

to the juristic claim that, not only is the administration of justice the primary function of government, but that it is also the source of government. Only by slow degrees did New South Wales free herself from the régime of martial law and develop a system of civil administration. The growth of the colony and the gradual change in the character of its population led the home authorities to introduce a modification in the autocratic form of government by the creation of a Legislative Council. In a despatch of January 19th, 1824, to the Governor of New South Wales, the Colonial Secretary authorized the appointment of such a body, which, acting in concert with the Governor, 'should "have power and authority to make laws and ordinances for the peace, welfare and good government of the said colonies." By this concession an advisory body made up partly of official and partly of non-official members, was placed alongside the Governor as a check upon his legislative freedom of action.² The Executive Council was, of course, unaffected by this proceeding and still retained its strictly official independence and personnel. This form of government which was designed to introduce a semblance of constitutional freedom into the country and gradually prepare the way for a more popular system, lasted for a period of eighteen years, when further important constitutional innovations were made.

The Act of 1842,³ for regulating the government of New South Wales and Van Dieman's Land, is the third great charter of the Australian people. This statute which attracted but the smallest attention in the imperial parliament, was principally concerned with the colony of New South Wales, into the Legislative Council of which it introduced a representative element, two-thirds of the members of that body being now made elective.⁴ The Governor, with the advice and consent of the Council was empowered to enact laws for the peace, welfare and good government of the colony, subject to certain limitations intended to preserve the authority of the Colonial Office over the provincial executive and the land and revenue laws of the colony. Although but a half-way measure, it marked the beginning of

¹Quick and Garran, *Annot. Const. of Aust.*, p. 37.

²Woodward, *The Expansion of the British Empire*, p. 265.

³5 and 6, Vict. c. 76: "An Act for the Better Government of N.S.W. and V.D.L."

⁴Quick and Garran, *Annot. Const. of Aust.*, p. 38.