Aspects of the career of Alexander Berry, 1781-1873

Barry John Bridges
University of Wollongong

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Chapter 10

LEGISLATOR

Berry was not a regular participant in Legislative Council debates although he spoke a good deal more often in his earlier years than later. The Colonial Observer in 1843 praised his writing but rated him much less effective as a speaker because he made desperate attempts to be an orator, for which 'nature certainly never designed him'.1 In one of its reports this newspaper said that Berry 'kept the house during the whole of his speech, as usual, in a roar of laughter'.2 His humour and good nature when amongst friends came out in debate where he was commonly in turn ironical, whimsical, outrageously forthright or undulging in playful banter at the expense of fellow members. The depth of his knowledge of the Bible showed in a wealth of allusion and his wide experience of other men, other places and other times in anecdote and reference. On the evidence of press reports he was undoubtedly the most widely read member throughout his long tenure but in his displays of learning he often appeared to be striving for effect. He normally spoke in a monotone and at so low a volume that quite often reporters were unable to hear him.3 The looseness and tendency to irrelevance of many of his speeches detracted from their impact. In contrast Berry's letters for press publication, while usually very long, benefited greatly from the need for some discipline. Increasingly the matter

1 17 May 1843, edl.
2 23 Sep. 1843: LC 20/9/1843.
3 Complaints about not being able to hear a speaker at all seem to have been confined to Berry but there were general complaints that the absence of any provision for maintaining order in the press and public galleries made it difficult for reporters to follow speeches. See Australian, 22 Sep. 1843 'again' drawing attention to the problem and, in a separate report, linking Berry's 'low tone' and 'the great noise in the gallery' as reasons for not being able to report what he said.
of his contributions told against him. He despised 'politicians' and was decidedly not one himself. He did nothing to moderate expression of his opinions and feelings. His increasingly outmoded social attitudes stood out; so too his regard for self-interest, his prejudices and hates, quirks and crotchets. A newspaper complained of Berry inflicting 'mischievous twaddlings upon the Council' and he was described at various times, as a man of 'singularly antiquated ideas', 'champion of all that is narrow and antiquated in political economy', 'a part of human antiquity in our midst' and an 'antediluvian oppressor'. A correspondent wrote that 'Mr Berry often says strange things which cause few persons to attach much importance either to his "speeches" or acts' and Manning Clark has suggested similarly that Berry 'probably destroyed his chance to be heeded by the men of his day by the extravagance of his language'. Although occasionally an editorialist would express surprise at good sense proceeding from an unlikely source Berry received a poor press. He was not alone in the blended Council from 1843 in firm adherence to conservative ideas but his expression

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4 See Berry to Mary Shelley 6/1/1848, BP: the fame of even the most celebrated of politicians would prove ephemeral. True distinction lay in scientific discovery.

5 Australian, 26 Aug. 1841.

6 Weekly Register, quoted SMH, 18 Dec. 1843.

7 SMH, 23 Dec. 1843.


9 IM, 2 Feb. 1859, letter from J.D.Lang.

10 Australian, 5 Nov. 1840, letter from 'A Subscriber Far South'.

11 Clark, op.cit., 258.

12 E.g. Australian, 24 Mar. 1842, edl.

13 Robert Lowe derided Berry's friend J.H.Plunkett as 'a political old woman, full of obsolete prejudices and
For most of his time in New South Wales Berry suffered frequent press criticism, ridicule or condemnation. He usually ignored these attacks. This example of ridicule is taken from the *Sydney Gazette* of 31 July 1834.
of them and contempt for derision elicited from more liberal members caused him to be dismissed as eccentric and even members well disposed towards him joined in laughing at his more extravagant remarks. On matters about which he cared deeply Berry could be moved to displays of emotion rare in that staid chamber.

Given his intelligence and long membership Berry's undiminished propensity for breaches of forms and orders of the House is surprising. In 1841 the Australian complained of

the rudeness, the uncultivated rudeness, with which he interrupts all and sundry of the Members who may happen to be speaking on the debate; nay, his Excellency himself is really scandalous and irritating to behold. Well may the Colonists pray for the time when, having the power to choose their own members, they may be rescued from the infliction of such a Representative.14

The ascent to power in 1830 of a Whig Government 'through the influence of Cobblers, Pickpockets and Scavengers'15 appalled Berry who saw in the ministry

a set of men utterly without talent to steer the Ship of State - a set of villains without principle or courage who for their own interest will revolutionize the Country, a set of men as base as the actors of the first French Revolution & who I have no doubt as God is just will meet the same fate.16

Later he wrote that Whig nobles were such 'great simpletons' that he could 'only account for their conduct by supposing many of them to be the Sons of the Footmen of predilections, and easily startled at innovations of any sort': Atlas, 9 Sep. 1847. C.M.H.Clark refers to Charles Nicholson, another friend, as having 'opinions as antediluvian as those of Alexander Berry but too shrewd to put them in such a way as to make people laugh at him': Clark, op.cit, 289.

14 26 Aug. 1841.
15 Berry to P.P.King 31/8/1835, BP.
16 Berry to W.Jemmett Browne 1/1/1833, BP.
their reputed Fathers'. Given such absurd prejudice it is not surprising that Berry viewed Whig governors with unprovoked hostility.

The liberal opinions of Sir Richard Bourke had been so plainly manifested before he came that he was greeted with hostility by the more intense 'Botany Bay Tories', none more so than Berry who told Wollstonecraft that were it not for malicious reports that they were insolvent he would resign immediately. He 'despised lending myself as a tool to a petty fogging, unprincipled and Revolutionary Administration'. A few months later he wrote 'I have no faith in the present Gov't. - whigs acting under whigs'. In January 1833 he told Browne that he knew very little of General Bourke,

indeed not more than what the circumstances of my meeting him in the Council leads me to know - but it is singular I have not seen the man who seems to care a fig about him - at the same time none of those professional libellers the editors of the newspapers say a word against him - this I should say is a bad sign.

Berry's submission to his prejudices seemed inconsistent with the pragmatic philosophy which he had expounded to his partner. Wollstonecraft was unsympathetic, writing in April 1832:

I must candidly tell you, that I do not understand your Hints and Whisperings as regards the present Government! What have we to fear from them or their Measures?

Bourke began his governorship with men politically opposed to him entrenched in the Executive and Legislative

17 Berry to W.Corben 28/12/1837, BP.
18 Hazel King, Richard Bourke, Melbourne 1971, 152.
19 Berry to Wollstonecraft 5/9/1831, BP.
20 Berry to Wollstonecraft 4/1/1832, BP.
21 Berry to W.Jemmett Browne 1/1/1833, BP.
22 Wollstonecraft to Berry 15/4/1832, BP.
Councils, magistracy and higher levels of the public service. He was never certain of a majority for his Government in the Legislative Council. Of the seven unofficial members only John Blaxland was not to be counted an Exclusive and of the six who were he rated five of them including Berry the principal opponents of Emancipists. These leaders of the 'emigrant party' appeared to assume they represented the opinions of the majority of respectable colonists. In Bourke's opinion they did not. The evil of legislating for the whole population by means of a legislature drawn from one party was checked only by the Governor's power to limit Bills to those of which he approved.

At the end of 1833 and again at the end of 1835 Bourke proposed reform to make the legislature representative, including ex-convicts amongst those eligible to vote. In the House of Commons Henry Bulwer Lytton was equally unsuccessful in advocating a representative legislature in 1832 and in presenting a petition for one from colonists in 1835.

Pressure on the Exclusives was increased in 1835 by formation with Bourke's tacit support of the Australian Patriotic Association which by 1836 was clearly a liberal party organisation.

Early in 1836, when the existing Act of Parliament for the government of New South Wales was approaching expiry, the Exclusive faction drew up petitions to the King and Commons calling for

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23 Bourke to Howick 28/2/1832, HRA, v XVI, 544.
24 Bourke to Stanley 2/10/1833, Ibid., v XVII, 236.
25 Bourke to Stanley 25/12/1833, Ibid., 303.
26 Bourke to Stanley 25/12/1833, Ibid., 302-307; Bourke to Glenelg 26/12/1835, Ibid., v XVIII, 246-249.
such an enquiry into the present state and condition of the Colony, in relation to its eligibility as a place for the transportation of criminals and for carrying into effect an efficient system of secondary punishment; its resources and capabilities as a free settlement, together with the most effectual means, by Emigration or otherwise, of raising its moral character; and to what extent or under what modifications it may be wise and expedient to confer upon the community the free institutions of Great Britain.

The petitioners conceded that the Legislative Council was 'in a great measure inoperative' from a majority of members having no right of initiation and the inhibiting effect on free expression of the Governor's presence. Nevertheless many people of experience questioned whether the period when the Colony would be ready to enjoy free institutions had yet arrived and those of an opposite view had proposed no satisfactory basis for the elective and representative franchises. In the petition to the House of Commons it was put that admission of ex-convicts to all rights and privileges of citizenship would render transportation an incitement rather than a deterrent to crime and prove 'disastrous in the extreme' to the Colony. Berry was almost certainly one of those at the heart of the movement for these petitions which were signed by 427 landholders, merchants and others, including all six Exclusive Members of Council and fifty-seven magistrates. The Australian Patriotic Association got up a counter-petition with about six thousand signatures. This agreed that the Legislative Council 'has no hold upon the public confidence', being held in equipoise by a 'factious oligarchy' and called for a Legislative Assembly of not fewer than fifty members, three quarters of whom were to be elected, the rest

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nominated by the Crown. Bourke described the Legislative Council as a 'self condemned body, consisting for the most part of Members selected for their known political bias'.

The more liberal newspapers condemned it as representative merely of a faction bound together by a network of family ties, too few and too confined in background to have sufficient knowledge to make good laws, not responsible to those whom they allegedly represented and disdainful of petitions.

No British minister or civil servant was going to advocate a measure which would exclude emancipists as a class from the vote or membership of a legislature wholly or partly elective, yet given the large number of convicts and ex-convicts and vehement opposition of a significant cross-section of the 'respectable' population, including most of the non-official members of the existing Legislative Council, most of the great landowners and a majority of magistrates it was entirely reasonable to await further developments. All that Bourke could achieve was appointment of the Australian Patriotic Association's Sir John Jamison to a vacancy in the Legislative Council in May 1837.

Upon his arrival in New South Wales Bourke sought the advice of the judges and legal officers and found that they favoured extension of trial by civil jury in the Supreme Court. As he anticipated considerable opposition in the Legislative Council he asked the Secretary of State for instructions to extend the civil jury system. Meanwhile

Petitions to the House of Commons of the Free Inhabitants of New South Wales, HRA, v XVIII, 399-403.

Bourke to Glenelg 8/8/1836, Ibid., 470.

Colonist, 25 May 1837; Sydney Monitor, 7 June 1837: publishing with comment extracts from Australian, 17 Sep. 1836: commenting on views expressed in SH.

Bourke to Glenelg 17/5/1837, HRA, v XVIII, 755.

Bourke to Goderich 6/2/1832, Ibid, v XVI, 515-517.
it was necessary to renew the Jury Act. After the Governor 'strained every nerve to obtain a majority'\textsuperscript{34} and a 'very warm' debate in which Berry joined Macleay, the two Macarthur\textsc{s} and Jones in opposition\textsuperscript{35} this was achieved with the significant alteration, which Bourke considered the thin edge of a wedge, that bank directors, a few of whom were emancipists, were made eligible for empanelment.\textsuperscript{36}

In July 1833, without receipt of instructions from London, Bourke introduced a Bill to assimilate the petit jury system to that of England. Ex-convicts who met the property qualification, were not of 'bad repute' and had not been convicted of any offence in the Colony were made eligible to serve as jurors. Even after amendment giving defendants the right to choose trial by military juries the Bill was passed only by the stratagem of taking the vote while Robert Campbell was absent and use of the Governor's casting vote. Archdeacon Broughton and six unofficial members including Berry voted against the Bill.\textsuperscript{37} This Act in effect resolved the jury issue in favour of Emancipists. Exclusives and even E.S.Hall, perhaps the Colony's foremost advocate of trial by representative jury, argued that the experiment failed because it resulted in unfit individuals getting onto juries.\textsuperscript{38} In 1836 Bourke used reports from the judges and Crown law officers to support a submission to the Colonial Office that military juries were no longer necessary.\textsuperscript{39} In 1839 when legislation to abolish these

\textsuperscript{34} E.D.Thomson to his father 29/2/1832, quoted King, \textit{op.cit.}, 157.
\textsuperscript{35} \textit{Sydney Monitor}, 1 Feb. 1832.
\textsuperscript{36} Bourke to Goderich 19/3/1832, \textit{HRA}, v XVI, 564.
\textsuperscript{37} King, \textit{op.cit.}, 159; Michael Sturma, \textit{Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales}, St Lucia 1983, 20.
\textsuperscript{38} Petition to the King, \textit{HRA}, v XVIII, 394; \textit{Sydney Monitor}, 18 Nov. 1835, edl.
\textsuperscript{39} Bourke to Glenelg 13/4/1836, \textit{HRA}, v XVIII, 391-392, quoted 392.
juries was brought in Berry, with James Macarthur the leading opponent, bungled by presenting a hastily got up petition protesting at trying felons by civil juries. He had failed to note that felons were not eligible for trial by jury. Defeat of the Exclusives on the jury issue was a prelude to ultimate defeat on the other issues of civil rights.

At Bourke's arrival there were four separate Acts relating to application of summary processes to convicts. These abounded in contradictions and errors and often led to illegal sentences. Bourke replaced the four Acts with the Summary Jurisdiction Act, 3 Wm IV No 3 of 24 August 1832, passed without dissent. As well as drastically reducing powers of Justices of the Peace this Act established hearings in public by petty sessions, abolished administration of justice in magistrates' houses, restricted use of the lash, and attempted to encourage reformation of convicts by prosecution of any master who assaulted or was otherwise cruel to his servants. Henceforth no master could even chastise corporally an assigned boy convict. Bourke remained uneasy about the phrase 'other disorderly or dishonest conduct' by which a most comprehensive authority... out of place in any but a Slave Code' was given to the magistrate.

Government gangs were no longer set a daily work quota. All that was required was that convicts kept working at their own pace. In general men in road gangs worked


42 For a summary of the Act: Bourke to Stanley 15/1/1834, HRA, v XVII, 322-323. See also Sydney Monitor, 14 Nov. 1832, ed1.
slowly and productivity was low. As a sentence to a road gang was the regular punishment for insubordination or laziness this situation was subversive of the whole system of convict discipline.

These changes led to convict discipline becoming the major issue in an ongoing battle between Bourke and his Exclusive opponents. The gentry, having their freedom of action trammelled by regulation, focussed on convict discipline because it was the one issue likely to attract attention and cause alarm in London. Indications are that there was genuine widespread concern over the Government's alleged encouragement of convict indiscipline. People did not divide in attitude neatly along party lines. The Sydney Herald, Sydney Monitor and to a lesser extent Sydney Times demanded tighter discipline; the Sydney Gazette and Australian were opposed. Bourke advanced the opinions of the stipendiary magistrates as 'unexceptionable evidence' of 'the sufficiency of the law'. It is questionable whether, despite all the complaints, prisoners were in fact treated with less severity during Bourke's governorship. Berry dismissed stipendiary magistrates' opinions on working of the Act as worthless, asserting that they dared not report anything disagreeable to their superiors.

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43 Sydney Monitor, 15 May 1833, 5 July 1834.
48 Berry to James Atkinson 9/2/1834, BP.
In the matter of the notorious 'Castle Forbes' affair, the central incident in the struggle between Bourke and the gentry, Berry was firmly in the corner of James Mudie. He believed that

these present disorders plainly arise from [our Rulers'] affected liberal principles & desire of Low popularity which induces them to take the part of the Servants against the Masters.

At the trial resulting from the 'Castle Forbes' outbreak

an officer of the Government [Roger Therry] appeared in the Court and defended the act on the allledged grounds that they had been badly used - had bad rations and had been flogged for misconduct by the Magistrates - pleading even punishment for disorderly conduct as a justification of crime and murder.

The contagion had not yet reached Shoalhaven but he felt 'no reason to flatter myself with final hopes of escape'. In 1836 Berry was among prominent colonists who responded to Mudie's applications for testimonials to append to his pamphlet, The Felony of New South Wales.

E.S.Hall contended that Bourke's greatest offence in the eyes of Colonial Tories was the fairness with which he distributed convicts. A favoured member of the gentry was no longer permitted to cull the idle and rebellious but had to try to manage his black sheep. Such men had to confront a degree of convict insubordination new and alarming to them. In May 1835 Bourke issued new assignment regulations under which distribution of convicts became more a matter of bureaucratic procedure than patronage. A ceiling was placed on the number who could be assigned to any settler, agriculture encouraged by giving additional


50 Berry to Atkinson 9/2/1834, BP.

51 Sydney Monitor, 28 June 1837.

52 Ibid., 21 Mar. 1834.
men according to acreage under cultivation, and preference given to new settlers whether their tenure was leasehold or freehold. These regulations were criticised as favouring small farmers, many of them ex-convicts, at the expense of large landholders. Berry was one who joined in attacks on assignment to smallholders as destructive of convict discipline and the assignment system and who abused the new regulations by creating a fictitious leasehold for his brother John.

Prior to creation of the partly-elected Legislative Council in 1842 the only elective office in New South Wales was that of chairman of Quarter Sessions, which by s5 of 10 Geo. IV No. 7 was restricted to persons 'possessing competent knowledge of the law'. The Governor's choice for an election late in 1835 was Irish Catholic barrister Roger Therry, his ardent supporter. Opposition magistrates claimed to feel it their duty to oppose his election. Therry was unacceptable because he was by common knowledge author of an anonymous pamphlet which supported Bourke and criticised a petition from inhabitants of the Hunter River district in support of Mudie, his religious affiliation and activism were inconsistent with their desire for Anglican supremacy and he was a pluralist already holding a number of public offices and practising privately. The Governor was petitioned to add J.H.Plunkett, Solicitor General and also an Irish Catholic, and two other barristers to the commission of the peace that the magistrates might be permitted a choice from men competent to undertake the office. Bourke rejected this as unnecessary: the Act did


54 SH, 3 Dec. 1835; Berry, 'Thoughts on the Present Crisis', 1839, BP.

not require election of a barrister. The magistrates then approached Pieter Laurentz Campbell, Police Magistrate at Maitland and a personal friend of the Governor, but he declined to stand. The magistrates concluded that Bourke was intent on forcing Therry upon them and asserted that even had the personal objections to him not existed it had become incumbent upon them to oppose him in defence of their right to a free election.56 C.D.Riddell, the Colonial Treasurer, an ultra conservative opponent of Bourke, was put into nomination and support for him organised by Richard Jones. Riddell won by 41 votes to 2557 but claimed that he had not sought nomination and declined to take office.58 John Lamb reported to Berry in January 1836 that rumour had it that Bourke 'has been in a state of the greatest excitement ever since Roger's defeat, and that his temper ... is ungovernable'.59 Bourke suspended Riddell from membership of the Executive Council for alleged defiance of the Governor's wishes and insisted on acceptance of his own resignation when the Secretary of State ordered Riddell's reinstatement.60 In this matter the Governor's defeats were of his own making.

In September 1839 Governor Gipps brought in a Bill providing that the chairman of Quarter Sessions was to be a barrister of at least three years' standing. The Chief Justice and Crown Law officers wanted such a provision in hope of ensuring competent appointments but Berry and Jones secured defeat of the clause by an appeal to the 'constitu-


57 Sydney Monitor, 11 Nov. 1835, voting lists. Berry voted for Riddell.

58 Ibid., 14 Nov. 1835.

59 John Lamb to Berry 9/1/1835, BP.

60 King, op.cit., 238-240.
tional' right of the magistrates to unfettered selection while pointing out that a barrister was likely to be the best qualified candidate and it was open to the constituency to elect one. Berry wanted to go further in guaranteeing elections free from influence by denying the vote to Member of Council, military and stipendiary magistrates but was unable to carry the legislature.61

By March 1832 Bourke found that highway robbery and housebreaking had so declined since passage of the Bushranging Act of 1830 that there was no longer any need for 'so restrictive a statute' and made the first of three attempts to prevent its reenactment. The 'Tories', attributing current security to operation of this Act, continued to muster the numbers for short-term renewals.62 As late as 1842 the Colonial Secretary and the Attorney General were to be found arguing that while this legislation did appear somewhat repugnant to British law, in the peculiar circumstances of the Colony it could not prudently be dispensed with.63 Berry was its strongest supporter. He argued that taking to the bush was one of the worst crimes because it led a fugitive to further crimes in order to survive. In response to an application to the magistrates in the early eighteen twenties for suggestions on how best to put down bushranging he suggested that any convict who ran should serve the remainder of his sentence in irons. He acknowledged that this had been thought 'harsh[,] cruel & consequently inadmissable'; but after some of his convicts had bolted he reiterated adherence to


63 _Australian_, 19 May 1842: LC 17/5/1842.
The Bushranging Act was, he said, 'nothing more than a transcript of the Vagrancy Act of England' but crime was both more frequent and more atrocious than in England and special laws were required. In 1839 Berry accused the Legislative Council of being partly to blame for bushranging through tampering with the Act and 'taking away its keen edge'. He went on:

We have, in this Colony I am sorry to say, a spirit of Whiggery degraded into liberalism and philo-felonism, which does not care a farthing about honest men's throats being cut, but has a strong feeling in favour of the bushranging rascals.

In 1840 Berry voted against renewal of the Act in protest at its not being rigorously enforced. In 1842 he opposed as premature relaxation of provisions for arrest on suspicion and transportation long distances for identification.

In 1839 Berry said that the Mounted Police, which existed mainly for suppression of bushranging, was 'not worth half what was paid for it' although he noted, with apparent inconsistency, that the force had apprehended some three hundred bushrangers in the past year and moved successfully for a rise in pay for the force's officers.

In 1832 the Governor's and judges' salaries were made a charge upon the Colonial rather than the British revenue. Wollstonecraft berated Berry for having 'eternally disgraced himself' by not voting against these appropriations. Strenuous opposition should have been followed by a

64 Berry to - n.d. (c1825), BP.
66 Sydney Monitor & Colonist, 3 June 1840: LC 2/6/1840.
67 Australian, 19 May 1842: LC 17/5/1842. See also Berry to John Berry 26/5/1842, BP, expressing disappointment that 'no person seemed to take the smallest interest in the matter'.
protest and if necessary resignation. Berry, conscious of coming battles with the Whig Governor, held that it was not the time for resignation. In 1835 when the British Government ordered that police and gaols become a charge on the Colonial revenue Berry joined the other non-officials in vigorous protest against this as unjust given that the expense was incurred to deal with Britain's criminals. Bourke reported that an appropriation for the police and gaol establishments had been carried by only one vote and that two official and one non-official member by whose aid this was achieved declared opposition to the measure. He gave reasons for believing that the Colony could not at present afford more than half the cost. In following years Berry continued to oppose the police and gaols estimates, despite the British Treasury's argument that the cash value of each convict's labour left colonists with an advantage. Unaccountably in 1841 Berry and Richard Jones saved the Government from defeat by voting against a motion supported by all the other 'independent' members for reduction of the vote by half.

Berry was generally critical of the Estimates in Bourke's time, being of opinion that contemporary Whigs

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69 Wollstonecraft to Berry 15/4/1832, re-dated 16/4/1832, BP.
70 Spring Rice to Bourke 15/11/1834, HRA, v XVII, 577.
71 V&PLC, 1824-37, 259-260, 4 Sep. 1835, Protest of Alexander Berry, Richard Jones and H.H.Macarthur - published Sydney Monitor, 16 Sep. 1835. Berry's office was one of very numerous places where a Memorial to the Legislative Council could be signed: Australian, 3 July 1855.
72 Bourke to Glenelg 18/9/1835, Transcript of Missing Despatches from the Governor of N.S.W. 1833-38 (ML A1267-5), 704-707.
thought all merit consisted in economy and that great mischief was occasioned by retaining large amounts of revenue instead of incurring expenditure for development: an opinion which in 1835 Bourke reported to the Colonial Office.75

Berry found in the next Governor, Sir George Gipps, that restless urge to change everything which constituted the menace of Whiggism and later recalled with satisfaction that 'I used always to join in opposing the absurd pernicious & Radical measures of Sir George Gipps'.76 Press reports of Council proceedings indicate that generally Gipps dealt with Berry with good humour and amused tolerance. There are occasional hints that he found him tiresome and his opposition an annoyance. In a despatch of 1 January 1844 reporting the workings of the blended Legislative Council Gipps wrote concerning the unhelpfulness of unofficial nominees to the Government in debate that

Mr. Blaxland has uniformly, and Mr. Berry very frequently, opposed the Government. These Gentlemen were appointed by me principally, if not solely, because they had been Members of the Old Council; and I do not regret having appointed them; because their very opposition has prevented the Nominees of the Crown from appearing in the Council as a distinct body, opposed to the Majority of the Representatives of the People, and has, I think, had a tendency to lessen the dislike, which was at first exhibited, to the presence of Nominees in the Council.77

In another despatch some months later Gipps noted that Berry 'votes almost universally against the Government'.78

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75 Bourke to Glenelg 18/9/1835, Transcript of Missing Despatches 1833-38, 706; Berry to Colonel - 12/2/1837, BP.

76 Berry to Richard Jones 9/3/1852, BP.

77 Gipps to Stanley 1/1/1844, HRA, v XXIII, 310. For an attack on nominee members: Colonial Observer, 16 Feb. 1842.

78 Gipps to Stanley 27/7/1844, HRA, v XXIII, 709.
Berry shared with other nominees and those elected to the blended Legislative Council what Michael Roe has characterised as 'a loathing of taxation too absolute for the twentieth-century mind to comprehend', and with other patriarchs of the landed gentry what Manning Clark describes as an 'implacable and irrational opposition' to every threat to the status quo. Berry's opposition to Gipps's desire to introduce local government because of its taxing implications is discussed in a later chapter.

During the session of 1840 the nominees defeated several measures for financing public works. On 19 August Gipps sat through Berry's facetious analysis of his Roads Bill and waited for the gales of laughter which it evoked to subside before giving vent to his exasperation, telling members that he knew their arguments:

Give us roads, give us bridges, give us public works, give us buildings and improvements; but we will not be taxed, oh no, we won't have taxes!

Berry got to the nub of the matter when he said that in the current state of the Colony no legislation could be made applicable to all districts. Two vital considerations for acceptable roads legislation were inexpensive administration and that only those with a direct interest should be required to contribute. He suggested an Act to authorise a majority of proprietors both by value and number to decide on effecting repairs to a line of road at the expense of all proprietors and introduction of camels to carry the wool clip to overcome need for roads in the

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80 Clark, *op.cit.*, 183-184.
82 *Colonist*, 20 Aug. 1840: LC 19/8/1840.
84 *Colonist*, 20 Aug. 1840: LC 19/8/1840.
interior. When the Legislative Council eventually passed a Parish Roads Act in July 1840 Berry prophesied that proprietors would do all that they could to defeat operation of this legislation because it would unjustly tax them to make roads for mere occupiers of land and two years later reminded members of this prophecy during discussion of a petition relating to defects in the Act.

Similarly in September 1840 Berry opposed a Bill to defray the expense of embodying a water police by imposing charges on all vessels entering the harbour, saying that it was contrary to justice to tax local shipowners for the benefit principally of English shipowners whose sailors made up the bulk of deserters.

Berry's contributions to debate in Gipps's time were most frequent and at their strongest in economic matters. He had a high opinion of himself as an economist and a low one of the economic nous of British officials and of policies which they required governors of New South Wales to implement.

In 1841 about half the wheat growers of New South Wales appealed in petitions for moderate protection from cheap imported grain. They were facing failure from causes not of a transitory nature. Labour costs were high in consequence of the discontinuance of assignment and extreme scarcity of free labour. Richard Jones calculated a cost of production of 7s per bushel, assuming the average crop returned 18 bushels per acre, whereas the greater part of the deficient crop of 1840-1841 had already changed hands at not more than 4s a bushel. Cheap grain which millers preferred to import came from countries which took little

86 *Sydney Monitor*, 29 July 1840: LC 28/7/1840.
87 *Colonial Observer*, 27 July 1842: LC 26/7/1842.
88 *Sydney Monitor*, 17 Sep. 1840: LC 15/9/1840. This newspaper, 19 Sep. 1840, supported Berry in opposing application of this tax to coastal vessels.
or no produce in exchange. There had been a specie outflow of £m in the last two years. Berry, who provided petitioners with their most effective backing, likened this to 'a patient having a lancet stuck into his vital vein, and being compelled to issue his life-blood to no purpose'.

Berry's speeches revealed that he had delved deeply into theoretical writings and researched historical experience and current tariff practices in foreign grain-producing countries. By comparison addresses by those opposed to him lacked depth. He argued, in essence, that the agriculturist is the backbone of any society and that to deprive him of economic viability is destructive of all relations of society. It was absurd to argue that the Colony could not produce bread for its present population simply because from the high price of labour cost of production was above that of some other countries. Berry was arguing for protection and asked at first for a prohibitive duty of 10s per bushel. Then he abandoned the logic of his argument and nullified himself, as he did on other occasions, in a weak attempt to secure wider support for a compromise. Eager to rebut accusations that he stood for a 'Corn law' which would have deleterious effects on the price of the dietary staple of the poor Berry quickly amended his call to one for a duty of 1s to 1s 3d per bushel on wheat from a source other than a British colony. In pointing out that this could not prevent importation Berry was conceding defeat.

The petitioners' pleas were turned down by Governor Gipps who recited the free trade maxim 'Buy where you can buy cheapest, and sell where you can sell dearest' and expressed trust in the 'balance of trade'. Within the last five years it had been necessary to suspend the small ad valorem duty no fewer than three times to encourage imports. An increase in duty was likely to make suspension still more urgent if harvests continued the same. Gipps was supported by the majority of the Legislative Council. At no
stage was consideration of costs allowed to get in the way of exposition of free trade principles and Berry felt that farmer petitioners were treated as 'a caste lower than that of their fellow citizens'.

The *Australian*, which denounced free trade as 'base Whigish, dirty, and Utilitarian', held that Berry, 'a person whose hopeless twaddling annoys us in most instances', was the 'only man who spoke sensibly about the matter'. The *Sydney Gazette*, on the other hand, wrote of his 'antiquated, unstatesmanlike' arguments and of 'the disjointed and heterogeneous verbiage which he unmercifully poured upon his impatient listeners'.

In June 1842 Berry unsuccessfully argued for a duty on imported salt beef and pork because importations were having a similar effect on the meat industry and unsuccessfully opposed exempting produce of New Zealand, Van Diemen's Land and South Australia from the *ad valorem* duties.

Berry initiated further debate on agricultural and pastoral protection through a 'very able and ingenious letter' in the *Sydney Morning Herald* of 14 April 1843.

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90 *SMH*, 14 April 1843, letter from Berry.


92 Ibid., 2 Sep. 1841.

93 *SG*, 21 Aug. 1841.


96 *SMH*, 15 April 1843, ed1.
followed by two further letters on 8 May and 29 May.97

Berry traced Britain's advance in prosperity relative to other European nations to Cromwell's protectionist Navigation Laws and William III's realisation that agricultural production was the basis of national prosperity and payment of a bounty on export of wheat whenever the price fell below a certain level. Currently every European state and the United States of America were protectionist. Britain's prosperity, Berry argued, was put at risk by Huskisson's repeal of the Navigation Laws for 'wild and visionary anticipations'. Free trade was not a new and enlightened doctrine but an old, discredited one. It was absurd to argue that foreign trade must be free when otherwise economic activity was 'hemmed in on all sides by a series of common and statute laws'.

Berry considered New South Wales a land favoured by nature and wondered that it was often said it was not a good farming country. Governor Gipps, the Legislative Council, and, with one exception, the Colony's newspapers had united to support free trade and counteract nature's bounties. It was the height of folly for any country to make itself dependent upon others for food, yet 'all the money we could beg or borrow' had been sent to purchase foreign grain or meat and a financial crisis had resulted. The considerably more than seven hundred insolvencies to the beginning of May 1843 had, he claimed, 'all originated from free trading'. Typically Berry weakened his argument by digressing with a tirade against British Whig Governments.

In the first of his letters Berry conceded that in the Legislative Council his arguments were 'almost treated with contempt', receiving support only from Richard Jones (later a convert to free trade in grain98), and that in the

97 The letters were all unusually long. The editor told Berry that he would have a better chance of being read if he were briefer.

98 Richard Jones to Berry 2/6/1846, BP.
community at large 'were treated with derision as antediluvian notions'. He now expected 'that many will mock, and that some will smile' but challenged anyone able to confute his arguments to do so.

The editors of both the *Sydney Morning Herald* and the *Colonial Observer* dissented from Berry's argument while acknowledging the ability demonstrated in his letters. The *Herald* saw the 'predominant error' of his logic as reliance on British experience, saying that need to have regard to vested interest had prevented free trade ever being properly tried there. No such impediment existed in New South Wales.99 The *Colonial Observer* dismissed Berry as 'a mere setter-forth of pompous panaceas'.100 A number of correspondents found Berry unconvincing, even 'absurd', merely presenting fallacious arguments for dear bread. The most balanced critics argued that agricultural protection would favour only a few growers of grain on alluvial flats near water transport at the expense of the community as a whole.101 A couple of letter writers supported Berry, one testifying that in moving around 'the haunts of busy men' he had found only two who differed materially from him.102 Berry himself claimed to have learnt from reactions to his first letter that protection

has many other supporters amongst the thinking part of the community, and is daily gaining ground from the fact, that the present condition of the colony has led many to think for themselves on this subject, who never thought upon it before.103

Berry was correct in saying that none who disagreed

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99 24 April 1843, edl.
100 17 May 1843, edl.
102 *SMH*, 17 April 1843, letter from 'Verax', 25 April 1843, letter from 'Mercator'.
with him had refuted his arguments. His opponents failed to come to grips with the facts that local consumers needed to be producers earning an income and that importing cheap grain and meat amounted to exporting jobs and capital. Berry urged voters at the forthcoming election for the Legislative Council to spurn from them all free traders, and choose no representative who does not swear to advocate protective duties, and, if they cannot get such men, to go unrepresented. Better will it be for the interests of all the productive classes, ... that the Council never meets, than that it should be filled with free traders.104

Berry wrote to Gipps in an attempt to persuade him to his way of thinking - but to no avail.105

Shortly afterwards, in December 1843, the new partly-elected Legislative Council amended a Tariff Bill to double proposed tariffs on flour from 1s 3d per cwt to 2s 6d and on wheat from 6d per bushel to 1s, ostensibly to increase revenue although the increases were also considered an encouragement to local farmers.106 Berry alone argued for protection on principle. Gipps refused to accept the amendments and when the Legislative Council held firm reserved the Bill which was disallowed by Her Majesty's Government on his recommendation.107

Berry was the first colonist to take a public stand for protection - a distinction which has not been credited to him.108 By the Tariff Act of 1852 New South Wales

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104 Ibid., 29 May 1843, letter from Berry.
105 Gipps to Berry 12/12/1843, HRA, v XXIII, 354.
106 Michael Roe, Quest for Authority in Eastern Australia 1835-1851, Melbourne 1965, 49, sees in these amendments a genuine but 'shamefaced' attempt to strengthen the landed interest by protection.
108 See Grainger's claim that James Martin was the sole protectionist in the NSW legislature in 1852 and David
abandoned *ad valorem* duties and lightly taxed only eight classes of articles. Until long after Berry's time it continued resolutely free trade. Berry remained a protectionist, convinced that Britain had sacrificed its welfare by neglect of advantages offered by its colonies in pursuit of the 'chimeras' of free trade without reciprocity and fallacious banking laws.

From 1839 Berry and his friend Richard Jones campaigned for a total ban on distillation. Berry considered spirits a 'pernicious manufacture' and local distillation as having possible value only in providing a market for locally-grown grain. The Colony's distillers were dysfunctional in that they did not assist agriculture but wastefully consumed large quantities of imported sugar, forcing up the price to other consumers. In 1839, 1840 and 1841 Berry and Jones took a stand for prohibition in the face of increases in excise to make up shortfalls in customs duties on imported wines and spirits.

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He permitted himself an occasional grumble about the prices of local products not subject to foreign competition: e.g. Berry to David Berry 31/1/1865, BP.


**Colonist**, 17 Sep. 1840: LC 15/9/1840.

because of smuggling.\textsuperscript{114} In 1843 when the Government reduced the tariff in hope of reducing smuggling Berry objected to this as depriving the local farmer of the right to dispose of his surplus produce.\textsuperscript{115}

Gentry hegemony was no sooner fairly established than it came under disruptive pressures. Its labor base was eroded by ending of gentry monopoly of assigned labour and then abolition of assignment. Gentry unity was fractured by uncertainties about how to respond. Immigration introduced a would-be yeoman farmer class and recruits to town middling classes which would end landowner control. The Colonial Office was staffed increasingly by systematic colonisers who believed in dear land and that it was not necessary for squatter capitalists to own land on which to produce the wool Britain wanted. Expansion of squatting was destructive of the aristocratic ideal and of the view that pastoralism should give way to a higher use of land. The incoming squatter was usually a man of education, respectable family and some capital who looked upon his exile in the Australian bush as an interlude in life to make money before a hoped-for return to Britain free of debt. Squatters did not acquire a stake in the country and never adopted a role of social leadership and responsibility for the less advantaged as required by the gentry ideal. Squatters contributed nothing to revenue by purchase of Crown land yet competed for scarce resources of labour and credit while landowners found freehold land a burden as they struggled with purchase instalments and quit rent. In the words of T.A.Murray 'by admitting the competition of the squatters, the Government had broken faith with the settlers'. These changes brought the old gentry and richer Emancipist landowners closer by emphasising common interest; in the process threatening the old distinction

\textsuperscript{114} \textit{Ibid.}, 17 July 1839: LC 16/7/1839, 13 Dec. 1841: LC 10/12/1841.

\textsuperscript{115} \textit{SMH}, 20 Dec. 1843: LC 19/12/1843, 22 Dec. 1843: LC 21/12/1843 & 28 Dec. 1843: LC 27/12/1843.
between wealth and respectability. Secondly, most of the old gentry also became squatters. Berry was one of very few who did not who survived the economic pressures of the eighteen forties.116

For the old gentry a solution to the problem of squatting lay in pricing Crown land low enough to encourage purchase of pastoral land. Berry dismissed Wakefieldians as ill-informed, impractical theorists117 and opposed rises in the upset price of Crown land from 5s to 12s in 1838 and to £1 in 1840,118 seeing this as the means, along with long leases, of allowing squatters by 1847 to tie up 300,000 acres of land which they did not want sold.119 In two of his least creditable speeches he aimed abuse at Lord John Russell120 and at Sir George Gipps. He attributed to Gipps the greatest blame for tilting the balance against the aristocratic principle in favour of squatting by his efforts to keep land dear and introduce local government, allegedly to ruin landowners.121

Berry had so much to say on protection and cheap land because both were essential for maintenance of the position of landowners. His measured advocacy of protection is in stark contrast with his highly emotive and unconstructive remarks on the land issue.

Berry opposed fixed rates of interest, asking 'is it...


118 Ibid., 11 Dec 1840 & Colonist, 12 Dec. 1840: LC 10/12/1840; Australian, 15 Dec. 1840: LC 14/12/1840.

119 SMH, 23 June 1847: LC 22/6/1847.

120 References as for 118.

121 SMH, 23 June 1847: LC 22/6/1847.
equitable to fix the profit on money more than on any other property?' In 1834 he testified to a select committee that he did not favour any limit to the rate recoverable at law but if there was to be a maximum he favoured ten per cent. By the 'Forbes Act' of that year English law was set aside and flexible rates to a maximum of eight per cent introduced for New South Wales. Existing Colonial banks were under-capitalised and this Act encouraged British banks to invest in New South Wales.\(^{122}\)

By 1839 high premiums were being paid on bank shares of recent origin and existing banks lacked capacity to discount much unexceptionable paper. Berry apparently originated a proposal to found a new Sydney Bank on the 'Scotch system' of keeping individual shares within reach of all classes to attract small savings. Berry chaired a provisional meeting on 7 November 1839,\(^{123}\) was placed at the head of a provisional committee elected a week later by a general meeting\(^{124}\) and headed a list of thirty-nine shareholders seeking election as director\(^{125}\) - but was defeated in the ballot.\(^{126}\) The moneyed interest had taken over. Tradesmen and retail shopkeepers were excluded by doubling the price of shares and the bank was formed in all material respects on the same principles as existing banks.\(^{127}\) It had a short existence, being wound up in 1843


\(^{123}\) *SH*, 11 Nov. 1839; *Sydney Monitor*, 13 Nov. 1839.

\(^{124}\) *Colonist*, 16 Nov. 1839; *Sydney Monitor*, 18 Nov. 1839.


after suffering embezzlement.128

At the end of 1841 Berry protested at the banks' 'useless speculation' at the risk of ruining customers. By then English banks were repatriating about £100,000 annually in dividends. Describing this as 'a dead loss' Berry called for Government action to guard against future establishment of such institutions.129

Throughout 1842 and 1843 public concern over the usury issue built up steadily as numerous prominent men went into insolvency and others struggled to survive high interest bills. In August 1843 W.C.Wentworth introduced a Usury Bill designed to reimpose a legal limit of five per cent on interest and to delay repayment of principal on mortgages. Berry recanted his previous advocacy. The banks were 'already breaking from the dry rot of high interest and exaction, and there was no other step likely to cure the disease speedily and effectually'. Free trade in money 'had already involved all classes of society in one common ruin' and colonists owed it to their reputation for honesty not to allow British capitalists to continue to believe that they would receive an enormous rate of interest. The Bill was defeated 21 to 12 on the second reading, the most telling argument against it being that it would destroy confidence in a colony which required a continuing injection of development capital.130

In December 1844 a Bill introduced by William Foster limiting interest to eight per cent passed the legislature by one vote. Berry considered it 'indispensable' but the press continued to advocate legislative non-interference on free-trade principles, Gipps reserved the Bill, the

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129 Colonial Observer, 16 Dec. 1841: LC 14/12/1841.

business community and others petitioned against it and the Imperial Government disallowed it.131

The need for an insolvency law was raised several times from 1838. Governor Gipps in June 1840 proposed a Bill to provide relief for the honest debtor who had done all that he could to repay creditors. Berry formed part of the majority negativing the proposal. Traders had not petitioned for such legislation and he saw no necessity for forcing it on them. He agreed with Richard Jones in wanting to see the word 'insolvency' abolished; for it to be law that when two-thirds of creditors agreed to voluntary assignment of the debtor's property that it be made binding on all creditors, and that a debtor should be able to say 'take all' and be freed of his difficulties.132

By late 1841 the judges were urging the necessity of legislation without delay.133 A Bankruptcy Act drafted by Mr Justice Burton came into force on 1 February 1842. This permitted voluntary bankruptcy and resulted immediately in large numbers of persons avowing bankruptcy who had been unable to meet their obligations for some time. In October 1842 Berry remarked that much of the evil of the current depression could be attributed to the Act.134 Ruth Knight has accused Berry of 'mistaking the cart for the horse',135 but numbers of bankrupts abused the legislation by concealing or disposing of assets, some passed through the court two or three times using the process as a means of


133 Ibid., 17 Sep. 1841: LC 15/9/1841, the Chief Justice.

134 Australian, 10 Oct. 1842: LC report.

clearing the slate before embarking on a fresh career of reckless trading, and some of the distress was caused by men being brought down by others taking advantage of the Act.136

In 1843 Berry joined with ten elected members to pass against Government opposition a Bill to provide for and regulate issuing and lending of Land Board Notes and Pledge Certificates. Berry wrote to the Governor in its support but was unable to sway him.137

Berry believed that the common school concerned to lay a moral foundation - long a reality in Scotland - was the proper object of State support. From the beginning of controversy over State aid to schools he supported the Irish National System as best adapted to the needs of New South Wales.138 In later decades when the Berrys were generous builders of schools on their estate Berry insisted on comprehension saying that he could see no justification in helping people to worship the same God in segregation.139

Deas Thomson's Electoral Act, 14 Vic. No. 48, ensured that the partly elected or 'blended' Legislative Council created by the Constitution Act of 1842, would be a property-owners' body by setting qualifications for the vote so high that in 1846 only 4.4 per cent of the


137 Gipps to Stanley 14/12/1843, encl. Gipps to Berry 12/12/1843, HRA, v XXIII, 252-254.


139 Berry to David Berry 28/4/1851, 9, 16 & 23/10/1851, 3/11/1851, 14/4/1852 & 6/5/1852, BP.
population was enrolled. Squatter domination was guaranteed by allocation of six seats to 47,000 town dwellers and eighteen seats to 66,500 rural inhabitants.\textsuperscript{140}

This constituency was so safely conservative that for the first and only time Berry considered standing for an elective seat provided he could be quite sure of success.\textsuperscript{141} John Dunmore Lang a fortnight later reported of Berry that this worthy of Legislative notoriety is canvassing sub rosa the electors of the county of St.Vincent. Mr. B. is quite satisfied that the ignoramuses of the new council will require some gentleman of experience to put them right - Eh! And conceiving that there is no one better qualified than himself, he had condescended to proffer his services. He has, however, some sort of expectation that the governor will not be so far forgetful of his past services, as to omit his name from the list of government nominees; and lest his openly canvassing should interfere with his prospects in this respect, Mr B. intends to do the business very quietly.\textsuperscript{142} Whatever the reason, Berry abandoned the idea of election and was returned at the head of the non-official nominees.\textsuperscript{143}

As Gipps interpreted Crown nomination, unofficial nominees were given their seats to ensure the Government could command one-third of votes on all matters on which it took a stand. Pastoralists and larger agriculturalists predominated amongst elected members and other interests went mostly unrepresented.\textsuperscript{144} Lang was of opinion that the


\textsuperscript{141} Berry to John Berry 16/3/1843, BP.

\textsuperscript{142} \textit{Colonial Observer}, 1 April 1843.

\textsuperscript{143} Proclamation by Governor Gipps 17/7/1843, published in \textit{SMH}, 21 July 1843. See also Gipps to Stanley 18/7/1843, \textit{HRA}, v XXIII, 44-45.

\textsuperscript{144} \textit{Empire}, 15 Oct. 1853; Knight, \textit{op.cit.}, 47; Barrie Dyster, 'The Fate of Colonial Conservatism on the Eve of Gold Rush', \textit{JRAHS}, v 54, pt 4, Dec. 1868, 336. Berry professed to want a seat only to advocate the interests of agriculture because he could see few
membership of the legislature produced by nomination and the very restrictive franchise was never surpassed in quality by any British legislature outside of Britain itself. In the eyes of an historian writing in 1943 no parliament in the history of New South Wales had such 'a high percentage of notable men'. A small group including Berry identified as the 'conservatives' were unimpressive performers. The Guardian newspaper complained that lack of a 'legitimate and salutary balance of power between the constituted interests of the country' allowed the 'landed interest' to gain a kind of aristocratic ascendency and reduced government to 'a compound of despotism and oligarchy'. Actually squatters were dominant politically and they and their sympathisers, including Berry, made the Council a forum for protest and mobilised to fight constitutional restrictions on their control of land policy and revenue raising.

When the new Council was deliberating on the hour at which it should meet, lawyer members wanted 4 p.m. to avoid sitting times of the courts. Berry opposed this:

Day was the time meant for business, and not night. If lawyers would come into the Council, they must abide the consequences (laughter) and they ought to be pleased at an opportunity of showing their patriotism, by making the sacrifice of their time which would be

candidates likely to do so: Berry to John Berry 16/3/1843, BP.


148 30 Mar. 1844.

149 Currey, loc.cit., 344; Clark, op.cit., 302.
The lawyers had their way. Berry refused to sacrifice his convenience in the interest of proper performance of his duties. His attendance, in terms of being present for any part of a day's proceedings, was poor and he spoke infrequently. Normally he went home when the House adjourned for dinner. As matters often came to the vote of an evening his name seldom appears in division lists. From introduction of the committee system in 1832 Berry sat on an average of almost five committees per session but in the blended Council involvement in committee work fell away very markedly. Frequently he was not placed on any committee during a session. This may owe something to failure to participate effectively. In 1849 Berry was placed on a committee on the Medical Profession Bill: a committee on which his background and interest seemingly fitted him to play a constructive role, yet he attended only about half its meetings and asked but two questions. Seen in context his attitude to his duties was more typical than exceptional. Berry was not active in public life outside the legislature. A return of all members of the Legislative Council 1843-1853 reveals that he was the only nominee and one of very few members not to hold any paid or honorary appointment under the Government.

Between Gipps's departure and inauguration of Parliament ten years later Government House was occupied by conservatives Sir Charles FitzRoy and Sir William Denison and Berry reverted to being generally a reliable supporter of the Government, to the annoyance of those opposed to

150 SMH, 11 Aug. 1843: LC 10/8/1843.

151 For example in 1853, selected at random for a count, Berry voted in only 14 of 41 divisions: 'Weekly Report of Divisions in Committee of the Whole House', V&PLC, 1853.

152 Minutes and V&PLC.

153 New South Wales Parliament Petitions & Correspondence 1851 - (ML A285).
nomineeism. In a letter to his old friend Richard Jones in 1852 Berry wrote:

You accuse me of generally voting with the Government. It may be so - but if so I vote conscientiously and from no interested motive. There has never been any Government expenditure in the Part of the Colony where my property is Situated - and I have never asked any Post for my self or any of my Connections. Therefore if I sometimes vote against the opposition it is clear that I must do so from believing that the views of the government are better for the Public than those of the Opposition - many of whom are not Capable of entertaining comprehensive views, and whose objects are generally some local interests.  

Later, on the eve of a general election, Henry Parkes gave to the world doggerel verses satirising Berry's adherence to the Denison administration:

I came from my rest in the Old Crow's Nest
When Sir Denison bid me come,
And voted most willingly an extra shilling
On the brandy, the gin and the rum.
A thorough paced Tory, in which I take glory
A sturdy old Briton youl own
If Sir Denison had twenty, like me,
 he'd have plenty
To keep all the Democrats down.

Berry continued to oppose all forms of taxation which raised revenue from one section of the community for the benefit of another and to endure taunts concerning his obviously self-interested motive after having enjoyed to the full free land and free labour.

Until the eighteen forties it was possible to think of New South Wales as having a plantation-type society because it was dominated by landowners, the working class - much of it bond - was subordinated and there was no large body of individuals engaged in commerce, manufacturing or the professions to fill the void between the two and moderate the effects of class. The position of the gentry suffered

154 Berry to Richard Jones 9/3/1852, BP.
155 Published in Empire, quoted here from W.G.Mathews 'Reminiscences: Sun, 15 Oct. 1938.
when pastoralism became the focus for the economy and squatters gained control of the blended Legislative Council. The gentry's claim to hegemony was weakened by the fact that the squatters were not properly part of the 'landed interest' and loss of its air of solidity and permanence from the bankrupting of so many old landowners, including a number of the most prominent, during the eighteen forties.

With a steady increase in population the number of people in middling class occupations gradually increased. At the time of the 1846 census they constituted about thirty per cent of gainfully employed inhabitants of Sydney. These people had independence without power. They were neither part of the ruling elite nor an uneducated rabble to be kept in subjection. It was possible to think of representative government by the gentry and 'the people', as this middling class was described in popular usage, and to move on from the notion of an imposed government as necessary to mediate between classes and protect minority interests. In the squatters' struggle with the Crown for security of tenure they were obliged to appeal to liberal constitutional principles to put together a combination of interests sufficient for victory. Their abandonment of leadership of the liberal movement after obtaining long leases and preemption was used to support a thesis that a land monopoly could defeat any Government not based on a wide franchise.156

Effective radical organisation at the Sydney city elections of 1848 and in the anti-transportation campaign of 1849-1850 brought the urban masses to the fore for the first time, confronting elite conservatives with the problem of how to deal with them.157 Liberals, committed to retaining interest-based politics, and radicals, espousing wider representation on a population basis, entered into a temporary alliance. Conservatives to their cost failed to

156 Irving, op.cit., 133-134, 227-228, 473.
157 Ibid., 395.
distinguish between these groups and saw liberals as part of a radical leveller onslaught. Berry was one who lumped all reformers together as dangerous 'radicals'.

During passage of the Australian Colonies Government Act of 1850 the House of Lords lowered the franchise to £10 for householders and tenant farmers who had leases with at least three years to run: low enough to enfranchise tenant farmers with only twenty or thirty acres. This raised the proportion of adult males in New South Wales with the vote to twenty-eight per cent. 158 Charles Nicholson predicted gloomily that this Act would 'republicanise and democratise the country'. 159 Worried conservatives responded with an Electoral Act which defended the principle of representation of interests.

The gold rushes destroyed whatever slight prospects remained for defence of a stable, hierarchical society based on rural interests. Gold mining was organised on the radical principle of allowing equal access for all men to one of the country's richest resources, encouraging economic and social democracy on the fields. Gold encouraged an inflow of migrants committed to petit bourgeois agrarian ideals and strengthened the economic and political position of the urban bourgeoisie. 160 An increase in money supply resulting from the rushes produced a boom in wages and rents, pushing up males qualifying for the franchise to fifty-five per cent in 1856. 161 Surrender to the Colony's legislature by the middle of the decade of

159 Nicholson to A.Cunninghame 12/2/1851, quoted Ward, op.cit., 170.
authority to draw up a new constitution and control of land policy and the budgetary schedules marked recognition that, with the gentry not amounting to an established ruling class, a weak working class and middling classes gaining in strength, conditions were right for a liberal democracy.162

In drawing up an intended permanent constitution conservatives controlling the Legislative Council had a last chance to try to entrench their position before social changes flowing from the rushes overwhelmed them. Their solution was a bicameral Parliament to allow satisfaction of the demand for a wide franchise while retaining power through a nominated Upper House to reject any measure unacceptably threatening. W.C.Wentworth, principal author of the new constitution, considered it a conservative document but he and other leading conservatives realised that it was unlikely to hold back for long the coming of manhood suffrage and representation by numbers,163 especially after the Imperial Parliament amended a clause requiring a two-thirds majority in each House for constitutional amendment to make simple majorities sufficient.164 There was overwhelming popular opposition to nomineeism with realisation that in the new dispensation its purpose was to snaffle and bridle the representative system. The Sydney Morning Herald was the only one amongst the Colony's ten newspapers supporting nomineeism.165


163 Ward, op.cit., 194, 250.

164 The Constitution Act 18 & 19 Vic. c54 is printed in V&PLC, 1855, v I.

Berry voted for the Constitution Bill of 1853\textsuperscript{166} although he was later to say that the clause requiring two-thirds majorities for constitutional change was the only one that 'he had absolutely an affection for'.\textsuperscript{167} He voted specifically for a clause rendering any priest or minister of religion ineligible for election, devised to exclude John Dunmore Lang who had made himself obnoxious as the 'tribune of the people'.\textsuperscript{168}

Election of the first Legislative Assembly in 1856 was the prelude to loss of political power for the old conservatives who held power, with exception of a period of one month, for just over a year and then lost it forever.

Berry opposed the succession of democratic reforms which followed. He tried unsuccessfully to defeat a Bill bringing in constitutional amendment by simple majority.\textsuperscript{169} He opposed introduction of the secret ballot for the city council, saying that 'its introduction was an admission that the people of Australia had degenerated and were unable to exercise their privileges like Anglo-Saxons'.\textsuperscript{170} Most horrifying to him as to other conservatives was the push for manhood suffrage, accompanied by equal electorates

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{166} V&PLC, 1853, v I, 191; 6 Sep. 1853; Empire, 3 Sep. 1853: LC 2/9/1853. John M. Ward, \textit{Earl Grey and the Australian Colonies 1846-1857}, Melbourne 1958, 332-333 refers to a constitutional proposal by Berry and to his probably being behind a petition from inhabitants of Shoalhaven. See reports Empire, 27 & 30 Sep. & 1 Nov. 1853; V&PLC, 1853, v I, 269, 7 Dec. 1853, v II, 707-709. The position taken is not that of Alexander Berry. Ward is mistaken in identifying Berry with the 'Berrie' of the reports. There were other Berries at Shoalhaven. See Berry to David Berry 10/10/1853, BP, regarding Thomas Barker confusing David Berry of Coolangatta with 'radical' David Berrie, a rough carpenter formerly assigned to Berry.
\item \textsuperscript{167} Empire & SMH, 20 Nov. 1856: LC 9/11/1856.
\item \textsuperscript{168} V&PLC, 1853, v I, 328, 13 Dec. 1853. On keeping Lang out: Empire, 1 Nov. 1853.
\item \textsuperscript{169} JLC, v 1, 1856-57, 24, 19 Nov. 1856; Empire & SMH, 20 Nov. 1856: LC 9/11/1856.
\item \textsuperscript{170} Empire, 22 Jan. 1857: LC 21/1/1857.
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and representation of people instead of interests.\textsuperscript{171} Manhood suffrage resulted in the number of registered voters more than doubling from 1856 to 1864.\textsuperscript{172} This widening of the electorate paved the way for virtual elimination of the remnants of the old gentry from the Legislative Assembly and induced in conservatives a sense of powerlessness and loss of social stability.\textsuperscript{173}

At the 'free selection' election at the end of 1860 even James Martin, the most able and eloquent of conservatives, failed to win a seat although he contested serially four electorates.\textsuperscript{174} The \textit{Sydney Morning Herald} dismissed those elected as 'spouters without weight - often without character'.\textsuperscript{175} Old conservatives saw society as divided into two irreconcilable groups, described by Berry as \textit{Landowners} and \textit{Lacklanders}, the latter being jealous and of predatory disposition. After the 1860 election conservatives felt sure the poor had taken charge and would launch an assault on private property with punitive taxation and hunt men of education and property from public life.\textsuperscript{176}

In Berry's view the Colony was 'going to ruin - at a hand gallop'.\textsuperscript{177} In the early eighteen sixties in particular his correspondence was sprinkled with references to New South Wales being in the hands of 'the mob' or the

\textsuperscript{171} For a statement of the conservative viewpoint: \textit{SMH}, 7 May 1858, ed1.


\textsuperscript{174} Hirst, \textit{op.cit.}, 140.

\textsuperscript{175} 24 April 1861.


\textsuperscript{177} Berry to David Berry 6/12/1860, BP.
'dregs of the people'. 'Responsible' government was an instrument of oppression as a taxing machine. He saw 'virtual annulment' of the law of primogeniture in 1863 as designed to 'prevent the perpetuity of large properties' and argued that landed property was every bit as insecure as in France at the time of the Revolution. He was given to lamentations that he had not sold up and left the Colony before the rot set in. It was no longer possible for any group of men to govern in a rational manner because real power was in the hands of those whose 'great object is to reduce every one to their own level'. Besides, as he wrote repeatedly over the remainder of his life, the Legislative Assembly no longer contained material from which to assemble a good ministry.

Almost immediately Berry's worst fears of predation appeared to be borne out in the actions of John Dunmore Lang and Charles Cowper and their political followers in relation the the Berry estate: a subject taken up below, and later in landless members of the Legislative Assembly talking of substituting taxation of land for indirect taxation. Both Berry and Wentworth linked a major upsurge in bushranging to the spirit unleashed by democratic government.

A number of prominent colonists, most notably W.C. Wentworth, Sir Charles Nicholson, Sir William Burton

178 Berry to David Berry 17/7/1863, BP.

179 Berry to David Berry 29/11/1860, 18/1/1861, 25/3/1861, 19/9/1861, 25/11/1861, 14/11/1862, 10/12/1862, 10/8/1863, 9/10/1863, 12/10/1863, Appendix to Berry to Clerk of Executive Council 7/10/1861, draft probably to James Busby c1867, BP; Berry to Sir Charles Nicholson 19/4/1862 (ML Ab 69/5).

180 Berry to David Berry 19/12/1863 & 19/3/1864, BP.

181 Berry to David Berry 14/7/1863, BP.

182 Berry to David Berry 19/12/1863, BP.

183 R.Therry to James Macarthur 19/10/1863, reporting Wentworth's remarks, Macarthur Papers, v 34 (ML A2930), 282-283; Berry to David Berry 19/3/1864, BP.
and James Macarthur left the Colony on account of political changes. Others, such as Robert Lowe and Roger Therry, who had returned to Britain earlier looked on with dismay.\textsuperscript{184} New South Wales lost a large number of residents, including some of the most enterprising, to the new colony of Queensland. With them went capital.\textsuperscript{185} Berry told of advising a young naval lieutenant intent on becoming a squatter to go to Queensland 'as that Colony was not yet so Mobocratic & thoroughly degraded'.\textsuperscript{186}

In implementing their program of reform by 1862 liberals altered neither the structure of society nor distribution of wealth. As C.N. Connolly points out even the shattering of 'monopoly' in land through free selection was merely metaphorical\textsuperscript{187} for neither freehold nor leased land was touched. The changes produced something less than democracy. The parliamentary system was still slewed in favour of property by the nominated Upper House, plural votes for property owners,\textsuperscript{188} very unequal electoral districts, non-payment of members\textsuperscript{189} and exclusion from the franchise of itinerant workers and whole female sex. Liberals believed in a social hierarchy with mobility, wanting not equality but equality of opportunity. Connolly


\textsuperscript{185} Coghlan, \textit{op.cit.} v II, 1095-1096.

\textsuperscript{186} Berry to Sir William Burton 18/1/1864, BP.

\textsuperscript{187} Connolly, \textit{loc.cit.}, 383.

\textsuperscript{188} Hawker, \textit{op.cit.}, 15, calculates property votes as accounting for perhaps fifteen per cent of the number of registered voters.

\textsuperscript{189} Berry characterised the proposal to pay members as a device for allowing men incapable of earning their own living to occupy seats in Parliament: Berry to David Berry 6/12/1864, BP.
concludes from his study of the politics of the period that leading middling-class liberals used political success to advance themselves while leaving conservatives socially and economically dominant and that the latter 'tamed liberalism by submitting to it'. Political lines were re-drawn so that from James Martin's ministry of October 1863 all Governments contained former conservatives and liberals. They, not the feared mob, were in control.  

Former conservative leader James Macarthur returned from exile in 1864, feeling that the liberal follies were largely exhausted. The rule of law seemed assured, property was safe and society stable. New South Wales was, after all, still a place where a gentleman could live. On the other hand Berry remained unreconciled to the changes and in Connolly's perception 'succumbed to bitterness and paranoid delusions'. Berry's language was certainly extreme, his assessment of the political situation was clouded by his inability to accommodate change and the warping effect of the extraordinary campaign waged against him in the 'Shoalhaven Incubus' and Shoalhaven Municipality affairs, and he was mistaken in fearing imminent destruction of large properties - but he was not paranoid. The reforms rendered irreversible destruction of the hegemony of a landed gentry, entrenched representation of people rather than interests, negated the key concern with stability - especially in relation to hierarchy and property, altered the type of man gaining election to the legislature and lowered the tone of its proceedings, reinforced the notion that a proprietor's rights in relation to real property are not absolute, left organised religion to its own devices and opened the way to eventual destruction of large estates and redistribution of wealth through taxation, in the process penalising initiative and 


191 Ward, James Macarthur, 4, 195.

192 Connolly, loc.cit., 383.
investment. It was not irrational for Berry to feel so pessimistic. While he erred in believing that the assault on landed property was imminent he was correct in seeing the trend to destruction of much that he believed in.

On 13 May 1856 Berry was named amongst the first batch of the Donaldson Government's appointments to the Legislative Council as the Upper House of Parliament. He told a friend that he did not trouble himself so much about politics as formerly and had accepted a seat 'merely ... in order to vote against pernicious enactments'. At another time he explained the decline in his involvement as 'on account of my deafness'. One newspaper described the new Upper House as a 'remarkably odd agglomeration of talent and stupidity, well informed men and ignorant men, friends of progress and opponents of all innovation' which defied classification or forecast. The attempt to link the new Council to the old by reappointing 'useless' men such as Berry, George Allen and James Mitchell was 'a blunder the people would never have made'. Lang twitted Berry, challenging him to say whether the new body 'ought not to be designated "The Colonial Poor's House", or "The Deaf and Dumb Asylum"?'

The work-load of the new Council was much less than that of the old one but Berry, then in his later seventies, was not an active member even by its relaxed standards. In the session of 1856-1857 he presented one petition and moved one motion. In the four-month-long session of 1857 he

194 Berry to W.Jemmett Browne 15/6/1857, BP. See also Berry to C.B.Robinson 15/6/1857, BP.
195 Berry to W.Jemmett Browne 15/6/1857, BP.
196 Maitland Mercury, 20 May 1856, edl: reprinted with approval in abridged form IM, 26 May 1856.
197 Empire, 23 May 1856, letter from Lang.
took no initiative. He was a poor attender and rarely spoke. He seemed concerned only with his own interest and it is true that there is nothing in his speeches or correspondence over the course of his five-year term 'to indicate that he realized his responsibilities as a legislator'.

Early in 1861, after a general election fought largely on land reform returned an overwhelming majority pledged to reform, the Cowper Government passed through the Legislative Assembly Bills allowing conditional purchase before survey of from forty to 320 acres of Crown land. The scope for 'peacock ing' was so direct a threat to squatters that it evoked their vigorous opposition and resulted in emasculation of the legislation by the Legislative Council. The matter might have been left to stand over until the imminent expiry of the Council from effluxion of the quinquennial period of appointment but Cowper saw a chance to make a constitutional point by asserting supremacy of the representative chamber. He asked Governor Young for twenty-one new appointments (described by Berry as 'people, picked up out of the streets of Sydney') to allow swamping of the Council. When the Council met on 10 May 1861 the President, Sir William Burton, announced that a few minutes earlier Minister for Lands John Robertson had informed him that a number of new members were to be sworn in. He had neither been consulted nor informed in the normal manner by the Private Secretary. Subjection to such discourteous treatment was incompatible with his retention of office and he had resigned the presidency and his seat. Burton then walked from the chamber followed by nineteen other members, including Berry, who also submitted their

199 James Jervis, 'Alexander Berry, the Laird of Shoalhaven', JRAHS, v XXVII, pt 1, 1941, 70.
200 Berry, Petition to Earl of Belmore and Members of Exec. Govt [undated, unsigned, incomplete draft], Campbell Papers (ML B223), 41.
resignations. The conservatives who walked out believed that an Upper House existed to represent the interests of intelligence and property and held that by 'an unconstitutional breach of the prerogative' Governor Young had ended 'absolutely ... the power of the Council as a co-ordinate branch of the legislature'.\(^\text{201}\) On the matter of constituting an Upper House Berry was more conservative than current British practice.\(^\text{202}\) Because under responsible government the executive was 'merely the heads of a Party' it was not 'safe' to allow it control of nomination. Appointment should be entirely a matter for the Governor but at worst the executive should be allowed nomination of no more than one-third of the membership.\(^\text{203}\)

When the Legislative Council was reconstituted on the basis of appointment for life Berry, along with other extreme conservatives, was omitted. While this greatly disappointed it should not have surprised him. Nomination was in the hands of the Cowper Government with which he was in bitter and highly publicised dispute. He was eighty years old, deaf, and for many years had treated the Legislative Council as a kind of club rather than a place to perform public service.

In informing Berry on 24 June 1861 that he was not to be reappointed the Governor wrote that it was gratifying to have the concurrence of his responsible advisers in thanking him for his past service. Berry replied that the concurrence of the Cowper ministry in Young's remarks was 'anything but gratifying to me'. Other members of the late


\(^{202}\) Stephen, \textit{op.cit.}, 79.

\(^{203}\) Berry to James Mitchell 12/12/1861, BP.
Council who had voted as he had on the land Bills and 'other destructive measures' of this Government had been offered reappointment. He believed his own exclusion was owing to his libel actions against John Dunmore Lang and his resistance to the raid on his property suggested by Lang and encouraged by Cowper. In a manifestation of his habit of playing down the hurt of defeats and disappointments Berry added that he could not have accepted renomination

for the purpose of making myself the unconstitutional puppet of the Ministry. On all former occasions when I accepted a seat in the Legislative Council, I did so unconditionally; no pledge was asked or given. The first oath I took was to advise his Excellency the Governor according to the best of my ability, and I have always acted on that principle. It was therefore not to be Expected that I could be one of a Council formed upon the understanding that Your Excellency's present advisers should be able to Command 'a fair working majority' for their views.204

Berry had been the last surviving member of the old ex-officio-nominee Legislative Council and held a seat in it in its various forms for almost thirty-three years but the metropolitan press allowed his departure to go unnoticed.

Alexander Berry at his best was the epitome of the liberal ideal of the independent member: intelligent, well-informed, patriotic, usually gentlemanly in bearing, untrammeled by subjection to a constituency, party or nominating authority. He spoke and voted without fear or favour, at times proving a thorn in the side of governors who felt entitled to his support. He looked to the approval of posterity rather than to contemporary applause and scorned to dissemble to win favour. To him being 'right' was what was important. There is much to be said for his view that an overriding concern about popularity is a species of corruption. There is something to be said for his belief that popular government becomes a taxing machine and predatory in its attitude to better-off sections of

204 Berry to Sir John Young - 7/1861, copy, BP.
society. Berry was proud that in the whole course of his term he never asked for any public expenditure at Shoalhaven, for 'I should have considered it, an act of moral degradation, to have advocated any interest of my own'. He had no legislative triumphs to reflect upon and 'there were not many really exciting incidents in [his] political career'. His championing of protection was at odds with the prevailing free trade ideology and the social philosophy he expounded was increasingly abhorrent to the majority of his fellow colonists. In the last half of his term or more Berry's contribution was mostly unremarkable.

Governor Denison wrote in 1853 concerning politics in the Australian colonies:

Every question is discussed upon personal grounds - how will it affect me or my property? What profit shall I derive from it? what return shall I derive from the tax I am called upon to pay? This is the spirit in which questions involving the future character of the people of the colony are dealt with.

No one can have revealed concern about self more clearly than Berry did. Because of this and the extravagance of his language he was dismissed by most of his fellow-colonists as an anachronistic and selfish eccentric: sometimes amusing in his speeches and antics, more often simply annoying.

In keeping with the practice of Dundas-led Scottish landowners Berry believed to the end of his life that exercising 'superior influence' in political matters was a function of the great landowner. He became more openly interventionist from 1858 when, confronted by manhood suffrage, extension of local government and calls for land reform, he took to seeking to dragoon tenants and others

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205 Appendix to Berry to Clerk of Executive Council 7/10/1861, BP.
206 Hay, op.cit., 739.
207 Denison to Duke of Newcastle 27/10/1853 (Newcastle Papers, University of Nottingham), quoted Foster, op.cit., 130.
into voting for conservative candidates. Berry's activism aroused widespread opposition from 'outsiders' and residents of his estate alike from fear that he would be able to use his economic power to gain political dominance and exercise it in ways inimical to majority aspirations. The columns of the *Illawarra Mercury* reveal seemingly almost general acceptance of much-exaggerated estimates of his influence, even with politicians or officials who were in reality enemies.

Berry's intrusions into elections at Shoalhaven were in this period ineffective and most likely counterproductive. Berry tenants regularly returned majorities for candidates he opposed. For example, in the 1860 election Berry tenants voted 139 to 65 for liberal John Garrett: a margin of 74 in an election he won by only 43 votes.208 Scottish tenants in particular supported Garrett.209 By 1864 Berry was acknowledging that being tagged as 'Sandy's man'210 was a handicap to any candidate.211 It must have confused and alienated those susceptible to influence that he backed Henry Osborne212 and Henry Parkes213 after previously seeking their defeat.

Berry had to work through his brother David who, as he said with disgust, had no influence with the tenants,214 and who like any well-brought-up Scot of his era was,

208 Berry to David Berry 21/12/1860 & 7/12/1864, BP.
209 Berry to David Berry 4/1/1860 [sic 1861], BP.
210 IM, 13 June 1859.
211 Berry to David Berry 19, 28 & 29/11/1864, BP.
212 Berry to [David Berry] 8 & 11/1/1858, BP.
213 Berry tried to influence Gerringong tenants to vote against Parkes in Kiama electorate twice in 1864 yet supported him in 1869 although continuing to believe him devoid of principle: R.C. Johnson to Berry 18/4/1864, Berry to David Berry, 19, 20, 23, 27 & 28/4/1864, 3 & 4/5/1864, 10/12/1864, 16/12/1869, 12/12/1870 & 28/3/1873, BP.
214 Berry to David Berry 27/1/1858 & 7/12/1860, BP.
although staunchly conservative, unquestioningly subservient to any government of the day.\textsuperscript{215} From the fact that in December 1864 David allowed Thomas Garrett, a man detested by Alexander, to hold a campaign meeting at Coolangatta, gave his men time off to attend and was present himself\textsuperscript{216} it must be questioned whether he made much effort to influence voting as his brother directed. David in any case left the leg-work of canvassing to Henry Morton.

Tenant opposition so angered Berry that periodically he issued directives for ejection of all identified supporters of land reformers. After the debacle of the 1860 election he adopted Morton's suggestion to call tenders for leases up for renewal without undertaking to accept any bid so that 'fearful democrats' and other undesirables might be 'weeded out'.\textsuperscript{217} This was perceived to be a cover for political retaliation and caused a great deal of murmuring amongst tenants.\textsuperscript{218} The absence of further press comment suggests that no action resulted, just as there is no evidence that David ever moved otherwise against dissidents. Tenants were not on offer to the number wanted. Berry's anger was impotent, serving only to fuel opposition to him as a would-be tyrant.

Given that Berry's attempts to exercise political tutelage had such unsatisfactory outcomes the question arises as to why he persisted. It seems that in this matter as in others he felt that he should continue to pursue old, 'correct' courses regardless of circumstances. He was no doubt encouraged in this by continuing applications from candidates hoping to benefit from his supposed influence.

\textsuperscript{215} DT, 5 Oct. 1889, obit. for David Berry.

\textsuperscript{216} IM, 20 Dec. 1864.

\textsuperscript{217} Henry G. Morton to Berry 27/12/1860, Berry to David Berry 7/1/1861, BP.

\textsuperscript{218} Henry G. Morton to Berry 14/1/1861, BP; IM, 11 Jan. 1861.