separation — all the more vehemently sought for after it seemed for a brief moment that the two districts were to be permitted to keep their land funds separate, and that what had been thought 'inconvenient' in 1838 was to be conceded in 1840. In that year Gipps was told that New South Wales was to be divided into three districts; the land in the southern (or Port Phillip) district was to be sold at a fixed price; the funds raised in each district were to be completely separated and there should be a 'strict and exclusive application of each portion of that fund to the uses of the particular district from which it may be derived'.⁷

To this Gipps took strong objection, though his criticism has often been overlooked by scholars concentrating on his more justified condemnation of the proposal to sell Crown land at a fixed price rather than by auction — and it may be noticed that much of the popular opposition to separation, when it was first mooted, sprang from objections to the fixed price scheme ordered for the dissevered districts; but the Governor's objections to separate land funds, which were upheld, certainly exacerbated the quarrel between Melbourne and Sydney. Opposing separate funds, Gipps argued that the land revenue in the central district, where the best land had already been sold, would soon decline, and the only source of more was Port Phillip; this district, which 'had been opened mainly at the expense of New South Wales', was drawing labour from the old, and the fund derived from the purchases in the new was needed to replace the labour withdrawn from Sydney; if the latter gained no return from the land fund — as would be the case if the funds were separated — it must be 'greatly a loser'; it would be unable to bring in immigrants, for the portion of the fund 'applicable to the payment of bounties in Sydney will in all probability be altogether inadequate to the demands made on it'.⁸

There was something in this argument, though it ran counter to all the principles on which the policy of assisted emigration was based, for, as the Land Commissioners explained,

the General principle . . . is that sale of waste lands . . . is to be taken as a test of the want of labour and unless that is conveyed there by means of the purchase money the land will not be sold. This rule . . . [is] justly applicable to Port Phillip which has in so great a degree already acquired the character of a distinct colony.

Its demand for labour was urgent; it had a local though subordinate government, and all machinery necessary for the collection and custody of the Revenue; there seemed no reason, therefore, to disturb 'the arrangement already made for employing that proportion of the Land Funds of Sydney and Port Phillip in conveying labour to the district which has furnished the fund'.⁹ After all Sir George was judging his own cause, and in fact was saying that the demands of the squatters in Sydney were more important to him than were those coming from Melbourne, though Port Phillip was, if anything, more in need of labour than Sydney (except briefly during the depression of 1842-3); then when he went on to argue that 'upon broad principles of expediency and justice all portions alike in 'the Colony should share in the produce of the sale of lands in any part of it', he was making unjustified value judgments, which were in no way proved by his reference to the current practice in the United States. His assertion that 'the existence of separate funds . . . must give birth to jarring

interests and angry feelings' ignored the fact that the lack of separate funds had already done this. Unfortunately for Port Phillip, when the 'fixed price' sales were abandoned, the proposal for separate land funds was abandoned too, though separate returns were still to be made, and the failure to spend all the revenue raised from Port Phillip in that district remained a running sore, several times noticed by La Trobe, and in petitions, and emphasised in evidence to the Executive Council inquiry in 1846.¹⁰

Certainly in 1847, Governor Fitz Roy was to agree with Gipps that the funds available for immigration should *not* be spent so that the migrants came only to the district where the revenue had been raised, but as La Trobe had said when forwarding petitions on this subject, the abandoning of the separate funds could 'never be defended on any grounds except expediency'. It was 'not fair to assume to the manifest advantage of the middle district and the undeniable disadvantage of Port Phillip' that the produce of the land sales there was greater than what was needed locally. The revenue should have been allowed 'to fertilise the country in which it took its rise'.¹¹ In London, Lord Grey agreed. The request that Fitz Roy opposed he thought was 'only reasonable and ought to be assented to' — but as the colonies were about to be separated, no action was necessary. In fact, the question had not been a practical one in the middle of the decade, when assisted immigration was suspended, and after its resumption in 1848, Port Phillip did not fare so badly as it had between 1839 and 1842; but as Charles Nicholson, one of the Port Phillip members, had told the Executive Council, 'it was the expenditure of £180,000 [sic] of the Land Revenue on purposes wholly unconnected with Port Phillip that had led to the demand for separation', and while this memory survived, the feelings of resentment were intensified by grievances over the expenditure of the ordinary revenue.¹²

Here again, though Gipps was right in saying that up to 1840, Port Phillip had been, in a sense, subsidised by the central district, there is little doubt that the former suffered from its lack of power and influence with the Sydney authorities — despite the good relations existing between Gipps and La Trobe themselves. As early as 1841, for example, before the establishment of a partially elective Legislative Council, the two were beginning to differ. Gipps, bearing in mind instructions from home, wanted to economise. He said he had 'already authorised as much public money for works at Port Phillip as can be expended advantageously' — and that only because of the size of the land revenue; but this might fall off, and as the southern establishment cost more than the ordinary revenue, before long there might be 'works in hand' without money to complete them. La Trobe recognised this possibility, but to him the works were really necessary. He told the Governor that without visiting Port Phillip, the latter 'might not appreciate the claim of the district to attention', and he could assure him that 'the expenditure on Public Works has scarcely been what it might have been'; the ordinary revenue by this time had increased enough to pay for more, being £32,000 against an expenditure of only £22,000 in the year ending June 1841 (with a land revenue of £54,000 and expenditure on migration only £42,000).¹³

Possibly, like the stoppage of immigration, the great economies made between 1842 and 1844 created a special grievance, stimulating

the separation petition drawn up at the end of 1844, but as far as the finances generally were concerned the inhabitants of Port Phillip were sure that they had justifiable complaints, even though in some cases this was the fault of the British rather than the New South Wales government. In the past Great Britain had not expected colonies in their early years to pay their way. Leaving aside the money spent on the convicts, the Treasury and Colonial Office in London had succeeded in removing Imperial subsidies to New South Wales and Van Diemen's Land only about 1826, when Governors Darling and Arthur set about implementing the tighter financial instructions they then received, and when settlement at Port Phillip was authorised, Bourke expected that some of the initial expenditure, which would certainly exceed ordinary receipts, would be met from the land revenue. However, the Colonial Office refused to allow this, and after 1840 Gipps, of necessity, had to reduce his expenditure and balance his budget, when faced with an accumulated deficit of nearly £200,000 at the end of 1839. This left little latitude for public works, much as they were needed at Port Phillip, and London was unwilling to allow the colony to run into debt.¹⁴

But financial stringency made the divisions of what were limited funds all the more controversial, and Gipps seemed less willing to help Port Phillip with works than he was to insist on the southern district helping Sydney with immigrants. Reporting on the separation petition in 1846, the New South Wales Executive Council, composed of course of Sydney officials, concluded that while between 1836 and 1844, the revenue from Port Phillip was £316,000 and the expenditure there was only £261,000, if a contribution towards the general expenses of the colony were to be added (and the Auditor suggested £6000-£7000 a year for this), the apparent surplus disappeared; but this argument was convincing *only* if it were agreed that a colony's budget should balance even during the first decade of its existence, and that it should receive no assistance for necessary foundation works.¹⁵ Apart from this, at that time, though the land revenue surplus was admitted to be £117,000, and it was the Colonial Office, not Sydney that at first had forbidden it being spent on works, Gipps, as has been seen, not merely refused to recognise the justice of spending it where it was raised, but after 1843 it was he who failed to make use of the provision in the 1842 Land Act permitting part of the fund to be spent on main roads, a matter thought sufficiently important to be repeated by the Privy Council Committee which reported in 1849 on the proposed Australian Constitutions.¹⁶

Complaints over public works were perennial. Certainly Port Phillip was given £22,000 between 1841 and 1843 for building a gaol; but though this may well have been necessary, it made a smaller popular appeal than requests for funds to repair the 'indescribable' streets — 'barely passable' in summer, 'chains of water-holes' in winter, with their 'trees, tree-trunks and stumps . . . deep and dangerous ruts every twenty yards' and after rain, 'slushy and sticky . . . with mud in most of the principal thoroughfares . . . waist deep'.¹⁷ Between 1843 and 1848, casual expenditure proposed by La Trobe was cut by about one quarter in Sydney — from £265,000 to £195,000 — although with a total ordinary expenditure at Port Phillip of £288,000 and the district's ordinary revenue £401,000, one would think that funds were available, even after allowing for a contribution (£7000 a year between 1836 and 1848) to New South Wales

overheads. Between 1843 and 1846, including about £7000 for the unemployed in 1843, expenditure on public works at Port Phillip totalled only £25,000 altogether — or about half what was spent in the Central district in 1844 alone, despite the report that year by the Select Committee of the Legislative Council on Distressed Labourers that no public works 'of a pressing nature' were then required in Sydney — which could hardly be said for Melbourne where it was not until 1846 that any money was voted (£3000) to begin the Yarra bridge. In 1845, £48,000 raised from Port Phillip was applied elsewhere, complained a spokesman for the district to Grey. 'No other country in the world could sustain such a drain on its resources without absolute ruin', he asserted. Certainly the people there were convinced that their interests were insufficiently attended to, both by the Governor and his officials, who all resided in Sydney, and by the Legislative Council, where the Port Phillip representatives were in a helpless minority — six out of thirty-six — even if it had been possible, as it was not, to induce local residents to stand for election, and though Gipps might argue that economy had been necessary for the colony, he failed to appreciate that it might have been inexpedient at Port Phillip.¹⁸

While the financial question remained a running sore, there were other causes of dispute too. When the Colonial Office offered, in 1842, to send out to New South Wales, and 'particularly to Port Phillip', some convict boys from Parkhurst, La Trobe and the Port Phillip settlers, conscious of their labour shortage, welcomed the suggestion, but Gipps and his officials were opposed, so despite La Trobe's advocacy, the proposal was dropped, and Port Phillip had to go without.¹⁹ Though it was the Postmaster-General in London, not in Sydney, who refused to send mail direct to Port Phillip, despite Gipps' support of the latter's requests, it was Sydney who charged high rates on the Sydney-Melbourne service, and besides, the southerners' case might have seemed stronger if it had come from an independent colony.²⁰ And still more important was the boundary question. The first delimitation of the district, made when La Trobe was appointed, defined the district as running between the 141 and 146 degrees of longitude, and south of latitude 36 degrees — that is roughly south of the line through Albury and Echuca, and west of the line roughly through Benalla and Wilson's Promontory, so that it excluded the whole east coast and the still unexplored Gippsland section. Next year, the Land and Emigration Commissioners, wanting the largest possible area for their fixed price experiment, brought in both these areas by moving the northern boundary to run along the Murrumbidgee and thence to the sea at Moruya, but this at once produced a strong protest from the still wholly nominated Legislative Council in Sydney and from the colony's spokesmen in London, particularly Edward Macarthur, with the result that the area between the Murray and the Murrumbidgee and the coastline between Moruya and Cape Howe were restored to the Central District.²¹

Certainly the abandonment of the fixed price for land made 'the proper limits' of Port Phillip a matter 'of little or no practical importance', at least to the Colonial Office, which still thought the time 'hardly ripe for separatism', despite the receipt of a formal petition from Melbourne asking for it; but it was perhaps a pity that the Office had accepted without question and without much

consideration, the views of spokesmen for the older settlement.²² Stephen noted in justification that 'although there may be some danger in confiding too much to the local authorities', in matters such as this, it was difficult to over-rule them; still he might have noticed who the local authorities were. For once John Dunmore Lang was probably right when, in condemning this decision, he argued that 'a matter of such transcendent importance should not have been left to be determined as might be suggested by the selfishness of individual colonists, or the caprice of some self-conceited functionary', and that though the eastern coastline and the Maneroo Plains should remain in the Central District, the area between the Murray and the Murrumbidgee rivers, where the settlers normally obtained their supplies from Melbourne, lay naturally within the Port Phillip district, and should not have been removed from it.²³ One might suspect that it would have been judicious to hold further enquiries, especially when the Land and Emigration Commissioners defended their proposed Murrumbidgee boundary as being one which was 'well defined, well-shaped, compact, with natural features', and gave an area 'less than any other colony on the mainland of New Holland' and 'no more than was reasonable'. But the reasonable theory did not prevail, and though La Trobe was to recommend the Murrumbidgee boundary again in 1846, neither Gipps nor the Colonial Office were prepared to consider it.²⁴

The Commissioners recognized the difficulties involved in administering a large colony, but rather surprisingly Gipps did not, or at least believed they were outweighed by other advantages. Thinking that British interference in local colonial matters was undesirable, and that this 'must of necessity be more frequent where numerous small colonies are intermingled or clustered together than where they are few, distinct and large', he concluded that 'on this principle alone, I should feel greatly disinclined to recommend the dismemberment of the Colony of New South Wales', but the centralist administrator, though certainly urging the need for local authorities, and finally supporting the petition from Port Phillip, appears to have consistently underestimated the drawbacks of government from a distance. The Commissioners in this case were more realistic, and observing that the eastern part of Australia was larger than all the states in the American union, emphasised the indubitable need for a separate executive and judicial authority in each part of New South Wales, and the possible need for a separate legislature as well; unfortunately at this stage they refused to comment on such political questions 'which do not properly fall within our province', and leaving the matter to the Colonial Office virtually meant accepting the views of the Central District's spokesmen. These were incorporated in the New South Wales Act of 1842, which passed virtually without debate, and not only defined the boundaries of Port Phillip in the restricted sense adopted by Russell and Stanley, but repeated an amendment to the temporary act of 1840, inserted at the insistence of Sir Robert Peel, which provided that no new colony should be created south of latitude 26 degrees. This meant that the Crown could no longer divide the colony by prerogative, presumably on advice from the Colonial Office, and that separation was impossible unless Parliament passed an amending act, and though certainly the clauses providing for the creation of District Councils did attempt to modify the power of the central

government in dealing with some local affairs, unfortunately, to the chagrin of the Governor, these Councils were never to come into effective operation.²⁵

Gipps had always been a strong advocate of local government, although in this he was to some extent only following current progressive political ideas, as enunciated, for example, by de Tocqueville in his *Democracy in America*, and applied to the colonies in Lord Durham's famous report, though this only shows yet another limitation on colonial self-government which was included in that improperly celebrated document, which has usually been overlooked by its commentators. In his report Durham had argued, rather curiously, that institutions of municipal self-government were 'one of the foundations of Anglo-Saxon freedom', and that their absence was one of the principal causes of maladministration in the Canadian provinces; it followed that 'municipal institutions must be part of every colonial constitution', and that their establishment was so vital that, like the land laws, they should be created by an imperial Act, which would thus guarantee their existence and ensure that the general legislature would not encroach on their powers.²⁶ His ideas were taken up by Poulett Thomson, who, when he went to Canada as Governor-General in 1839, bitterly regretted that the clauses providing for them were cut out of the Canadian Government Act of 1840, but who managed to have them introduced by local legislation the following year; however, though it was Peel and Stanley who had forced Russell to omit these provisions in the case of Canada, they proceeded to include clauses modelled on them in the New South Wales Act of 1842.²⁷ It was necessary to institute local bodies with powers for local purposes, wrote Stanley, and though it would be better to 'leave their objects to be provided for by local legislation . . . there was reason to fear . . . that the local legislature might not come to agreement . . . and to believe that principles laid down by the authority of Parliament would be more easily acquiesced in' — though Stephen was to note in 1845 that 'Lord Stanley would never have recommended it [legislation by the U.K.] with longer colonial experience'.²⁸

Two years before, Gipps had argued that municipal institutions, if nothing else, provided a valuable training for the exercise of wider constitutional powers, telling the old, nominated, Legislative Council that

it is, I believe, impolitic, if not unsafe, to entrust any People with a Control over their Government in the exercise of its higher functions who have not been previously trained to the temperate exercise of their powers in the management of local affairs.

But there was more to them than this, for their existence would also have enabled local areas to escape from the misuse of power by a central authority, which was not the less likely to be selfish, or dominated by particular interests, because it was more or less popularly elected — a point emphasised by Grey in 1847, after he had become Secretary of State. He thought that the failure of the District Councils to operate properly, despite the provisions of the 1842 Act, had meant that 'the remote districts' had not been able 'to exercise their fair share of power, and to enjoy their proper influence in the general policy of the Province', and that therefore the principle of self-government had not worked in these areas.²⁹

There were many reasons for the Legislative Council's opposition to the district councils and its refusal to pass the legislation necessary to enable them to work. There was the objection on principle to institutions imposed on the colony by the British Parliament. There were objections to the qualifications of electors and councillors, and to the 'Algerine' clause authorising the distraint of councillors' property in the event of a deficiency in the district's assessed payments to the government. There were objections because in many districts the population was too sparse, the value of property was too indeterminate and the holdings of squatters would not be taxable, and because, regarding the councils' functions, 'the distinction between points of general and local interest was not sufficiently recognised', and one might add, as Grey was to remark later, there was a 'remarkable innocence' about the practice of local government in England. There was a 'disinclination', as Gipps put it, by the Legislative Council to see in existence 'other bodies which may render less extensive its own powers', but above all, the Council objected to the districts being 'rated', so that what was in essence a land tax would be levied to pay for 'local improvements', rather than leaving these to be financed by the central government from revenue raised mainly by customs duties. This feature, naturally enough had particularly appealed to Gipps, as he struggled to obey Imperial orders to economise, but not surprisingly it helped to induce the Legislative Council's Committee on Grievances to conclude that 'Municipal government may be bought too dearly', as it emphatically condemned what had been proposed for this purpose.³⁰

Popular opinion was less hostile than the Legislative Council, and in Port Phillip it was even thought the district institutions might be beneficial, if, like the Melbourne City Council, they made possible more local control over local affairs; but despite this 'prejudice in their favour', as La Trobe put it, there was 'a degree of repugnance and suspicion' about their rating powers, as well as the other objections already referred to, and in 1846, he concluded that the effect of the Councils in the counties of Bourke and Grant had been 'to retard rather than facilitate . . . the progress of internal improvement', for their establishment had removed some powers and functions from the central government without providing an effective substitute. In 1844, the *Sydney Morning Herald* had criticised the Legislative Council's refusal to co-operate in making the district council scheme effective, arguing that it had 'passed upon a great body of its constituents a sweeping sentence of political condemnation', and certainly this failure meant, as Gipps said, 'that the Government intended by the Imperial Parliament to be created in New South Wales, . . . essentially one of Local Administrations . . . in which it was intended that the local affairs of every Country, District, or division of the Colony, should be managed by a local Council elected in the District itself, and only what might be considered the general business of the whole colony be transacted by a Council sitting in Sydney' (a government which provided for the union of Port Phillip with the rest of the colony), was never properly implemented.³¹

Gipps had been concerned that the central government, without local institutions, had insufficient authority to provide good government throughout its extensive boundaries. Matters of local interest, he argued, could only effectively be dealt with locally; but

whether the local government arrangements, which he had proposed in 1840, or 'a full development . . . of the system of District Councils under the present Constitution might have sufficed to preserve unity in the colony of New South Wales and avert its dismemberment' remains as doubtful now as when Gipps refused to speculate on the subject in 1846, but as matters stood, when the Legislative Council refused, in 1848, to give those District Councils that had been established any financial help towards meeting their debts, the *Herald* was certainly justified in asking how could it complain of the tyranny of Downing Street, when its members, in their turn, executed such 'an act of despotic injustice to a number of respectable colonists'? This vote appeared to justify de Tocqueville's claim that a 'democracy without provincial institutions has no security against . . . the excesses of despotism', and since so long as there were no effective local councils in New South Wales, decisions on all local improvements, including roads, bridges, schools and so forth, had to be taken by a body sitting in Sydney on which, as has been noted, the residents of Port Phillip were most inadequately represented, it may well be argued that the lack of local self-government was a further stimulus to the campaign for separation.³²

Though he was at first unsympathetic, Stanley did not remain completely impervious to the agitation from Port Phillip, and when he received the lengthy and elaborate petition drawn up at the end of 1844, he asked Gipps for a full report on the matter. In this, Gipps came down in favour of the petitioners, carrying two members of his Council with him, though the Treasurer, Riddell, opposed the change as being unnecessary and Bishop Broughton objected to it, as Grey observed, largely for ecclesiastical reasons. Gipps denied the existence of any administrative evil or of 'serious practical grievances', which, though a comprehensible stand, is one that I have suggested was not entirely true; however, he agreed that the district could support itself financially, that it could not find suitable representatives to sit in the Legislative Council in Sydney, and that its inhabitants were 'very generally perhaps unanimously' in favour of separation, noting, as has been seen, that the successful establishment and working of the District Councils might have preserved the unity of the colony. He reiterated his belief in the importance of local institutions for good government, and he urged, not only, like Durham, that a system of local self-government should be established by the Imperial Parliament before any legislative body should be summoned in the new colony, but also that 'the first representatives introduced into the Legislative Council should be elected by local Municipalities, or District Councils' — a scheme for which Lord Grey was soon to be much abused.³³

Writing from Melbourne, La Trobe had no doubts on the need for separation. Certainly he thought that it was easier to refer to a government six hundred miles away than to one on the other side of the world, but even with the former, references caused delays and often misunderstanding, despite his personal good relations with Gipps. It was clear the connexion no longer had any financial advantage (rather the reverse) and he hoped that if separated the new rulers at Melbourne — and he was later to propose that they should be a *nominated* Legislative Council (with a nominated Executive) for the new colony — would adapt their policy better to local needs, would regulate their immigration more efficiently and might even pay

more attention to 'the spiritual and moral welfare of the people'.³⁴ On the question of inter-colonial relations, La Trobe thought there would be 'no difficulty' in making an 'amiable adjustment' of the tariff, but J. P. Robinson, giving evidence on behalf of Port Phillip, recommended the appointment of a Governor-General 'to maintain a harmony of legislation among the Australian colonies', together with a statutory declaration that inter-colonial trade be free (was this the first sign of Section 92?); the only interference that he thought would be necessary would be an occasional veto on legislation. With this the Executive Council agreed, asserting that 'the controlling power of Her Majesty's Government' would prevent any action that would 'seriously impede the freedom of intercolonial commerce'. However, this was a matter which caused more concern at the Colonial Office.³⁵

Gipps' report reached London about the time Lord Grey assumed the position of Secretary of State for the Colonies, in July 1846, but it was twelve months before he replied. His excuses regarding the pressure of other business were of the type that infuriated colonists, but at least the delay had given him time to receive in March 1847 the despatch Fitz Roy had sent the previous September, in which, following a debate on inter-colonial tariffs in the Legislative Council, he had raised the question of the imposition by Van Diemen's Land of a 15 per cent duty on imports from New South Wales. Fitz Roy's objections to the colonies adopting 'measures . . . calculated not only to interrupt their Commercial intercourse with each other, but to create feelings of jealousy and ill-will among them', had been to some extent anticipated in some of Gipps' remarks, but this raised, in an immediate practical manner, the question of inter-colonial relations. These would become all the more important if Port Phillip became a separate colony, and not only did the British government have to decide whether to disallow the Van Diemen's Land Act, but it also need to consider Fitz Roy's suggestion that 'it would be very advantageous' if some superior functionary were to be appointed to whom all measures adopted by the local Legislatures, affecting the general interests of the Mother Country, the Australian Colonies or their Inter-colonial trade should be submitted' by the different Governors'.³⁶

This was a subject on which rumours had been circulating for some years, though it was not one that aroused immediate interest in the press; both Fitz Roy, his adviser Deas Thomson, the Legislative Council, and even for a time Lord Grey himself seemed more interested in the question how to preserve inter-colonial free trade than in more complex schemes for colonial federation, but the latter was obviously one of the possible means of preserving a uniform commercial policy to which Grey was devoting 'mature consideration'.³⁷ Though this might have been achieved, as Robinson (and also Deas Thomson) had suggested, by Imperial legislation, in fact it seems to have stimulated Grey to make more far-reaching proposals, though it is clear that these had already been in the minds of those at the Colonial Office. Fitz Roy's suggestion would 'be met by the proposed enactment for establishing a General Assembly for the Australian Colonies' minuted Stephen, and although Grey noted that 'nothing is yet decided', it seems that by then Grey and Stephen were thinking in terms of a federal government structure, something which Grey had favoured for Canada at least a decade before, had

imposed on New Zealand the previous year, and which he later thought of applying to South Africa.³⁸

But however attractive it was to Grey, federalism made no great appeal to Australians when he brought it forward in the despatch he sent at last on 31 July 1847. Cunninghame had already criticised it in London in February as he was to do again later. Press comments in Melbourne reveal confusion, and the electors of Geelong argued that the idea was 'more plausible than feasible'; as Professor Ward has commented, 'the idea of federal union was unwelcome because the need of it had never been felt and because it threatened to renew the hated domination of Sydney'. As for New South Wales, though the reaction was less hostile, when the subject was not ignored, it seems to have been generally felt that a central legislature would be unworkable, because of distance if for no other reason; in May, the Legislative Council carried a resolution 'almost without remark' to the effect that it could 'not acquiesce in any plan for an inter-colonial congress in which the superior wealth and population of New South Wales, as compared with the other Colonies . . . shall not be fully recognised as the basis of Representation', but it did not pursue the matter.³⁹

When he replied, in July 1848, to the comments on the despatch he had sent a year earlier, Grey was more concerned with the criticisms of his constitutional proposals than with any federation scheme, but he had admitted that the latter subject was 'beset with difficulties', despite the 'extreme inconvenience of the colonies having different tariffs with internal customs houses', and both Hawes and Merivale opposed the idea. The former thought that it 'must flow from the experience of inconvenience'; the latter argued that the distance between the colonies would minimise conflicts between them, while agreeing with Grey that it would make it difficult for a central legislature to meet. In the end, Grey, while again stressing to Fitz Roy the need for 'some means of providing for that uniformity in their commercial policy which is necessary in order to give scope for [their] development', followed Stephen's advice and referred the whole question of the Australian constitutions, including his federal proposals, to a Committee of the Privy Council, although this Grey (as chairman) and Stephen were in a position to dominate.⁴⁰

When it reported, it favoured federation, ignoring the difficulties involved in the sitting of a Federal Assembly, and stressing that the division of New South Wales 'would further aggravate the inconvenience' caused by differing rates of duty in the different colonies, even if they were imposed only for revenue. 'So great indeed would be the evil, and such the obstruction of the intercolonial trade, and so great the check to the development of the resources of each of the colonies, that it seems to us necessary that there should be one tariff common to them all', it argued; this tariff which should be that of New South Wales, should initially be imposed by the Imperial Parliament, but should be subject to review and amendment by a General Assembly, of between twenty and thirty members, elected by the colonial legislatures, which should also have power to legislate on other specified topics of common interest. The number of members from each of the colonies would depend on their population; initially New South Wales should have twelve out of twenty-five. To minimize opposition, Stephen had been anxious that the proposal for the

General Legislature should seem to grow inevitably out of the difficulty regarding the commercial relations of the colonies; since most of their revenue came from the Customs, it was inevitable that differences would emerge unless steps were taken immediately to maintain uniformity, and then, once a general authority was established for this reason, other subjects could be entrusted to it. But the proposals in the Australian Colonies Government Bill were far-reaching. A General Assembly was to be established, with power to appropriate 'an equal percentage' of the revenue received in each colony (which could be the whole); federal law was to be pre-eminent; intercolonial trade was to be free; initial duties were to be imposed by the Act. Merivale wondered if this meant that Federation would destroy the benefits of separation? or that the details laid down, especially those relating to the customs tariff, would be thought to undermine the principles of local self-government? Apart from this the difficulty of the colonies sending representatives to Sydney would recur.⁴¹

In Australia, though some of the colonists and the press recognized the importance of regulating inter-colonial trade, most were apathetic, and a few were hostile. In response to criticism, which included reference to administrative difficulties, the clauses prescribing duties were withdrawn, and as a further concession, Grey agreed to allow the Federal Assembly to control Crown lands and the land revenue; only the ban on the colonies imposing differential duties remained. Grey referred to a despatch he had sent to New Brunswick as showing 'very clearly how far I think local representatives ought to be allowed to go in the management of their own affairs, and where the authority of the Imperial Government should be maintained' — though he was prepared to be more flexible than the intransigent Molesworth and other so-called Colonial Reformers. The Imperial government's prohibition of differential duties was not 'a capricious interference' with local autonomy, he had told Sir Edmund Head in New Brunswick; it had to regulate colonial commerce in the same way that in the U.S.A. the Federal government had the power of controlling interstate and foreign commerce — it was 'the power of meeting the injury which uncontrolled legislation of these subjects allowed one member of a group of colonies to inflict on its neighbours'. So the Imperial government could not consent to interference (in trade) by a particular colony, and it could not allow differential duties. Perhaps it was a pity he did not take a similar line on railway gauges — but it was commercial policy — and the intercolonial questions allied to this — that worried him most.⁴²

But what worried the Australians most was the delay in granting constitutional reform — and in the case of Port Phillip, separation. Forwarding a petition from Melbourne protesting against the postponement of legislation from 1849 to 1850, La Trobe emphasized that 'the longer the meditated separation may be delayed, the more embarrassing the task of governing [the district] must become', to which Fitz Roy added the comment that 'The rising generation was becoming impressed with the belief that amid the more weighty and urgent causes incidental to the nation, the interests of the colonies . . . are forgotten or disregarded'. The bill, when re-introduced in 1850, included Federal clauses, but rather than risk yet another year's delay through the need to correspond with the colonies in order to correct their deficiencies, or through the defeat of the whole bill in the House

of Lords, Grey abandoned his federation scheme. The Act when passed contained nothing relating to inter-colonial trade except a prohibition on discriminating duties, and this, though intended to prevent retaliatory action, in due course came to stop inter-colonial tariff agreements. So separation was accompanied by no arrangement for inter-colonial co-operation, save for the instruction that neither New South Wales nor Victoria should enact legislation to alter customs duties without previous consultation with the other, and the creation of the nebulous position of Governor-General, to which Fitz Roy was appointed, but which was 'little more than an empty title'.⁴³ In the future, declared Lord Stanley, in the House of Lords, the colonies themselves could 'point out the nature of the combination . . . they desired . . . and upon their petition and advice, let Parliament — not the Crown — . . . give effect to that which upon experience they found to be necessary'. Russell was 'quite ready' to agree, though stressing that the colonies could not in future make a Federal legislature without another Act of the Imperial Parliament. Grey remained 'persuaded that the want of some central authority to regulate matters of common importance to the Australian colonies will be felt, and probably at an early period', and in this he was correct, but in the meantime he had aroused irritation and ill-feeling by the delay caused by his attempt to mix constitutional reform with a simple straightforward separation, which might have been accomplished in 1847.⁴⁴

As one looks back on the campaign for separation — certainly with the jaundiced eye of a Victorian — few of those in positions of power or authority seem to emerge with credit. Whether or not an effective system of local government would have weakened the demand is doubtful, as we have noticed, but the New South Wales Legislative Council undoubtedly stimulated it when it refused to establish any form of municipal, shire or county institutions, as Gipps pressed on it both when it was wholly nominated and when it was partly elected. But Gipps himself gave those in Port Phillip cause for complaint, by his attitude to the spending of the Land Revenue, by his reluctance to recommend local works, and by his recommendations on the district boundaries. Helping him in the accumulation of grievances was the British government's insistence on economy and balanced budgets, its prolonged refusal to send mails direct to Melbourne, and its unsympathetic attitude on the boundary question; and when separation was finally agreed on, the delay in implementing the decision caused further irritation in the district. This delay might have been justified had Grey's federation proposals been listened to, for all that they carried with them the unpopular implication that 'mother knows best', and underrated the genuine difficulties of a federal system in 1850; but thanks to the opposition of the self-styled friends of the colonies — the Colonial Reformers — and of Imperialist-minded Conservatives, they were abandoned. Certainly the original colony of New South Wales was too big a unit for effective government at time when communications were still very primitive, despite Gipps' opinion to the contrary, but the opportunity of combining local independence with central control on a few vital matters was lost, and it was left for the Canadian provinces only sixteen years later to undertake this important initiative towards a solution of one of the most complex problems that confronts a territorially large political unit.

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