

CHAPTER FIVE

THE CHILD, THE GOVERNMENT
AND THE LAW

So far in this work the concentration has been on the child's relationship to the family and to society but Government has been hovering on the border through it all. The contact between government and child was probably more profound in N.S.W. than in any contemporary society, but the most accurate gauge of government-child relationship can be found in the status afforded the child by the Law.

New South Wales was established in a period when the legal rights of the individual were beginning to emerge. It was established in a social climate which nullified many of the assumptions upon which British Law regarding children was based. The Colonial government, through its almost total control of every facet of daily life, had at its disposal the means of intervening on behalf of the child, of extending the protection, and strengthening the status, afforded the child by the Law. The Law still operated, however, to force the child into a dependant relationship and to absolve the State as much as possible from responsibility to the individual child. The uniqueness of the situation, however, produced a relatively higher status for children in N.S.W. compared with those of the parent country, most often in practice but sometimes in Law, both as individuals and as members of the family unit.

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The overriding object of the early governors was the preservation of peace within a potentially explosive penal colony. One of their most powerful adjuncts was the Law whose intrinsic function is the maintenance of society's stability. This is done positively by the civil law, which sets the limits to which a person may go in his transactions with others and regulates contact between members, and negatively by the criminal law, which sets out to punish those who go beyond those limits. Theoretically the principle upon which the Common Law is based is that of equality, but in each case, by defining what it means by an individual, it practically discriminates against individuals or groups that it considers undeserving of protection or, conversely, deserving of more adequate protection.

When English Law was being formed children were a naturally

disadvantaged group in need of support.¹ Childhood was seen as an unstable and immature period, and the child as an unstable and immature individual. In civil law the immature child had to be propped up by every possible device to ensure that decisions made by the child, which could injure the child or its family, were not made, or at least, were not made legally binding. This resulted, for instance, in the tangled web of infant contract law, "succinctly" stated as:

An infant is not absolutely incapable of binding himself but is, generally speaking, incapable of absolutely binding himself by contract.²

This "principle" was interpreted so pragmatically by the judges that it verged on inconsistency. The Law, in its efforts to safeguard the assets and person of the child, allowed a person the right to terminate, either during the infancy itself or upon reaching maturity, any contract entered into during infancy: the ultimate protection against irresponsible decisions by an immature individual.

Similarly, in criminal law the child was seen as special. Vengeance, or (more politely) the concept of strict liability, is historically the basis of criminal law from which a child was theoretically not exempt.³ Vengeance's fury, however, was lessened for it was recognised that the child's will did not join with its act because of defects of understanding.⁴ Infants are incapable of deceit, or doli incapax.

¹ Pinchbeck, I. & Hewitt, M. Children in English Society, 2 vols., London, 1967, Vol. I, p7.

² Pollock quoted in Hartwig, H.J., "Infants' Contracts in English Law: with Commonwealth and European Comparisons" in International and Comparative Law Quarterly, 15 (3), 1966, p784.

³ "If a child injured me, I took vengeance upon him simply because he had done me wrong; his tender years may have lessened my fury but nevertheless I would take vengeance upon him. When the machinery of law substituted public punishment for private vengeance, the same thing happened: the child convicted of crime deserved punishment but needed a pardon." Kean, A.W.G., "History of the Criminal Liability of Children." in Law Quarterly Review, 53 (3), 1937, p365.

⁴ ... to constitute a crime against human laws there must be first, a vitious will, and, secondly, an unlawful act upon such vitious will. Blackstone, quoted in Heath, J., Eighteenth Century Penal Theory, London, 1963, pp191-193.

There were, however, big differences in the treatment of children by the criminal and civil branches of the law. The differences were based upon widely diverging interpretations of the term 'infancy'. In Roman Law, from which the term 'infant' is derived, the term applied only to those under seven years of age - almost literally to those "unable to speak".⁵ In English Law the age to which the term was applied slowly moved up to around twelve or fourteen years, but by late mediaeval times was eventually codified at twenty one years. Subsequently, as far as the civil law was concerned, an individual of twenty years was as incapable as an individual of twenty months, and their legal position was on a par.

On the other hand, the criminal law, in its efforts to stamp out all disruptive elements, took far less cognizance of this generous age range. Mitigation of punishment for crime on account of age also codified slowly, but by the seventeenth century the Law held that criminal liability was non-existent only for those under the age of seven years. In this age group an "irrebuttable presumption of innocence" applied, that is, the assumption that the child did not know what it was doing was irrefutable. In the same century the notion arose that only a "rebuttable presumption of innocence" applied to those aged from seven to thirteen years. For those fourteen or over no concession was made: they were held fully liable for all their criminal activity. The seven to thirteen years age group was not held to be liable for criminal activity unless it was proved that at the time of the act the child knew that the act was wrong.⁶

In the period under study the commonly held criterion of "proof

⁵ Halsbury's Laws, Vol 21, p134, Note (a).

⁶ What exactly was meant by "wrong" and what was determined as "proof of knowledge" by the judges were highly idiosyncratic. "Wrong" could be either legal, that is the ability to distinguish crimes according to their gravity (otherwise called mens rea), or moral, that is the ability to identify moral acts according to right or wrong. A child, for example, may be aware that hitting somebody is morally wrong, but unable to see the difference in nature and effect between hitting someone with its hand and with an axe. Today the courts usually only accept legal knowledge, incorporating mens rea, as "proof of knowledge". Using the moral yardstick meant that the criteria of "proof of knowledge" were wide.

of knowledge" was that of moral awareness. This allowed a very wide interpretation. Pleading guilty was the most obvious. Unfortunately in the harrowing court experiences of the eighteenth and nineteenth centuries this was most probably reverted to by many children out of sheer fright. Besides pleading guilty other "proofs" included confessions before police, a child's respectable upbringing, or its attendance at Sunday school. It is thus argued that, by the 1850s, the presumption of doli incapax had fallen into desuetude.⁷

The reasons for this inconsistent definition of what constituted an infant are found at the very roots of English law. The civil law, because of inherent weaknesses in the machinery of the State, sought to extend parental influence and childhood immaturity for as long as it possibly could. Theoretically, the most desirable method of forestalling social instability as far as the State was concerned was for it to take complete control of all children. The theoretical and ideological justification of this existed through the concept of State guardianship for all its subjects. Pollock and Maitland argued that

No part of our old law was more disjointed and incomplete than that which deals with the guardianship of infants. When it issued from the Middle Ages, it knew some ten kinds of guardians, and yet it had never laid down any such rule as that there is or ought to be a guardian for every infant.⁸

but there did exist a notion that the Crown operated as parens patriae giving it prerogative jurisdiction over all children. The notion, however, was a theoretical proposition more than a practical reality. It could operate only where the Crown possessed the means to implement

⁷ Susan Magarey quotes several representative magistrates, judges and others involved in criminal jurisdiction, who expressed doubts about the whole presumption, and made it obvious that they did not take it into consideration at any stage of the proceedings. From the large numbers of children under the age of fourteen who were indicted in Britain during this earlier period it appears that many judges of that time held similar views to those Magarey quoted. Magarey, S., "The Invention of Juvenile Delinquency in Early Nineteenth Century England." in Labour History, No.34, May 1978, p19; Bevan, H., Law Relating to Children, London, 1973, pp26, 7, 34-46; Howard, C., Australian Criminal Law, (2nd Ed.), Sydney, 1972, p345.

⁸ Quoted in James, T.E., "The Legal Guardianship of Infants" in Law Quarterly Review, 82(327), July 1966, p323.

its policy. Two such means were possible. One could be used only if each child had independent property; the other could operate only if the State established a huge and effective welfare system. The State used both methods to a limited extent, but neither could be implemented universally.

Where a child possessed independent property the State could implement its policy by ordering the court to use the child's property exclusively for the maintenance of the child.⁹ Before any of this could be done the child had to be declared a ward of the court, a move that was not lightly commenced or easily carried through.

The second, or welfare, method operated to a limited extent at the other end of the socio-economic scale. The concept of parens patriae was used in the sixteenth century to justify State intervention through the Poor Laws into parental authority. The same legislation also established an embryonic welfare system to implement this principle, but the system was unable to cope and the principle was never fully implemented.¹⁰

Faced by these almost insurmountable obstacles to the stability desired by the State, the Crown took the only possible course open to it and institutionalised what appeared to the State to be the "natural law" of guardian obligation. Instead of attempting to legislate to compensate for the immature child's natural disadvantages, the State codified those natural disadvantages into a legal system which strengthened the autonomy and autocracy of the guardian, while it downgraded the individual legal rights of the child. The State abrogated, as much as possible, its responsibility and passed that responsibility onto

⁹ The personal interests of the child, for example an adequate education, could be taken into consideration by the court when appointing suitable guardians, and assured by the threat of withdrawal of that custody. At no time in English legal history did the implementation of this concept extend beyond a tiny minority of the landed or monied elite. Simpson, A.H., Treatise on the Law and Practice Relating to Infants, London, 1875, ppl36-7; Bevan, H.K., op.cit., p411.

¹⁰ Pinchbeck and Hewitt, op.cit., I, ppl38-9 & II, p359.

the child's guardian, in most cases the natural parents of the child.¹¹

While the law upheld the principle of equality, it in effect denied (and still continues to deny) children within the family unit reciprocal legal rights.¹² The family relationship, or the ideal family relationship, shaped so much of the Statute legislation and conditioned the interpretation of Common Law principles that it is impossible to view children's law through any other than this single perspective. The civil law held strongly to a concept of society in which the family and not the individual within that family was the basic unit in need of legal protection.¹³ Lynne Forman points out the more basic theme underlying this premise:

... is the notion that the law upholds the cultural view that the preferred family unit is one that is legally sanctioned, economically independent of the State and generally is able to support, maintain and develop its own internal structure along the lines of socially acceptable criteria.¹⁴

¹¹ The law of guardianship, under which parent/child law was grouped, was vague. The Common Law set down a duty to protect upon anyone old enough to be legally responsible who took upon themselves, either by legal document or "natural" obligation, the care of any person unable to look after themselves because of illness, disability or immaturity. It depended in no way upon the age of the person under care, and extended equally to children, apprentices, servants, the aged and the sick. As Bullock and Maitland pointed out, the Middle Ages knew some ten kinds of infant guardianship, but by the eighteenth century the only practical and widespread form of guardianship was the natural parent to infant relationship, and it was this relationship that received the greatest legal reinforcement. Bevan, H.K., op.cit., pp444-445.

¹² Pinchbeck and Hewitt, op.cit., II, p368.

¹³ This concept was supported by an indifference bred of familiarity to cruelty within the family, religious notions of resignation to and acceptance of one's designated lot, as well as economic and political causes. Even today when State intervention into the family structure for the benefit of an individual member is accepted in principle and reasonably common in practice, any intervention is based on the premise that the family, the most desired unit of organisation and protection, has failed. Ibid., II, pp357-360 & I, pp13-14.

¹⁴ Forman, L., Children or Families? An Evaluation of the Legislative Basis for Child-Protective Statutory Welfare Services in the Australian States and Territories, Canberra, 1975, p11.

In the period under study this notion was paramount to the extent that State intervention was not accepted in principle or fact. The Law sought to protect the family and its members for to undermine the family was to undermine society. The Crown seems to have been unable to see that family disruption caused by disharmony within the family was as dangerous to the State as that caused by external threat, for it set out to protect the family only from outside exploitation. It made no move to protect the child or the wife from violence or exploitation from within the family unit. Two assumptions lay beneath this lack of protection. The first was, as Blackstone pointed out, that "in marriage, husband and wife are one person, and that person is the husband".¹⁵ The second was that one parent, or another member of the family, would moderate the excesses of the other. Given this understanding of marriage the legal protection afforded the family really extended only to the head of the family and only indirectly to the other members. The father's paramountcy and the Common Law's accent on his rights as opposed to his duty led to a submersion of children before the Law, and explains the State's reluctance to intervene on the child's behalf in internal family matters.

The criminal law, for similar utilitarian reasons, sought to restrict the excuse of individual immaturity to as small a number as possible. The idea of corporate or familial responsibility for the crime of any member, adult or child, did not take long to succumb to the notion of individual responsibility for actions. Additionally, more utilitarian arguments could be found to justify criminal proceedings against the guilty individual himself rather than against a representative or corporate body. Punishment with the maximum deterrent effect, but with the least dysfunctional effect, would naturally be the most desired. These ends could best be fulfilled by punishment inflicted upon the individual alone. This, then, is the reason for the inconsistency in the definition of infant by the two branches of the Law. The civil law sought to extend parental influence and childhood immaturity for as long as it possibly could. The criminal law sought to restrict the excuse of individual immaturity to as small a number as possible. Both interpretations were seen as imperative if the

¹⁵ Quoted in Pinchbeck and Hewitt, op.cit., II, p362.

stability of society was to be maintained.¹⁶

When the specific law relating to infants is examined it becomes even more apparent that the child had little legal protection other than that furnished by the family.¹⁷ Protection against legal and criminal liability, was so easily circumvented, either through the legal framework itself or by devious individuals who operated within the letter of the law, as to be almost useless to the vast majority of children. In civil law, as an example, apprenticeship and service contracts, the only area where the normal child came in contact with English civil law, were binding on the infant during its minority. This was opposed to all other contracts which were voidable during the child's minority as well as upon reaching its majority. The indenture, while binding upon the infant, recognised in part this voidable nature of infant contract by making the guardian party to the indenture and liable for the ward's defaults.¹⁸ Even if the guardian was not party to the indenture the contract was still considered as valid by some magistrates because the contract was entered for the boy's benefit and was therefore legally binding.

During the period 1820 to 1840, protection against criminal liability was subject to the rather restricted interpretation of doli incapax, the child faced a trial and punishment as an adult, was

¹⁶ The practical problems caused by punishing a father for the crimes of his children are fairly apparent especially at a time when there was already excessive burden on the Parish Poor Law system. Moreover, the vengeance or retributive principle, which was the basis of criminal law, had to have the added utilitarian function of acting as a deterrent to crime by being sufficiently horrible to frighten others into good behaviour. The Utilitarian of the eighteenth century believed that punishment was a pure evil if no happiness resulted, sufficient to outweigh the suffering involved. Crime left unpunished, or punishment left unpublicised would lead to the dissolution of society. A child who knew that its criminal activity would result in its father's punishment would not be greatly inhibited, nor would society be gratified by the spectacle of an innocent man suffering as a result of another's crime. The vengeance and utilitarian purpose of punishment would in this case be negligible and possibly even counter-productive. Watson, J., "The Prison System" in Radzinowicz, L. and Turner, J. (Eds.), Penal Reform in England: Introductory Essays on Some Aspects of English Criminal Policy, London, 1940, p152; Heath, J., op.cit., p7.

¹⁷ Simpson, A.H., op.cit., p3; Bevan, H.K., op.cit., p4.

¹⁸ Simpson, A.H., op.cit., pp92-94.

attributed with the same degree of mens rea as an adult, was subject to the same adversary system as an adult, was expected to meet the same evidentiary requirements, and was punished by similar sentences in the same correctional institutions as adults.¹⁹ It need not be pointed out that in every one of these proceedings the child was at a decided disadvantage.²⁰

Protection from physical and moral harm by criminal law and tort extended equally to adults. Few statutes at the time specifically dealt with crimes against the person or property of children. The protection of children afforded by the criminal law was weak in practice first because of defects in the law itself. Often it was not ultimately aimed at protecting the child, but at protecting the parents, or making sure the culprit of some moral transgression bore the burden of his or her responsibility rather than take the easy course of destroying the effects. Second, it was weak because of a general reluctance to prosecute the law to the fullest. Children had little recourse at law in cases of injury. It was generally assumed by the State that the family would give protection from external threat and would not itself engage in child injury.²¹ Against external threat the law offered no special protection except in the area of sexual molestation. Even in this area the conviction rate was low.

Against familial aggression the law was virtually powerless. Parental cruelty was always protected by the right of "reasonable and moderate" corporal chastisement which extended to persons "in loco

¹⁹ Forman, L., op.cit., p18.

²⁰ If we take the matter of evidence for example - Corroboration of Infants' evidence was needed and demanded and it was a common practice for the jury to be directed to treat the evidence of children with extreme caution unless it was corroborated by material particulars directly implicating the accused. Glanville Williams, The Proof of Guilt: A Study of the English Criminal Trial, (3rd Ed.), London, 1963, pp178-9.

²¹ In practice there appears to have been some sort of parallel to the civil law notion that:
 a child of tender years is so identified with the person
 it is with, that if the negligence of the latter cause
 an injury the child cannot recover.
 Simpson, A.H., op.cit., p106.

parentis" such as schoolmasters, legal or casual guardians, and masters; in fact just about everybody with whom the child came in contact other than the casual sadist.

Further discrimination by the civil law added to the lack of protection for in the case of an adult where the law did not prosecute, for example for assault, the victim could claim compensation through the civil court. With a child a father could prosecute only for injury to his child if the child was of serviceable age, and a child could prosecute only if he had the independent means to pay costs.²²

There were few statutes specifically adverting to children's welfare except those dealing with custody acts which protected, in the child's interest, the parents' or guardians' rights over the child. It was assumed by the Law that all children would belong to a legally constituted family. The Common Law accepted only one criterion for legitimacy; the parents must have been legally married when the child was born or conceived.²³ In the eyes of the Law an illegitimate child was filius nullius (a child of no-one) and consequently had no legal guardians. An illegitimate's parents who refused to assume the "natural" duty of care for the child (arising from the general duty to protect the incapable) could not be forced by law to assume that care. Early Poor Law legislation mitigated this by attempting to enforce the duty of maintenance upon the parents, especially the mother, but it was

²² Bevan, H.K., op.cit., p451.

²³ The law went to great lengths to widen the criteria by introducing a "presumption of legitimacy". In fact there were two major assumptions underlying this presumption. The first was that a child conceived before marriage was legitimised by the subsequent marriage as long as the husband knew the woman was pregnant. The second assumption was that no woman would commit adultery; a child born of a married woman during the subsistence of her marriage, even if she was separated or if the conception could possibly have taken place before her husband's death or divorce was rebuttably presumed to be legitimate. Additionally although the Statute of Merton (1235) held that children born before the marriage of its parents were always illegitimate, subsequent marriage was recognised as a legitimization if no question of heirship was involved. Ibid., pp237-40 & 249-250; Jenks, E., A Short History of English Law, (6th Ed.), London, 1949, pp412-413.

never wholly successful.²⁴ All children were supposed to be entitled to the same remedies to protect their personal and property rights but these remedies were practically impossible without the aid of a legal guardian or parent.²⁵

The weakness of English law lay in its need to couple child protection with family and guardianship law. Thus in the colony the law was even weaker because of the dubious legal status of so many of the colony's parents. This confusion raised doubts about the rights of some parents to the guardianship of their children and anxiety about the enforcement of the duty of maintenance. A great number of the heads of the families to which colonial children belonged were either convict or ex-convict. A conviction for a felony often involved disabilities at law which were not fully resolved even upon expiration of the prisoner's sentence.²⁶ The legal position of convicts or ex-convicts as the guardians of their children and the extent of their rights and duties towards these children were therefore open to doubt.

The illegal nature of many of the marriages also failed to give the family the "protection" afforded the English family. This illegality not only extended to those who openly chose to cohabit instead of marry, but spread to many who thought they were legally married.²⁷

As a matter of priority the colonial government attempted to introduce into the colony the socially stabilising influence of the legal family. The colonial powers also had as an ultimate aim the

²⁴ 4 & 5 Will IV, c76, bound the mother to support her illegitimate children till the age of 16, but she was not bound to expend any part of her estate on their maintenance. One wonders then how the maintenance was to be achieved? The father was never bound to maintain his illegitimate child unless he promised an allowance in a legal agreement. Bevan, H.K., op.cit., pp236-7; Simpson, A.H., op.cit., pp158-161.

²⁵ Ibid, pp132-133; Pinchbeck and Hewitt, op.cit., I, pp202

²⁶ Whitfield, L.A., Founders of the Law in Australia, Sydney, 1971, p12.

²⁷ One illustration was the famous clashes between Therry, the Roman Catholic chaplain, and the courts over bigamy cases which Therry claimed were non suits as the English Marriage and Bigamy Acts did not apply in N.S.W. SG, 8/11/1826, 3(c); Currey, C.H., "The Law of Marriage and Divorce in New South Wales (1788-1858)", in JRAHS, 41 (3), 1955, pp97-115.

forcing of each child into a stable and protective dependant relationship which would then be given full English legal protection. The irony was that this could be achieved only by enhancing the individual legal status of the child and by being willing and able to intervene in the natural family unit for the benefit of individual members of that family.

The legal structures under which the governors operated, even after limited self-legislation was introduced in 1824, allowed the governors sufficient scope to alter the practice of English law. There was, and still is, considerable debate as to how far English Common and Statute Law applied in N.S.W. especially in the 1788-1823 period. Phillip and subsequent governors assumed that their title allowed them to rule autocratically by means of General Orders and Proclamations which applied to the free, the military, and the bond. The governor's assumed powers were not seriously challenged at law until the middle of Macquarie's reign and when challenged were usually upheld unless repugnant (that is contradictory) to English law. The second Charter of Justice (1824) limited the governor's powers, but really only transferred part of his previously autocratic power to a legislative body which was still capable and desirous of implementing changes to the law.

On a more idiosyncratic level, the magistrates, although English trained, operating in a structure closely modelled on England's and within a legal code profoundly English, and knowing that their decisions could ultimately be taken to the Privy Council, nevertheless found it impossible not to deviate sometimes from English legal practice. As much as they attempted to disregard colonial conditions they came across situations which had no English precedent. They were forced to take into account local conditions and customs. The governors and the magistrates struggled with a legal code which reflected the moral climate of the English landed elite in a colony whose moral climate overwhelmingly reflected the attitudes of the

lower echelons of English society.²⁸

In a two pronged attack the government aimed, first, to reinforce family life and values and, second, to strengthen the child's individual legal position by strengthening government powers over guardianless children, children in care, and even children in families. To implement the first aim they worked to strengthen the dubious custody rights of parents, to avoid as much as possible family disruption through legal action, to strengthen the financial and moral ability of parents to support their children, and to enforce more rigorously maintenance upon parents. To implement the second they extended the notion of parens patriae far beyond that envisaged by the home authorities, and moved to reduce the inconsistency between the civil and criminal law.

Custody rights differed in nature according to the form of guardianship involved but by general rule and by numerous specific cases, the relationship between the parent and child contracted to the father's right as guardian, by nature and nurture, of all his children.²⁹ This gave him the most extensive powers over the custody and control

²⁸ Campbell, E., "Prerogative Rule in New South Wales 1788-1823" in JRAHS, 50(3), 1964, pp161-90; Castles, A., Introduction to Australian Legal History, Sydney, 1971, pp116 & 139-40. Phillip's instructions, the Act of 1787, and the first Charter of Justice assumed English Law would operate, but failed to make clear the extent to which it would operate or how it would operate. The Crown, in effect, withheld legislative institutions from the colony and delegated to the Governor the authority to make laws for the colony, a duty normally carried out by the colonial legislature alone.

²⁹ In theory the law of parent-child relationship fell under three heads of guardianship; namely, by nature, nurture and statute. Guardianship by nature was understood as guardianship by rules interpreted by reason from the "natural law". Positive law under this head strictly only applied to the heir apparent but it generally extended to all the children of a relationship, whether legitimate or illegitimate. It gave the guardian custody and government of the person and property of the child until the child reached its majority at age 21. Guardianship by nurture only extended to the natural parents of a child and occurred when the infant was without any other form of guardian. It extended only to the person of the infant, its custody and government, not its property, and it ceased when the child reached the age of discretion (14). Simpson, A.H., op.cit., pp112-113.

of both the child and its property until its majority. The natural father's right of custody was absolute.³⁰ The courts interfered a few times in the father's custody rights where the child had independent property because the most extreme circumstances of harshness and continued cruelty, or "anti-social" training, or "poverty" leading to the waste of the child's assets, prevailed. A mother had no rights to the custody of her children during the lifetime of the father and even after his death her power of custody was limited. She could be dismissed as guardian of her children for misconduct, immorality or refusing requests or orders from the courts.³¹

Neither parent had a legal right to the illegitimate child although a mother had guardianship if she desired it and if the child was within the age of nurture, that is, in need of sustenance and guidance. She had to relinquish guardianship if, after the child had reached the age of discretion, the child itself, or another with a "better" claim, made an appeal against the mother. From 1804 mothers of bastard children under the age of discretion were given legal custody of their child. In fact illegitimate children had far greater discretion than legitimate children as to their care-givers, for in disputed cases

³⁰ Theoretically, before the adoption laws of the late 19th and the early 20th centuries, there was no release from the right of custody. Bevan, H.K., op.cit., pp309-310. The father had custody regardless of the age or condition of the child and regardless of whether the child was under the father's control or under the immediate control of someone else. The father could renege at any time on an undertaking to leave the child in the care of another, for example, foster parents. By habeas corpus the father could demand the return of the child, a demand the courts hardly ever refused, even if the children had been deeded by him to any caregiver including his separated or divorced wife. The father had custody and could deed custody until the child attained its majority subject to the provision that if a custody dispute arose, the child, if it had achieved the age of discretion (that is 14 for boys and 16 for girls), could elect with whom it wished to stay.

³¹ The father while still alive or by will after his death could appoint guardians over and above the mother. If the father died and left no testamentary guardians, the mother was guardian by nurture alone and had control of the child only till it reached the age of 14. Simpson, A.H., op.cit., pp118-119, 129-132, 138-147, & 120-121; Pinchbeck & Hewitt, op.cit., II, pp362-365.

judgement was usually based on the child's choice.³²

There appear to be no available cases of contested custody between parents to test the application of this law in N.S.W.. The three custody cases that could be found were all involved with orphaned children and in two cases the custody went to the mother.³³ The reasons so few custody cases are extant are manifold. Chapter Three showed that amongst the parents who separated no pattern was discernable. In some cases all the children stayed with one of the parents while in others the children were split. It appears that most custody cases were settled, if not amicably, at least without recourse to the law.

No doubt most saw the law as irrelevant to their situation and it is little wonder that they did given the motives of English custody law. Custody law existed to preserve three principles thought to be basic to the preservation of the landed economy; namely, primogeniture, marriage arrangements and the dowry, and the children's contribution to family maintenance.³⁴ By the nineteenth century the importance of all three had declined and in the colony none seems to have been of great importance. While the desire for continued family lineage sometimes caused clashes,³⁵ primogeniture played only a minimal part in family history in N.S.W. even amongst those who had considerable property.³⁶ The

³² Simpson, A.H., op.cit., pp112-113; Bevan, H.K., op.cit., pp362-4.

³³ SH, 16/6/1833, Supp., 2(a); SH, 19/6/1837, 2(e).

³⁴ See for example the discussion in Simpson re the economic motive behind the division of custody into custody by nature and nurture. Simpson, A.H., op.cit., pp112-113.

³⁵ A.M. Baxter took his young son with him when he deserted his wife and daughters, to preserve his lineage and withdraw the son from the clutches of his cursed "Romanist" wife. There was little she could do except return to England. ADB, I, pp74-75.

³⁶ It appears that boys were expected to make their own way and could anticipate family assistance only in establishing themselves on the abundant land available. They could not depend on a family legacy on the death of their father, the legacy usually being divided equally amongst all the children or being given to the daughters alone. Obviously an assumption existed that the family name and economic prosperity could be carried on without recourse to primogeniture. For example T.V. Blomfield commenting on his father-in-law's dowry plans wrote:

He told me he could give me very little money with her, but he could give me cattle, that he had expended all his money in improvements, etc. that his property should devolve on his daughters, his sons being already provided for.

T.V. Blomfield to Capt. T. Blomfield, Sydney, 4/9/1820, C.E.

Blomfield, Memoirs of the Blomfield Family, Armidale, (N.D.) p24.

evidence in Chapter Three pointing to instrumental marriage also showed the wide choice of "suitable" partners available to girls and women and the keen competition amongst men for any woman. Disharmonious marriage arrangements were probably few and far between. The lack of a dowry only inhibited the prospects of some daughters of the tiny elite. Few parents of grooms were wealthy enough to expect a dowry to be given. Few parents of brides felt obliged to offer one. For those who did worry the government came to the rescue by offering land grants as dowries for respectable young ladies.³⁷

Child assistance in family enterprise was certainly alive in the colony and this seems to have been the main stimulus, combined with fear of moral corruption, for the few notices in colonial papers warning people against harbouring runaway wards, and the even fewer cases involving alienation of a ward from his or her guardian.³⁸ It seems to have done little to promote custody cases. The courts could do little in these cases to effect a reconciliation between ward and guardian. They could not punish a child for absconding unless he committed a crime at the same time. It is not surprising then that few cases appeared before the courts. The less economically advantaged parents were probably more in need of their children but the cost, the futility of court proceedings, and the realisation that ultimately the child, upon reaching maturity, would abandon the family, must have militated against disciplinary action.³⁹ The courts were not entirely useless for they could punish

³⁷ For example, Darling to Vis. Goderich, 11/2/1828, HRA, I, xiii, pp773-4. See also previous footnote & HRA, I, xv, p149.

³⁸ It is interesting to note that the majority of parental warnings against harbouring wards came from mothers. Unless they were testamentary guardians they should really have relinquished control of the boys at age 14 and of the girls at 16, but it is obvious that they did not. It is possible to see this as evidence of the beginnings of a strong matriarchal influence in child rearing, but a simpler and more cogent reason could be that the mothers, usually single, were more economically dependant on their sons or daughters and feared for their own future if the child was tempted away.

³⁹ The case of William Hancy and his son illustrates these points. In 1823 the Sydney Gazette published the following:

Whereas my son, Fredrick Hancy, has absconded from paternal protection and support for some weeks since, I hereby caution all persons from giving countenance or encouragement to the said Runaway; and any one harbouring him after this notice will do it at their peril. He is about 18 years of age, and is addicted to company: - William Hancy. SG, 27/2/1823, 5(c). In the 1825 Muster Fredrick Hansey, 18, is listed with his parents

the harbourer of the absconder and it is surprising that more cases of this type were not prosecuted.⁴⁰

Masters of apprentices made more use of these warnings than parents. Obviously masters, much more than parents, thought of their wards as economic investments. There were also many more cases of masters exercising their control of apprentices through court action. In this guardian-ward relationship the courts could interfere as the relationship was controlled by a legal contract.

As far as the custody of illegitimate children was concerned the custom seems to have been that the mothers applied for custody and it was granted, presumably on the basis of the 1804 English Act giving custody of bastards to their mothers.⁴¹ No case confirmed this but maintenance orders on putative fathers were issued on behalf of the child by the mother which implies that legal custody must have been granted to the mother. Only infrequently did the mothers who were unable to support the child forgo custody.

Efforts were made by N.S.W.'s authorities to supplement the English legal presumption to legitimacy and hence to validate the custody rights of many parents. Bligh in 1812 seemed to imply that baptism of children gave the child some legal status which then gave the child inheritance rights, if not legitimization.⁴² This seems to be

on the family farm at Parramatta. In the 1828 Census Fredrick, 25, is listed as a sawyer at Kissing Point, his brother is a baker in Kent Street and none of his five sisters is listed. His parents are still on the farm. Obviously the family has rapidly split up (the girls have probably married) possibly because the parental control imposed by this free settler was out of step with the freedom apparent outside this family.

⁴⁰ Only one case was prosecuted along these lines. It was the case brought by the mother of a "boy" against a publican because his housekeeper's daughter had seduced the plaintiff's son into the daughter's house and bed, and may have been motivated by the fear that the boy would be forced to desert the mother and her young family, rather than by outrage at the moral implications of the act. SG, 21/10/1826, 3(b).

⁴¹ Hunter, Select Committee on Transportation, 1812, Minutes, p20; Slade, A.E., Select Committee on Transportation, 1837, Minutes, p65.

⁴² Bligh, Select Committee on Transportation, 1812, Minutes, p39.

contradicted by evidence from the proceedings in the case of Henry Salmon.⁴³ Salmon's mother was the daughter of an army corporal who died intestate in 1820 leaving one "natural born son" and four "legitimate" children. Salmon's mother shared the estate with three legitimate siblings, and not with the illegitimate child. He was obviously not legitimized by the subsequent marriage of the parents, as one would expect if Bligh's word was correct.

The tenuous legal basis of many colonial marriages left the validity of many parents' custody rights up in the air. When colonial marriage practice was called into question the government's first action was to uphold the legality of the practice, but eventually a more direct step was taken when in 1834 an Act to remove Doubts as to the Validity of certain Marriages had and Solemnized within the Colony of New South Wales and to regulate the registration of certain Marriages Baptisms and Burials was enacted.⁴⁴ This retrospectively legalized all marriages officiated at by the Ministers of the Churches of Scotland and Rome and those where authority to marry by licence was granted by the governor. It presumably retrospectively legitimized several hundred, possibly thousands, of legally illegitimate children.

It is obvious that English custody laws influenced colonial legislation. The 1836 Act to prevent clandestine marriages between minors was a succinct summary of the hierarchy of guardianship involved in English custody law.⁴⁵ It forbade the marriage of minors not widows or widowers unless approval in writing from

the father of such parties so under age (if then living) being had and obtained or if dead of the guardian or guardians of the person of the party so under age lawfully appointed or one of them and in case there shall be no such guardian then of the mother (if living and unmarried) or if there shall be no mother living and unmarried then of a guardian or guardians of the person appointed by the Supreme Court.

It was a prime example of the unsuitability of pristine English law to colonial conditions for the Act had a short history. The resulting

⁴³ Order Book, Master in Equity, Supreme Court, 1831-38, 7/4/1835, NSWAO 5/4496, ff58-60.

⁴⁴ 5 Gul. IV., No 2, 4/7/1834.

⁴⁵ 7 Gul. IV., No 6, 5/8/1836.

concubinage, in lieu of legal marriage, caused an outcry in the colony and in England. The Act was effectively repealed in 1838 because so many minors, especially emigrant minors, were without parents or guardians.⁴⁶

The father had no legal obligation to maintain his family except under the Poor Law or until his neglect brought the case to the notice of the criminal courts.⁴⁷ Through the Poor Law and other legislation (against exposure of infants for example) attempts were made to shore up the weaknesses of the Common Law, but the authorities were willing to punish only if there was proof of actual, serious and intended harm.⁴⁸ Illegitimates were in an even more precarious position. In England it was not until 1844 that the mother of an illegitimate child was empowered to apply in her own right to the justices of Petty Sessions for a maintenance order against the father.⁴⁹ Before this she had to support the child alone or hand it over to the parish who could then apply for a maintenance order on the father.⁵⁰

⁴⁶ Vict., No 8, 29/8/1838.

⁴⁷ The Poor Law made it obligatory to maintain his children and those of his wife, whether his or not. This Law was basically ineffectual as far as the child was concerned, for it prevented children being dumped on the parishes, thereby preventing unnecessary parish expenditure, but in no way guaranteed true maintenance of the child. Simpson, A.H., op.cit., pp156-161.

⁴⁸ Neglect in itself was not considered worthy of attention. As a consequence of this non-liability to maintenance, the father was not liable (unless he had given authority) for any debts incurred by or on behalf of the child even for those incurred in supplying the basic necessities of life. Bevan, H.K., op.cit., pp175-6, 453; See for example SG, 3/3/1827, 4(f).

⁴⁹ 7 Vict., No 101.

⁵⁰ This legislation was aimed at avoiding or minimizing State responsibility for the children of the poor. In England one of the "inevitable and intended consequences" (Pinchbeck & Hewitt, op.cit., II, p583) of these laws was to provide such an example of the mother and the child that it would discourage the reckless and profligate from similar action. It inevitably, but probably unintentionally, led to all sorts of devices to get rid of unwanted pregnancies or illegitimate children especially when mediaeval tolerance of bastardy gave way to puritan oppression. The Act of 1623 to prevent the murder of bastard children, for example, was primarily aimed at preventing loose women from avoiding the results of their actions rather than showing any concern for the child involved. Ibid., I, pp209-210; II, pp589-591.

The government in N.S.W. was more successful and far more active in forcing parents to maintain their children. While it is apparent that the minimization of government expenditure was the basic goal of both governments the difference was that the colony was more willing to force the parent to maintain the child and facilitated the means to implement this. The confusion of legitimate and illegitimate makes it almost impossible to judge whether the measures applied to both. Ex-Governor Hunter in his evidence to the 1812 Select Committee on Transportation stated that during his time illegitimate children were provided for at the expense of the Crown unless the father and mother had the means of maintaining them. It does not appear as if they were compelled to do so, at that time, as he goes on to say "but that has been altered since, the fathers of the children are obliged to maintain them in some way or other".⁵¹ No evidence of any such regulations could be found.⁵² In an 1823 court case John Scott sued Anthony Best for the maintenance of Best's illegitimate child born of Scott's wife before her marriage to Scott. The magistrate ruled, presumably based upon Poor Law precedents, "that the putative father is, and ever will be, compellable to support his offspring".⁵³ These opinions were contradicted by the Rev. Richard Hill who, in 1831, wrote concerning a father who refused to maintain his children

As they are illegitimates; if there were here a law to compel a father to support his children, this chap would not be entitled to that benefit.⁵⁴

⁵¹ Select Committee on Transportation, 1812, Minutes, p20.

⁵² They may have been introduced in 1801-1802, for a comparison of the victualling returns for 1800 and 1802 show a huge drop in the number of children fed from government stores. The N.S.W. Pocket Almanac of 1813, which lists all General Orders and Regulations operating in the colony, makes no mention of such a regulation.

⁵³ Best had evidently promised and paid maintenance for about two years up to the time of the marriage in about 1818. The payments had then stopped. Scott, in 1823, sued, but the judge ruled for the defendant on the grounds that Best had never signed an agreement and the plaintiff's wife had never made a proper application. This course was now open to the plaintiff if he wished. SG, 8/5/1823, 2(c) - 3(a).

⁵⁴ Hill to Scott, 13/8/1831, Applications for Admission into the Orphan Schools 1829-33, NSWAO 4/331, ff213-218.

F.A. Slade also claimed, in 1838, that the mother was often able to support the child, applied for them and no attempt was made to find the father nor was he called upon to support them.⁵⁵

These conflicting opinions may have been prompted by confusion in the speakers' minds between the law itself and the means to enforce maintenance. The mechanism of applying for maintenance was changed in the colony. It is obvious from the cases that the mother herself, and not the parish, was entitled to apply against the father for maintenance. In 1819, for example, Thomas Scott was ordered to pay Catherine Kewes five shillings per week for the support of a boy "begotten by him upon her".⁵⁶

The colony's desire to legislate for family support went beyond child maintenance. In 1829 legislation was passed compelling a married man to withdraw and maintain his wife upon expiration of her sentence to the Factory.⁵⁷ This policy of enforcing maintenance culminated in the 1840 Act to provide for the Maintenance of Deserted Wives and Children.⁵⁸ In this legislation either the wife or the children, whether legitimate or illegitimate, could apply directly, or through another, to the courts for a maintenance order on the husband for a weekly or monthly payment towards their upkeep. This legislation was far in advance of anything of its kind in England.

The extent to which the colony would not only bend the law, but reverse the very principles underlying the law in order to maintain family unity and reinforce parental obligation is illustrated by the decision of the colonial powers, in 1829, to make families share the punishment of convicts sentenced by a colonial court to a penal settlement. This decision ran against the principles and the letter of the law of England.⁵⁹ In N.S.W. a Board constituted to prepare

⁵⁵ Select Committee on Transportation, 1837, Minutes, p65.

⁵⁶ Bench of Magistrates, County of Cumberland, Bench Books, 1815-1821, NSWAO 7/2691, f167.

⁵⁷ 10 Geo.IV, No.5, 9/9/1829.

⁵⁸ 4 Vict., No.5, 21/7/1840.

⁵⁹ The practical effect, however, of legally sanctioned death, imprisonment, or transportation of a parent, especially the father, was that the family shared the culprit's punishment.

regulations for the Penal Settlements recommended that free wives and families of convicts who were allowed to join them in the settlement were to be placed in exactly the same circumstances of ration and indulgences as the husband. Underlying all this was the desire to keep the family unit together and to uphold the principle of parental maintenance of children. While the principle of shared punishment was odious the practical results were probably of benefit to both the family and the government.⁶⁰

The two other duties incumbent upon parents were protection and education. The government's exaggerated fears for the physical and moral wellbeing of the children led, to be shown below, to a more concentrated effort to use the criminal law where the family could or would not protect. As for education, the government's high profile has already been noted.

The duty to educate did not impose a duty to secular education but merely to religious education.⁶¹ The child had to be brought up in the father's religion. Even if as a condition of his marriage he had agreed to allow his children to be brought up in a different religion, his right was still enforceable as the agreement was not binding.⁶² The right even went beyond the grave, for, if he died and made no provision for religious education, the courts could force his children, over all objections, to follow his religion.⁶³ It was obvious, in Chapter Three, that amongst the "mixed marriages" this seemed to have been almost totally disregarded probably because of the

⁶⁰ They also recommended that the families be made to pay for their upkeep by non-compulsory labour. Their justification for this was that convicts with astute families soon found themselves living "in the lap of luxury" instead of suffering the punishment they deserved. They also wished to relieve the colony of the troublesome burden of looking after the "orphaned" children of re-sentenced convicts. "Report of Board for Preparing Regulations for Penal Settlements", HRA, I, xv, p116; "Regulations for Penal Settlements" Nos.66-68, 70 and 77, 1/7/1829, HRA, I, xv, pp112-113.

⁶¹ Bevan, H.K., op.cit., pp424-5, 432-3.

⁶² Once again the Baxter case is a prime example of the father having every legal right to renege on his undertaking to allow his children to be brought up as Catholics. ADB, I, pp74-75.

⁶³ Simpson, A.H., op.cit., pp120-121.

general uninterest in matters religious.⁶⁴ The State itself took little notice of this right, for it overruled the often express wish of Catholic parents and raised all N.S.W. "orphans" as Anglicans.

This disregard of the wishes of "disadvantaged" parents was typical of the development of the notion of parens patriae and the government's willingness to interfere in family affairs to protect the weaker parties. These moves were again forced upon the government by legal deficiencies within the colony and the government's fears for the colony's children. Some Governor's Orders were proclaimed to cover legal deficiencies caused by the lack of a Matrimonial Court and an effective Ecclesiastical Court. The civil courts lacked the jurisdiction over and could not adequately handle affairs such as alimony and a range of other domestic and matrimonial problems. Justice Field, in his submission to Commissioner Bigge, pointed out that he had had to let go many hard cases because of his lack of jurisdiction in these areas.⁶⁵

Article 18 of the second Charter of Justice (1824) authorized the Supreme Court of N.S.W. to carry out the functions of the English Courts of Wards and Chancery regarding the appointment of guardians to infants and their estates.⁶⁶ The Gazette was therefore correct, in 1828, when it pointed out that

Orphans in this Colony are under the immediate protection of his Excellency the Governor, who is vested with similar powers as those of the Lord Chancellor in England.⁶⁷

⁶⁴ If the law had been tested, however, it most probably would have been upheld, for later in the century there were several cases involving disputes over the religious upbringing of children caught up in desertion, divorce or post death proceedings. Nearly all ended in a ruling according to English law which had by that time changed considerably.

⁶⁵ Field to Bigge, 23/10/1820, HRA, I, iv, p861.

⁶⁶ HRA, IV, i, p518.

⁶⁷ SG, 28/6/1828, 2(d).

The precision of Article 18 was quickly dented, however, by a very liberal interpretation, based upon previously held notions of parens patriae, of the word "orphan". The criteria for entry to orphanages always included one for the entry of children of "depraved parents" and this was frequently used to justify and prolong institutionalization. The inclusion of children from this category and others who were not genuine orphans involved a few unsubtle twists to the law of guardianship. Robert Campbell, speaking in 1837 in opposition to moves by Catholics to establish denominational orphan schools, was logically correct when he argued that

First, because destitute Orphan Children are the children of the State: Because the Protestant faith is the Religion of the State, and it follows therefore that destitute Orphan children ought to be brought up in the principles of the Protestant faith.⁶⁸

but the logic had a few legal imprecisions. First, it is doubtful if the Anglican faith was the religion of the colonial State. Second, very few institutionalized "orphans" were, as he knew full well, entirely guardianless, and while a guardian remained his or her wishes had legal priority over those of the orphanage authorities. Governor Bourke, in 1833, was forced to use an equally dubious legal argument that:

As they [orphans] are received at a very early age, and those who are not Orphans in the strict meaning of the term are for the most part deserted or neglected by their Parents, it is proper that they should be so brought up [in the Anglican faith].⁶⁹

To gain slightly better legal standing the parents of children taken into orphanages were asked to sign a waiver giving control and custody of the child to the Governor, but it is doubtful if this would have stood up against a writ of habeas corpus. The only case that came close to testing this waiver ended in an uncontested victory for the parents who removed the child to their home.⁷⁰

⁶⁸ Quoted in W.W. Burton, The State of Religion and Education in New South Wales, London, 1840, pp110-111.

⁶⁹ Bourke to Stanley, 30/9/1833, HRA, I, xvii, p230; See also Bourke's categories in Bourke to Glenelg, 7/8/1836, HRA, I, xviii, p465.

⁷⁰ "General Rules for ^{The} Female Orphan House.", HRA, I, xii, p281 & Aust., 2/5/1828, 3(a-b).

The concept of parens patriae influenced not only those in positions of authority. Dr. J. Eckford, appearing before the 1835 Legislative Council Committee on Immigration, urged the immigration of youths and girls between the age of 12 and 18 chiefly from the hospitals and institutions of England. Their welfare could be assured by "placing the onus of a parent upon the government, a view which ought never to be lost sight of". Eckford thought this might at first startle his listeners but it probably did not even cause a raised eyebrow amongst the like-minded legislators.⁷¹

The more crucial point is that the concept could be pursued because the government had several welfare means to implement its policy. Its use of the orphan institutions is exemplified by a case in 1827 which was typical of many others. A boy, about 10 years old, was brought before the bench charged with having no means of subsistence. Both his parents were prisoners and he lived in a disused pigsty and was fed by other street urchins. The bench ordered him to the care of the watchhouse until he could be placed in an orphanage.⁷² In England the boy probably would not have been noticed until he had committed a more serious crime and he then would have been committed to a gaol or a workhouse.

There were many other devices the government could, and did use. The government could grant rations to the children of convicts in difficulty or it could marshall the support of private benefactors to overcome the immediate and long term effects of family disruption. As a substantial employer it could take on the eldest child of a family-in-need either as an apprentice, clerk, message boy or domestic, thereby providing the family with relief and possibly some extra income.

Unfortunately this policy could be double edged for it meant that a few children, forced by desertion or neglect, into petty crime, could not be accommodated in the Orphanages for fear of contaminating the other innocent inmates. This was not a rigid policy, but once the child's depravity was beyond dispute he or she was sent to the House

⁷¹ Committee on Immigration, 1835, Minutes, p304.

⁷² Aust., 18/7/1827, 3(d).

of Correction (Carter's Barracks or the Factory).⁷³ Other neglected children who appeared before the police on more than one occasion were also refused entry to the orphanages. Interestingly, one eight year old girl accomplice to a robbery was kept in the women's watch house for three months to prevent her starving while alternatives to the orphanage were found. The environment may not have been wholesome but it was probably better than starving in the street.⁷⁴

The other facet of this recognition of the individuality of the child was that in N.S.W. there seems to have been more consistency between the civil and criminal law's attitude to children, at least towards children in the seven to fourteen years age group. In the civil sphere the general opinion was that youths over the age of fourteen were capable of independent status. Some maintained that colonial youths even over the age of twenty one were inexperienced and incapable of responsible positions but this was a minority position.⁷⁵ There was much discussion, for example, about lowering the legal age for the right to be granted property and legal liability to 18 or 19 years, but it was not adopted, due to English opposition.⁷⁶ There were very few cases of contested custody or warnings against harbouring or giving credit to minors, except in the case of very young children. So many guardianless minors of sixteen and over, ex-convict, colonial born, and emigrant, wandered the colony, that much of the law regarding infant contracts and the marriage of minors fell into desuetude. After 1832, for example, juvenile workers were allowed to sue for wages and debts in the same manner as if they were

⁷³ Twelve year old Thomas Chapple, for example, was caught stealing and sent to the Male Orphan School. He subsequently absconded but was again caught stealing a small quantity of copper and sent to Carter's Barracks for one month. SH, 28/9/1837, 2(e).

⁷⁴ SH, 13/3/1837, 3(c); SH, 22/7/1833, 3(a).

⁷⁵ For example "A Colonist" at Hawkesbury objected to the inclusion of some of the people on the Windsor Jury List, all of whom must have been over 21, in the following terms:

Some are well known to be quite inexperienced youths. Others are living under their parents' roof are looked upon as mere boys, and as yet are not in possession of any property ...

Aust., 18/11/1824, 3(d).

⁷⁶ Bathurst to Darling, 2/4/1827, HRA, I, xiii, p228; Members of the Land Board to Gov. Darling, 20/3/1826, Enclosure, Darling to Bathurst, 22/7/1826, HRA, I, xii, p416.

of full age and without the aid of a guardian.⁷⁷ As noted above, the colony was also forced to introduce two Marriage Acts in the space of as many years in an attempt to come to terms with the problem of guardianless minors marrying.⁷⁸

In other areas the law showed little signs of relaxation. The apprenticeship laws were enforced with little relaxation of the master's grip. Whereas in many other areas young men aged fourteen to twenty were allowed a great amount of freedom there were cases of masters exercising, through legal channels, fairly rigid control over apprentices aged 16 or 18. Theoretically there were several ways an apprentice or servant could get out of a contract while still in his minority but they were fairly extreme. Absconding or periodic misconduct did not terminate the deed, only habitual misconduct by the servant liable to damage the master's trade or reputation. This method usually meant the loss of the premium of indenture and the possibility of an action for loss.⁷⁹ Numerous notices appeared in the papers warning persons against harbouring, encouraging, or employing absentees from their masters and mistresses. Obviously many futile attempts were made to avoid the indentures.⁸⁰

More serious challenges were mounted in 1822 and 1828. Apprentices who had complained of ill treatment attempted to have their indentures invalidated on the grounds that they did not have the requisite (in English law) physical indents around the edge of the contract paper. In 1822 the Chief Justice argued that this was irrelevant in N.S.W. as the purposes of the indent (to prevent forgeries, and to indicate that

⁷⁷ 3 Gul. IV, No. 2, c8.

⁷⁸ 7 Gul. IV, No. 6, 5/8/1836 & 2 Vict., No.8, 29/8/1838; See above p18.

⁷⁹ Such as the death or injury of either the master or apprentice, bankruptcy or retirement of the master, or by mutual consent as long as it was beneficial to the servant. Simpson, A.M., op.cit., pp91-92. It was probably under the last clause that William Estlinman, on behalf of his son John, had his son's apprenticeship terminated because the master had "corrupted the principles (by bad and vicious example) of the said John." Bench of Magistrates, County of Cumberland, bench books, 1815-1821, 14/9/1816, SSW40 77/2691 (no folio). Similarly, Thomas Anderson was released by mutual consent after his master was found over for ill treating the apprentice. Aug, 25/7/1827, 360.

⁸⁰ For example, 36, 18/8/1821, 660.

the contract had been subject to stamp duty) did not apply in N.S.W.⁸¹ In 1828 to the consternation of many masters, a bench of three magistrates ruled the opposite way.⁸² In their decision they made no reference to an Act, apparently introduced in July 1828,⁸³ regulating matters between masters and apprentices. This Act specifically excluded this defect from invalidating indentures. The newspaper reports also make no mention of this Act, but do refer to an Act of Council No. 8, which is obviously 9 Geo. IV No.9 an Act for the better regulation of Servants Laborers and Work People.⁸⁴ So the Apprenticeship Act must have been introduced to operate retrospectively to July 1828 to overcome the adverse 1828 judgement and the problems it introduced. The swiftness with which the government dealt with this problem, its reaffirmation that the English laws on masters and apprentices extended to the colony, after it had listed a series of local (but now legal) aberrations, and the direction that all disputes were to be settled before two justices all significantly reinforce the impression of a government acting in a manner it perceived to be in the best interests of both the child and the master.

What is even more significant is that this Act extended the right to an industrial apprenticeship to "orphans" whose indenture was to be signed by two magistrates in lieu of a guardian. In England illegitimates were ineligible for admittance to trade guilds or corporations. This was the essential difference between the parish apprenticeship scheme, the major "beneficiaries" of which were illegitimate children, and the real industrial apprenticeship. The parish apprenticeship did not so much teach a trade as remove the child from an injurious background and teach it a "useful" occupation for later independence.⁸⁵ As these guilds did not exist to the same degree of rigidity in N.S.W. this was not a real problem.

The protective role of government is more apparent in the criminal

⁸¹ SG, 12/7/1822, 2(c).

⁸² Aust., 21/11/1828, 2(d)-3(a).

⁸³ 9 Geo. IV, No.8.

⁸⁴ Aust., 25/11/1828, 2(e).

⁸⁵ Pinchbeck and Hewitt, op.cit., I, pp223-4 & 234-5.

law. The attitude towards childish innocence reinforced the notion of criminal liability for those over the age of fourteen, but softened the attitude to liability for those under fourteen. Again the law was not altogether consistent. Colonial born youths committing their first and sometimes subsequent offences were invariably treated with a much greater leniency than convict youths of the same age. Commentators have a tendency to exaggerate the severity of the law in England and in N.S.W. at the time. They often point with horror to the instances of children sentenced to death and actually hanged, and imply this was a common thing. B. Knell shows that in England this was a myth and that it was extremely rare for a child under fourteen to be hanged. The last child sentenced to death appears to have been one in 1836.⁸⁶ In N.S.W. nothing as severe as this ever occurred. The most severe sentence found was the recorded sentence of death passed for burglary on three fifteen or sixteen year old convict boys from Carter's Barracks.⁸⁷ The sentences were commuted to twelve months on the chain gangs.⁸⁸ The most severe sentence for a free child was six months in Windsor gaol for a fifteen year old girl,⁸⁹ and six months with hard labour in Newcastle gaol for a fifteen year old boy.⁹⁰ The sentences given to free children ranged from this six months through being bound over to keep the peace⁹¹ to discharge with

⁸⁶ Knell, B., "Capital Punishment: Its Administration in Relation to Juvenile Offences in the Nineteenth Century, and its possible Administration in the Eighteenth." in British Journal of Criminology, 5 (2), April 1965, pp199-201. He could find only one hanging in the 19th century; that of a 13 year old unrepentant boy who brutally robbed and murdered his "schoolmate". The sentencing to death of a child was usually greeted with horrified clamour from the court, and was usually only reverted to by the judge when it was felt necessary to provide an example to others. Radzinowicz, L., History of English Criminal Law and its Administration from 1750. Vol. I. The Movement for Reform, London, 1948, p13. Wakefield pointed out that boys sentenced to death in the 1820s, and their gaolers, knew that their sentences would be commuted and they acted and were treated like all other prisoners of their age, quite differently to the men in similar circumstances. Knell, B., op.cit., p199.

⁸⁷ SH, 1/7/1833, 3(c).

⁸⁸ SH, 6/8/1833, 3(e).

⁸⁹ SH, 8/8/1833, 3(b).

⁹⁰ SH, 6/5/1833, 2(c).

⁹¹ SG, 4/11/1826, 3(b). He had assaulted his half sister over her infamous love life.

admonition. Frightening, by a night in the cells,⁹² or corporal punishment, such as an hour in the stocks,⁹³ "12 lashes with two or three rods out of a Broom"⁹⁴ or a very severe twenty five lashes for a 14 year old boy, were favoured. The reasons for favouring corporal punishment are well illustrated by the comment of the Herald on the last case.

This is the most judicious punishment that could have been inflicted on this boy; but it is to be regretted that the Magistrates had not the power to deal with him in the first instance, as it is much to be feared that the lesson of depravity he had learned in the Gaol, with the vile wretches with whom he has been associated, will have a melancholy influence on his future life.⁹⁵

The treatment meted out to the Carter's Barracks' boys contrasts with the case of "a boy" charged with "abstracting five sovereigns belonging to his master" who was sentenced to only fourteen days in the cells; or with the case of 15 year old Susan Wright who was found guilty of stealing a pocket book and £3 and was sentenced to a severe, at least for colonial born offenders, six months.⁹⁶

Research uncovered only thirty two cases between 1820 and 1837 involving what appear to be children under the age of fourteen. Only one child was reputed to be below the age of seven, a three year old girl taken into custody for stealing £3 from a house "of which she was left for a short period in charge". Unfortunately there is no report of the court appearance so the age cannot be verified but it must surely have been a misprint for it seems highly unlikely that a three year old would be left in charge of a house let alone taken into custody.⁹⁷ Eleven defendants out of the thirty two were definitely children under 14, the rest were merely described as "boys", "young girls" or by some other appellation indicating youth. Some of those named as youths or boys could be found in the 1828 census and were over the age of 14 while

⁹² SH, 20/2/1837, 2(c).

⁹³ SH, 3/4/1837, 2(e).

⁹⁴ Return to Crimes and Punishments 1828-1829: Secretary of State Correspondence, C.O. 201/216 ff123.

⁹⁵ SH, 30/4/1835, 2(g).

⁹⁶ SH, 1/7/1833, 3(c); SH, 9/9/1831, Supp. 1(d); SH, 3/6/1833, 2(e) & 8/8/1833, 3(b).

⁹⁷ SH, 29/10/1835, 3(e).

others were probably also over the age of 14. There are undoubtedly more cases than the 32 found, but the court records and the newspaper reports do not contain enough information to isolate adequately other examples. The fact that so few cases reached the courts could mean that the children were law abiding, or that they were dealt with in a less severe manner than summary jurisdiction, or that their criminal activity was overlooked. A combination of all three, but with particular emphasis on the last is the most probable explanation.

Children caught in criminal cases were treated in the same way, in an adversary court system, as adults. To overcome the child's disadvantages in such a system the English proposed an expansion of summary jurisdiction facilities. The problem with this was that it was open to the vagaries of individual judges and it was not until 1847, when the cases went before two justices, that these problems were partly overcome.⁹⁸ In N.S.W. this summary jurisdiction system was the most common form of trial until trial by jury was introduced in 1824, and still remained a significant force after that date. While it was as open to abuse as the English system it at least allowed for the possibility of an approach more sympathetic to the child. On numerous occasions the sympathy shown to children by the court, not only in the leniency of the sentence, but in the conduct of court proceedings, is an indication of how the system could operate to the child's advantage.

The severity of English law was further mitigated by the common practices of bringing a minor charge against a child who had committed a capital offence, failing to prosecute,⁹⁹ the prosecutor failing to appear at the trial,¹⁰⁰ and handing the child to the police or its parents for punishment (in the case of police, illegally).¹⁰¹ There

⁹⁸ Glanville Williams, op.cit., p13; Bevan, H.K., op.cit., pp1-2.

⁹⁹ SG, 3/2/1821, 2(a).

¹⁰⁰ Knell, B., op.cit., p202, footnote 9 & 10; Aust., 3/1/1827, 3(c); Clerk of Peace, Papers, Sydney Quarter Sessions, Nov. 1824, NSWAO 4/8438, f5.

¹⁰¹ Ruck, S.R., "Developments in Crime and Punishment" In Radzinowicz & Turner, op.cit., pp21-22; presumably a "young delinquent" 11 year old, who was caught stripping a drunkard of his clothes was given this treatment by the arresting constable. No charges appear to have been laid. Aust., 30/6/1825, 1(d).

is ample evidence that these devices were used also in N.S.W.. In the late 1820s a major revision of the criminal law took place in England and by the 1830s this revised law was operating in N.S.W.. The revision removed many offences from the list of capital crimes, but paradoxically led to a hardening of attitudes towards other crimes previously regarded as minor, and induced many people previously reluctant to press charges to continue with an indictment. It was these and other changes which Magarey, amongst others, blames for the "invention" of the problem of juvenile delinquency in the second third of the nineteenth century.¹⁰² In N.S.W. there also appears to have been some hardening of attitudes in the 1830s. In the 1820s one never finds a prosecution proceeding, as one finds in the 1830s against children who insulted soldiers,¹⁰³ robbed fruit trees,¹⁰⁴ or destroyed shrubs in The Domain.¹⁰⁵ With the hardening of attitudes towards convicts in the 1830s it was to be expected that some would rub off onto other sectors of the population.

From the small number of criminal cases found it is impossible to see how the notion of doli incapax operated in N.S.W.. The fact that so few cases are recorded, and that in the few cases where pleas based on age were entered the pleas were for mercy and not for dismissal, could indicate that the implementation of doli incapax entered well before cases reached the courts. Only those cases which the police thought demonstrated a "knowledge of wrong" were allowed to go to court. Only one case was discharged on what may have been the application, in part, of doli incapax. The report is sketchy and indicates that the evidence was insufficient to convict thus reinforcing the presumption of doli incapax rather than the discharge being solely reliant on doli incapax.¹⁰⁶

¹⁰² Magarey, S., op.cit., passim.

¹⁰³ SH, 22/1/1835, 2(d)

¹⁰⁴ SH, 20/2/1837, 2(c).

¹⁰⁵ SH, 30/11/1835, 3(b).

¹⁰⁶ This was the case of William Middleton, an 11 year old boy, charged with his widowed mother of receiving burgled property. The original case was dismissed and Williams discharged. His mother then faced another trial arising from the same incident and was convicted. It appears that after his mother was arrested and the goods confiscated William was left in charge of the family. The police returned and found more stolen property and assumed William had received it. It was proved, however, that his mother had had the opportunity to do this herself so the presumption of innocence had to be upheld and William was discharged. Aust., 6/1/1829, 2(d-e).

Of the other cases several unusual criteria of proof were used to convict. This could indicate that a search for "knowledge of wrong" was undertaken. One deaf and dumb boy was convicted of assault because of his "sullenness";¹⁰⁷ one girl was convicted of stealing because of her knowledge of the use of a skeleton key;¹⁰⁸ another boy was convicted because of a police report that he was a "depraved character."¹⁰⁹

Where pleas for mercy were entered they show a rather cunning play on the assumptions of child innocence so prevalent in society. The pleas, especially from the colonial born children, were an amalgam of appeals on account of their youth, their need, and most potently, the wayward example and urging of convict servants. One fifteen year old boy was caught gambling (tossing coins) with a convict servant. He pleaded that he had never done it before and that the prisoner proposed and persuaded him to undertake the gamble. The boy was admonished and discharged while the convict received 50 lashes for "very aggravated disorderly conduct" in leading the boy astray.¹¹⁰ Two older youths, Holmes and Maddox, arrested for drunkenness and vagrancy, pleaded that they had been "kicked about from post to pillow, unknowing and unknown", but this time it did not work and they were sentenced to one month in the Barracks.¹¹¹ Bridget Byrne, aged 13 when charged with stealing some lace and a cap valued at eightpence, pleaded:

...witch offence would have been the most distant of
her thoughts had it not been for the ill-timed advice
and over persuasion of a consined female servant that
in the same whith her

and only secondly for mercy in consideration of her tender years.¹¹²
She was recommended for mercy and sentenced to one month in the Factory.

While the criminal law seemed to be more lenient towards young children who broke its tenets it seemed to frown more severely on those (usually adults) who attempted to abuse children. It is impossible to gauge accurately the extent of criminal child abuse in early N.S.W. and

¹⁰⁷ SG, 10/6/1826, 3(c).

¹⁰⁸ SG, 8/3/1822, 3(a).

¹⁰⁹ Aust., 2/11/1827, 3(b).

¹¹⁰ SH, 10/8/1837, 2(d).

¹¹¹ SH, 11/3/1833, 2(e).

¹¹² Clerk of the Peace, Papers, Sydney Quarter Sessions, 9/11/1825, NSWAO, 4/8442, ff103-4. Spelling as in original.

how effective the law was in dealing with the abuse. The protection extended to the child by the criminal law seems to have been enhanced not by any changes to the law itself, but by a greater willingness on the part of the authorities to prosecute on behalf of children, and by the success of many of those prosecutions. It seems reasonable to assume that a fair proportion of the cases of criminal abuse were dealt with by the courts. Except in the case of "unnatural crimes", many of the commentators on the sufferings endured by children, especially those appearing before the Molesworth Committee, referred to quite identifiable court cases as evidence of the reputedly widespread nature of these occurrences. They did not seem to be able to find or refer to many examples that had not been dealt with in the courts. Furthermore Ullathorne amongst others was not worried by cases not being prosecuted, but only that the cases were so difficult to prove the culprit often was convicted on lesser charges.¹¹³ The authorities were aided in their prosecutions by the fact that the defendant was often a convict who lacked full legal status and against whom an assumption of guilt existed in reality if not in law. Similarly the aggressor was often a member of an illegal family unit and could thus be treated as any other extra-familial aggressor.

If one looks at the range of possible crimes against the person of the child it appears that there were few other than quite a number of sexually related crimes. For example, even amongst those obsessed with the moral perversion of N.S.W. there is so little mention of the practices of abortion and infanticide, that they must have been so well hidden, or so common and accepted, or so negligible, that they did not rate a mention. The last is probably correct for it is difficult to accept that the religious, especially the Catholic clergy, would have allowed such practices to go unmentioned. Obviously some infant deaths went unreported, but attempts to circumvent the proper channels after such a death were often thwarted. Much excitement was caused by the few cases of abandoned dead infants being found. Usually the body of the baby was in a box in the Old Burial Ground, or uncovered by animals or workmen.¹¹⁴ One was found in a box under the bed of a female convict

¹¹³ Select Committee on Transportation, 1838, Minutes, p24.

¹¹⁴ SH, 10/8/1835, 3(a); SG, 5/8/1820, 2(c); SH, 8/5/1834, 3(d) & SH, 6/10/1836, 3(b).

servant. In all cases the child was found, after reputable witnesses were called, to have either been still born or to have died of natural causes. Only one case of genuine infanticide was found. An unrecognised three week old boy was found, suffocated, lying in a pool of water in The Domain. The Coronial jury returned a verdict of wilful murder against an unknown person and urged the Governor to offer a reward.¹¹⁵ The public's and the authority's reaction to these incidents indicate that they were uncommon and totally abhorrent occurrences.

Because of intrinsic difficulties within the law relating to prosecution for infanticide and child destruction, the Act against concealment of the death of a child was used most extensively. This crime, between 1803 and 1828, involved a presumption that the child was born dead, but after 1828 whether the child was dead or alive at birth was irrelevant. This presumption was an immense advantage to the defence and indicates the lenient attitude taken to the crime.¹¹⁶ Only one case could be found in N.S.W.. In 1824 Eliza Evans was sentenced to one year in gaol for concealing the death of her illegitimate child. The body of the baby could not be found. Because it was impossible to establish if it was born alive the presumption mitigated the sentence.¹¹⁷

The child had little recourse against less serious physical assault. The extant cases sometimes show the court's inability or unwillingness to deal with the problem, but at other times show the court's sympathy and protective desires towards children. The assumption that children should be protected by their custodian, or that one custodian should moderate the excesses of the other in the case of parents, seems to have been as widespread in N.S.W. as it was in England. The effect of the former assumption is illustrated in the case of Patrick Trayner, indicted in 1824 for an assault on Susannah Walker. The deposition from Susannah mentions, in a hurried addendum, that while Trayner was horsewhipping and kicking her the infant in her arms "suffered much injury". Trayner was fined £5, or one month, for the assault on Susannah alone; the child did not rate a mention in the indictment.¹¹⁸

¹¹⁵ SH, 5/10/1837, 2(c) & SH, 9/10/1837, 3(b).

¹¹⁶ D. Seaborne Davis, "Law of Abortion and Necessity" in Modern Law Review, 2(2), Sept. 1938, pp133-5; and "Child Killing in English Law" in Modern Law Review, Part I, 1(3), Part II, 1(4), 1937, I, pp211-213; Jenks, E. op.cit., p417.

¹¹⁷ SG, 12/2/1824, 2(c).

¹¹⁸ Clerk of the Peace, Papers, Sydney Quarter Sessions, 13/11/1824.

The latter concept of parental moderation is illustrated to a startling degree in the case of Sarah Searle committed in 1826 for the murder of her cohabitant, John Radley. One of their children had been sent to fetch some beef. The child dropped the beef on the way home and was "corrected" by Radley with a leather strap to such an extent that Searle feared for its life. She interceded on behalf of the child provoking Radley to turn on her and in the ensuing struggle he was stabbed. Searle was found not guilty of murder, but guilty of manslaughter and fined a total of 200 dollars. The jury and the judge reached their verdict partly because the prosecution could not prove she malevolently stabbed the man, and partly because they had great sympathy for a woman defending her child from barbarous treatment.¹¹⁹ No doubt the illegal nature of this marriage also worked in Searle's favour. Unless Radley had legally accepted custody of the illegitimate child, the mother had sole custody and was legally protecting her ward from a stranger. The extent to which parental rights to corporal punishment could be pushed, the powerlessness of the law in the face of domestic assault, but also the willingness of the courts in N.S.W. to protect as far as possible its children is illustrated by this case, and that of Patrick Trayner, an incorrigibly violent man. He had been fined for an assault on a woman and her infant on 13/11/1824 and was charged again in 1825 with violently breaking the peace, committing dreadful outrages on the inmates of his own family, and using foul and indecent language in front of his own children and other females. He was bound over, but being unable to find the sureties was gaoled.¹²⁰ About a fortnight later he was released to attend his daughter's funeral. Immediately he violently attacked his family, alarmed the neighbours, caused a tumult in the street, and was in the process of tearing his daughter's body from the coffin when he was overpowered by the constables.¹²¹ The fact that

¹¹⁹ Aust., 4/11/1826, 3(c-d).

¹²⁰ SG, 14/4/1825, 3(b).

¹²¹ SG, 28/4/1825, 3(d). Not surprisingly in the Gazette of 24/5/1827 a notice of separation between Mary and Patrick Trayner is found.

the case came to the courts is an indication of the closeness of N.S.W. society and the willingness of the law to protect its children, but the fact that he was only fined and bound over to keep the peace towards his family indicates the matter was something the court was not particularly keen to pursue and could not effectively punish. Sometimes the confused custodial rights inherent in the lax matrimonial state of N.S.W. could work to the disadvantage of the child. In 1825 Terence Flemming was arraigned on a charge of assault on Lucy West. It seems Lucy had some form of custody over a little girl who was sent on an errand to Flemming's house. When she did not return, Lucy went to Flemming's house, was assaulted and fled, leaving the child behind. Flemming was found not guilty. The more interesting thing is that no mention is made, nor a charge laid, for what appears to be the abduction of a child.¹²²

In assault cases the civil status of the victim and the offender was crucial. If the victim was a disreputable character, or even worse a convict, then the defendant had few worries. Augustus Caesar's case in N.S.W. illustrates this point. Caesar was charged with assault on Timothy Collins "a lad from the Carter's Barracks". Collins was in charge of the Government water trough under instructions not to let anyone take water. Caesar arrived on his horse and demanded water which was refused. Caesar struck Collins several blows with a horsewhip. Caesar claimed that Collins had grabbed his horse's reins. Collins's story was supported by the evidence of Mary White, a twelve year old, who claimed that she saw Caesar give Collins one dollar to forego prosecution. The case was dismissed, so evidently the evidence of two children was of less merit than that of one adult, and the status of the victim crucial.¹²³ If the situation was reversed, the victim a respectable youth and the defendant a suspect or unknown character, then the defendant was gravely disadvantaged. Thomas McGuire, for example, was summoned for an assault on William Dillon, 13. Dillon, whose evidence differed from that of another boy (the only other witness), claimed he had been assisting a drunk, but McGuire claimed he had kicked Dillon in the pants for attempting to steal the

¹²² Clerk of the Peace, Papers, Sydney Quarter Sessions, 10/11/1825, NSWAO, 4/8442, ff205-207.

¹²³ Aust., 19/10/1827, 3(b).

drunk's coppers. McGuire was found guilty and bound over to keep the peace.¹²⁴

Sexual exploitation of children was another area causing worry within the establishment ranks. Boys were afforded no more protection than adults, and from all reports the incidence of "unnatural crime" involving boys seems to have been widespread. However, the number of cases of sexual molestation of boys is difficult to gauge. One guesses that a proportion of the cases reported as "too repugnant for the gentle reader" involved crime of this sort, but even these are few and far between. The few cases mentioned in Bench Books always dealt with convicts and many of their "crimes" appear to be little more than masturbation. Sometimes this was carried out in the presence of others and sometimes more mature convicts encouraged youthful convicts to indulge. Undoubtedly there were examples of more brutal sexual molestation of unwilling victims but only one case involving a free boy could be found. It was probably reported because the 12 year old boy was murdered after being indecently assaulted by an assigned servant.¹²⁵ One can only assume that in the majority of cases the authorities were powerless to prosecute.

Legislation dealing with the corruption of young girls existed as a separate entity and had a long history. Rape laws were in operation by the 13th century and by the 18th century the distinction between rape and carnal knowledge was recognised. The Act of 1828 revising the criminal code made rape a felony, carnal knowledge of a girl under 10 a felony, and carnal knowledge of a girl aged between 10 and 12 a misdemeanour.¹²⁶ The subtlety of this law seems to have been lost in N.S.W.. The only cases mentioned are rape cases which, when unsuccessful, reverted to simple assault charges or were dismissed. There do not appear to be any prosecutions for unlawful carnal knowledge even when the charge of rape was dismissed because of doubts about the consent of the girl.

The judicial attitude to child rape is well illustrated in the report of the judge's sentencing of Hartley Smith for the rape of two

¹²⁴ SG, 6/4/1827, 3(c).

¹²⁵ SH, 19/6/1837, 2(g).

¹²⁶ Howard, C., op.cit., p172; Bevan, H.K., op.cit., p222.

young girls in 1833. The judge observed

that the offence of which he had been convicted was most dangerous to civilised society, but when committed on the person of a child it was of the worst description; if there was any difference in the commission of the offence upon a child or a full grown woman, it was assuredly greater on the child than on the woman, in consequence of their tender age and their inability to offer resistance: he had poisoned their minds, it was to be feared, for ever, and it would be fortunate for them if they ever forgot the vicious lesson he had taught them; if they did not, the fault would be his.¹²⁷

The popular attitude is also illustrated in the same case for when Smith fainted on receiving the sentence of death he was carried away amidst the "exercration of a multitude of persons" and when his death sentence was commuted to life on Norfolk Island the decision "caused great dissatisfaction among the inhabitants of Sydney who have young children".¹²⁸

The actual extent of this crime, as opposed to the outraged exaggerations of many commentators, is difficult to gauge. Amidst the prevailing sexual mores, outlined in Chapter One, some parents, unwilling to acknowledge the sexual experience of their supposedly asexual daughters or have it publicly broadcast, probably refused to prosecute. The law also had many well known loopholes which would have persuaded others to forgo prosecution. Of five cases of child molestation found in 1826, no verdict was given for one, in another the defendant was allowed to go with sureties as the 7 year old girl had escaped before the deed could be completed, and three defendants were all found not guilty of rape, but guilty of a lesser assault charge.

The number of recorded cases is not large. In 1826 the Gazette claimed that the crime was "all too frequent" then pointed out that two convictions had been recorded in Windsor in the past twelve months.¹²⁹ The same paper reported a total of five cases in the year 1826. In 1835 when the Herald was beginning to thunder that a

¹²⁷ SH, 2/9/1833, 2(c).

¹²⁸ SH, 19/9/1833, 2(c).

¹²⁹ SG, 28/6/1826, 2(e).

depraved community no longer views such outrages with that feeling of horror and indignation, which they are but too well calculated to inspire in a virtuous mind.¹³⁰

and when the paper was well into its campaign of highlighting every aberration of the convict system, only four cases were reported.¹³¹ Children were not even safe in their own homes. Mary Baily, a seven year old, was raped in 1826 by her mother's cohabitant.¹³² Margaret O'Brien was sent to three months Factory labour in 1826 for putting her 13 year old daughter up for sale as a prostitute.¹³³ One case is, of course, "all too frequent", but the impression given is that this was an almost daily occurrence. Such an impression is completely misleading.

In defence of the law, it should be noted that all these cases came from the less genteel section of the community and children of this section of the community were not usually, at least in England, afforded even this measure of protection. More significantly, in the cases of Baily and O'Brien, the defendants were members of the victim's family. Juries were sometimes critical of the protection given children by guardians belonging to the lower classes and upset that the only course open to society was to pursue the child's protection by prosecuting after the act. In one case even the Chairman lamented the fact that "they had no power to interfere" in such families.¹³⁴ When one reads the depositions of some of the witnesses in these cases, especially the children's, it is a wonder any convictions were recorded. One can imagine, for example, the respectable judge and jury of 1826 being shocked at the frankness and knowledge shown by a victim such as six year old Harriet Smith. Not only did she admit the action had taken place on a previous occasion without her reporting it, not only did she admit that she remained in the barn until her attacker returned from being called away during the act, but she also described in great detail, to a court wallowing in euphemisms, how Cunningham,

¹³⁰ SH, 9/4/1835, 3(d).

¹³¹ SH, 9/4/1835, 3(d); 27/7/1835, 2(f); 10/12/1835, 3(a); 24/12/1835, 2(f).

¹³² SG, 16/8/1826, 3(c).

¹³³ Aust, 26/4/1826, 3(d). See also SH, 2/5/1831, 3(a) & SH, 27/7/1835 2(f) for other cases of family abuse.

¹³⁴ SH, 10/12/1835, 3(a).

her attacker, "had unbuttoned his trowsers and had put his cock to her cock". Cunningham was found not guilty of rape but guilty of assault.¹³⁵

The principle problem in these and other cases involving children was the reliability of child witnesses. The assumption of childish innocence did not extend to believing everything a child claimed. It appears that not only was moral awareness used as a criterion for determining "proof of knowledge" in the trials of children, but that the same criterion was used for determining the reliability of child witnesses. Eight year old William Clarke, the principal witness against five men accused of a felony, was closely examined by His Honour who

took great pains to ascertain from him if he knew the nature of an oath. The boy replied, I say my prayers at night; I do not know my catechism; I do not know the meaning of an oath; I think God would punish me if I told and (sic) untruth; bad people go to hell; where good people go I do not know; God is said to be in the sky; I cannot read or write, but I can say my A,B,C; I think God would punish me if I swear wrong. His Honour told the Jury that he thought the boy had sufficient understanding to take the oath, ...¹³⁶

In the lax religious atmosphere of N.S.W. this criterion could be disadvantageous especially in rape cases. Rape victim, Mary Coleman (14) was also questioned by His Honour who asked the prosecutrix

if she ever went to Church, if she knew the nature of an oath, if she knew there was a God, if she said any prayers, and other questions of the kind, all of which the unfortunate creature answered in the negative. Under these circumstances His Honour refused to put her on her oath, and there being no case without her, the prisoner was discharged.¹³⁷

Obviously this criterion was not infallible for a 13 year old boy was arraigned in 1835 for perjury against an alleged cattle thief.¹³⁸

Even when the competency of the child witness was accepted corroboration, material evidence implicating the accused, was needed. As we saw in the cases of assault much depended on the relative status

¹³⁵ Clerk of the Peace, Papers, Sydney Quarter Sessions, 9/2/1826, NSWAO, 4/8443, ff529-540.

¹³⁶ SH, 2/12/1833, Supp. 1(a).

¹³⁷ SH, 6/2/1837, 2(d).

¹³⁸ SH, 5/2/1835, 3(a).

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¹³⁵ Clerk of the Peace, Papers, Sydney Quarter Sessions, 9/2/1826, NSWAO, 4/8443, 11529-540.

¹³⁶ SH, 2/12/1833, Supp. 1(a).

¹³⁷ SH, 6/2/1837, 2(d).

¹³⁸ SH, 5/2/1835, 3(a).

of the victim and the defendant. In more serious crimes the status of the combatants was less important than corroboration of the identity of the perpetrator and the occurrence of the crime. In the case of a boy assaulted in a robbery the fact of the crime was accepted but the 8 year old boy's competency to identify the assailant was repeatedly tested by identification parades.¹³⁹ In the case of child rape the difficulty was twofold. Firstly, the identity of the attacker had to be established beyond doubt. Secondly, if the act had not been witnessed by a third party, given the nature of the crime this was very rare, assault could be proved by the distressed state of the child but only if the distressed state was witnessed by somebody other than the mother. Rape could be proved only if physical examination by a medic, often inconclusive after the delay in reaching a doctor, showed evidence of penetration.¹⁴⁰ In N.S.W. there were no examples of cases being dismissed because the identity of the attacker was not proved but most were lost because of the stringent requirements for corroboration of the act.¹⁴¹ It is a wonder that any were successful.

* * * *

In N.S.W. the assumptions underlying the legal position of the child were that the child was an innocent in need of protection, that the family (the traditional mode of protection) was incapable of giving that protection, that the State through the notion of parens patriae had the justification for an interventionist welfare policy, and, that its autocratic command system gave the government the means to implement that policy. The authorities attempted to protect the person of the child, while at the same time strengthen the tenuous claims to custody of many of the more caring parents of these children. The governors redoubled their efforts to propagate acceptable family values, to implement measures to strengthen the powers of the authorities over children in government care, and to give the children themselves the best care and opportunity appropriate to their rank.

¹³⁹ SG, 2/12/1820, 3(b-c)

¹⁴⁰ See above, p253, footnote²⁰

¹⁴¹ SH, 20/11/1837, 6(a) for example.

The law as it stood was inadequate, but within the framework of that inadequacy, the children of N.S.W. were in a far better position than those in England. The inconsistency in attitude to liability between the civil law and the criminal law seems to have been eased somewhat by a common acceptance that children over the age of fourteen matured rapidly and were both civilly and criminally more responsible, while those under the age of fourteen were innocent victims of a vicious society and were both civilly and criminally less liable.

CHAPTER SIX

CONCLUSIONS

In each preceding chapter a different element in the structure that made up colonial society was examined. In this, the final chapter, it remains to draw the conclusions of each chapter together and to look to the central hypothesis of this work. To do this one has to go behind the images of reality created by people from different social and ideological groups, and attempt, first, to gain some idea of the reality of the situation and, second, to measure the self assessment of the dramatis personae. The differences in outlook and self assessment had profound effects upon the children of the time and upon the character of later generations. This chapter will look at the reality of family life and childcare, and at the short and long term effects of that upbringing.

* * * * *

It is pointless attempting to whitewash the sins of colonial society but the position must be kept in perspective. In the colony there were many who were violent, drunken, salacious, irreligious and dishonest by modern standards but the general behaviour of its inhabitants was probably no worse than that amongst comparable contemporary groups in England. Breton, and other less biased witnesses before the Molesworth Committee, agreed that there was little difference between the ordinary streets of Sydney and those of any English seaport.¹ The huge majority of Sydney's inhabitants were exiles from the rougher elements among the citizens of the industrial and maritime centres of England. They carried on their usual activities as best they could in a new land. Sydney's, and the colony's, abiding shame was that these rougher elements could not be separated effectively from polite society.

The polite, the respectable, naturally defined themselves in very narrow terms. A person's respectability was judged on birth, education, economic position and, most importantly, the civil status of the person on his or her arrival in the colony. The first three criteria were the usual ones which separated the lower orders from the more respectable elements. The respectable viewed the lower orders with obvious distaste and suspicion. The dissimilitude of attitudes towards physical and

¹ Select Committee on Transportation, 1837, Minutes, p154.

moral purity evident in Chapter One meant that the respectable had a poor view of the virtue of the lower orders, but above all else they feared the democratising effect of education and the workingman who did not accept his position or show suitable deference to right order.

The status of the person on arrival in the colony usually deepened but sometimes confused the divisions based on wealth, education and birth. Manning Clark argues that the criminals sent to Australia were

one section of the working class for whom crime is an occupation just as plumbing, carpentering, etc., are occupations for other members of the working classes.²

Many of the utterances of the respectable elements in N.S.W. and England presupposed the opposite. It was not that they believed the manual workers contained the criminal elements but that the criminal element was the manual element. The accent was on the "honest" tradesman, the "respectable" shopkeeper, the "industrious" labourer - implying that all the lower occupational groups were guilty, or at least suspect, until they could prove their innocence. In N.S.W. this was reinforced by the real correlation between crime and colonial manual workers, the latter being made up almost entirely of convict and ex-convict men and women.

According to the respectable the criminal was irredeemable and had placed himself even further beyond the dictates of morality already eschewed by the lower orders. By setting their faces to legitimate authority they manifested most markedly a lack of respect for right order and proper authority. As if to make this point even more "obscene" the criminal element, the ex-convict element, refused to restrict itself to its low position. It spread through all economic ranks, even into the civil and legal administration of the colony. This high favour was a scandal not only to the sensibilities of honest men but more so to God Himself who rewarded only the righteous.

Association by birth, kinship, or marriage to any of the freed or bond meant consignment to the disreputable element of society. Even the free emigrants from poor backgrounds were not beyond reproach.

² C.M. Clark, "The Origins of the Convicts transported to Eastern Australia, 1787-1852", Part 1, HS, 7(26), May 1956, p133.

They supposedly came from the "respectable" poor and therefore carried with them, it was hoped, a proper sense of their place in the plan of society. Unfortunately they more often came from the ambitious, aspiring elements. Those who did not immediately seek independent means were confronted with masters whose social status would have gone unrecognised in the home country. Most free emigrants therefore displayed many of the unsavoury democratic tendencies of the lower orders.

A veritable siege mentality quickly arose amongst the self appointed respectable element. They had to endure the sight and sound of a class of people they could have avoided effectively in the home country. The colony was too small, the respectable too fractious to allow any relief from this assault on their sensibilities through withdrawal to those English havens of middle class retreat, the drawing room, the theatre, the arts, or the church. Most of all they lacked the support of likeminded people in positions of authority. Not only were they swamped by the unwashed masses but legitimate authority paid scant heed to their demands. English society, the epitome of all civilisation and the true defender of law and order, was not being reproduced in the colony - to the detriment of all.

Small wonder that this group's description of the colony was so devastatingly negative. Small wonder that its description and its views were rejected by another group who considered themselves to be the truly respectable and the self appointed respectable to be high class spongers and rogues. The righteous were only out to thwart the legitimate ambition of men and women who having been forced into error on one occasion by pecuniary need were determined not to let it happen a second time. Nor were they to countenance a system which had been the initial cause of all their misfortune.

Respectability was determined for this second group by economic position and present standards of behaviour. The past - birth, education and civil condition on arrival in the colony - were peripheral. What mattered was a man's present standing in the eyes of his neighbours. This was almost entirely dependent on his economic standing. Connell and Irving have argued along similar lines that the ideology of economic development gave rise to a form of bourgeois hegemony which denied the organic theory of class and the doctrine of hierarchy but accepted many

of the cultural relations, aspirations and morality of the bourgeoisie.³ Honour and respectability were not attached to the position a person filled but to the quality of the present actions he or she performed.

Whether this was an entirely secular belief or a carry over of a religious belief in rewards being given to the righteous is difficult to assess. Economic standing in the shaky economy of the colony must have attested to the person's sobriety, frugality, and freedom from the other vices which interfered with economic prosperity at least. The fact, however, that morality played little part in the amassing of some notable men's fortunes, even if they did not break the law, implies that secular, rather than religious, justification was used for this ideology. The ideology appealed not only to the ex-convict element, a minority by the 1820s, but to those tainted by relationships with the freed and the bond and to the poorer free emigrants. It would be safe to assume that the great majority of the married population subscribed to this philosophy. Few married men appear to have operated under the wage system preferring, if devoid of land or other assets, to use alternative techniques mentioned in Chapter Four which preserved the independence and freedom essential to this philosophy.

While the reformed rejected the basis of the exclusivist's ideology, they accepted, often in a watered down version, many of the moral and cultural values of the exclusivist element. Much of Whig morality, so popular in the colony, was "polite" in origin and effect. Nowhere is this more more apparent than in the area of marriage and the family. Married life and values in this period of N.S.W.'s history pre-empted many of the values that were to reign supreme in the Victorian era. At this time, as Patricia Grimshaw has pointed out, the notion of a child oriented ideology of family life with a solid demarcation of duties between the breadwinning husband and the childbearing and caring wife gained wide acceptance.⁴ Life within the home may not have reflected the standard of prudishness, reticence and ornamentation demanded at the height of Victorian elegance but the fundamental tenet of a strict division of labour within the family was quickly entrenched.

³ R.W. Connell & T.I. Irving, Class Structure in Australian History, Melbourne, 1980, pp65-68.

⁴ P. Grimshaw, "Women and Family in Australian History - A Reply to The Real Matilda" in HS, 18(72), April 1979, pp412-421.

Two elements of colonial society fostered the rapid acceptance of a strict division of labour. The first was the exacerbation, under colonial conditions, of the emerging English distrust of what may be called the "unenfamilied" woman; that is, the woman unprotected by a husband, father or reputable household. The second was the disproportionately small number of women in the colony.

By the late eighteenth and early nineteenth century the woman, whether married or unmarried, who lived alone, managed a business or property alone, or who operated or worked outside a respectable family unit was morally suspect. In the colony these suspicions were exaggerated by fears about the dissipating effect of the colony's climate, the low moral standards of the colony, and the low standard of the majority of single (convict) women. In a case brought to court in 1826 Miss Spencer, Mr. Campbell's governess, sued for "words uttered" by the Captain of her emigrant ship. The Judge, in ruling for the plaintiff, stressed the absolute necessity of a woman's reputation remaining intact in the colony and how easily idle talk could ruin that reputation.⁵

Mrs. Edwards, the wife of the alleged escaped convict Lockaye, indicated the behaviour that was expected, or suspected, of separated and unprotected wives when she wrote to the Colonial Secretary:

but I have lately found reason from an insult, offered to me by a Soldier Sergeant, that, if I were of the same cast as the generality of those women who procure favor in this Colony, My Husband also might be favored.⁶

Women whose husbands died leaving them to run a business, especially an inn, were subjected to campaigns of innuendo and rumour. F. Girard spoke of his mother-in-law, the colonial born widow of Michael Hayes, suffering distress in "a colony such as this".⁷ James Wemyss wrote similarly of his widowed mother's troubles:

⁵ Aust, 6/5/1826, 4(c).

⁶ Enclosure Darling to Huskisson, 11/5/1828, HRA, I, xiv, pp171-2.

⁷ F. Girard to his Dear Relatives, 25/9/1831, Michael Hayes Letters, ANL, Ms 246.

Mother during her widowhood met with many obstacles and had many ill speaking friends which you might guess in the line of business she were left [an inn] which caused her to change her life and she got a loving and affectionate husband ...⁸

The woman or young lady brave enough to walk the streets alone, or unaccompanied by a respectable man, was subjected to molestations from the lower orders and slanderous accusations from the respectable. James Macarthur claimed he could tell the moral character of a woman from the way she walked the streets no doubt using as his basis whether she was accompanied or unaccompanied.⁹

This attitude towards the single, unprotected, woman also coloured the colonists' views about the "reformed" ways of married convicts. Most commentators,¹⁰ except possibly James Mudie and his devotees,¹¹ agreed that marriage reformed at least the external behaviour of convict women.¹² No doubt some of this reformation was real, for freed of the shackles of convict discipline the married women avoided most of the many misdemeanours for which they, as convicts, were liable. Equally many of her character faults were hidden by marriage.

In their homes and families they will not be found, in the same proportion, free from the grosser vices and immoralities to which the lower class of people are subject.¹³

A woman who "tippled" in her own house was less likely to be discovered and punished. Finally one is left wondering how much this supposed reformation was influenced by images of previously single, unprotected, and therefore morally suspect females at last being taken into marriage and conforming more closely to the ideal of womanhood. Before their marriages the women were as bad as they were expected to be (but in reality not as bad as they were imagined to be) while after their

⁸ J. Wemyss to J. Humphries, 10/7/1841, Wemyss Family Letters, ANL, Ms 686, f7.

⁹ Select Committee on Transportation, 1837, Minutes, p202.

¹⁰ The Sydney Herald's Bathurst correspondent claimed it was "three fourths of the heads of families". SH, 18/3/1833, 3(a-b).

¹¹ Select Committee on Transportation, 1837, Minutes, p40.

¹² For example, J.D. Lang, Select Committee on Transportation, 1837, Minutes, p231 or W. Ullathorne, Select Committee on Transportation, 1838, Minutes, p23.

¹³ Bourke to Glenelg, 4/12/1837, Select Committee on Transportation, 1838, Appendix, p235.

marriages they were as good as they were expected to be (but probably no worse nor better than they had been as single women).

It appears that these opinions had an influence on the women who married. Much has been written on the self image of convict women and the effect of that self image on patterns of childrearing. The self image of convict women was considered by some to be very low because of the prevalence of "bourgeois" notions of respectability, because of the degradation and deprivation arising from the instilled low self image of the lower orders, because of the brutal moral climate of the colony, and because of the unequal relationship in most marriages or less formal arrangements amongst the poorer groups.¹⁴ There may be an element of truth in this but it appears that notions of respectability had more to do with fostering a division between the married and unmarried, the former disreputable and latter respectable, than between the self-appointed respectable and the convict/emancipist groups. In part the division between the respectable and the convict-emancipist groups was based on a transference of English socio-economic structures to the colony. No doubt the self esteem and the self image of all groups in that social structure were determined to some extent by each group's "betters", peers, and "inferiors". It is difficult to see that the effects on self esteem of transferred social groupings would have been worse in the colony than in the home country. First, those English social groupings were thrown askew by colonial conditions and, second, the convict-emancipists' self esteem was only marginally influenced by the respectable ideology for they rejected many of the tenets of that ideology and of what constituted respectability. Within the framework of dissimilar structured societies it is highly unlikely that the self image of the colonial married woman was lower than that of comparable women in England. It is highly probable that the self esteem of the average married woman was in fact higher in the colony than in the mother country because of the good economic distribution of colonial families. Marriage initially implied an enhanced status for all women besides providing a greater measure of security and comfort than that experienced in the home country and as a single woman in the colony.¹⁵

¹⁴ M. Dixon, The Real Matilda, Melbourne, 1976, Especially Chapter 4.

¹⁵ P. Grimshaw, op.cit., p414.

The sensitivity of many lower to middle ranking women to taunts at their respectability is evident in the extreme litigiousness of the colony during the 1820s and 1830s. The courts were crowded with cases of assault and slander arising from "words having been uttered" detrimental to the honesty, sobriety or respectability of the aggrieved plaintiff.¹⁶ Women responded to slanderous notices, from their husbands usually, in attempts to maintain their respectability and prove the other's perfidy.¹⁷ Cases arose around disputes over the legitimacy of the husband-wife relationship.¹⁸ One dismissed assault case arose out of a claim by the plaintiff that the defendant's children were not fathered by the defendant's husband. The case was settled when the defendant, displaying her children and husband, made

a forcible appeal to the Bench, as if conscious of having effected a perfect refutation of the foul slander, she roared out, at the top of her voice, 'there, your Worships, what do you think of that? aint 'em like hem as two new pins?' The Bench, of course, concurred.¹⁹

Another case saw Mary Gardner prosecute John Booth after Booth had challenged her to a fight, a contemptible suggestion to a respectable mother of five. The reporter in this case complimented the plaintiff on her "proper regard" for the law and family dignity by taking the issue to court instead of fighting it out.²⁰ The Australian sometimes did not share the Gazette's sentiments. It seems the Australian would have preferred many of these trifling lower class cases to have been sorted out in the streets. It relished a good punch up between disputing wives or rival lovers²¹ and pointed out on more than one occasion that many of the petty claims placed before the Court of Requests could be better solved by an exercise of might rather than legal right.²²

¹⁶ See for example SG, 29/5/1823, 3(a).

¹⁷ See for example SG, 18/8/1825, 1(e) and the reply SG, 25/8/1825, 3(d).

¹⁸ Aust, 30/12/1824, 3(d).

¹⁹ SH, 9/4/1835, 2(g).

²⁰ SG, 7/10/1826, 3(d-e).

²¹ Aust, 5/4/1826, 4(a).

²² Aust, 2/9/1826, 4(a-b).

The sheer weight of this litigiousness, the preference of some lower class families to use legal rights rather than might, or to prosecute when might was used, betokens an extreme sensitivity to questions involving respectability. Many married couples, from all walks of life, seem to have considered themselves respectable and were willing to defend that claim regardless of the "objective" assessment of the often amused courts and newspaper reporters.

This anxiety about respectability and the ideology surrounding the unmarried woman may have been influential in persuading many middle ranking parents, the ones who would normally have supplied the colony's servants, to keep their daughters at home until they married. Single emigrant women often complained of the difficulty in finding a "respectable" family with whom to work; a family which not only treated its servants as they deserved but also protected the reputation of their employees. Isabella Gibson, for example, wrote to her brother in 1834:

But I do not well know what is best to do there are so very few places that is any way tolerable here and I am afraid to risk leaving Hunt's they are such quiet people and have never one (sic) found fault with me since I came to their house.²³

The ill deserved reputation for immorality amongst free female emigrants shows not only another example of this ambivalence but that the fears of the single female servants were justified.²⁴

The best and only publicly recognised position available to a woman was to be a wife and mother. The one function most beneficial to the colony they alone were capable of performing was the bearing of children. Perhaps the most vocal proponent of this view was John Henderson:

We have assumed, that in such a country the most useful employment for the women, would be in bearing children. Almost every woman, under 42 years of age, on her arrival in New South Wales, and properly treated, will beget a large family, producing, for a considerable period, a child once a year.²⁵

²³ Isabella Gibson to H. Gibson, 19/6/1834, Gibson Letters, ML, Doc 1416, f2.

²⁴ Hammerton, A.J., "Without Natural Protectors: Female Immigration to Australia, 1832-36". HS, 16 (65), Oct.1975, pp539-566.

²⁵ J. Henderson, Observations on the Colonies of New South Wales and Van Diemen's Land, Calcutta, 1832, pp21-22.

These "populate or perish" sentiments were supported by many, but the children had to be legitimate. Marriage civilised women and women then took on a civilising function "relieving the husband from a number of subordinate, unmanly, household anxieties [and throwing] a cheerfulness and contentedness around the dwelling".²⁶ Behind every good man was a good wife and a wife was "a sine qua non to a young man being desirous to thrive upon his farm".²⁷

A good wife should be "like a snail, prudent and keep within her own house".²⁸ The five objects of her attention were, in order of priority, husband, children, servants, house, and self. "Her children are the objects of her unsleeping solicitude. Hence it is the affections of her heart, and the industry of her hands are equally conspicuous".²⁹ Her one public role, if she was in a position to have free time, was to carry on her womanly work in overseeing, but never becoming involved in, charitable activities. For most this was restricted to a subscription which entitled the donor to distribute largesse to those who appealed to her, but for a few it involved sitting on a management committee.

The second factor influencing the rapid acceptance of family orientation by women was the small number of women in the colony. The disproportionately large number of men in the colony meant that women were often forced out of their traditional spheres of extra-familial work and influence. Very little was left to women except domestic duty which many felt they may as well carry out in their own homes as in the paid employ of another. The demand for brides was high and the allurements of marriage, for example some security free from convict discipline or the drudgery of domestic service, were great. A notable feature of this essentially pre-industrial period in the colony's history is that the wife often regained economic value lost in the industrial revolution without regaining the public recognition of her contribution to the family economy. The pre-industrial family income producing team was partly re-established in many areas. A wife-

²⁶ Aust, 7/2/1827, 2(b).

²⁷ W. Shairp to W.D. Gillan, 15/3/1831, in Howick to Bourke, 14/8/1831, HRA, I, xvi, p327.

²⁸ SG, 9/9/1824, 3(a).

²⁹ SG, 6/1/1825, 3(b).

as noted above, was recognised by many men as an absolute necessity in business and in farming, not only for her ability to produce labourers but also for her farm or business management skills. Thus within the family the woman's self esteem may have been heightened by her husband's recognition of her value while public recognition was not forthcoming.

The demographic pressures, the prevailing ideology surrounding the unmarried woman, the rapid emergence of a 'populate or perish' mentality and the initially enhanced status of the married woman proved, in combination, a powerful influence on women to see their main role as mothers within a legally enjoined marriage. All of these pressures originated in the period under study. Before this time the colony was a penal settlement whose future was of limited importance to the Home government. Those who benefitted from local industry still saw the colony only as a stepping stone to position and respect in the Home country. Only in the period under study did the colonists and the Home government become interested in the long term future of the colony. Consequently they desired a re-establishment of traditional mores and feared the degenerating effect of convict morality, the distance from Home, and the debilitating climate. They saw the problems of a small scattered population not only in terms of defence but also in terms of the provision of labourers for English capital.

The ideology outlined above was one result, and these pressures and solutions continued for many generations. One can find in these notions the origins of later eugenic beliefs, such as the White Australian Policy and its inherent racism, the phrenetic populate or perish campaigns of the late nineteenth and early twentieth century, and the fears of race degeneracy which led some to expect the worst before the landing at Gallipoli. Most importantly because these pressures remained constant throughout the century, women continued in the low public role they adopted in this period until well into the twentieth century. Women of political and economic significance, the Mary Reibey, Elizabeth MacArthurs and the Harriet Kings, disappeared during the period under study and few arose to rival them during the remaining years of the nineteenth century.

The other aspect of the rapid acceptance of family life was that

the family was child orientated. Perhaps one might be a little rash to say that the family was child orientated but the mother was certainly so orientated. Some pressure must have been exerted on all women by the ideology of the women outlined above. The necessity for mothers to breastfeed and the fact that few families could afford, or obtain, female servants to act in positions that separated parents and children meant that contact between parents and children was probably greater than in the home country.

Other features of the colony enhanced the possibility of greater parent-child relationships. Most families could survive without the aid of a working wife and the higher economic status of many families and the lower infant mortality in the colony point to the possibility of more intense parent-child relationships than that which existed within the average English family, and certainly within the average working class English family. In later childhood and adulthood, if Harris is to be believed, the confused civil status of parents and children led to a more relaxed relationship between the two indicating that some affection may have replaced the authoritarianism which dominated many parent-child relationships.³⁰

Being more child orientated does not necessarily mean that the relationship between parents and children was more loving, but it is at least a prerequisite for affection. Throughout the evidence presented there appears to have been a much less intense relationship between the father and the children than that which existed between the mother and children. Prolonged breastfeeding must have developed some bonds between child and mother. In addition a wider age difference between children and fathers than between mothers and children, and the separation, in many occupations, of father's work and house, may have contributed to a division between father and child. On the other hand the many features which pointed to instrumental rather than companionate marriages indicate that parental attention and affection may have been directed to the children rather than to the partners.

Chapter One dwelt as much as possible on the parents' attitude to their children but there are few direct examples of the children's reaction to their parents' affection. Alexander Harris believed that

³⁰ A. Harris, Settlers and Convicts, (London, 1847), Melbourne, 1969 p92.

the overwhelming majority of children loved their parents because of the lack of harsh discipline.³¹ Another indirect indication is that there were few examples of children mistreating or disowning their parents or other members of the family. Interestingly in many of the cases that do exist the action was provoked by infidelities by one parent against another,³² or by one member of the family who revolted against the family's wishes.³³ It is difficult to believe that such family solidarity was founded on fear or discipline or that the children had imbibed virtue to the extent that they corrected the morals of their parents. Obviously it was a division based on preference for a particular parent.

The paucity of direct and indirect evidence makes it difficult to judge the reality but it is enough to lead one to reject the portraits of some of the more lurid contemporary commentators, such as Ullathorne, and the conclusions, based on these comments, reached by Ward and MacNab. One can no longer accept that

Many of them [the children] could hardly have known who their parents were. Perhaps they were better off than those who did, since most of the convict men were drunken and demoralised professional criminals, and most of the women were equally drunken and demoralised prostitutes.³⁴

For those native born children who did have a home environment - a substantial number of the illegitimate majority would have been born and reared in the Female Factory, and either abandoned to fare for themselves, or sent to an orphanage - family relations would have been such as to facilitate a reaction against parental control. The majority of the convict and emancipist homes would have been "vicious homes".³⁵

In contrast to this description, the children of the colony, at least those born from 1820 onwards, were born into families which were as

³¹ Ibid, plll.

³² For example, SC, 11/11/1826, 3(b).

³³ For example, SH, 9/1/1832, 3(b).

³⁴ K. MacNab and R. Ward, "The Nature and Nurture of the First Generation of Native-Born Australians" in ES, 10(39), Nov.1962, p290.

³⁵ Ibid, p304.

stable as the physical, as opposed to the moral, characteristics of the colony would allow. The economic and civil status of these families were much higher than average, reducing the chances of family disruption due to the vagaries of convict discipline and the chances of economic deprivation. The overwhelming majority of children remained under parental management until they were well into their teens.

There are no objective criteria one can use to assess the moral climate within these families. It was not up to the standard demanded by the small "righteous" elite but probably the great majority complied with the standards demanded by the more relaxed "respectable" element. Regardless of modern objections to the quality of this care the children raised in these families would have accepted their treatment as normal and imitated the standards and qualities of their parents.

James Macarthur was only partly correct when he claimed that the moral character of the colonial youth was good and that this was the result of a reaction to their environment, a desire to show themselves as better or best.³⁶ Even less substantive is the MacNab/Ward argument that the currency lads and lasses reacted against the vicious environment within their homes. All should have been talking of the married couples who produced the children rather than the children themselves. It was at the family level that the reaction to the excesses of convict activity took place. If the Currencies had a tendency to show themselves better it was better than the free emigrants rather than the convicts and it was better in physical and mental prowess rather than in moral worth.

The native born, in fact the overwhelming majority of the children in the colony, were presented by contemporaries as a group characterised by good physique and health, worldly wisdom and precociousness, clannishness with a good esprit de corps and an exaggerated sense of their own ability, a pride in their native land and a sense that it belonged by rights to themselves, strong independence and anti-authoritarianism resulting in an empathy with the convict underdog, and free of the grosser vices of the colony. The preceding chapters have hinted at the qualifications that need to be made about the validity of these characteristics and at the origins of the characteristics.

³⁶ Select Committee on Transportation, 1837, Minutes, pp175-176.

The ones of most interest are those contributing to the personality of the children for it is here that the major reasons are found for the small impact this group had on public colonial affairs. Often the economic, demographic and physical characteristics of the colony operated in one direction when the individual was a child but in another when the child reached adulthood.

Is it possible to gain some true impression of the children and the effects, both long and short term, of the social, political and economic condition in the colony? It is apparent that the children were not the angels they were made out to be. They shone in comparison rather than by self illumination. Colonial born children and young people got drunk, swore, lied, fought each other, assaulted others, stole, seduced, prostituted themselves, ill treated and sometimes even murdered their parents, and absconded from home and work. In most cases, however, it was not they who got the blame; rather the moral condition of the colony, the moral turpitude of their parents, and the criminal prompting of convict servants were believed to be squarely at fault. The truth lies surely in that they were a mixed bunch; some exceptionally honest, the majority aspiring to virtues which did not exclude more genteel versions of many of the above "crimes", and some of depraved or delinquent character. Like their parents they did not accept the rigid proprietary values of their "betters" and had little compunction in claiming unbranded items, be it livestock, produce, or durable goods, or in trespassing into areas of advantage to themselves and obviously not put to rightful use by the legal owner. Thus as children they trespassed, poached, stole wood, and laid claim to many items left unguarded. As young men they squatted, gully raked (cattle stealing according to Macarthur and his ilk) and made free but temporary use of others' property. In addition, like so many of their "betters" who used sharp but legal practices to gain a dishonest pound, many of the colonial born saw morality not in terms of answering to a "higher law" but in terms of staying within the dictates of the legal code. Smartness, the quick profit, taking the "new chum" to the "cleaners", were all accepted if legal, and in some cases were thought to be admirable traits amongst the young.

In many other areas generalizations are not only impossible but

sometimes misleading. The claim, for example, that the colonial born were clannish seems to rest uneasily alongside the claim that they were fiercely independent. One presumes that the great majority of children lay somewhere between, on the one hand, those wild children bred by isolation to be totally lacking in social graces and with an intense fear of strangers, and, on the other hand, those urban urchins who seemed powerless to do anything unless accompanied by a group of peers. Both individualism and clannishness were promoted by the same demographic pressures. The demographic material showed that the children in the colony were overwhelmed by the adult population. Most children were constantly surrounded by adults who involved the child in adult behaviour from very early times. This constant barrage of adult behaviour contributed markedly to the precocity of the colonial born as children and as adults, a feature that was noted by many contemporaries. Hughes attributed their precocity to the scarcity of labour in the colony and the early age at which children were put to work,³⁷ but these were not unusual conditions in other countries, whereas the population structure of the colony was unique. The position of children in families with doting parents, relatives, or lodgers was even more conducive to precocity. Elizabeth Bate wrote of their child:

I attribute it [her precocity] to having so many to pet and talk to her and always been with grown up persons for she has not had a playfellow younger than her Aunts.³⁸

It is clear that as children the native born were the centre of much attention and comment, and that their precocity promoted individualism.

On the other hand it was almost inevitable that some clannishness would arise amongst the small number of children. Despite the attention of so many adults children seek companionship amongst themselves, and did so in this period also. Christiana Blomfield, from a family of seven children, wrote of the advantages of large families.

It has been a great comfort to us in this country, where we have been completely without companions;

³⁷ W. Hughes, *The Australian Colonies*, London, 1852, pp114-115.

³⁸ E. Bate to M.A. Mossop, 6/9/1840, *Bate Family Papers*, NLA, Ms 3239,2.

indeed I think there is nothing like home and one's own sisters.³⁹

For those who did not have large families this companionship was found in peer groups of varying sizes. Few peer groups would have been broken or expanded by the loss or gain of new members, and companionships formed within these peer groups would have continued almost unaltered from earliest days to quite mature ages. It's hardly surprising, therefore, that these companionships, manifested in clannishness, homogeneity, and a high esprit de corps, existed amongst the colonial born.

The common economic, social and civil background of most children, the tiny number at each end of the colony's social scale excepted, also contributed to homogeneity within peer groups. Additionally their acceptance of the land in which they were born as the "one and only", a natural conclusion for those who had seen no other, set them apart from the rest of colonial society and drew them together. They alone, as Haygarth pointed out, "are tormented by no secret contempt for the country they inhabit, and no wish to exchange it for another."⁴⁰ Emigrant children who came to the colony at an early age were among the few who adopted the colony as their own and could thus find some empathy with the colonial born. Jane Cox, who came to the colony as a young girl, tells how many of the wives of the dignitaries thought of Captain Piper's house and hospitality as being too good for N.S.W..

My sisters and I were greatly offended at this, we thought ... it was showing others that had to seek a home what might be made of this faraway Country.⁴¹

Older emigrant children found it difficult to adjust. James Wemyss, who came to the colony around the age of 10 or 12 years, "could not settle being quite uneasy about his [English] Cousins" and constantly expressed the desire to return to England when his apprenticeship was out.⁴² If this attitude was common amongst those of an age where it

³⁹ C. Blomfield to L. Edwards, 5/1/1828, C.E. Blomfield, Memoirs of the Blomfield Family, Armidale, (BD), p54.

⁴⁰ E. Haygarth, Recollections of Bush Life in Australia, London, 1848, p23.

⁴¹ "Reminiscences of Jane Maria Cox etc." Christiana Brooks Manuscript, SLA, Ms 1559/3, 1115-16.

⁴² S. Nolle to J. Humphrey, 16/1/1842, Wemyss Family Papers, HLA, Ms 686, 15.

might have been possible to break into a colonial born peer group it is little wonder that the attitude of the colonial born towards their homeland set them apart.

Homogeneity was further enhanced by the unique civil status of the colonial born and the rather invidious positions in which they often found themselves. The demographic material showed the relatively favourable civil status of the children. As children and as adults this fostered, according to E.S. Hall, a sense of independence and superiority.

The circumstances of the parents of most of them having come to the country in bondage, so far from making them humble, causes them to be the proudest people in the world. They are high-minded even to arrogance. The circumstance of being free is felt by them with a strength bordering on fierce enthusiasm.⁴³

Breton, on the other hand, pointed out that the label "emancipist" was often applied to the children of ex-convicts as well as to the ex-convicts themselves,⁴⁴ while W. Walker stated that people "endeavoured" to forget the stigma attached to the worthy children of ex-convict parents.⁴⁵ The tension between this attitude and that of the colonial born mentioned by E.S. Hall appears to have been the major cause of strife between the colonial born and the authorities, especially the police (almost all of whom were ticket-of-leave men) and the soldiers. The Gazette's report and editorial on an attack by a body of soldiers on a number of Sydney houses gives some hints as to the tension between the colonial born and the instruments of authority who probably paid scant heed to the subtle distinctions between the convict and ex-convict parents and their free children.⁴⁶ Certainly after the Bushranging Acts and the detention provisions therein were introduced the hostility between the colonial born and the authorities was exacerbated.⁴⁷

⁴³ E.S. Hall to Murray, 17/11/1828, Enclosure, Darling to Murray, HRA, I, xiv, p580.

⁴⁴ Select Committee on Transportation, 1837, Minutes, p153.

⁴⁵ Select Committee on Secondary Punishment, 1831, Minutes, p65.

⁴⁶ SG, 24/3/1825, 2(a-b) & 3(a).

⁴⁷ A. Harris, op.cit., pp79-83.

This act gave the police powers to arrest on suspicion anyone without identification documents. The native born were the only group in the colony who lacked official documents and they bore the brunt of police misjudgement which bordered on harassment.

It would be wrong, however, to conclude that as a reaction to their treatment some empathy existed between the colonial born and the convicts. Both shared a contempt for authority because they were both victims but both also had a degree of mutual contempt. J.T. Ryan, a self proclaimed "typical colonial born", expressed an obvious sympathy with the small settlers, both free and emancipist, but his attitude towards the convicts was one of pity rather than sympathy.⁴⁸ He mentions that long running feuds between the colonial born and the convicts erupted into brawls during the 1824 race meeting at the property of Sir John Jamieson. No doubt many children imbibed the attitude of their parents. Amongst the upper ranks an inconsistency of attitude often prevailed. The same person first expressed sentiments of distrust towards convict servants and then confidence in the attachment of their convicts to their children and themselves.⁴⁹ This attitude would obviously have bred distrust of convicts among children even while as children they "shed many tears at parting with our dear ^{good} Ann" (a convict housemaid) and could conclude as adults that they were "well and kindly served" and in fact preferred convict to free servants.⁵⁰

Among others it is obvious that some exconvict parents, overcome by their new freedom and authority, passed on quite authoritarian attitudes. Thos. Reid wrote of some employers of female convicts:

some even of their own sex who have become wives out of the same situation, and now are further advanced in life, and live in circumstances of comfort and opulence, are among the first to vilify and asperse their convict servants for the slightest deviation

⁴⁸ J.T. Ryan, Reminiscences of Australia, Sydney, 1894, pp6-10.

⁴⁹ See for example the contrast between C. Blomfield to Matilda, 18/8/1830, and C. Blomfield to Louisa Edwards, 5/1/1828, C.E. Blomfield, op.cit., pp63 and 54.

⁵⁰ M. Herman, Annabella Bowwell's Journal, Sydney, 1965, pp39 and 176; see also Will Rawson to John, 30/4/1842, Rawson Papers, NLA, Ms 1029, f26.

from rectitude, exacting from them more than would be expected from female circumstances in more respectable stations, whose characters have never been tainted by judicial sentence.⁵¹

This may have been the background of Richard Kelly, a 27 year old colonial born, who was mentioned in 1828 for striking his convict servants and denying them food. The Gazette wrote of the punishment:

It is astonishing how some men, who have risen from obscurity with the prosperity of the Colony, would exercise a tyrannical power over their dependants; if it were not for the liberal and mild conduct of those in proper authority, the lower orders would often feel the force of this sentence.⁵²

No doubt some of the children practising the horsewhipping of convicts, mentioned by Alexander Harris's friend, came from this class.⁵³ Probably in most cases the attitude of J.T. Ryan and Annabella Boswell, a mixture of pity and class patronage, predominated.

Could this be part of the cause of the rather strange relationship Australians have had with radicalism and conservatism? The difficult task of explaining how Australia alternated between being a progressive social experiment and then a conservative society has puzzled historians. Many explanations have been advanced. Some see it in terms of alternating bouts of nationalism and imperialism, or Anglo-Australians versus Australian Patriots.⁵⁴ Others blame the suppression of class antagonism and the hindrance to the development of class consciousness caused by the facade of egalitarianism and the search for consensus.⁵⁵ But another explanation, which may in fact also explain why class antagonism was suppressed and why class consciousness did not develop, may lie in the legacy of the colonial distrust of both authority and the lower orders. The distrust of authority supposedly led to fierce independence and radical democratic ideals, while out of the second came a

⁵¹ T. Reid, Two Voyages etc, London, 1822, p268.

⁵² SG, 1/2/1828, 3(a).

⁵³ A. Harris, op.cit., p11.

⁵⁴ See for example: R.B. Ward "Two Kinds of Australian Patriotism" in Victorian Historical Magazine, 41(1), Feb. 1970, pp225-241.

⁵⁵ See for example: J. Rickard, Class and Politics, Canberra, 1976, Chapter 11, pp287f.

basic conservatism. One could afford to pity and attempt to ameliorate the position of the lower orders but if they tried to overreach their position the very fabric of society could be disturbed. Equally the capitalist class should be allowed to exist as long as it did not attempt to overreach its position by monopolization or undemocratic autocracy. These attitudes are obvious in many colonists in the later half of the nineteenth century and the middle ground occupied by the descendants of the colonial born became crucial in electoral success. When they distrusted authority and wealth and thought the condition of the poor was pitiable "progressive" legislation was introduced. When the working class became fractious, demanding and syndicalist they reverted to a conservative position.

To return to the period under study, the children of the colony were precocious, clannish, highly identified, feted and spoiled. Many children must have faced great problems when they entered the more competitive world of adulthood. There are several indications of personal problems on the part of some young people caused by loss of prestige or the inability to cope with subservient positions. One wonders, for example, if 24 year old Joseph Inch (Jn) was not a little jealous of his father's new wife and child, or whether the new family disturbed the relationship between Joseph senior and junior. Joseph junior was charged in 1826 with an assault on both his father and half sister.⁵⁶

Another example is that of Sarah Potter who was charged with stealing in 1822.⁵⁷ Her employer-prosecutor's attempt to intercede on her behalf was met with "a volley of petrifying abuse" no doubt reinforcing the common opinion that colonial born girls were awful servants and Sydney born girls even worse "bush wives".⁵⁸ Ullathorne claimed that the correction of a native born boy only resulted in the boy running "into the bush for days before he even returns to his home, confident he will then be supported by his mother against his teacher".⁵⁹ The complaint of many masters was that colonial born apprentices were

⁵⁶ SG, 10/6/1826, 3(c).

⁵⁷ SG, 8/3/1822, 3(a).

⁵⁸ John Sidney, A Voice from the Far Interior of Australia, London, 1847, p33.

⁵⁹ W. Ullathorne, The Catholic Mission to Australasia, (Liverpool, 1837).

insubordinate and wilful. The questioning of their indentures was one way this was shown while others were by absconding or misconduct. Punishment only made "their conduct more outrageous, and their contempt of subordination more fixed ...".⁶⁰ The reputed anti-authoritarian attitude of the colonial born was no doubt a deliberately inculcated "virtue" but one wonders how much of it could also be attributed to the inability to adjust to new demands on the part of spoiled children. Haygarth's opinion that the colonial born were plagued by "irritability",⁶¹ which he put down to the climate, also indicates that the natives had an inability to put up with mild frustration. Apart from having individual problems, the children as a group, and indeed the adult colonial born, occupied a unique position in society. They were a small group in absolute numbers, a small group in proportion to the total population, but still a significant element in the free population, clearly delineated as a separate class by the authorities, and carried the hopes of many of those who dreamed of a better future for N.S.W.. They were an advantaged and feted group.

This rather fortunate situation for the colonial born did not last into the latter half of the 1830s. After 1835 they were still a significant element in the free population but were not delineated as a separate class and were no longer a significant element in the adult population. The exact decline in significance is difficult to determine. By 1841 the colonial born proportion of the population had declined from 25.8% in 1828 to 22.8%. A greater proportion of these were probably children for the proportion of children in the population had increased from 17% to 25%. The proportion of free emigrants had tripled (from 12.8% to 41%) while the bond population was halved and the freed population had declined by some five percent. More importantly, in 1828 the colonial born represented 23.1% of the free and freed adult population and 45.9% of the free adult population. Comparative figures from 1841 are unprocurable but one can reasonably conclude that these proportions were slashed by post 1837 emigration and did not return to the previous rates until the 1841 children reached adulthood (when they too were probably swamped by gold seeking free emigrants). So it was

⁶⁰ SH, 31/10/1833, 2(e).

⁶¹ H.W. Haygarth, *op.cit.*, pp26-27.

not just a case of a feted child reaching the more competitive world of adulthood, it was also a case of a pampered minority being thrust into adulthood where it became more of a minority but with none of the support and identity previously bestowed upon it.

The effect of this was noticeable in the period under study as well as in later periods. E.S. Hall claimed in 1828 that as a result of the changed circumstances frustrating their ambitions the colonial born boys were withdrawing from public life to "brood over their discontents without restraint or contradiction".⁶² Macarthur noted in 1837 that the morality, homogeneity and pride of the native born had declined in previous years because of increasing numbers and because the census no longer delineated them as a separate class.⁶³ There is certainly plenty of evidence that the sulking exclusivity mentioned by Hall was a major characteristic of the colonial born youth and that its immediate prompt was the loss of economic status or economic prospects resulting from changes in government policy and the demographic features of colonial society. It is notable that the economic prospects of the colonial born girls were not as adversely affected as those of the boys and therefore many of the characteristics described below will apply only to the boys.

The currency lasses seem to have desired nothing more than to be what the colonial government, and most probably their parents, desired them to be: good mothers and wives. The lack of other opportunities, the pressure of the prevailing ideology on the role of women, the initial security and comfort offered by marriage to a man with prospects, the rapid establishment of a quite large family and the paucity of reliable servants to relieve the wife of household management and domestic chores combined to exclude most women, of all classes and all civil ranks, from public positions and even public notoriety. This would have been particularly true of the great majority of the colonial born girls who received little more than an elementary education and predominantly came from the middle ranks of colonial society. Many of them had mothers who had experienced the socially uplifting benefits

⁶² E.S. Hall to Murray, 17/11/1828, Enclosure, Darling to Murray, HRA, I, xiv, p580.

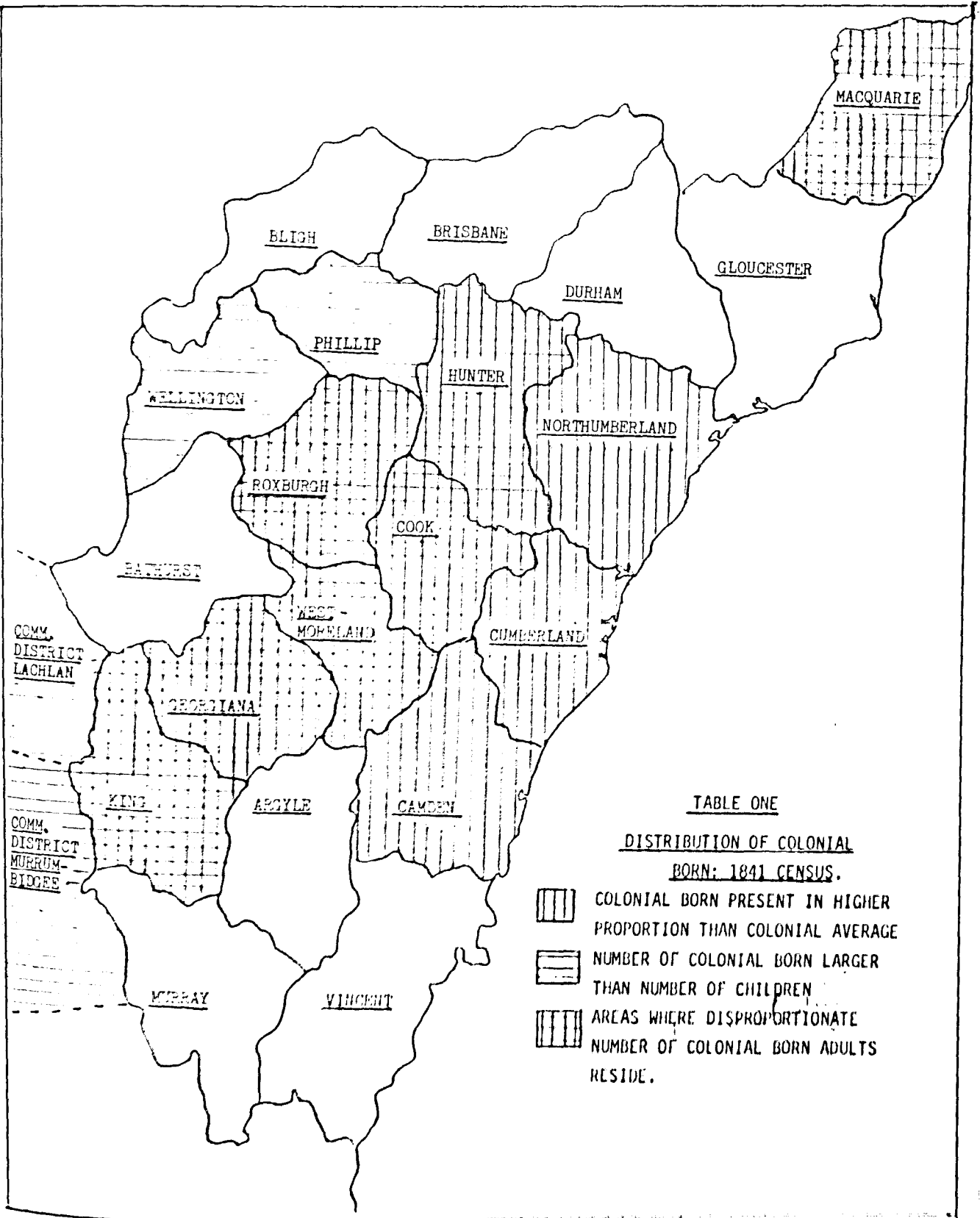
⁶³ Select Committee on Transportation, 1837, Minutes, pp175-6.

of an economically advantageous marriage and were keen to see their daughters also share the same experience. Thus the prevailing respectable ideology was reinforced by parental experience and remonstration.

Hall's assertion that the boys refused to join the ranks of the military and civil authorities, the mechanics, the professions, or to become urban dwellers and preferred to become "humble assistants to our large graziers" is a little less accurate.⁶⁴ In reality the evidence shows that initially the majority of the colonial born filled the same middle ranks as their parents. They then sank slowly to become the landless urban workforce following, where possible, their father's trade but clinging to private shows of exclusivity, in such areas as marriage, and public displays of exclusivity, in such things as showing contempt towards other groups or pride in their physical and mental prowess. In all these areas they differed from the currency lasses who withdrew even further from public scrutiny.

It is difficult to determine the correctness of Hall's assertion that the colonial born youths disappeared into the bush. If this were correct one would expect to find a disproportionate number in the less settled areas and a large proportion involved in agriculture as landholders or labourers. The 1841 Census was the first, after 1828, to classify the colonial born as a separate group but it drew no distinction between adults and children. It is thus impossible to estimate the number of adult colonial born and see how they were distributed throughout the colony. From that census it is possible to see that in some counties the colonial born were found in greater proportion than the average but these counties were merely the more settled with greater numbers of children. In the total population the colonial born numbered fewer than the child population but in some counties and Commissioner's districts the colonial born numbered more than the children. Where the colonial born were overrepresented and outnumbered the children it would be safe to assume that colonial born adults were overrepresented in the adult population (Table 1). These counties - Cook, Georgiana, Hunter, King, Macquarie, Roxburgh, and Westmoreland - were pioneering areas but far behind the frontier. It appears that

⁶⁴ HFA, I, xiv, p580.



the colonial born youths moved out from the Cumberland Plain avoiding the previously settled counties of Camden, Argyle, Bathurst and Northumberland and into the hillier, less fertile, and thus less desirable land bypassed by the squatters. The only thing they had in common with the squatters was that they too occupied vacant crown land. This movement was the result of their background in agriculture and cattle on small plots of land, their poor economic status and lack of capital to invest in large scale squatting and their penchant for congregating amongst compatible society.

The numbers involved must have been small for over 63% of all colonial born, compared to 61% of all children and 52% of the population, lived in the two most populous and established counties - Cumberland and Northumberland. One can safely estimate that only a tiny proportion of the colonial born left their homes for the perils of pioneering life. The majority either stayed in the vicinity of their family or moved to the cities.

This is confirmed to some extent by the occupations listed by the colonial born youths and young men in 1828, again, unfortunately, the only source available. As noted in Chapter Four, 52% of boys aged 14 to 18 years were living at home. Amongst the listed workers 45.5% were either apprenticed to trades or tradesmen, 5% were town labourers and only 35% were listed as agricultural labourers. The rest were scattered amongst a wide variety of occupations. This trend is also apparent amongst the over 20 years colonial born and those adults raised from childhood in the colony. Table 2, Column I shows that 17% were living with their families with no stated occupation and the rest were scattered throughout the occupations with the landholding and overseeing positions being a little overrepresented. It shows the relatively high occupational status of the colonial born but the numbers in the elite occupations are small and no one occupation dominates. The only real conclusion one can make is that the colonial born do not seem to have become the "humble assistants to our large graziers" as Hall asserts.

Another example of the sulking exclusivity of the colonial born youth was their refusal to marry any woman who had not been born or raised from childhood in the colony. Even though the sex ratio was favourable to women it is obvious that the civil status of his partner was important to the currency lad while it was less important to the

COMPARISON OF OCCUPATIONAL STATUS OF
MARRIED AND UNMARRIED COLONIAL BORN AND FREE EMIGRANT
MALES OVER 20 YEARS: 1828 CENSUS

PROPORTION IN EACH OCCUPATIONAL GROUP

	1	2	3	4	5	6
	COLONIAL BORN OR RAISED				ALL FREE & FREED MALES	ALL FAM- ILY HEADS
	ALL	MARRIED	UNMARRIED	UNMARRIED §		
C.E.	7.1	6.6	7.0	10.2	5.5	7.7
M&P	1.3	2.8	0.5	0.5	0.6	1.9
L.L.	9.2	14.2	6.5	23.1	3.4	6.5
M.L.	8.7	20.6	2.1		2.5	7.0
S.L.	9.4	22.6	2.1		10.9	18.8
L.U.	1.0	1.9	0.5		1.2	2.2
S&D	2.0	1.9	2.1	4.3	3.4	6.0
I.	3.4	7.6	1.1	1.1	1.5	3.6
H.	0.3	0.9	-	1.6	1.3	3.5
O.	5.2	1.9	7.0	7.0	3.5	2.5
M. i	4.7	4.7	4.8	7.0	6.1	5.2
M. ii	5.8	7.5	4.8	5.4	5.3	5.1
M. iii	4.1	3.8	4.3	6.5	6.7	7.7
L.	11.1	1.9	16.1	18.3	37.4	14.8
S.	6.9	0.9	10.9	10.2	6.7	3.5
U.	2.5	-	3.9	4.8	3.9	3.8
WITH FAMILY	17.3	-	26.9	-	-	-

§ Those living with their families have been distributed according to father's occupation.

TABLE TWO

currency lass. 91% of colonial born men married either a colonial born or free emigrant girl and the overwhelming majority of the latter had been raised in the colony from childhood. This is in marked contrast to the colonial born girls who were much more catholic in their tastes. The civil exclusivity of colonial born men denied many the chance of marriage. This is evident from the difference between the number of colonial born men and women who were married. Married colonial born

women outnumbered married colonial born men by two to one.⁶⁵ Many of the free males had little to offer a girl from their own civil class other than their untainted civil status and this was insufficient to attract a free bride, but more colonial born and emigrant youths would have secured a wife if they had been willing to search amongst ex-convict women even though their choice would have been restricted to the youngest quarter of the convict population.

The occupational status of the married colonial born and colonially married emigrants was higher than average - high enough to attract an untainted and most desirable girl - while that of the unmarried men of the same class was too low to attract an untainted girl but sufficiently higher than the average emancipist to attract a convict or emancipist female (Table 2). The ratio of married to unmarried men was 1:1.8 and there was an almost equal number of colonial born and emigrant men. There was thus no shortage of free males on the marriage market. Amongst the free males who were unmarried over a quarter were still at home (Column 3). Nearly half of these were on landholdings of various sizes, supporting a single mother and younger siblings or apparently assisting the father and staking a claim for the property. Another 13% were clerical assistants to their civil establishment or dealer fathers. They were distributed, in Column 4, according to the father's occupation raising significantly the occupational status of that group. If one takes all those above the level of householder as belonging to the more economically secure groups then the following points emerge. First, the proportion of the married free in the higher groups, Column 2, is much higher than the proportion of all families in those same groups, Column 6, (78.2% to 53.7%) making them very attractive to the free females. Second, the proportion of unmarried free in these groups, Column 4, is lower than the proportion of all families (39.2% to 53.7%) indicating they had fewer chances of attracting a free female interested only in economic security. Third, the proportion of unmarried free is still higher than the proportion of all free and freed

⁶⁵ Although colonial born women married at an average of 18 and the boys at 23 this is more than compensated for by the larger number of colonial born men in the population.

males in the population, Column 5, (39.2% to 29%) thus making them an attractive proposition for tainted women. These marriages did not occur so one can only conclude that the great majority closed their minds to the possibility of marrying a tainted woman.

The higher civil and economic status of the free males would have been most attractive to ex-convict and convict women but the majority of unmarried free males belonged to the proportion of the population at the lower end of the occupational scale. Even if they had not been exclusivist their civil status would not have been attractive enough to overcome their low economic status. Competing against mature ex-convict and convict males, many with small holdings acquired under Macquarie, clerical skills, skilled or even semi-skilled trades earning good wages, the largely landless and unskilled free youth had little in the way of economic security to offer a prospective bride.

One suspects that this would have changed in the 1830s. By then many of the colonial born and the child emigrants of the 1820s would not only have matured in years but would have served their apprenticeships and acquired some capital. Some would have inherited land and others would have joined the squatting craze. There was also an influx of single males with capital, or skills rivalling the convicts. On the other hand the convict regime tightened, land ownership (the granting of which had virtually ceased to ex-convicts with the demise of Macquarie) dwindled, convict semi-skilled and skilled tradesmen were more rigidly controlled, and marriage discouraged. The proportion of free males with not only civil prestige but also economic prestige would have risen and the proportion of ex-convict and convict men with economic prospects would have contracted. Free girls would thus have had a better opportunity to make an economically advantageous marriage within their own civil rank. The proportion of men to women did not improve so the pendulum may have swung the other way with ex-convict and convict women attracted to free men not only by their civil status but also their economic status. It is possible that the social exclusivity apparent amongst the men in the 1820s may also have become apparent amongst the women from the 1830s as more free men became desperate enough to marry a freed or bond woman. One suspects however that the male exclusivity of the 1820s was not entirely the result of their low economic status and that the social exclusivity which was

commented upon so frequently, but which was only apparent amongst the males in the 1820s, may thus have had a basis amongst both sexes in the 1830s. Unfortunately this is impossible to verify empirically.

Many of these characteristics contributed to the small impact the native born made on the history of the colony. The areas where a man or woman could make sufficient impact to be mentioned in the annals of a nation were in the arts, the professions, politics and commerce. Access to all four was restricted to varying degrees by the character of the colonial born which was the result of the conditions prevailing in the colony and more importantly of the upbringing the children received. All four areas, especially the first two, demanded a good education which was beyond the reach and the desire of most currencies. Most parents demanded some education for their children and it is clear that the cause of general education was much further advanced in N.S.W. than in the home country. Even though the quality of that education was also equal to that enjoyed by the lower ranks of England both boys and girls seem to have accepted the expressed intention of the Colony's government to educate them to a standard in keeping with their station in life only. The children's parents realising that they had achieved their position with a minimum of education agreed with the government policy and saw no reason why their children should go beyond elementary tuition.

The great majority of colonial born children came from the families filling the middle ranks of colonial society; the small landholders, the shopkeepers and mechanics. Proportionally few came from families at either end of the socio-economic scale. The tendency amongst parents was to have limited ambitions, to be content with a middling standard of living, and to train their children to follow in their footsteps. This may have been adequate in the pre-1830s but when their children entered the workforce the situation had changed. The greatest change took place in the land laws, the basis of the happy position of many of the colonial borns' parents. From Brisbane's governorship the granting of land to the sons and daughters of emancipists and other capital-less people was restricted while the policy of granting some land to free emigrants continued. Even this was stopped in 1831 and

from that point land had to be purchased. Most colonial born youths and young women, if they had any assets, were without enough liquid assets to purchase land. Their parents were less able to employ the tactics used by emancipists such as Geo. Best to further the careers of their children.

Without access to the land the colonial born needed an adequate education even more than previously. There was a movement amongst the professions towards certification and away from the apprenticing system. The days of a professional choosing a bright young lad, even without formal education, as an apprentice (a system which allowed some colonial born children to reach the professions without the necessity of returning to England) were rapidly disappearing. The majority of the colonial born were inadequately educated for middle occupational ranks such as the clerical or surveying positions, especially when competing against better educated and better patronised emigrants.

In the field of commerce the lines had been well established by this period. Again the situation tightened as competition from capitalist emigrants increased. The spectacularly successful businessmen were poles apart from the next rank of the commercial class, few belonging to the former and most belonging to the latter. Only the former and their landholding compatriots could afford the luxury of involvement in colonial affairs. The prominent emigrant and emancipist agitators of the twenties and thirties came from this class. They were also the only ones who could offer their sons (for it was not a woman's place) the education and the time to engage in political or social affairs. The few colonial born who were active in colonial affairs, such as W.C. Wentworth, H. Hume, the Macarthur boys and the Lord boys, came from within this group.

The great majority of the colonial born had to work as hard as their parents to maintain their standard of living. They did not have the time nor the money to be active in colonial affairs. Besides few individuals achieving prominence the native born, as a group, may have added to the crowds at certain political meetings and signed various petitions but they never formed a significant political force other than a short lived and historically unrecognised association which

struggled for existence in the 1840s.⁶⁶

Many of the colonial born retreated to displays in areas where they were immediately demonstrably of better standing. They began to brag of their physical prowess; their height, their weight, their health, their appetite, their stamina, their horsemanship, and their fighting, shooting, swimming, rowing and other sporting abilities. These displays were not just restricted to the boys. The colonial girls were equally adept at taking on a newcomer for the hand of some fair swain,⁶⁷ and "Betsy Bandicoot" was equally proud of her riding and swimming ability.⁶⁸ There can be little doubt that this was a reaction produced not only by the innuendoes and aspersions cast upon the worth of the colonial born but also by the frustrations they felt in not getting access to the areas of importance. For the majority their occupations and their backgrounds gave them security but little opportunity to make an economic, cultural or political mark on the history of the colony.

The limited ambitions instilled into the colonial born and the accent in that training upon land ownership as a solution to many problems explains many of the recurring features in Australian history. Only a minority of colonial born men ever owned farming land and only a minority came from families who were farmers. A large majority, however, came from families, be they urban or rural, who could boast of some form of land ownership. The belief that security could be found in land ownership was heightened by the inability of many colonial born to gain land and their consequent perceptions of deprivation and status diminution. This belief and frustration were handed down to succeeding generations. During the rest of the nineteenth century, and through most of the twentieth, for many people, and some "notable" social reformers (from E.S. Hall through William Lane to Bob Santamaria), the panacea of all social ills was land reform and the establishment of an honest yeoman class.⁶⁹ In the cities the suburban mentality, the high demand for home ownership, and the desire for a quarter acre lot

⁶⁶ My thanks to Dr. A. Atkinson who drew my attention to this group. A forthcoming article by Dr. Atkinson will bring this group to the notice of others.

⁶⁷ Aust., 29/5/1826, 3(4).

⁶⁸ SG, 30/12/1823, 4(4).

⁶⁹ See, for example, ...

may all have had their origins in the frustrated desire for farming land and the security it supposedly offered.

The other "virtue" passed on from parents to children during this period was a belief in the image of the self made man. The colonial born came from families who could boast that they had pulled themselves up by their own bootstraps (with a little help from the government and other economic and social factors) with a minimum of capital and a minimum of education. Admiration for men of initiative, daring and financial success (often regardless of the means used to achieve that end) went hand in hand with a dislike of inherited wealth and learning. As mentioned above they had respect for wealth as long as it was not monopolist and as long as it was earned. Similarly, while intelligence and experience were respected, this respect did not extend to book learning. This not only restricted the occupational choices of the colonial born, as shown above, but also led to an anti-intellectualism which had profoundly damaging effects upon the social, economic and cultural history of New South Wales and Australia.

Another manifestation of this early training was (and is) the belief in the moral superiority of country life over "unnatural" urban living. This was felt not only by rural dwellers but also by many city folk. Russel Ward's "Legend" embodies the mythical qualities of the typical Australian and nearly all its qualities are couched in rural terminology.⁷⁰ Ward claims that the origins of the "Legend" can be found in convict society. This may be true in so far as the convicts were the parents of the first generation but as we have seen the majority of convict and ex-convict families eschewed convict morality and values and instilled in their children what can only be termed "respectable" values. The "Legend" owes more to the values of a group of people who saw themselves as self made men, as successful innovators, and as the victors against ingrained snobbery and privilege; values that were more at home amongst the English middling classes than amongst the bushman and convicts of N.S.W..

The bushman's image was probably the most romantic of these rural images but it is also the one which most effectively hides the respectable values that lie at the base of the "Legend". In fact the bushman

⁷⁰ R. Ward, The Australian Legend, (2nd Ed.), Melbourne, 1966, Chapters I & II.

probably became a figurative image for a minority. The majority, rather than believing in the image, believed in the principles which underlay the image. This belief in the superiority and security of rural self sufficiency was reinforced by two movements. Literature, from the colonial poets down to Vance Palmer and his contemporaries,⁷¹ and politics, from both sides of the spectrum - the squattocracy and the urban radicals of the 1840s and 1850s, the early Labor Party and the still functioning Country Party - constantly reiterated the message first passed on to the children of N.S.W. in the 1820s and 1830s.⁷²

* * * *

This study has attempted to investigate all the aspects involved in occupying the position of a child in Penal N.S.W. The subject is "The Child", not an individual but what C.E. Rosenberg calls a "metaperson",⁷³ a representative figure, the "typical child" of 1820-1837, and to surround it with what might be called metastructures. The ultimate aim of such an approach is to build a picture of the "typical" child of 1820-1837, and to surround it with the "typical" family, the "typical" household, the "typical" employer, and so on. In effect this is the historian's answers to the statistician's "mean". The sample, or population, mean (or average) is necessary for almost all further statistical calculations, especially the measurement of the variation between individuals, or sub-groups, within the same group or between two different groups in the same population. The creation of the historical metaperson must be accompanied by the same awareness that it is made up of a multiplicity of individuals (of whom only the barest fraction are knowable in detail) and various class or occupational sub-groups. A representative figure for each of these sub-groups can then be described and compared with the metaperson in order to understand variations between groups; (for example, middle class versus working class) and variations along different lines within the same group, (for example, Irish-Catholic working class versus WASP working class). This may lead to the recognition that the variations are

⁷¹ See D. Walker's Dream and Disillusion, Canberra, 1976.

⁷² See, for example, J.B. Hirst, Adelaide and the Country, 1870-1917, Melbourne, 1973.

⁷³ C.E. Rosenberg, "Introduction: History and Experience" in Rosenberg, C.E. (Ed) The Family in History, Penns., 1975, p5.

sometimes more significant than the similarities, but it does not destroy the importance of the original work. Thus while much of this work has assumed that the children of the colony were a fairly homogeneous group there has also been much evidence presented which has shown that homogeneity to be the fiction that it is. There did exist, however, a large middle group which had many common characteristics and it has been examined at the expense of the atypical. That is surely a fault of all histories.

The period 1820 to 1837 is an important one in Australian history as far as social structure is concerned. Manning Clark writes:

... the man who is interested in the creation of a gaol will concentrate on the First Fleet and its immediate successors while the man who is interested in the creation of the colony will look mainly at the men and women in the convict ships which sailed between 1815 and 1840.⁷⁴

But this does not mean that I subscribe to the notion of "formative periods" in a nation's history. This concept seems to imply that nations go through a period where national character and outlook are formed and stabilized. For some this influence is virtually perpetual, similar to imprinting in animals which can only be removed by a long and painful process of "unlearning" the imprinted characteristics.⁷⁵

This "stability of attitudes" theory, remarkably similar to the theory of "natural" laws in human behaviour, is visible in another area. It is obvious, for example, that many of the early authorities in N.S.W. thought that a re-establishment of family life in N.S.W. would return society to an even keel. Behind this approach was an implicit belief that cultural values were immutable, ingrained into the very nature of family life, and that the environment in N.S.W. would have little effect. Once family life was established, it was felt, English tradition and its social system would prevail unaltered. The colonial authorities were not altogether wrong, for many traditional patterns of family life did re-emerge as colonial stability increased. But some attitudes were subtly changed by the unique circumstances of the colony and others which may originally have been the beliefs of a minority became the accepted norm. As changes did occur and values did alter,

⁷⁴ C. Manning Clark, *op.cit.* p123.

⁷⁵ See for example M. Blain ...

due to changes in the physical, economic and emotional climate, it indicates that the original values were not immutable. Additionally further changes in the climate will irrevocably alter the status quo, and no period can be regarded as any more formative than the next. Traditional values are learned not indelibly imprinted. Unless these values are constantly reinforced by the physical, economic and moral climate their impact on the individual and on society diminishes. At most the values remain as a starting point for the next generation rather than as an immutable hand-me-down. What one generation considers the "status quo" the next considers to be the "status a quo".

It is for this reason that this final chapter has dwelt upon the immediate and short term consequences of colonial conditions and has shied away from attempting to see this period as one which contributed to the development of a "national character". What is important about this period is that the divisions within the colony became multifarious and more subtle. The "them and us" division, which characterised the convict-free society of early N.S.W., became blurred by significant numbers of colonial born and emigrants who felt separated from each other and from the original colonial inhabitants. Additionally some of the attitudes formed in this period were passed down to the next generation and are therefore necessary to understand the next generation's history even though this was profoundly affected by the gold experience. Finally the period saw the rise of wool the first capital intensive industry (the first and probably the most enduring of several dramatic changes in Australia's economic base) a change which directly excluded the fulfilment of the aspirations of many of its inhabitants. This frustration was again a new element in colonial society.

This thesis has argued that the accepted description of the moral economy of the colony was a caricature of the real situation. The great majority of the people, convicts, ex-convicts or free, who became parents rejected the grosser faults of convict morality which formed the basis for the low opinion of the colony's moral health. As they moved into economic and social security, often of a type unknown to them in previous periods, they accepted the values of the "better elements" admittedly in a watered down, more democratic, less religious

and less legalistic version. They became the "aspiring" class, striving to achieve respectability and economic worth and determined, if they could not achieve it fully themselves, to offer the opportunity to their children. Their children's status was therefore enhanced individually within the family and as a group within the community. Their children accepted many of their parents' values as a starting point. They developed some and neglected others according to the unique situation in which they found themselves. Perhaps this is best illustrated by the limited ambitions they acquired from their parents. Security was not to be found in education, salaries or wages. It was to be found in land and property - in small, basically self-sufficient and farming enterprises. For the daughters the acme was a respectable and secure life as a wife and mother. By ambition and circumstances the children of the colony during this period were almost fated to fill the economically secure positions in the middle ranks of society but never to have an opportunity to make an economic, cultural, or political impression upon the history of the colony.

APPENDIX A

BIRTH AND CHILD DEATH RATES:

N.S.W. 1820-1837

Almost as soon as the white colony was established at Botany Bay a belief arose that the healthiness of the climate contributed to a high birth rate, low infant mortality, and a low overall death rate. This meant, in reality, a birth rate higher than and a death rate lower than that existing in contemporary England. There are statistics on births and deaths available in various sources, especially for the period 1820 to 1837, but the reliability of these sources is seriously questioned. The figures however are not so inaccurate that they do not allow an estimate to be formed. The estimate can be used to compare the colony with the home country and tests the validity of the colonists' claims.

The N.S.W. Blue Books include records of the number of births, deaths and marriages for each year, but in reality they are a record of church solemnized baptisms, marriages and burials. The figures always carried an official warning that they were inaccurate. The death records according to the Blue Books, were the most inaccurate for "many" in country areas died unrecorded.¹ This appears more acceptable than Coghlan's argument that the birth records were probably the most inaccurate and the deaths probably the most accurate because clergy were necessary for burials.²

Another source of inaccuracy was that the records did not include ceremonies performed by Catholic clergymen until 1832 thereby excluding, theoretically, about a quarter of the population from the figures. Until that date the birth and death figures should, at least in theory, only be compared with the Protestant population to obtain death rates. In 1829, for example, using only Protestant numbers (estimated at approximately 30,000 from a total population of just over 40,000) gives a crude death rate of 20.5/1000 compared to the 15/1000 given by Cumpston.³ As it is highly likely that some Catholic deaths, especially public executions and convict deaths, were included in the official figures and, as the crude rate after 1835 hovered around the 20/1000 mark, it is probable that the true rate was somewhere between the widely diverging rates for Protestant population and total population.

¹ Blue Book of Statistics, 1829, f82.

² Coghlan, T.A., General Report on the Eleventh Census of New South Wales, Sydney, 1894, p60.

³ Cumpston, J.H.L. & McCallum, F.A., A History of Intestinal Infections (and Typhus Fever) in Australia; 1788-1923, Canberra, 1927, p66.

Unfortunately the number of child deaths is not distinguished from those of adults until 1829, and as the number of children in the colony in 1829 is only an estimate and the Protestant proportion of that child population even more obscure, it is highly ambitious to attempt to determine a crude death rate for children under 12 before 1833 (although an attempt will be made later). The same is true for birth rates. Using total population gives a birth rate of only 17.3/1000 in 1828 while using the Protestant population gives a rate of 24.9/1000.⁴ Some Catholic births, especially of convict women who had babies in the Factory, were probably registered, so the real figure for 1828 was also probably somewhere between these two figures.

A third problem, the atypical population structure of N.S.W., produced by free and bond immigrants, throws out all the normal measures of death and birth rates. The great bulk of the N.S.W. population was in the healthy 15-45 year age bracket and this significantly lowers the death rates, and, more significantly, increases the proportion of child deaths in the total number of deaths. In addition women between the ages of 14 and 45, the fecund years, were a tiny proportion of the total population and this severely restricts the birth rate when births are measured as a proportion of total population. Another unknown is whether the deaths and births of the military were included in the official figures. If they were then the rates could be higher than the reality for the military are not included in the population numbers.

These three problems in N.S.W. led to an underestimation of whatever rate was under consideration, but the problems in England were probably worse. The English figures to 1836 are also church registered baptisms and burials and they reflect country rates to a greater extent than city rates. In the urban areas, i.e., the major commercial and industrial cities, the parish system had broken down and the areas where most of the population was born, lived and died, were underrepresented statistically. It is generally recognised by historians that the death rate in the cities, especially child mortality, was far greater than it was in the country and that the published death rates described the country rate with more accuracy than the city rate. Peter Mathias, using the argument of J.T. Krause, points out that after 1780 the parish registration system collapsed and the gap between recorded burials and actual deaths widened. In the period 1800 to 1820 the death rate was probably underestimated by 25% and possibly

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⁴ See Table Two, p337.

50%.⁵ Civil registration started in 1836, but it was inefficient until the 1870s, but especially in the first decade,⁶ with an underestimation according to Krause of about 18% in the years 1838-40.⁷ He puts the real death rate at about 26-27/1000⁸ while Glass puts the child mortality at about 147-152/1000 births.⁹ This would give a child death rate of around 42/1000 for boys and around 37/1000 for girls.

The official birth rate is also treated with great scepticism by English historians. Farr estimated that between 1841 and 1850 about 65 in every thousand births were missed by the official recorder.¹⁰ The real birth rate for the whole period 1800 to 1850 was therefore about 36/1000 compared to the average of about 30-32/1000 in the official figures for the early 1840s, or the 1835 birth rate of 27.5/1000 based on the parish registration system. Krause thinks the deficiency was even more pronounced and puts the birth rate for the 1820-1840 period at about 40/1000.¹¹

In N.S.W. the parish system operated best in the towns and more closely settled surrounds, but in the sparsely settled areas accurate recording was hopeless; the opposite to the circumstances in England. As we saw from the area distribution of children for the various censii, most children lived in districts covered by parishes or at least a clergyman,¹² thus the death figures may be more accurate for children than for adults, especially adult males. Adult males bore the brunt of pioneering isolation. This may explain why the male death rate was lower than the female death rate; a feature that would have been unique to N.S.W. in this period if it were true.¹³ There are also reasons for believing that the birth rates, after Catholics are included, while still being an underestimation are

⁵ Mathias, P., The First Industrial Nation, London, 1969, pp187-8.

⁶ Glass, G.V., "A Note on the under-registration of births in Britain in the Nineteenth Century", Population Studies, V(1), 1951, p70.

⁷ Krause, J.T., "Changes in English Fertility and Mortality 1781-1850", Economic History Review, 11(1), 1958, p52.

⁸ ibid, p70.

⁹ Glass, G.V., op.cit., p85.

¹⁰ ibid, p71.

¹¹ Krause, J.T., op.cit., p70.

¹² See Chapter Three, p

¹³ See Table Four below.

much closer to the true figures than those of England. It is worth noting that the children of one of the lowest social classes, who wouldn't have been included in the English figures, are included in the N.S.W. figures. The children of convict women, many of whom returned to the Factory to have their children, were baptised and included in the birth figures. As most children stayed in the Factory till they were one year old, and many stayed till they were three, any who died would naturally have been included in the death figures. The "respectable" nature of the overwhelming majority of the families with children in the colony would also have ensured that a goodly proportion of births and child deaths were reported. The clergy argued that the great majority of the children were baptised and deaths recorded but that applied only to the children within their parish. Those who were missed most frequently were the children who lived only a few days. Some clergy who officiated at private baptisms (presumably of sick children) even admitted that they did not enter the children in the records if the child was not publicly christened at a later date (presumably because the child had died). The majority of clergy did enter these occurrences.¹⁴

Finally, the smallness and closeness of society, even in the less settled districts, ensured that few births and children's deaths would have gone unwitnessed and unreported. The frequent newspaper comments on the deaths of children of all social classes, and the coroner's inquest reports (features missing from all but the most provincial of English newspapers) indicate that few deaths escaped the eye of some observer.

Some idea of the accuracy of the figures can be gained by a comparison of the entries in the Mutch Index (based on the parish records) and the 1828 census. A sample of 146 families with 451 children born prior to 1828 was taken from the Mutch Index. 15 families with 45 children were not found in the census leaving 406 children as the basis for the test. In these families 24 children who were not recorded in the Index were listed in the census; an error rate of just under 6%. Amongst the same families 17 children other than the ones whose deaths were noted by Mutch were listed in the Index but not listed in the census (presumably having died); an error rate of about 4%. One cannot be sure, however, that the birth or death was not recorded in a parish book not available to Mutch, nor that the families found in Mutch were representative of all families in the colony. If the discrepancy between the figures and the reality had been too great some comment would have been made in N.S.W. similar to that

¹⁴ Bigge, Ecclesiastical Establishments, Evidence, Appendix, ff21 and 36.

made in England which led to the introduction of civil registration in 1836. Instead comments to the opposite effect were being made: the high fecundity, the healthiness of the children, and the low death rate.

TABLE ONE
EXPECTED AND ACTUAL INCREASE
IN CHILD NUMBERS: 1833-1836

	BIRTHS	IMMIGRANTS	DEATHS	EMIGRANTS	TURNED 12
1833*	520	233	121	?	?
1834	1,857	397	302	?	?
1835	1,803	233	489	?	?
1836°	1,413	193	307	?	?
TOTALS	5,593	1,056	1,219	?	?

EXPECTED POPULAT. = [1833 CENSUS + COLS A + B] - [COLS D + E + F]
 = [10,187 + 5,593 + 1,056] - [1,219]
 = 15,617

ACTUAL POPULATION = 14,173

DIFFERENCE = 1,444.

* These figure were produced by taking the total for the year, getting the average per month and including only the four months September to December
 °The same method was used to obtain the eight months January to September.
 Both Censuses were taken in September.

N.S.W. in this period was far from being a "closed population". Because of that the methods used by Krause and Glass to test the accuracy of the English figures cannot be used on the statistics available in N.S.W. A very crude test is to take the child numbers from one census and attempt to calculate the number of children who should be found in the next census. To do this one needs to know the death rate, the birth rate, immigrant numbers, emigrant numbers, and the numbers of children who reached the age of 12 and passed on to adult status. An attempt can be made for the inter-censal period 1833-1836 even though we have no idea of emigration numbers (and there must have been some, at least to V.D.L.) nor of the numbers who passed their twelfth birthdays.

Table One contains the available information and the final figure shows a difference of 1,444 between the census figure and the expected figure, a discrepancy of about 10%.¹⁵ On this basis an average of only 481 children per year left the colony or the ranks of children by turning twelve. This is a very modest number considering that in 1828 (when the child population was only half that of 1833) nearly 330 children were

¹⁵ Blue Book of Statistics, 1833, 1834, 1835, 1836.

in the 11 year age group. The small numbers leaving the ranks of the children may, in fact, indicate that there may have been an overestimation of births and/or an underestimation of deaths in the intercensal years. The only real conclusion one can make is that the birth and death figures were not wildly inaccurate. Further comment on the validity of the figures and the trends they indicate is best left to the more detailed discussion of each set of statistics.

A. Birth Rates:

I do not think I can give a stronger proof of the salubrity of the climate, than by observing, that I never saw the constitutions either of the human race or any other animal, more prolific in any part of the world; two children at a birth is no uncommon thing, and elderly women, who have believed themselves long past the period of childbearing, have repeatedly had as fine healthy strong children as ever were seen. And there has but one old woman, who was sickly before she came to the country, and one infant, died of a natural disease on the island [Norfolk], since it has been settled.¹⁶

It was this sort of impression and this sort of comment that gave rise to what Gandevia calls the "Myth of Fecundity".¹⁷ According to the myth emigration to the colony greatly enhanced the fertility and fecundity of women. Gandevia, talking principally of the first decade of the colony, claims it is a myth because the birth rate was only half that of later decades in both Australia and England. It arose, he claims, from a combination of a low child death rate, rapid changes in the age distribution of the population, low marriage rates, and high illegitimacy rates. Yet the myth continued into the 1820s and 30s when the age distribution had stabilised (with children constituting between 16% and 18% of total population), illegitimacy rates were only a small proportion of total births, and marriage rates were increasing rapidly. The Australian was most astute at fostering this idea. In 1825, for example, it wrote:

At the late general muster of the inhabitants of the settlement at Newcastle, there were three pairs of little 'currency lasses' produced. They are about six or seven months old, and are the offspring of three mothers; - This is a fine country.¹⁸

¹⁶ Hunter, J., An Historical Journal of the Transactions at Port Jackson and Norfolk Island, London, 1793, pp203-4.

¹⁷ Gandevia, B., Tears Often Shed, Sydney, 1978, p19.

¹⁸ Aust, 8/12/1825, 3(d).

The impression created by the following birth notice

Birth - At Clydesdale, South Creek, on Friday the 22nd ult. Mrs Thompson, of a daughter, the youngest of eleven children, all living; the age of the oldest of ten of which is but twelve and a half. 'Increase and multiply; and replenish the earth'.¹⁹

would also have contributed to the myth. The Australian failed to point out that these eleven children were a combination of Mr. Thompson's family by a former marriage and Mrs. Thompson's family by her marriage to the deceased Charles Armytage. No doubt examples such as these reinforced an accepted belief. The fact that most of the colony's children were urban and that many of these were allowed to roam the streets unrestrained also created an impression that the streets of Sydney were swarming with children.²⁰

What we are dealing with here is a conclusion not based upon statistical comparisons between N.S.W. in the 1820s and N.S.W. in the 1860s, or between N.S.W. in the 1820s and England in the 1860s, but upon impressionistic comparisons of N.S.W. and England in the 1820s and 1830s. While Gandevia's explanations and the sort of propaganda put forward by the Australian go part of the way towards explaining this belief, there may well have been some truth in the opinion. It is necessary then to see how the birth rates for England and N.S.W. compared in the 1820s and the 1830s.

Once this is attempted the anomalous population structure of N.S.W interposes itself. If, for example, the proportion of women in the population is small then the birth rate, expressed as a number per thousand of the total population, would naturally be low. To the observer, however, the small number of women may well have had many more children than their counterparts in a normally distributed population. If a lot of the women are each surrounded by a number of children, or if the total number of children is much greater than the number of women, a favourable impression of the fecundity of the colony would be gained almost inevitably. This was the case in N.S.W. so it is better to compare the number of births per thousand women of childbearing age (fecund females) in each population and not births per thousand of total population (the crude birth rate) to gain a more accurate idea of comparative birth rates.

¹⁹ Aust, 6/7/1827, 3(d).

²⁰ SH, 11/5/1837, 2(e).

Change in the population structure adds further problems to the interpretation of variations in the crude birth rate. In N.S.W.'s case this change was mainly brought about by free and bond immigration, but especially the immigration of single females. New arrivals added to the total population but had little chance of adding to the number of births. The birth rate figures can fluctuate wildly during periods of high single immigration. Usually they stay low then climb rapidly a few years later, especially if the first arrivals are not followed by increasing numbers of immigrants. This makes comparisons between the unstable N.S.W. population and the reasonably stable English population very difficult.

The determination of the trend in birth rates is equally difficult to assess. Population variations usually mean changes in the numbers and the proportion of fecund females in the population. A situation may arise where a population (whose total numbers may be stable, rising or falling) influences the proportion of women in the population (keeping it stable, or making it rise or fall) and both influence the raw number of births (which can also stay stable, rise or fall). If a change in the crude birth rate takes place in any population it could, because of the arithmetic progression involved, be the result of one of 27 possibilities. It is a daunting task to try and reverse the procedure and determine the movement of the crude birth rate when there was a changing population, a changing number of females, and a changing number of births.

A far more manageable task is created by removing one of the variables (total population) and looking at just the number of women and the number of births. This gives the birth rate in terms of births per thousand women of childbearing age (fecund females) and only nine possible causes of a movement in the rate remain to be explored. In N.S.W. between 1825-1841 the number and proportion of women in the population rose from 16.9% to 20.7%. This narrows the possible causes to three. As we shall see below the rising rate per thousand females can be attributed only to the rising number of births outstripping the increase in the female population; that is, a genuine increase in the birth rate which because of the changes in total population may not be immediately apparent in the crude birth rate and certainly more difficult to prove.

Unfortunately we have only a sketchy idea of the numbers of women of childbearing age, i.e. 14-44 years, in N.S.W.. The musters and censii before 1841 do not give a breakdown of ages. Thus for the period to

1841 all women aged 12 and over, the only group the censii delineate, must be considered to be of childbearing age. This inevitably lowers the birth rate per thousand fecund females, but the error is not too great. The overwhelming majority of women were in the childbearing age range. In 1828, for example, women 12 years and over constituted 16.5% of the population while women 14-44 constituted 16.1% of the population. By 1841 there was about a two percentage point difference. These small differences contrast markedly with the English figures where there is a ten point difference between the two proportions (34% to 24.8%).

While one side of the births per thousand ratio is relatively easily ascertained, the other side, actual birth figures, are less easily accepted. Until 1833 the birth figures were in reality Protestant baptisms. Thereafter Catholic baptisms were included in the official figures. Because the population remained relatively steady while the number of recorded births increased dramatically, the change from supposedly purely Protestant birth numbers to combined Protestant-Catholic figures introduced spuriousness into the rise in the crude birth rate and in the birth rate per thousand fecund females. The only way of overcoming this is to restrict the population to only Protestants before the change in recording births. Two difficulties arise. First, during this early period some Catholic births, especially those babies born in the Female Factory, were probably recorded so although theoretically the Protestant births should only be compared to the Protestant population, in practice this probably leads to an overestimation of the birth rate. Second, one has to try and estimate the Protestant proportion of the population. During the period under study this was about 70% of the total population, but this is all the information one can gain from the censii. The proportion of Protestants amongst women was probably lower than this because of the disproportionate number of female convicts from Ireland. The 70% figure is however the only one that can be used.

As well as the non-registration of stillborns and short-lived babies, mentioned earlier, there was no effective registration of babies born to people who held no religious convictions. For various reasons there were probably not many in the last category. Bligh, in 1812, indicated that some sort of legal status was granted illegitimates once they were baptised²¹ and this, allied with the practical difficulties of non baptism

²¹ Select Committee on Transportation, 1812, Minutes, p39.

and a whole string of legal disabilities, probably encouraged most parents to have their children baptised.²² Most children belonged to "respectable" families, or families striving for respectability, lived within parishes, or within reach of a clergyman, and were baptised eventually even if a little later than normal. A major proportion of the "unrespectable", single convict women, bore their children in the Factory where their babies were baptised by the visiting chaplain.

The same problems on a larger scale prevailed in England. They also missed the stillborns, the early deaths, and the non-religious. The official English figures for 1835, the last year of church registration, give a birth rate of 27.5/1000 while in 1841 the official figure, based on civil registration was 32.3/1000.²³ All English demographers agree that these greatly underestimate the true situation. Glass estimates that the real crude rate was 36/1000,²⁴ while Krause thinks that it could have been as high as 40/1000.²⁵ It is highly unlikely that the N.S.W. figures were as inaccurate.

Tables Two and Three give the birth rate details for N.S.W. (1825-1841) and for England and Wales (1835 and 1841). Two points are immediately obvious. First, the birth rate, especially when measured as a rate per thousand fecund women, generally matches that of England, and, second, the N.S.W. rate rose dramatically during the period. While the crude birth rate in N.S.W. does not resemble the official English rate until somewhere between 1836 and 1841, the rate per thousand fecund females is similar from at least 1828 and rapidly passes that of England after 1836. Before 1825 we have even less reliable information than after that date, but Gandevia puts the birth rate for the first few years of white colonisation at 150-200/1000 women of childbearing age,

²² Such as non-eligibility for admission to the orphanages, non-eligibility for relief from the benevolent societies. There are several examples of colonial youths being refused court oaths because they had not been baptised and therefore would have no knowledge of God and the nature of the oath. SH, 6/2/1837, 2(d).

²³ Mitchell, B.R., Abstract of British Historical Statistics, Cambridge, 1971, p29.

²⁴ Glass, G.V., op.cit., p71.

²⁵ Krause, J.T., op.cit., p69.

BIRTH RATE NEW SOUTH WALES: 1825-1841

YEAR	NUMBER OF BIRTHS	POPULATION	CRUDE BIRTH RATE	FECUND FEMALES	BIRTH RATE /1000 F.F.	PROPORTION OF F.F. IN POP.
1825	442	31,016*	14.3	5,260	84.0	16.9%
		21,711 [#]	20.4	3,682	120.0	
1828	634	36,598*	17.3	6,051	104.8	16.5%
		25,362 [#]	24.9	4,235	149.7	
1833	1,560	60,794	25.6	11,220	139.0	18.5%
1836	2,120	77,096	27.5	14,550	145.7	18.8%
1841	4,892	130,856	37.3	27,145 [@]	180.2	20.7%
				24,395 ⁺	200.5	18.6%

* Total population. # Protestant Population. @ 14 and over. + 14-44 yrs.

TABLE THREE
BIRTH RATE ENGLAND AND WALES: 1835 and 1841

YEAR	NUMBER OF BIRTHS	POPULATION	CRUDE RATE	FECUND FEMALES	BIRTH RATE /1000 F.F.
1835*	405,000	14,724,000	27.5	3,274,000	123.7
1841	512,400	15,877,411	32.3	3,925,828	130.5
	571,800 [#]	"	36.0	"	145.6
	635,100 [@]	"	40.0	"	161.7

* Population estimate; births based on Parish returns. # According to Glass's estimate of 36/1000. @ According to Krause's rate of 40/1000.

i.e. 150-200/1000 fecund females.²⁶ This is a wide range, but even the lower limit indicates that this rate was well above that of England at the same time. It looks, however, as if this initial high rate was not sustained in later years. The figures for 1817, although considered by all contemporary observers as highly unreliable, indicate that the rate per thousand fecund females was between 69.2 and 98.8, well below the rate in the early years of settlement and the later period 1820-1840. Paradoxically the crude birth rate was higher in 1817 (15.1 - 21.7) than in 1825 (14.3 - 20.1) due to a decline in the proportion of women of childbearing age in the population (21.9% to 16.9%).²⁷ These rates per thousand fecund females show that if N.S.W. had had a population structure like that of England the crude birth rate would have at least matched the English rate. The 1833 colonial birth rate per thousand

²⁶ Gandevia, B., *op.cit.*, p19.

²⁷ Figures from Coghlan, T.A., *op.cit.*, p60.

fecund females, when converted to the same population proportions as England in 1841, gives a crude rate of 34.7/1000, above the official English figure but below the estimates of the true rate of 36-40/1000. When all the other inhibiting factors, such as the unregistered births and the women under and over 45 years of age who were included in the number of "fecund females", are removed the colonial rate would have surpassed that of the home country. The colonists therefore appear to have had a genuine basis for their belief in a relatively high birth rate, especially based on the early years of the colony compared to the same period in England. This belief lingered on into a period when the English birth rate increased to such an extent it almost rivalled the colony's rate. The belief was reinforced, as Gandevia points out, by the colony's relatively lower child death rate.

The second point that emerged from Table Two was the rising crude birth rate during the whole period. The rise is most dramatic between 1836 and 1841, but it is obvious that it had been rising steadily before then. The birth rate per thousand fecund females confirms this, as it is not susceptible to the problem of an increasing proportion of women amongst the total population. The 1825 and 1828 figures show that the rising proportion of women in the population had little real effect on the birth rate for both crude rate and rate per thousand fecund females rose while the proportion of women in the population dropped.

Between 1828 and 1833 the rise in the rates is less apparent for the increased proportion of women and the inclusion of Catholics produced a spurious rise. The crude rate is influenced by both movements but still shows a rise over even the "Protestant only" rate of 1828. It is likely then that the birth rate eased somewhat around 1828 as a result of the depression of 1828-29 and the influx of large numbers of single female immigrants, both bond and free, adding to the female population, but not significantly to the number of births. The large increase between 1836 and 1841 is attributable to the huge number of married immigrants arriving after 1836 and to the single immigrants of the pre-1836 beginning, through marriage, to contribute to the number of births.

It would be a pointless exercise to try and measure the overall rise; the figures are just too unreliable to allow such a calculation. It appears there may have been an 80% increase in the birth rate between

1825 and 1841 (from about 100/1000 fecund females to 180/1000 fecund females, from 20/1000 total population to 37/1000 of total population), but whatever the figure it greatly outstrips the influences of the increasing proportion of fecund women in the population and the introduction of more accurate birth figures.

B. Child Death Rate

The general impression gained from contemporary writers and modern commentators is that the death rate in N.S.W. was below that of England. McLeod²⁸ in 1830 estimated that the crude death rate was about 1/63, or 15.9/1000, and about 1/75, or 13.3/1000, for the military alone. In 1894 Coghlan estimated, on the 1817-1819 death figures, that the crude rate was about 13/1000.²⁹ Cumpston, in 1927, using the Blue Book figures gave a crude rate of 15/1000 in 1829 going down to 12.1 in 1831 and up to about 20-21/1000 in 1835-39.³⁰ All of these rates are considerably below the rate of 20 to 23/1000 which then prevailed in England.³¹ Cumpston also attempted to determine the crude child death rate from 1836, which he put at 32.5/1000 children in 1836.³² More recently, Gandevia attempted a division between child and adult deaths in order to determine the child death rate. He places the rate of child deaths during 1830-1834 at less than 4/1000 of total population, and in 1834-1844 at nearly 7/1000 of total population.³³ Again these are rates below those of contemporary England. The fundamental problem with all these figures is that they are based on the crudest of statistical sources.

Table Four gives all the information that is possible from the limited statistics available. The normal practice of giving age-sex specific mortality rates is impossible as the Blue Book's death figures are only divided along sex and adult-child lines. The only rates that can be achieved are a sex specific child rate (column 3) for those below 12 years, a sex specific population rate (column 6) and a crude death

²⁸ McLeod, D. (Inspector of Hospitals), Enclosure, Darling to Twiss, 12/2/1830, HRA, I, xv, p371.

²⁹ Coghlan, T.A., op.cit., p60.

³⁰ Cumpston, J.H.L. (et al.), op.cit., p66.

³¹ Mitchell, B.R., op.cit., p36.

³² Cumpston, J.H.L. (et al.), op.cit., p67.

³³ Gandevia, B., op.cit., p33.

TABLE FOUR
COMPARATIVE DEATH RATES: NEW SOUTH WALES
AND ENGLAND AND WALES.

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			AGE-SEX SPECIFIC			SEX SPECIFIC			CRUDE		
			POPULATION	DEATHS	/1000	POPULATION	DEATHS	/1000	POPULATION	DEATHS	/1000
N. S. W. 1833	MALE	ADULT	39,387	611	15.5	44,643	805	18.0	60,794	1,150	18.9
		CHILD	5,256	194	36.9						
	FEMALE	ADULT	11,220	176	15.6	16,151	345	21.4			
		CHILD	4,931	169	34.3						
N. S. W. 1836	MALE	ADULT	48,375	868	17.9	55,539	1,131	20.4	77,096	1,628	21.1
		CHILD	7,164	263	36.7						
	FEMALE	ADULT	14,550	299	20.5	21,557	497	23.1			
		CHILD	7,007	198	28.3						
E. & W. 1841	MALE	ADULT	-	-	-	7,777,600	174,000	22.4	15,914,100	334000	21.6
		CHILD	2,441,800	83,105	34.0						
	FEMALE	ADULT	-	-	-	8,136,500	170,000	20.8			
		CHILD	2,435,450	73,047	29.9						

rate for all the population (column 9). These are taken for the census years 1833 and 1836, and compared to England in 1841 again because that was a census year and the first with enough information to fit into the cruder N.S.W. classifications.

At first Table Four indicates that the reputed healthiness of N.S.W., its lower death rate especially, is as much in question as the reputedly high birth rate. Propagandizing colonists appear to have been as prone at

The England and Wales rates were calculated thus:

	Age Group	Population	Age Group	Population	Death Rate	Number of Deaths
Male	0 - 4	1,048,400	0 - 4	1,048,400	68.4	71,710
	5 - 9	953,200	5 - 9	953,200	9.6	9,150
	10-14	880,400	10-12	<u>440,200</u> 2,441,800	5.1	<u>2,245</u> 83,105
Female	0 - 4	1,059,900	0 - 4	1,057,900	58.6	61,993
	5 - 9	951,700	5 - 9	951,700	9.2	8,755
	10-14	851,700	10-12	<u>425,850</u> 2,435,450	5.4	<u>2,299</u> 73,047

- i) Populations of age groups for each sex were found (Column 1)
- ii) 10-14 age groups divided by two to give approximate number of children 10-12. Necessary because the N.S.W. figures place 12 and 13 year olds with the adults. (Column 4)
- iii) Column 4 totalled to give approximate number of male and female children in 0 - 12 age group.
- iv) Age-sex specific death rates found for each age-sex group. (Column 5)
- v) Number of deaths in each age-sex group found by multiplying Column 4 by Column 5 and dividing by 1,000. (Column 6)
- vi) Number of deaths totalled to give approximate number of child deaths.
- vii) Crude death rate = $\frac{\text{Total Column 6} \times 1,000}{\text{Total Column 4}}$

Figures from Mitchell, B.R. op. cit. pps 12, 34, 38, 40; N.S.W. Blue Books 1833, 1836.

underestimating the colony's mortality as they were in overestimating its fecundity. It is also possible that the alleged rise in child and adult mortality between 1833 and 1836 did not take place, or was merely a product of more accurate statistics. Closer examination, however, needs to be made before these conclusions can be proved or disproved.

Observers of the two populations were probably influenced by their experience of the child death rate in England and the relatively happier situation in N.S.W.. The commentators would have been judging on impressions and the lack of fatal epidemics in N.S.W., especially in the institutions, may have created a favourable impression. It is also probable that many came from urban areas of England (or from India where the situation was even worse), areas not reflected in the official figures, but likely to deeply impress the interested observer. When comparing N.S.W. to England they probably remembered only the worst of England and the best of N.S.W..

I have already mentioned the argument that the N.S.W. figures while underestimating the death rate did so to a lesser degree than that of England. Most of that underestimation, it was argued, would have been the result of adult male deaths being unrecorded and it is unlikely that the child rate, especially after Catholics were included in 1833, would have been greatly erroneous. This contrasts with the situation in England where the errors were most profound amongst children. Birth rates and child deaths (especially infant mortality) were regarded as the most inaccurate of all the English vital statistics. Because the colonial situation was more accurately reflected in the figures while the home situation was not, the figures are deceptively similar. In reality, if the estimates of Glass and Krause are accepted, the child death rate in England (42/1000 for boys and 37/1000 for girls) is six to seven per thousand higher than the colony's rates.

Another factor which has contributed to the apparent closeness of these figures is the much higher proportion of very young, and hence vulnerable, children in the colony's child population during the late 30s and early 40s. In N.S.W. in 1828 under two year olds made up only 27.9% of the under seven year olds, while in 1841 they represented 36.7%. In England in 1841 under twos represented 29.2% of the under sevens. To overcome this problem, caused by a rapid increase in the colonial

TABLE FIVE
CHILD DEATHS AS A
PROPORTION OF BIRTHS: 1829-1836

		BIRTHS	CHILD DEATHS	PROPORTION OF BIRTHS
N.S.W.	1829	680	140	20.6
	1831	879	118	13.4
	1833	1,560	363	23.3
	1836	2,120	461	21.7
E. & W.	1841	512,000	156,100	30.5

birthrate, one has to try and compare child deaths as a proportion of births (Table Five). The N.S.W. average for the years 1829-1836 is about 20% while in England the average was around 32%; a very significant difference.

The birth/death ratio is probably a more accurate measure of the death rate as the same class and proportion of parents would have registered their children's births as well as their deaths. The figures when compared to each other are thus a good indication of the proportion of all but the very lowest class children (especially in England) surviving infancy. The position amongst the lower classes was probably worse, but in N.S.W. they were disproportionately underrepresented in the ranks of families with children, so the N.S.W. figures are probably more favourable. The English figures also include 13 and 14 year olds, relatively few of whom died while they added significantly to the numbers of children and therefore lowered the ratio.

In an attempt to gain some idea of the infant mortality rate, to compare with Glass's estimate of an English rate of 147-152/1000 births, a sample of 162 families, which included 740 recorded births, was taken from the Mutch Index. 59% of the families had lost no children but very few (only 38%) families with six or more children had not lost a child. The average number of births in the families who had not lost a child was 4.0 compared to an average of 5.3 for families who had lost a child. Of the 740 births 82 deaths were recorded giving a rate of 110/1000. As the error rate in the Mutch Index is higher for births than for deaths the real rate may have been lower.

TABLE SIX
0 - 4 AGE STRUCTURE: 1828

		AGES (YEARS)				
		<1	1	2	3	4
MALE	TOTAL	239	285	298	267	268
	IMMIGRANTS	2	6	6	8	16
FEMALE	TOTAL	212	256	276	274	260
	IMMIGRANTS	2	9	6	10	12
TOTALS		451	541	574	541	528
		4	15	12	18	28

One of the demographic features of N.S.W. in 1828, the even number of children in each age group up to about 4 years, supports the contemporary view. Child immigration and an increasing birth rate could effect this but child immigrants were a negligible influence and the birth rate was probably stable if not falling at the time of the 1828 census (Table Six). It is more difficult to see if this continues into the 1830s. A detailed age breakdown is not available from the 1841 census. The best it can offer is a division into under twos and two to six year olds.

There seems little doubt, then, that the child death rate in N.S.W. was lower than in England. It is impossible to measure the difference due to the inadequacy of the statistics, but it was obviously sufficient to prompt contemporaries to comment most favourably on the healthiness and fecundity of the colony.

The second question requiring closer examination is the belief that child mortality rose in the second half of the 1830s. If it did rise, when did it rise, by how much did it rise, and why was there so little comment by contemporaries upon the increase? Gandevia proposes a rise from 4/1000 of total population in 1830-33 to 7/1000 of total population in 1834-44,³⁴ but this is a dubious method for measuring child deaths given the inaccuracy in adult male death rates (shown by the anomaly of a higher female death rate) and the atypical population structure of N.S.W.. It also takes no account of any increase in the proportion of children in the population. Using this method certainly shows N.S.W. in a good light as the same method yields a child mortality rate of 9.7/1000 of total population on the 1841 English and Welsh figures, yet the proportion of children under 14 in N.S.W. in 1836 was only about 20%

³⁴ Gandevia, B., op.cit., p33.

of total population compared to 34.2% in England in 1841. I am also not sure how Gandevia arrived at these ratios for using the figures available to me (and presumably the same as those used by Gandevia) gives a rate of 3.4/1000 of total population (and 4.9/1000 of total Protestant population) in 1829, 5.9/1000 in 1833, and 5.9/1000 in 1836. Obviously the very high figures for 1840-43, 9.3/1000 in 1841 for example, when the proportion of children in the population reached 25.5% have influenced the earlier figures. These figures do not validly indicate a rise in the death rate. Table Four also does not indicate a rise between 1833 and 1836.

A more reliable method of checking increases in death rates is to check for an increase in the child deaths per thousand children. The figures that we can glean from the information available (Table Seven) show a marked decline in both child mortality and crude death rates after 1841, an erratic rate between 1833-1837, with an average of 33.1/1000, and an unknown rate before 1832. These figures, however, have obvious flaws. The differences between the rate in 1834, 1835, and 1836 seem to indicate that some 1834 deaths were carried over into the 1835 figures. As another, more serious, example, Cumpston gives child mortality figures of 32.2/1000 in 1839, 26.7/1000 in 1840, and finally 28.4/1000 (compared to my 37/1000) in 1841.³⁵ If Cumpston is correct then the mid 1830s would appear to have been the worst period of child deaths for many decades. The reason for the discrepancy between his figures and mine is that the Blue Books give the figures quoted in Table Seven while Cumpston uses E. Deas Thompson's figures which have 66 fewer child deaths than those in Table Seven. His population estimates for 1839-41 are also too large. Cumpston uses a child population as at 31/12/1841 of 40,649 but the October 1841 census shows only 33,058 children under 14, a number that Cumpston exceeds in his 1840 estimate. The 1841 figures are also compared to the earlier censii which did not classify 12 and 13 year olds as children. While proportionally few 12 and 13 year olds would have died, these age groups added to the numbers of children, making the rates considerably lower than they should be for the sake of comparison. Using Cumpston's death numbers and the census

³⁵ Cumpston, J.H.L., (et al.), op.cit., p67.

TABLE SEVEN
DEATH RATES N.S.W.: 1825 - 1845

YEAR	CHILD NUMBERS	CHILD DEATHS	DEATH RATE /1000 CHILDREN	TOTAL DEATHS	CRUDE DEATH RATE
1825	-	-	-	502	16.2 ^x 23.1 ^o
1828	-	-	-	593	16.2 ^x 23.4 ^o
1829	6,400* 4,480*	140	21.8 31.25	615	15.0 ^x 20.5 ^o
1833	10,187	363	35.6	1,150	18.9
1834	11,640*	302	25.9	1,164	17.6
1835	12,640*	489 [#]	38.6	1,453	20.4
1836	14,171	461	32.5	1,628	21.1
1837	16,800*	559	33.3	1,799	20.8
1841	33,058	1,223	37.0	2,543	19.4
1843	-	1,115	20.7	2,293	13.5
1845 ^z	-	-	-	2,128	11.3
	-	803	11.4	1,787	9.5

*Estimate. x Based on total population. o Based on Protestant population. # Possible carry over of some 1834 deaths. z Cumpston gives alternate figures.

population gives a figure of 34.9/1000, comparable with those of the mid 1830s. One would expect a figure of around 37/1000 if the 12 and 13 year olds were excluded.

It appears that there was a rise in the child death rate in the late 1830s and early 1840s and one would expect this given the extremely harsh economic depression of 1838-42, the social and physical dislocation of massive immigration (which doubled the population in five years) and the increase in the proportion of under twos in the under seven population.

The only indication of a rise taking place between the 1820s and the early 1830s is the ambivalent 1829 figures. Even the "Protestant only" figure for 1829 is below the average for 1833-1837 (33.1/1000) but it is difficult to know if 1829 was typical of the 1820s. One would expect 1829 to have been a bad year for infant deaths for it was in the midst of a depression. Indeed the raw number of child deaths in that year was not exceeded until 1832. Additionally, the population pyramid from the 1828 census shows a narrow base of under ones, an indication of a lower birth rate and/or a higher death rate for the year 1828, a trend that

probably continued into 1829 when only 50 births more than those recorded in 1828 are listed (followed by a leap of 200 births between 1829 and 1831). On the other hand the crude death rate for that year is significantly lower than previous and following years. However the proportion of child deaths among total deaths is slightly higher than one would expect given the small proportion of children in the population (Table Eight).

The only other estimate for years earlier than 1829 has been made by Gandevia on the 1793-1800 period when a total of 204 children died. The available information is insufficient to allow a conversion into a ratio of deaths/1000 children but this figure was about 20% of the number of births, slightly below the average of the 1828-33 period.³⁶ The conclusion appears to be that the death rate per thousand children in 1829 was probably higher than average for the late 1820s.

If this is correct then it is highly probable that the late 1820s had a child death rate of at least 27-29/1000 children and that a substantial rise in child mortality took place between 1828-1832 and 1833-1837. This is supported by the increased proportion of infant deaths amongst total deaths. The proportion of child deaths in total deaths is rather erratic but the average of 1829 and 1831-32 is 23.6%, well below the 1833-37 average of 33.1% and only half the 48.1% of 1841.

TABLE EIGHT
CHILD DEATHS AS
PROPORTION OF TOTAL DEATHS

YEAR	CHILD DEATHS AS PERCENTAGE OF TOTAL DEATHS	CHILDREN AS PERCENTAGE OF TOTAL POPULATION
1829	22.7	15.7
1831	20.3	-
1832	27.8	-
1833	31.5	16.7
1834	25.9	-
1835	33.6	-
1836	28.3	18.0
1837	31.1	-
1841	48.1	25.25

³⁶ Gandevia, B., op.cit., p30.

These increases seem to indicate a substantial increase in the child death rate between 1828 and 1833. Between 1829 and 1841 the proportion of children in the population rose by less than ten percentage points (a 66% increase) while their proportion of total deaths rose by over 25 percentage points (a 113% increase), (Table Eight). The seriousness of this rise is alleviated to some extent by the disproportionate increase of under twos in the child population (27.9% of under sevens in 1828 to 36.7% in 1841) and by the declining proportion of over 45s in the adult population (from 15.5% of total population in 1828 to 9.1% in 1841). These points do not entirely destroy the validity of the conclusion that a rise in child mortality did take place.

The crude death rate also appears to have risen in the early 1830s although using the "Protestant only" figures for 1825-28 shows that it may have fallen. Any increase in the crude rate seems to have been due to the increasing proportion of child deaths amongst total deaths and the increase in the child mortality rates. Two conflicting movements in the adult rate, especially the male rate, had the effect of cancelling each other out to a large extent, allowing the increase in child mortality to have an exaggerated effect on the crude death rate. The first movement was towards greater accuracy in the numbers of deaths with the inclusion of Catholic deaths in the official figures. The death rate is a ratio of deaths to population and while one side of the ratio (population) was always reasonably well known and always included Catholics the other (deaths) was not well known nor always included Catholics. When Catholics were included in the death figures the raw numbers should have risen, the population stayed the same, and the ratio worsened. Unfortunately while this was happening one major contributor to their inaccuracy worsened. The death of single men continued to be badly recorded and probably got worse as the proportion of men in outback areas increased. It is also possible that part of the dramatic decrease in the 1840s is due to an increase in the inaccuracy of these registrations as settlement spread more thinly in the country, as families instead of just single men became pioneers and as towns became too large and irreligious for the parish system to adequately cover. It appears probable that the adult rate remained steady throughout the whole period 1820-1841 although highly doubtful that it was at the level suggested by the figures in Table Seven.

Because the increase in child mortality appears to be the major contributor to the increase in the crude rate one cannot agree with Cumpston's conclusion "that the trend ... was dependent on factors involved in the stabilisation of the population rather than on the incidence of epidemic disease."³⁷ Certainly massive immigration caused social dislocation and an increase in child mortality but the major reason for the increase was undoubtedly the introduction of influenza and whooping cough in the 1820s and measles and "native pox" in the 1830s. All claimed victims although none caused catastrophic losses - nothing compared to the 60 colonial born children, sons and daughters of the disgraced New South Wales Corps who died within a fortnight of each other during a measles outbreak in the severe English winter of 1810-1811.³⁸ ^{diseases} The ^{diseases} were, however, endemic enough to raise child mortality to new colonial heights.

As we cannot accept the death figures at their face value the magnitude of the increase in infant mortality is difficult to assess. It seems unlikely that Gandevia's 75% increase, from 4/1000 to 7/1000 of total population, is correct or that such an increase would have gone unnoticed or unnoted. If we take as our lowest figure the middle of the 1829 range (26.5/1000) and 1841 as the highest rate (37/1000) the rise is 10.5/1000 or about 40%. This is still a dramatic increase and it seems incredible that it went unnoted. For example there is no mention of an increase in the death rate in the Petition, the Report, or the Minutes of the Select Committee on Distressed Mechanics in 1843. There is much talk of the distress to families, of near starvation, and of eviction but no mention is made, and it surely would have been a telling point for the petitioners, of an increase in child mortality.³⁹

There are several reasons why the increased death rate was not mentioned. The first is that the increase was gradual and not marked by

³⁷ Cumpston, J.H.L., "Public Health in Australia; The Second Period, 1830 to 1850", Medical Journal of Australia, 1931, I, p594.

³⁸ Robinson, P., "The Hatch and Brood of Time: Recreating a Generation. Parents and Children, New South Wales, 1788-1828", Unpublished Paper, ANZAAS Conference, 1979, p5.

³⁹ Report from the Select Committee on the Petition from Distressed Mechanics and Labourers with the Minutes of Evidence, 1843, pp717-51.

any spectacular epidemic outbreaks. The second is that the new rate was one that was acceptable to the new majority in N.S.W. - the free and bond immigrants of post 1835 - and one that was comparable to that which they had left behind in England. The huge majority of New South Welshmen and women in the late 1830s and early 1840s would have been unaware of the conditions prevailing in the colony in the 1820s. It is interesting to note that most of the comments about the healthiness of N.S.W. came from observers of the 1820s and of the latter half of the 1840s.

APPENDIX B

OCCUPATIONS AND
FAMILY MAINTENANCE

A. The Civil Establishment.

The Civil Establishment consists of all the individuals and positions listed in the Blue Book for 1828.¹ All schoolteachers and all clerks were added for they did not fit neatly into other categories and the great majority were employed by Government. Amongst the Civil Establishment the per annum wage ranged from the lowest paid constable's £36/12/0 to the Governor's princely £4,200. About a third of the families in the group belonged to the high Civil Establishment; the clergy, the judiciary, and the well paid administrative positions. The rest belonged to the lower echelon such as the police, the clerks, the schoolteachers, and the lesser law functionaries. 58% of the high establishment listed substantial landholdings, but about only a quarter of the lower group had landholdings ranging from a few acres to substantial grants. In the majority of all families in the Civil Establishment the husband received a wage of £100 per annum or more. This should have allowed the greater proportion of their dependants to be supported by the breadwinner alone without the need for the younger children to participate in family income supplementation.

This is certainly true for the higher class members of the Civil Establishment. Alexander Balcombe, 17, the only unemployed son of William Balcombe, the Colonial Treasurer, would not have been deprived on his father's £1,250 per annum wage and 6,560 acre farm. More modestly, Peter Louis Bemis, a draftsman in the Surveyor General's Office, should have supported adequately his wife and one child on his wage of £150 per annum. Those breadwinners who depended on fees received for duties rendered were more liable to anxiety. There were some plum positions but others were less secure and regular. William Wilkins, the Cryer of the Phillip Street Court, received fees amounting to £341/10/6 in 1828, far outstripping his wage of £25. No doubt his young de facto, Ann Pilkington, and their three children would have survived quite reasonably on this amount.

The constabulary seems to have been one of the most insecure positions. Edward and Elizabeth Arnfield had to support seven children

¹ Blue Book of Statistics 1828, ff41 et seq.

on his constable's wage of £41/3/6 per annum. In fact his wage was insufficient to support even his wife. Some relief was available for he lived at Windsor and some of his costs, especially his rent, would have been much lower. The police in Sydney were consequently paid more than their country counterparts. Even with his five cattle providing milk, butter, cheese and some supplementary income, he would have found it extremely difficult to survive. Constables were also provided with clothing and paid bonuses of four or eight dollars (£1 - £2) for the apprehension of runaway convicts.² It is little wonder, therefore, that we find his eldest son, George (13), listed as a houseservant to Mr. Badgery of Sutton Forest while his eldest daughter, Rebecca (15), is entered as a servant to James Wittmont of Sydney. Relieved of the maintenance of two of his children and with some expenditure cuts he may have been able to support the remaining five children. No doubt many of the other constables would have been in the same position as Edward Arnfield, even if they did not have that number of children.

Schoolteachers, because most were supported by the Government, are also included in the Civil Establishment and occupied a rung only marginally above that of the constables. Most were paid £40 per annum and their wives, if they assisted with the teaching, were granted another £10 per annum. On top of this they received 3d per week for each scholar they taught. Some, like John and Harriet Edney the schoolteachers at Windsor, were well provided for. They received £50 in wages and, with a school attendance of 50 pupils, another £30 or so a year. This probably would have covered the cost of maintaining his very young family of three but his load was lightened even further by the contribution made by his father and younger sister. John Edney (Sn) had 400 acres with 22 acres under cultivation and 12 cattle. Their combined income would have comfortably supported the three adults and four children. Others with large families, would have found the task more difficult. Matthew and Mary Hughes of Richmond received £50 and £10 per annum and they taught 31 pupils for which they received another £22/10/0. He was hardly in a position to support his nine children.

² F. Rossi: Report on Police, Enclosure No 1, Darling to Bathurst, 15/12/1826, HRA, I, xii, pp679-685.

the eldest of whom was 18 and the youngest just three months. It appears that they all stayed at home for none are listed separately. Hughes was fortunate, as were many others in the Civil Establishment, in having 16 acres all under cultivation and sufficient to run three horses and 51 cattle. With the advantages of this land and cattle providing accommodation, foodstuffs and some supplementary income there would not have been much trouble supporting his family even if in a very modest fashion. It is highly probable that his four eldest daughters engaged in a little needlework and other piecework.

It would appear that the great majority of the ten percent of the colony's children who belonged to families in this occupational group were well secured against poverty and forced early employment. Possibly the 15% of children in this group (0.7% of the total child population) who belonged to families with seven or more children, and some of those in smaller families who belonged to the lower echelons of the establishment, would have had to pull their weight. Many of the poorer families probably depended as did the Arnfield and the Hughes families, on the labour of the children to either supplement the family income by piecework, service, or by looking after the small farm while the father fulfilled his official duties.

B. The Merchants and Professionals.

The smallest group on the occupational scale, the Merchants and the Professionals, were probably in an even better position to maintain their children than the better paid Civil Establishment. The early history of the colony, and the 1830s especially, are marked by the bitter outpourings of landholders against the emancipated element in this category who were considered to be the most wealthy but the least worthy element in the colony. This occupational category had the highest average number of children per family in the colony: 4.2 children per family compared to the colonial average of 2.8. 65% of children in this category lived in families of four or more children compared to the colonial average of about 53%, and twice the colonial average (26% compared to 13%) lived in families of seven or more. There appears little doubt that these children would have been adequately sustained even in the largest of families.

Many of the professionals, especially surgeons, were in government positions and part of the Civil Establishment but were allowed a certain amount of private practice. For example, the surgeons' pay varied but the usual was £182 per annum and this, with their private income, would have adequately covered the expenses of a large family. The position of self employed professionals and merchants is harder to assess than those employed by government. Their fortunes were closely tuned to that of the colony as a whole and fluctuated quite wildly. The example of W.C. Wentworth is probably the best known and illustrative. But while their fortunes fluctuated they never fell to the level where deprivation jeopardized the sustenance of their families. The fortunes of many waxed and waned in relation to their property investments rather than their professional or merchant activity. Many in this group were very large landholders. John Dickson, the miller and brewer, is listed in the 1828 census as owning 17,000 acres thus making him one of the largest property owners of the time. His five children and de-facto wife were hardly in poverty. George Allen, the solicitor, had little difficulty in supporting the ten of his children who survived infancy. Allen's reputed austerity was no doubt partly due to the need for careful management to support such a large family but no child lacked what he thought was best.³

Some members of this occupational group were not well insulated against economic troubles, or the change in government policy after the Bigge report, because of their civil status and their personal failings. Francis Greenway's fortunes waned after the departure of Macquarie because of his emancipist status, the loss of his government position and his dilatory, indolent and neglectful nature. He found little private work after 1828 and his sizeable but marshy and poor quality land grant did little to assist him to support his family of seven children.⁴

When economic ills arrived, however, it was often a case of not being able to live in the manner to which the family was accustomed, often exacerbated by the refusal of the husband to accept a lesser position, rather than genuine deprivation. As with the majority of

³ G.W. Allen, Early Georgian: Extracts from the Journal of George Allen (1800-1877), Sydney, 1958.

⁴ ADB, 1, pp470-472, Havard, W.L., "Francis Howard Greenway, Macquarie's Architect" in *IRAHS* 22(3) 1936 pp127-130

children of the Civil Establishment the 2.5% of the child population belonging to families in this occupational category, barring absolute financial disasters, were well insulated from poverty and forced early employment.

C. The Landholders.

Turning to the landholders presents even greater difficulties in assessing the economic viability of the family. Many landholders operated a minimal cash economy. The larger dealt through notes of credit and the smaller depended as much as possible on self-sufficiency. Their farms would have provided them with basic accommodation and produce and the smaller landholders would have supplemented this by some cash crops or the sale of animal produce such as eggs, milk, cheese, butter and pork. No doubt some bartering was involved.⁵ Even amongst the landed elite the barter system was employed.⁶

The common opinion seems to have been that few settlers with less than 50 acres would or could survive, while those on a little more had to maintain strict economies to prosper. Bigge, in his report, wrote

While some [of the emancipist settlers] have extended their possessions by purchase and have considerable stock, the occupiers of the smaller Tenements appear to me to be in a very abject state of Poverty.⁷

As for the long term prospects of this particular class he wrote:

For the ordinary class of settlers, to whom sixty acres of land are usually allotted, the prospect afforded by this calculation is in very many cases a forbidding one. It supposes industrious habits, some portion of agricultural knowledge and the application of the annual savings to the purchase of agricultural implements, buildings, and lastly the operation of a steady demand for produce.⁸

⁵ As for example, during the 1828 recession when one shop accepted payment in wheat for produce at that establishment, SG, 1/8/1828, 4 (c).

⁶ Christiana Blomfield speaking in 1830 about her boys' school fees, wrote:

We pay £40 a year for each of the boys, that is to say, we supply Mr. Wilkinson with the produce of our farm to that amount, for money is not to be had in these days.

C. Blomfield to L. Edwards, Dagworth, 2/4/1830; C.E. Blomfield, Memoirs of the Blomfield Family, Armidale, (N.D.) p58.

⁷ Bigge, Agriculture and Trade, Report, f35.

⁸ Ibid, ff87-88.

The conviction amongst middle class observers was that few emancipists possessed these qualities. Cunningham dismissed three quarters of the emancipists as answering to the motto "Dum Vivimus Vivamus"; not at all conducive to the frugality and regularity demanded by the conditions set out by Bigge. Some indication, however, of their bias can be gained from Cunningham's next words:

Disastrous as the course of these individuals has generally been to themselves, yet they have undoubtedly conferred considerable benefits upon the public, supplying as they have done, our markets with abundance of fruit, vegetables, pigs, poultry, and other second rate substantials, which the wealthy settlers will not condescend to rear ... ⁹

It seems strange that considerable benefit could have been conferred upon the general public without some benefit accruing to the producers. It appears doubtful that these benefits would have been dissipated by three quarters of the settlers as soon as they received them. The clue to the reason behind this attitude may be the use of the term "second rate substantials". Obviously, Cunningham, Bigge and the wealthy settlers scorned this mixed farming and concentrated upon the production of quality staples such as wheat or wool. Their attitude towards the emancipist settlers was therefore a mingling of scorn and disgust at the supposed waste of valuable land. Michael Roe has therefore concluded:

Nevertheless it would seem reasonable to suspect that Bigge's sympathy with the large land-owners, naturally hostile to any policy of small scale grants, led him to exaggerate the destitution of the ordinary man on the land. Perhaps his concept of what constituted a decent standard of living was quite irrelevant to working-class reality.¹⁰

⁹ P. Cunningham, Two Years in New South Wales, (London, 1827), 1966, pp179-80.

¹⁰ M. Roe, "Colonial Society in Embryo", HS, 7(26), May 1956, p159.

This lack of recognition of mixed, and basically subsistence, farming is well illustrated in Oxley's submission to Bigge (which formed the basis for much of Bigge's opinion and recommendations) on the expenditure and income one could expect from a new 50 acre farm.¹¹ The major component in Oxley's prohibitively expensive estimate of establishing a farm was the cost of labour. For the three year establishment period labour costs amounted to £314/13/2 of which the landholder himself contributed only £45 worth. This £15 per annum saving on labour seems as conservative as the labour costs seem exaggerated and probably reflects a gentleman's reticence to involve himself in anything but marketing. It would not have reflected the case of a small landholder who, with his family, would have contributed the major share of all labour.

From contemporary evidence available on farming on a small scale the only assistance most settlers sought was during harvest, and the procedures itemized by Oxley were often either done on a reduced scale or bypassed.¹² Oxley also adds only a few pounds per year to the value of the farm from the sale of poultry and eggs, and makes no mention of the sale of vegetables, fruit, pigs, milk and other dairy produce (from goats or cows), and other livestock by-products. He thus neglected several of the chief sources of a small settler's income. As Cunningham pointed out the respectable settlers, such as Oxley, would not deign to consider these items legitimate farm produce.

For a man who was seeking merely to maintain his family and not to make a large profit, landholding, even on the smallest scale, held

¹¹ Bigge, Agriculture and Trade, Evidence, ff168 et seq. For the first year Oxley estimated that felling sixteen acres of its trees, stump-ing, burning off, plowing, thrice sowing ten acres with maize, pulling, husking and marketing the last crop would cost £71/5/-. Of this only £12, the cost of the maize seed, was a capital cost. The rest was the cost of the labour involved. Profits he lists as £60 for the maize crop and £17/4/- from the free government stores for six months. This gave a surplus (not a loss as Bigge reports) of £5/19/- for the first year. Agriculture and Trade, Report, f67. Similar costs and profits continue for the next two years by which time all the 50 acres would be tillable. Under rotational cropping the farm would then be returning about £60 per annum profit.

¹² See for example the lively account in James Tucker's Ralph Rashleigh, Sydney, 1975, pp100-107.

many attractions. This is evident to the settlers themselves for Bigge notes that much exertion and persuasion was used to entice the small settlers living in a "very abject state of Poverty" to move from their floodprone Hawkesbury River properties "but either from inability to construct new habitations or from unwillingness to leave their old ones the lower class of settlers have in very few instances taken advantage of these offers."¹³ If one looks at the list of requirements for subsistence level family maintenance both rent and fuel can be virtually eliminated, removing two of the most expensive items from the budget. Grantees were subject to "quit rents" of 3/- per annum for every 20 acres, but they were rarely collected thus those on grants avoided this cost entirely. Tenants were less fortunate. In the rich Hawkesbury Valley they were expected to pay 20/- per acre on a five year lease but considerably less in other areas.¹⁴ Even so this burden negated in full, or part, one of the greatest advantages of landholding.

The other great advantage was the self provision of much of the foodstuffs and other items. Sugar, salt, clothing and bedding would still have had to be bought but the rest, or substitutes, could have been provided, at least in part, from even the smallest plot. Similarly many of the additional items on the more realistic budget, other than tobacco and drink, could have been supplied by even a small farm. Even some of the excluded items could be produced or substituted. Furniture and bedding could be made from the same materials as the house-slabs cut from the farm. An exchange between correspondents in the Gazette of 1824 reveals that, among the small settlers, home made skin and leather goods were often substituted for cloth, straw hats for cloth hats, and children were thus "most homely attired".¹⁵

It seems doubtful that this self-provision would have amounted to much more than the equivalent of the board and lodging provided by employers. It would be safe to say that a landholder with a wife and three children would have had to depend on a cash surplus of about £28

¹³ Agriculture and Trade, Report, f35.

¹⁴ Bigge, Agriculture and Trade, Report, ff38-39.

¹⁵ SG, 22/1/1824, 4(b) and 29/1/1824, 3(a-b).

per annum to sustain his family and about £38 per annum to live realistically. On Oxley's figures, allowing £28 cost for additional labour during harvest and £4 for the seed, ten acres of good maize at 4/- a bushel, or seventeen and a half acres of poor wheat (or eight acres of good wheat) at 7/6 a bushel would nearly have provided this cash requirement.

The larger the family the larger the farm required to cover the food needs of the family and the less land available for a cash crop. A family of three children required about 26 bushels of wheat a year, about two acres of average wheat, to give it the equivalent amount of bread given in rations by employers. 18 pounds of meat a week (936 lbs per year) was at least three or four cows or nearly a dozen small pigs a year. To raise livestock required feed, often maize grown on the farm itself, further reducing the crop available for sale. It therefore appears likely that the proceeds alone of even a well managed property of less than 25 acres could not have supported a family of more than two or three children while that of 50 acres could have supported a family of three or four children.

To those on plots too small to provide for their family, and there were many, the only option was for the landholder to hire himself out as a labourer of one sort or another to provide the cash income. Nearly a quarter of those included as small landholders, most usually those with less than twenty five acres, listed themselves as having a second occupation, normally as a labourer or a mechanic. Even in this case the landholding family was at an advantage as the labourer's yearly wage of about £34 very nearly covered the required amount.

With these advantages to family maintenance, and the advantages of having children to lessen the need for hired labour, it is little wonder that this occupational category contained 38.3% of all children living with their families, 41.85% of children living in families of four or more, and 37.8% of children living in families with seven or more children. The figures are even more dramatic if the small landholders are excluded. Large and medium landholders, who constituted only 5.9% of the free male population, had 17.7% of all children, 22.5% of children in families of four or more, and 33.3% of children in families of seven or more.

i) Large Landholders

239 families were listed in the 1828 census as large landholders, that is with more than 500 acres. 204 of these families had children. They had an average of 3.1 children, slightly more than the colonial average, 60.2% of the children lived in families of four or more children and 18.2% in families of seven or more children. Many of these property holders, especially the largest ones with many thousands of acres, were engaged in other business ventures or government positions but listed themselves primarily as landholders.

There is little doubt that the children of this group were well looked after. Few would have been forced into early employment. They probably assisted in the management of the farm only after fairly extensive schooling either at private schools, public schools, or at home. For example Jane Cox in her Reminiscences wrote "I had very good Helpmates, but they [her daughters] never went into the Kitchen until they were past 20 years."¹⁶

George Best is a man representative of the lower status side of the established large landholders and about whom we know a little. Transported to the colony for life in 1792 he married his wife, also a convict transported for seven years in 1796, in 1797-8. He was given an absolute pardon, granted 30 acres by Hunter, 60 acres by Macquarie, had increased his land by purchase to 455 acres when interviewed by Bigge in 1820, and to 805 acres by the 1828 census. He had nine children, two girls and seven boys. By 1828 five are still listed as living with him, one daughter and four sons aged between 20 and 13 years. Two of his sons had been educated at a mission school and his other sons by a hired schoolmaster at home. His daughters had gone to school in Sydney. One daughter and one son were married. His eldest son had been granted 60 acres by Macquarie and by 1828 had purchased another 150 acres, was married to a colonial born girl and had four children aged 10 to 5 years.

What is most illustrative is the assistance that George was able to give his daughter when she married in 1820, a sure sign that he was well able to support his family even when he had less than 500

¹⁶ "Reminiscences of Jane Maria Cox, Etc.". In Brooks Manuscript NLA

acres. He explained to Bigge that his daughter had married one of his convicts.

They live on my son's farm. The young man was attached to my Daughter & she to him, & I was induced to consent to their marriage. He has behaved very well & is now living on a small piece of land belonging to my eldest son - I built him a house & found him his Provisions at first & now he finds himself and I have let him have one of my Government men.¹⁷

Contrast this with Darling's note to Huskisson in 1828 about the inability of the respectable class to supply dowries for their daughters.

There are at this moment several large families of Daughters in the Colony, who, though highly respectable in Conduct and Connexion, possessing no property, do not appear likely even to get married, while there are also many young Settlers, who declare their inability to maintain a Wife who has no means of her own. The addition of 1,300 acres of Land to a Man, who has already received all he has a claim to and which he could not obtain except by Purchase, will it is hoped act as an inducement to the Young Settler to marry ...¹⁸

The lower, and therefore fulfilled, expectations of the men and women like George Best and the consequent help given by the parents to their children contrasts strongly with the exaggerated expectations of many of the well off elite. The former could still be classified as basically a survivalist while the latter were acquisitive capitalists.

ii) Medium Landholders

No doubt many carried out an operation like that used by Best to establish his son George who, by 1828, is classified as a medium landholder; that is, with more than 100 acres but less than 500 acres. 262 families (about 85% of all males listed as medium landholders) are listed in the 1828 census as medium landholders. 202 of these had children. This group, with an average of 3.8 children per family, had the second largest families in the colony closely

¹⁷ Bigge, Agriculture and Trade: Evidence, f108.

¹⁸ Darling to Huskisson, 4/9/1828, HRA, I, xiv, p385.

rivalling those of the merchants. A huge 75% of children in this group belonged to families with four or more children and 31% to families with seven or more children. Of all the children in the colony living in families of seven or more children, 21.7% belonged to families of medium landholders.

It seems strange that medium landholders had more children than the families of the theoretically more secure large landholders. Several reasons can be put forward. Best's story shows that many landholders slowly acquired more land as they became older. By the time they became large landholders several of the children had already left home, either to work or to school, and the co-residing family was consequently smaller. At the other extreme, many of the largest landholders were young married capitalist emigrants who had only just commenced their families and had not yet had time to greatly affect the family size statistics. Second, medium size landholders were predominantly emancipists or colonial born and they were never wholly trusted by the authorities to oversee convict labourers, especially after the departure of Macquarie. Many probably could not afford to have more than one or two convict servants especially during non harvest periods. A common opinion, expressed by free settlers most often but probably shared by many emancipists, was that family help was more economical and more efficient than convict labour. George Brooks wrote:

... a Family of six would most likely furnish, a boy to drive Bullocks, or herd cattle, sheep, &c., and a boy or girl to keep Swine or Poultry, while the Mother could take charge of a small dairy. All of these occupations, Convicts are unfit for; because they all afford opportunities to indulge their dishonest, idle, reckless, dispositions, and the hostile feelings towards their Masters, which I solemnly believe 9/10ths of the prison population experience. A well ordered family of six, would be equal to four Convicts in point of Labour, and for trust beyond comparison.¹⁹

Many medium landholders thus depended on their families to oversee livestock and help manage the crops. As there was no real

¹⁹ Committee on Immigration, 1837, Minutes, pl24.

financial limit on the size of their family they expanded the families to fill the vacancies existing on the farm.

Finally, because these families were reasonably secure there was no need for members to leave home at an early age for work. Nor were their parents particularly interested in private education preferring a rudimentary and practical education from the church school systems.²⁰ Therefore, the size of the home often equalled the size of the family whereas in many other occupational categories home size was not usually equal to family size except in the very youngest families.

It appears that in this group the vast majority of children would have been well supported by their parents although it is probable that some of the children in the families with seven or more children were deprived in some areas. It would also be accurate to say that a large proportion of the children, the boys especially, were engaged in unpaid farm work from an early age. There was probably less necessity for them to do work, but to minimize expenses and maximize income it is probable that many parents utilized their children's labour at an early age, especially during peak labour periods such as sowing, harvesting, lambing or shearing.

iii) Small Landholders.

The position of the small landholders, that is those with less than 100 acres, has already been touched upon and the economic viability of their families is much harder to assess. So much depended upon the quality of the land, the landholder, and the willingness of the parents to restrict the number of children. That there did exist a willingness to restrict the number of children is evident from the tables. In the 1828 census 722 married people are listed as small landholders, about 78% of all free men listed as small landholders. 464 of these family groups had children. Another 152 were aged childless couples and many of these must have been couples whose children had already left home.

The average size of the families was 2.7, below the colonial average, and only 49% of children in this category lived in families

of four or more. However, this 49% represents 17.1% of all the children in the colony living in families of four or more, by far the largest occupational percentage. A tiny 3.2% of children lived in families of seven or more representing only 4.5% of the total number of children in the colony in families of that size.

From the information provided to Bigge it appeared that the very smallest landholders could not hope to support more than two or three children and those with 60 acres or over could support about four or five. Some of these who listed themselves as farmers lived on tiny properties. Daniel and Rebecca Parker of Wilberforce classed themselves as farmers even though they had only eight acres, all under cultivation. They were fortunate to have only one 6 year old daughter to maintain. James and Maria Daly also classed themselves as farmers with fifteen acres, one horse and two cows. Residing with them were their nine children aged from seventeen to two years. This must surely have been an unbearable strain on the family's resources and would undoubtedly have placed the family in Bigge's abject poverty class. The strain must also have been great on Joseph and Mary Davis, who had to support eight children, from 19 years to six months of age on their 40 acres. Many of those on the tiniest properties listed themselves as having another occupation. Most often they were labourers but there was also a fair sprinkling of mechanics or tradesmen. Thomas Douglass, for example, listed himself as a labourer at Richmond with two acres and four horses, upon which he supported a wife and three children aged 15 to 7 years. Obviously he had a horse team and hired himself out for plowing and carting, the land feeding his horses rather than his family. Darby Doyle listed himself as a labourer from Clarence St., Sydney, with a princely eighteen acres and nine cattle. He must have been able to support his family, even though he was still a convict, for his wife and one son had come out in 1826 to join him. Convicts were not allowed to petition for their wives unless they could prove they were able to support them. Another son had been born since her arrival so his family was small.

Some indication as to how these families survived is given in

the case of Charles Mitchell. Charles, his wife Sarah and four children (aged from nine to two years) are first listed as a shoemaker at Patrick's Plains with nine acres upon which to support his family. In the second entry he is listed as a cordwainer and Sarah is listed as a charwoman, both on the property "Hungerford" at Patersons Plains. Obviously both parents were earning a wage on top of which the property would have provided lodgings and some foodstuffs. Another indication is given by the double entry for the Moore family of Macquarie Fields, Lower Minto. Edward and Elizabeth Moore had six children aged fourteen to one year, and they are firstly listed as sawyers with twenty acres. In a second entry they are listed as labouring tenants. These sort of arrangements remind one of the agreement that William Macarthur had, at a later date, with many of his employees. Macarthur imported families on a wage of £15 per annum, with a full ration for the man, half a ration (for six months) for the wife, the milk of one cow, a piece of land for a garden (a paltry one quarter of an acre), a cottage, and permission to run pigs and poultry "provided they are not suffered to commit any mischief".²¹ No doubt many similar arrangements existed before 1836, and some employers were probably a little more generous than Macarthur with their land, or else leased larger pieces to their employees at a very modest rate. It would appear that a lot of those who listed themselves as labourers or mechanics with a small piece of land, such as the Mitchells or the Moores, would have fallen into this category.

Notwithstanding all this, landholders on the smallest plots with large families must have found the maintenance of their families a daunting task. The slightest lapse from thrift, sobriety or physical wellbeing on the part of either parent would have rendered the continued existence of the family highly doubtful. It seems likely that a majority of children from this category who lived in families of seven or more children, would have been living in a degree of deprivation. A significant proportion of those living in families of four or more would also have felt some deprivation. Certainly most children belonging to this group would have been forced into early

²¹ Committee on Immigration, 1838, Minutes, p19.

employment whether work on the home farm or paid employment by piece work or service.

D. Storekeepers and Dealers.

The category of storekeepers and dealers is another that is difficult to assess. So little work has been done on this group, other than biographies of the more successful who rose to the merchant class such as Solomon Levey, Barnett Levey, the Campbells, Simeon Lord and Mary Reiby, that it is almost impossible to isolate them as a group or to gain an accurate picture of that group. Many who in other publications are listed as shopkeepers or traders are, in the 1828 census, often listed as landholders, innkeepers or merchants. By 1828, for example, of the nineteen lesser traders mentioned in R.E. Kemp's article on the commercial life of Sydney in 1817, five were dead, one was insane, three were listed as landholders, one was listed as a mariner, another as a merchant, one had gone to the missions, two were publicans, four were unlisted and only one was listed as being in the trade mentioned by Kemp.²² This illustrates the problem of trying to isolate them as a group. Amongst a sample of retailers and dealers who advertised in the Sydney Gazette and the Australian in various issues between 1825 and 1828, the majority were listed in the 1828 census as something other than shopkeepers; merchants or householders, landholders and innkeepers were the most common. One can only assume that the majority of those listed as belonging to this category in the census were very much the lower class of shopkeeper.

No doubt these smaller men (especially those in the country) exhibited many of the characteristics of the larger establishments. Most were general stores selling food items, finished clothing, cloth, haberdashery, agricultural implements, and, either legally or illegally, wine or spirits. J.H. Smith, for example, listed in 1828 as a dealer of Cumberland Street, advertised, in 1825 at his George Street premises an odd mixture of French wines and liqueurs, stout, Eau de Cologne, honey, treacle, tobacco, sheet lead, gunpowder, slops and numerous other items.²³ Other shops retailed both finished items produced by the craftsman proprietor and the components of those finished items for the benefit, no doubt, of the home

²² R. Kemp, "Commercial Life in Australia A Century Ago", JRAHS, 4(3), 1917, pp131-161.

²³ SG. 6/1/1825. 3(c).

handyman of 1828. Henry Miller, Upholsterer, of Castlereagh Street, advertised in 1828 both finished furniture as well as worsted and cotton fringes, blind cords, tassels, bell ropes and other related sundries.²⁴

It is apparent, and was well recognised by the authorities at the time, that many of the very small shops acted as fronts for the illicit sale of drink. Once established, the shops were reputed to become the centres of convict riot and debauchery. The Australian of November 1827, for example, reported that two dealers, one from George St. and the other named Smith, were fined \$25 and costs for selling spirits without a licence.²⁵ Mudie, in his usual jaundiced way, argued that many of these shopkeepers were emancipists, or convicts assigned to their wives, who had established their business through the proceeds of their English robberies brought to the colony by the wives.²⁶ A man like George Wheeler would certainly have raised Mudie's suspicions. He came as a convict in 1817 on a 14 year sentence followed, in 1821, by his wife and at least two of his sons. He was assigned to his wife who added three colonial born girls to the family. By 1828, still by status a convict, he operated as a Chandler in Phillip St. Similarly Peter Hall transported for 14 years in 1813, was joined by his wife and two boys in 1825 and set up shop in Windsor where in 1828 he is listed as possessing a horse and three cattle. It seems more probable that most started by laying aside the wages they earned as convicts or from illicit sales of spirits. Some probably started off as itinerant dealers occupying one of the many

houses of wood, and on moveable wheels, [which
 , were] increasing rapidly in every part of Sydney,
 to the great disgrace of Australia, and the
 certain injury of respectable shopkeepers.²⁷

Included in this occupational category, besides those listed as shopkeepers, retailers and dealers, were ironmongers, auctioneers, pastrycooks, manufacturers, coach proprietors, chandlers and agents. Also included were many butchers and bakers, simply because it was too

²⁴ Aust, 9/5/1828, 2(a).

²⁵ Aust, 14/11/1827, 3(c-d).

²⁶ J. Mudie, The Felonry of New South Wales, London, 1837, pp109ff.

²⁷ Aust, 17/10/1828, 3(a).

difficult to distinguish between those who were self-employed, and operating their own shops, and those who were employed. These last two can give some indication of the economic viability of the families in this category. It is probably inaccurate to say that few would have entered into self employment or a small business if they could obtain more by wage labour. The appeal of independence and the hope of making good often loomed larger than the immediate financial position. Notwithstanding if the margin between wages and the rewards of self employment grew too great and the maintenance of the family suffered, one would expect that the decision would be made to re-enter the paid workforce and, if possible, leave the wife and children running the store. Thus in the case of bakers and butchers one can take the daily wage of these trades as being roughly equivalent to the return produced by a small trader in the same field. In 1836, bread bakers earned between 7/- and 3/6 per day at an average of 4/6, that is about £69 per annum for a six day week. Butchers at the same time earned between 5/- and 3/- per day at an average of 4/- a day or £64 per year for a six day week. This would indicate that two or three children would be the upper limit of at least these fields in this occupational group.²⁸

There were, however, several advantages involved in self employment or a small business. One was the continuity of income compared to the often erratic nature of employment on the daily labour market. Many of the smaller shops insisted on cash or kind payments as much as possible rather than bills of exchange, thus avoiding the potentially devastating effects of a client's insolvency and further insuring the continuity of income. Another advantage was that in the majority of cases the shop served as combined home and workplace, thus reducing costs in both activities. A shop also provided a guaranteed outlet for one's own products, allowed the shopkeeper to buy in bulk and offer goods, sold at a profit, to the customer from which the finished item could be made, at a second profit, by the shopkeeper. Just how important these advantages could be is illustrated by the rather pathetic case of Mrs. Edwards (alias Lockyer). A series of newspaper notices indicated her intention of supporting her two children through plain needlework.

²⁸ Wages given in 1824, HRA, I, xi, p388; 1832, HRA, I, xvi, pp758-9.

Finally, however, she wrote that "the impossibility of supporting herself and two helpless children by her own labour" had prompted her to put forward a plan to solicit subscriptions to publish, in England, a series of articles prepared by her husband who was a "cause celebre" escaped convict. The proceeds would be used to gain the capital required to establish herself in a milliner's shop. Presumably she would then be able to support the children she could not support by her labour alone.²⁹ On the other hand the new widow, Mrs. Armitage, was forced to give up her business and undertake needlework, but this was probably not a matter of choice but one forced upon her by creditors pursuing the debts left by her husband who suicided in "extreme pecuniary embarrassment".³⁰

There were 224 married shopkeepers, 157 with children, listed in the 1828 census. They had slightly more than the colonial average number of children (3.0) but most families had two or three children. They had slightly less than the colonial average number of children in families of both four or more (52.6%) and seven or more (10%) children. It would appear from a comparison of this group and the merchants that those shopkeepers who were successful not only changed their occupational listing to that of merchant but also removed restrictions on the size of the family.

There would appear to have been few advantages for the maintenance of a family in shopkeeping other than the combination of workplace and home, which was more an advantage to the worker than to the children. Certainly clothing and food may have been cheaper but for a shopkeeper who did not own his shop the rent on a house large enough to be a shop would probably have been more than the 5/- allowed in the budget. Again it is difficult to assess how many owned the houses from which they operated. Most country and village shopkeepers would have owned their shops, but in Sydney the story was probably quite different. Bigge noted that

the largest portion of the stone and Brick Houses,
are the property of the Retail Traders and Public

²⁹ Aust, 9/5/1828, 2(a) and 2/4/1828, 2(a).

³⁰ SG, 5/7/1822, 4(c) and 3/5/1822, 3(b).

House Keepers, of whom there are many, that were formerly convicts.³¹

Many of these, however, were probably in the hands of a few of the more wealthy merchants and were leased to the shopkeepers.

The possibility of a wide variance in wealth within this group means that it is virtually impossible to generalize. The figures for the bakers and butchers quoted above can only be taken as the roughest of guides. A butcher such as Robert Eather of Windsor might appear to be condemning his family of six young children to debilitating poverty, but he also had 60 acres of land under cultivation, six horses and 20 cattle, making the task of maintaining his family much easier. Eather was one of a tiny minority (about 8% of all shopkeepers) who had some land to help support their family. Nearly all were butchers who obviously used the land to fatten cattle before killing. Thomas Weedon, a shopkeeper of George St., with his wife Mary and three young children, also appeared to be getting close to the danger point, but listed as living with him are a paid servant, Lucy Irvin, and a young girl, Maryanne Baylis, who could have been a sister in law or a niece. Their presence indicates that the family was capable of supporting more than itself. A fairly high proportion of shopkeepers, like Weedon, had paid or convict servants, indicating a higher level of respectability and, probably therefore, economic status. Similarly many had young relatives or young boarders of indeterminate relationships residing with them, indicating that they were well able to support children who may have been at risk in their natural families.

It would probably be safe to say that the proportion of shopkeepers, on a rough sample about half, who employed servants or convicts were capable of supporting their families. Of the rest some, because of the suitably mature age of their children, would not have needed servants but may have been capable of supporting their family. Others were probably making enough to get by but not enough to employ servants while the rest would have had difficulty supporting more than one or two children. To try and determine the proportion of children at risk in this group is highly speculative but one would

³¹ Bigge, Agriculture and Trade: Report, f162.

hazard a guess that it was small.

It also appears likely that the children of this group would not have been forced into early employment. It was in the shopkeeper's interest for his children to receive a rudimentary education, at least reading and arithmetic, so it seems doubtful that very young children would have been forced to do work other than house or shop cleaning and the care of their younger siblings. Some indication of the use of more mature children can be gauged from Elizabeth Kenniwell's appeal, in 1826, for her 14 year old son Edward Heigh to be released from the Male Orphan School. She had remarried a dealer who was often travelling and she needed her son to protect herself and her business. It was granted on the recommendation of the Rev. Mr. Cowper, who noted that Elizabeth was poor but honest.³² Advertisements in the papers and the 1828 census indicate that children had to be 13 or 14 years of age before they would be employed as shopboys or girls, but younger children were used to mind the empty shop and alert the proprietor when a customer appeared.³³ When the shop sold the products of the shopkeeper's own industry, bakers, butchers, upholsterers, milkmen, dressmakers and many others, the children were probably invaluable assistants - a point to which we will return in the section dealing with tradesmen and mechanics.

E. Innkeepers.

In many ways the Innkeepers were only a more lucrative version of the shopkeeper. The 1828 census lists 134 married innkeepers. This is probably an understatement of even the number of legitimate publicans. The Australian, in 1825, lists 156 licensed publicans in the colony with 97 operating in Sydney. Three years later the Australian listed 79 publicans in Sydney. While there might have been a decline in Sydney it is likely that with the growth in the population of country regions, the Sydney loss was offset by an increase elsewhere.

Some legitimate publicans classified themselves in the census

³² Applications for Children out of the Orphan Schools 1825-29, NSWAO 4/333, f23.

³³ Aust., 17/8/1827, 3(a).

³⁴ Aust., 31/3/1825, 1(d) and 7/3/1828, 3(c).

as something other than publicans. George Ailwin (or Aylwin) for example is listed in the 1828 Australian as being granted a licence but lists himself in the census as a Tallow Chandler.³⁵ Many illegal publicans listed themselves as storekeepers or householders. There are numerous indications that this was a highly lucrative trade. One of the simplest was that many people were willing to risk continuous fines of £25 through engaging in illicit spirit sales, and that even legitimate innkeepers did not go to great lengths to avoid being fined for serving convicts. Another was that the rents on even the smaller city establishments were very high. The Australian noted in 1828 that the rent on the Freemason's Arms, York St. - by no means one of the larger establishments - was set at £150 per annum.³⁶

The income also seems to have supported a great number of people. In some cases the inn appears to have successfully supported not only the family listed as living on the premises but also a "sleeping" partner. The licence to the Freemason's Arms appears to have been jointly held by John Brogan and James Henry (Henerey). This is a very interesting combination. John and Eliza Brogan came free in 1823 and by 1828 had six children aged from nine years to nine months. They also had one female convict servant. James Henry was an emancipist who arrived in the colony in 1820. His wife, Catherine, thirteen years his junior, arrived in 1825 and was still under sentence of seven years. They had one son John, possibly named after his partner. From the census returns it appears that James lived at the pub while John resided in King St. Obviously the proceeds of this pub were expected to support at least five adults, seven children, the rent on the pub, and the rent on the separate accommodation used by Brogan; in all a sizable quantity of money. Neither partner is mentioned as having a licence in 1825 so they must have been relative newcomers to the trade. It is difficult to establish who provided the capital and who initiated this joint venture. It may have been Henry with the partnership forced upon him by the 1826 general order prohibiting both the granting of licences and the assignment of servants to ticket of leave men. Henry only became free in late 1827 so before this he may have had to operate

³⁵ Aust, 7/3/1828, 3(c).

³⁶ Aust, 4/11/1828, 1(e).

with a partner to legitimize his activities.³⁷

In other cases the family being supported by the inn was very large. Although only the most respectable of innkeepers were regarded by the authorities as above reproach, the authorities seem to have accepted the fact that the profession could successfully support a large family. The case of Priscilla Small and her children demonstrates both attitudes. Priscilla's first husband died and her three daughters were sent to the Female Orphan Institute. In 1826 an appeal from Priscilla was made to the Orphan authorities for the release of those children. She states that she has remarried Thomas Small, a publican of Kissing Point, and now had six infants living with her. She wanted Mary and Ann to take the children to school at Kissing Point, and could support them. F.P. Keane, the custodian of the Female Orphan Institute, reported that Mary, 13, was short but strong and while not well educated was too old to be in the orphanage. Ann, 9, was backward. He questioned the character of Priscilla stating that her house was a low public house. The request was therefore refused; Mary was sent to Rev. Mr. Cowper, and Ann was left in the School. Priscilla persisted, entering another request in September of the same year and although no verdict was given she must eventually have been successful for, in 1828, five of the Devlin children, including Mary and Ann, are listed with Thomas, Priscilla and her three children by Thomas. Martha seems to have been lost somewhere along the line. The ages of the children ranged from 21 to 2 years so two of the six "infants" mentioned in Priscilla's request included the three Devlin boys aged 21, 18 and 13. The authorities must have eventually agreed with the Small's assertion that they could support the eight or nine children, otherwise they would not have released the children. Their maintenance was no doubt assisted by the proceeds of the 60 acres of land, 44 cattle and 350 sheep that Thomas possessed.³⁸

The uses of children specific to this occupation group are few and similar to those of shopkeeper's children. The Priscilla Small case indicates some of the uses of older children not only within this

³⁷ HRA, I, xii, p248; Aust, 7/3/1828, 3(c).

³⁸ Applications for Children out of the Orphan Schools 1825-29, NSWAO 4/333, f46.

group but throughout all families. It also indicates that this group was, like the shopkeepers, motivated and anxious that their children receive a rudimentary education. Some were willing to go to considerable expense to give this. John and Mary Smith, innkeepers of Newcastle, are listed as having eight children at home ranging in age from 18 to 1 year. Three children are also listed as being at school. Their 14 year old son, James, was a pupil of the Rev. Mr. Walker in Parramatta, while Sophia, 11, and Eliza, 9, were pupils of Mrs. Love of Concord. This is a further indication of the relative lucrativeness of this trade, for although the schools were not of the highest class they were still expensive, and very few families, even amongst the elite, could afford the luxury of having three children boarding at the same time.

This anxiety to educate meant that young children were probably not subject to demanding labour, but because many of the publicans provided accommodation, the daughters especially would have proved an early asset as chambermaids, laundresses and general helps. It is probably for this reason, and not for taking the children to school, that Priscilla Small petitioned for the release of her daughters from the orphanage. Children of 9 and 10 were useful, especially if they had been raised in the right environment. Rachel Iken, 13, and Fredrick Flinn, 11, are both listed as servants to Charles and Louiza Lucas, innkeepers and tenants of Botany. Charles and Louiza were childless and therefore badly in need of labour. Both Rachel and Fredrick came from the families of innkeepers. Rachel was the only daughter amongst four children of William and Mary Iken of Liverpool, and Fredrick was the orphan son of the late James and Mrs. Flinn, innkeepers and dealers of Sydney. Even younger children could be used to mind the bar and alert the innkeeper of the approach of a customer. Elizabeth Smith a widowed innkeeper of Windsor stated that she left a little girl (presumably one of her daughters, Mary, 14, Harriet, 8, Maria, 6, or Eliza, 5) at the bar, who shouted to her whenever a customer desired a drink.³⁹

Of the 134 family groups listed in the census, 108 had children.

³⁹ Aust, 17/8/1827, 3(a).

The majority of families had only one or two children but the other families in the category, reflecting no doubt the greater degree of affluence, were large. The overall average was 3.5 children per family. The better off publicans (those with land) had the highest average family size of any occupational category with an average of 4.4 children per family. 5.7% of all children living within families belonged to families within this occupational group which is nearly four times what one would expect from the tiny 1.5% of the free male population who classified themselves as innkeepers. A huge 70.8% of children lived in families of four or more children (7.6% of all children in families of that size) and 38.3% lived in families of seven or more children (16.7% of all children in families of this size and about eleven times what one would expect).

There seems little doubt that a publican, even in the less affluent country areas, would have been well able to maintain a numerous family. In country areas the publican was more likely to own his pub and some land in the vicinity, thereby avoiding the considerable outlay of James Henry and John Brogan for rent, and compensation for his more modest income. Many publicans, especially in the country, also acted as general storekeepers and most provided accommodation of some sort adding further to their source of income. Seven or eight children must have been getting close to the limit for the smaller publican as several of the larger families shed one or two of their children. John Redmond of the "Keep within Compass" of George St., appears to have loaned his nine year old daughter (one of seven children) to Ed Cattlin, a mariner of Cumberland Street, presumably to assist with the care of his two very young children or to keep his wife company while he was at sea. Joseph and Elizabeth Scott of Minto sent their John, 11, (one of eight children) with A. Little, a single farmer formerly of Minto, but now at Hunters River. One can safely say that the vast majority of children who lived in families in this occupational category lacked few of the essentials for existence.

F. The Overseers

The category of Overseers was restricted to the lower level managers of landholder's properties and does not include convict overseers who were part of the lowest rung of the civil establishment. In the early 1820s overseers' duties were mainly restricted to the day to day management of the farm and its labourers, but in the 1830s their duties expanded, in many cases, to include financial management and planning. Many well qualified young capitalist emigrants took it up for year or two before attempting to establish their own run.

The beginnings of this change can be seen in the 1828 census returns. Only 94 married overseers are listed, 30% of all free males who gave this as their occupation (the third smallest percentage of all occupational categories). Over half the 94 married overseers listed were childless and over a third were childless couples of childbearing age, in many cases obvious newly weds. Even the bulk of the married couples with children were young couples, usually colonial born or free emigrant, with very young children. All this indicates the growing inability of young capital-less couples to gain their own farm. It also indicates the reluctance of employers in agriculture to employ married men with "encumbrances".

Becoming an overseer not only offered the chance of a respectable wage, but experience and the opportunity to commence one's own herd in the hope of one day gaining one's own land. Thomas Ether, with his wife Sarah and their three very young children, was overseer to Joseph Owens of Paterson's Plains but he himself had one horse and 60 cattle presumably grazing on Owens's property. William Eggleton was equally lucky. His master, Amos Crisp of Lower Minto, seems to have given him ten acres of land to cultivate. Few employers were keen to take on married men unless the women were willing to at least contribute to the cost of their ration, so many married overseers also listed their wives' occupation. For example, the emigrant couple Andrew and Agnes Cowen, with one colonial born daughter, are listed as Overseer and Dairywoman to John Dickson of Cooke. No doubt the added income helped to boost the chances of a leased or purchased property.

Those families with children constituted the third smallest group of all the families with children, but they had, on average, slightly more children than the average family (2.9). They had just under the average number of children in families of four or more (52.8%) and just over the average number of children in families with seven or more children (13.2%). They thus maintained their 3.5% share of the child population through all the family sizes.

For those who committed themselves to the occupation the position was one that allowed reasonable security for the medium sized family. Good Overseers on large properties earned £50 per annum with board and lodging. Lesser lights earned at least £30 per annum up to the maximum.⁴⁰ Depending on the value of the board and lodging, and employers were not overly generous in this department especially to the wives and children of employees, the higher rate should have allowed the parents to support quite a large family. With some of the perquisites, such as those of Thomas Ether or William Eggleton, the rewards would have been greater. Family size would have had to be restricted if the family was attempting to save in order to purchase land. Thus in some of the larger families of five or over (and there were few of these so these instances are significant) the children were put into service or paid labour at an early age. Hannah Clark, 12, the second eldest among six children of Daniel and Hannah, overseer to Barron Field, and owner of 14 acres of land in the South Forest, is listed twice; once with her family and secondly as nursemaid to Mrs. Styles of Argyle. William Eggleton, 13, the eldest son of William is also entered twice; once with his family and also as a servant to John Patrick, innkeeper and landholder of Campbelltown who in addition to being his master may well have been his uncle.

The families of this group probably bore the brunt of opening up the land more than any other class, certainly much more than the landholders for whom they worked. Their very remoteness would have offset many of the advantages of their relatively well paid position and probably explains why so few family men were willing to undertake the work. It may also explain why the elder children were sent to service in more hospitable areas, instead of staying to assist their

parents. Notwithstanding this the parents in this group should have been able to support adequately their families. Their children would have been most advantageous to the parents in attempting to maximise their profits or in working the home plot rather than in supplementing a subsistence income. The pressure to force children into employment was thus less and most would have avoided arduous labour until they were reasonably mature.

G. The Householders.

Only 131 family groups are listed as householders, 95 with children. It is difficult to gauge what is meant by the term "householder". It obviously did not exclusively mean the person owned the house in which they lived as several of the single women with children, who made up half this occupational category, were known to be established in their houses through the generosity of "benefactors". Jemima Eager, householder of Macquarie St., for example, was maintained by W.C. Wentworth after her husband had deserted her. She eventually bore him a child in 1830.⁴¹ Other single women were widows, women whose husbands had been gaoled, and deserted wives. Ludwina de Silva Cameron presumably lived off her late husband's pension.⁴² Elizabeth Shelly appears to have been supported by her married son William who must have taken over his father's 700 acre property upon which she ran her 600 cattle.

The occupations of the married couples listed as householders is even more difficult to assess. It has already been noted that some shopkeepers and innkeepers classified themselves as householders. Some landholders also classified themselves as householders.⁴³ Some like Elizabeth Marra of Phillip Street ran lodging houses usually on a small scale with only one or two lodgers. The term was also used

⁴¹ McLachlan, N.D., "Edward Eager (1787-1866): A Colonial spokesman in Sydney and London", HS, 10(46), May 1963, pp431-456.

⁴² ADB, 1, pp196-7.

⁴³ For the sake of this study they were included in the relevant landholding group. Presumably this meant that they were either absentee landholders maintaining a house in the town for themselves while employing an overseer to tend the property, or the husband worked the property while the family stayed in the town.

as a front for those who did not wish to disclose either the extent of their property or the nature of their employment, such as illicit grog shops or houses of ill fame.⁴⁴

A sample of twenty married couples with children was taken from this group and an attempt made to identify their occupations by referring back to the 1825 muster. Four had made no mention of their occupation, five had been, and three were still, convicts, another a labourer (and possibly a convict), two had been publicans, two had been pensioners (presumably military), and the remainder had between them been a landholder, a fisherman (who subsequently married the widow of a cooper), a tailor, a carpenter, a clerk, and a constable. The only conclusion seems to be that the majority of householders were members of the middling class who owned the house in which they lived.

The families in this group were relatively small. 61% of the families had only one or two children living at home with them (compared to the colonial average of 54%). The average family size was 2.4 children. 47% of children lived in families with four or more children, significantly below the colonial average of 53.2%, but only a tiny minority lived in families of seven or more.⁴⁵

It is impossible to assess the income of this totally disparate group, but because the head of the family in the majority of cases was a single woman, immediate doubt is thrown on the ability of these families to maintain themselves. Luckily these women had to support fewer children.

It is safe to say that a significant proportion of the 3.4% of the children of the colony living in families of this group would have suffered some deprivation. They would have been pressed into work at an early age to supplement the income of the family or to relieve the family of the burden of maintenance.

⁴⁴ For example, Mary Driver, householder of York St. was fined \$30 for selling spirits to convicts in 1825 (SG, 10/11/1825, 4(a)) or Ann Kerr, householder of Kent St., was fined \$100 for selling spirits without a licence (SG, 27/10/1825, 3(a)).

⁴⁵ The sample used showed none, but one family of newly arrived emigrants had eight children, three of whom were at school and only five at home. One other family had seven children.

H. The Mechanics and Tradesmen

According to many employers the mechanics and tradesmen of N.S.W. were the best paid but worst behaved of the colonial population. They were most trenchant in their criticism of convict mechanics mainly because they refused to accept the lowly position bestowed upon them by the exclusivist elite.

In that assignment they are very valuable to their masters, from the great scarcity of free mechanics in the colony, and the master consequently finds it in his interest to give wages to those men and to make them comfortable, in order to induce them to labour, for those men know very well their value to their master, and they will labour well or ill according as they are treated by that master; I have known cases not unfrequently where men have thought that their masters did not treat them as well as other assigned mechanics were treated by other masters, and consequently they have misbehaved, and got themselves returned to Government, in hope of being assigned to men who would treat them better.⁴⁶

It is little wonder then that Parry of the A.A.C. said

The Convicts who are good mechanics are generally the most worthless people; they are more drunken; the most valuable in point of skill are frequently the least valuable in point of moral character.⁴⁷

Brisbane wrote, similarly, that the convict mechanics

are generally of the most dissolute habits and, being principally employed in the Towns, have more ready access to indulge in these propensities and of making away with the Articles entrusted to them, which increases the means of their gratifying them more extensively, and which our limited number of Overseers cannot prevent.⁴⁸

Darling came up with the solution of actively encouraging convict mechanics to marry and settle down. Mechanics, according to Darling, were able to maintain families and should thus be encouraged to take up the surplus women from the Factory. Men of the "lower orders" were not encouraged to marry because they lacked both the financial means and moral equilibrium to maintain a family. To achieve this end greater indulgences were to be granted to married mechanics.

⁴⁶ W. Ullathorne, Select Committee on Transportation, 1838, Minutes, p17.

⁴⁷ Select Committee on Transportation, 1838, Minutes, p65.

⁴⁸ Brisbane to Bathurst, 29/10/1824; HRA, I, xi, pp385-6.

The mechanics of good character are generally allowed to sleep out of Barracks, as they can afford to hire lodgings, and those, who are married, are permitted to work on their own account on Friday and Saturday. Unmarried Mechanics are allowed only one day in the week to themselves, and this has always occasioned a number of Marriages.⁴⁹

Besides this indulgence, behaved prisoners could be assigned to their own families and convict spouses were assigned to the same master. This notice really only legitimized practices that had been continuing for some years. John Grounds, a tailor of Parramatta, gave an insight into how the pre-1826 system operated during the inquiry into Marsden's dispute with Douglass. Grounds came to the colony in 1817, aged 16, and sentenced to life. He was sent to work for John Macarthur. He slept on the premises for three or four years and was then assigned to John Cheers of Parramatta. Whilst with John Cheers he was allowed to "exhibit his board", that is, work for himself. At some stage during his stay with Macarthur or Cheers he began to cohabit with Mary Cheers, an orphan school girl of about 15 years of age, and whilst assigned to John Cheers he lived at her premises. They had one child before they were married in 1820-21 and six months after he was legally assigned to his wife. By 1828 he had five children, aged 10 to 3 years, (the eldest two girls were in the School of Industry) and he was still a convict assigned to his wife.⁵⁰

The great majority of mechanics were not convicts but emancipists who had probably used the same techniques as Grounds to attract a wife and commence a family. It is difficult to determine who worked for wages and who were self employed small manufacturers. Trades such as smithing, brickmaking, tanning and ropemaking could involve either piece work at the job site or home manufacture. It appears that the majority of free married mechanics did not contract to work exclusively for a particular employer. This was left to the convict assignees such as Thomas Atkinson, a convict carpenter to Mr. Cordeaux of Minto, whose wife Mary was also a convict at that establishment. Very few of the free mechanics list themselves in the same way as John Elliot an emigrant of 1825. He, with his family, is listed in the census as a

⁴⁹ Govt. Notice 27/6/1826 in Darling to Bathurst 3/9/1826: HRA, I, xii, pp525 & 28.

⁵⁰ Enclosure No.9, Brisbane to Bathurst, 10/8/1825: HRA, I, xi, p744.

blacksmith in the employ of T.P. McQueen, Segenhoe, Durham. It would appear that those who merely listed their trade and then address operated on a daily hire or contract for piece-work basis. They were the majority.

In some cases the trade, especially nailmaking, weaving, hatmaking, shoemaking, ropemaking, candlemaking and tailoring may have involved the establishment of a home industry. As early as 1802 settlers were being encouraged to spin and weave in their own homes by offers of cattle and sheep to the most productive families.⁵¹ The numbers involved must have been small as many of these so called trades, such as candlemaking, soapmaking and sewing for example, were part of each family's domestic duty. Others virtually demanded the establishment of a home industry and were beyond the scope of domestic manufacturers.

While the factory work of industrializing Britain was virtually unknown in Australia, Pinchbeck and Hewitt have argued that factories were only domestic industry grown large.⁵² It was possible that the conditions in cottage industries and the small manufactories in N.S.W. were as bad as the English domestic industries which rivalled the factories for appalling conditions. The rigid authority of the machine in the factory has also been compared to the authority of parents in domestic industry.⁵³ New South Wales may have avoided crowded, dark, cellar factories of England, but substituted the crowded, stiflingly hot, low roofed factories.

Whereas we have a lot of evidence of the extent and type of labour carried out by children of small settlers and agricultural labourers,

⁵¹ HRA, I, iv, p803.

⁵² Pinchbeck and M. Hewitt, Children in English Society, London, 1969-73, Vol I, pp393ff.

⁵³ Eric Hopkins stressed the commanding role of the father in the nailmaking families of England:

As the strongest adult he could (if he chose) work longer than anyone else, and in the nailing family he might be the only adult strong enough to operate the oliver [a spring loaded hammer worked by a treadle] by himself. In this position of authority he would decide the hours for the working week and, subject to the work available, thereby determine the weekly income.

One wonders if John Sparks, nailor of Upper Pitt St., worked and commanded his ten children, aged from 19 to 2 years in the same manner. Eric Hopkins, "The Decline of the Family Work Unit in Black Country Nailing", in International Review of Social History, 22(2), 1977, p190.

there is little direct evidence that young children were engaged in cottage industry at all, let alone to the extent that they were used in England. No doubt the families of the mechanics used many of the techniques available to the labourers' and settlers' families, such as taking in washing, needlework and making straw hats, for maximizing family income. A little needlework is, however, a far cry from the rigid discipline of the lacemaking trade, and making the occasional straw hat does not compare to the squalor and deprivation of the plait-making trade. Both these industries employed, in England, large numbers of children from six years of age.⁵⁴ There is no evidence in N.S.W. of the "schools" which existed in England to teach these sorts of trades. On top of this a lack of raw materials severely restricted both factory and home industry. Weaving and spinning, for example, were restricted to woollen yarn, the flax for linen being of fairly poor quality and cotton non-existent. Home industry had to compete with the Female Factory and Lord's mill who between them provided nearly all the coarse woollen cloth required by the colony. Similarly, too many imported finished articles chased too few buyers to allow the development of wide scale factory, or even cottage industry. Perhaps the closest N.S.W. had to either factory or domestic industry's use of child labour was Simeon Lord's weaving mill at Botany when at the time of the census he employed at least four boys under the age of 14 as weavers.⁵⁵

Some of the less skilled occupations, such as shinglesplitting or)

⁵⁴ Pamela Horn, "Child Workers in the Pillow Lace and Straw Plait Trade of Victorian Buckinghamshire and Bedfordshire" in Historical Journal, 17(4), 1974, pp779-796.

⁵⁵ Some indirect evidence of family industry is available. In 1875 a Select Committee of the NSW Legislative Assembly investigated the employment of children and found that brickmakers made the most use of children. The boys, aged 8 when first employed, acted as "pugger ups" for their fathers, their father's partners, or their elder brothers. The task, from dawn to dusk, involved bringing the clay and straw from the pits (up ladders) to the table of the brickmaker. There seems little doubt that this sort of activity would have been going on in the period under study, for many of those interviewed stressed that their fathers had done the same thing to them and it had done them no harm. Select Committee on Employment of Children, 1875-76, pp881-931. It is reasonable to assume, then, that James, 15, Thomas, 11, and William, 9, children of James and Ann Morley, brickmaker of Newcastle, would have been hard at work either as pugger ups or as brickmakers. Their younger brothers and sister were probably too little to be of much use.

sawing, required considerable strength and could not be carried out as a domestic industry. The very young children would have been of little help to their wage earner, while boys of 10 years and over would have been of some use. Even so they probably performed only the light tasks such as stacking, sorting and cleaning the products and job site. John Sunderland, 13, worked with his brother George as a sawyer at Richmond, for example, but he seems to be about the youngest boy specifically mentioned as being engaged in this type of heavy labour. Alexander Harris mentions one widowed cedar-getter who

had brought up these two little boys in the wide brush all by himself, except that he always had a mate for his work. Consequence was, that the little chaps at nine and ten years of age could take their axe and fall a moderate sized tree as well as any sawyers labourer in the brush.⁵⁶

One wonders if this is William Davis, entered in the 1828 census as a sawyer of Illawarra, with his sons William, 14, and Joseph, 11.

The more skilled occupations demanded prolonged apprenticeship before the child was of any real help. During that apprenticeship the first couple of years were spent more as a general labourer than as a useful assistant to the tradesman. Even so, few boys or girls less than twelve years of age were taken as apprentices. The value of children below that age to the great majority of mechanics, other than domestic help, was therefore limited. Mothers and fathers moreover began training their children to follow their trade at an early age even if only at the lightest tasks. In 1823 the following notice appeared in the Gazette:

Joseph Davis, the son of the late Joseph Davis, who has been dead a few days, respectfully informs the kind Inhabitants of Sydney, that he will carry on his Fathers Business in the Cutlery Line, as usual, on the most Moderate Terms. The Advertiser craves the Patronage of the Public, in Behalf of five Brothers and Sisters, who depend on his juvenile Exertions for support.

The state of the 1821 and 1825 musters and the 1828 census does not allow an entirely accurate reconstruction of this family. It would appear that the Joseph of the advertisement was only 11 years old when he took over his father's trade in 1823. This probably meant that his mother managed the business while he attempted to follow the trade. Not surprisingly they were unsuccessful in keeping the

⁵⁶ A. Harris, *Settlers and Convicts*. (London, 1847), Melb, 1969, p44.

family together.⁵⁷

The census lists 674 married mechanics, less than half (43%) of the free male population belong to this occupational category. 390 of these had children listed with them and a further 188 were young childless couples. Even though 18% of the free male population belonged to this occupational group it contained only 13% of all the children living with their families in the colony. This 13% was still the second highest percentage of children in all occupational groups; bettered only by the small landholders. Mechanics had an average of 2.3 children per family, well below the colonial average of 2.8, and most families had either one (40%) or two (27%) children. Thus 67% (well above the colonial average of 54%) of families had either one or two children. On the other hand one of the largest families in the colony, with twelve children, belonged to this occupational category. Families of more than seven are rare however. 40.5% of children lived in families of four or more and only 9.7% of children lived in families with seven or more children. A sizable proportion of the child population of the colony (9.6%) living in families of seven or more belonged to this occupation.

An earlier part of this thesis dealt incidently with the financial prospects of this group, maintaining that the single income family could afford to support only three or four children. More precise figures show that some of the better paid mechanics could have supported a larger family. Many could earn considerably more than the prevailing day rate by

⁵⁷ In the 1825 muster seven children are attributed to the family although no mother is mentioned. They are Joseph, 13, Richard, 11, Joseph, 10, Elizabeth, 10, Charles, 9, Philip, 6, and Edward, 1. It is obvious that one of the Josephs is a foreigner and presumably it is the 10 year old, as Joseph Jn. of the advertisement was the eldest child. The 1828 census lists Charles, 12, and Edward, 6 (which means Edward was 3 in 1825, not 1) as lodgers with Elizabeth Young of Harrington St., their mother. Richard, 15, was a labourer to Charles Pinkstone, a publican of Cambridge St., and Elizabeth, 11, was a servant to Samuel Cave of Clarence St.. Philip was not mentioned. A Joseph, 16, is listed as a labourer to Isaac Mills of Wilberforce, and a James, 16 (who is not mentioned in 1825), was listed as a carpenter to Henry Kettle of Pitt St.. It appears that James is the Joseph Jn of the family in question and the 16 year old (the 10 year old of 1825), was the child of Joseph and Marv Davis, a farmer of North Richmond. SG, 2/10/1823, 4(c).

contracting, doing piece work, or engaging in speculative enterprises.⁵⁸ Even amongst those restricted to day rates top class mechanics in trades that were in demand could earn from 7/6d to 10/- per day, whilst most others earned from 5/- to 7/6 a day and a few semi-skilled earned less than 5/- a day.⁵⁹

It was often pointed out that colonial wages were only equal to and not better than those paid to good English mechanics, but equally often the argument was that the wages were higher, but then so were the costs.

201 All agreed that the real advantage in N.S.W. was the continuity of

⁵⁸ Alex. Harris gives some idea of the comparison in earnings possible as a paid employee in a lumber yard and as a self employed cedar getter. Op.cit., pp111, 104 and 106.

⁵⁹ In a despatch from Brisbane to Bathurst 29/10/1824 (HRA, I, xi, p388) the wages paid to various tradesmen are listed. On the basis of this the 52 trades given by the heads of the families were divided into three groups. The first earned more than 7/6 per day, the second between 5/- and 7/6 per day, and the third less than 5/- per day. This list was compared to a more comprehensive list of mechanics' wages prepared by Bourke. Bourke to Goderich 24/9/1832, HRA, I, xvi, pp758-9 and "Return showing the Average Wages of Mechanics etc." Enclosure, Glenelg to Legislative Council, No.323, 20/5/1837: NSWLCV&P, 1838, pp10-12. The tendency of the second list was to lump most into the centre group. According to the second list the asterisked occupations belonged to the centre group. This could reflect the increased demand for skilled tradesmen in the later period but may also indicate that Brisbane's estimate was a little low.

<u>Group A</u>	<u>Group B</u>	<u>Group C</u>	<u>Labourers</u>
Boatbuilder*	Bookbinder*	Farrier*	Labourers
Brassfounder*	Blacksmith*	Toymaker	Gardener
Brazier	Cooper*	Buttonmaker	Mariner
Bricklayer*	Harnessmaker*	Shoemaker*	Laundress
Carpenter*	Locksmith	Tailor*	Horsebreaker
Ironfounder*	Plumbers*	Turner*	Miner
Millwright	Shipwright	Hatter*	Shearer
Miller*	Sawyer*	Wheelwrights*	Fisherman
Gunsmith*	Stonemason	Engravers*	Quarryman*
Pumpborer	Painter*	Cutler*	Carter
Shingler*	Glazier*	Sailmaker*	Limeburner
Tinman*	Coachmaker	Tallowchandler*	Fencer
Brickmaker	Silversmith*	Upholsterer*	Coachman
	Whitesmith*	Mantuumaker	Boatman
	Ropemakers	Carver	Waterman
	Chinaman	Guilder	Saltboiler
	Cabinetmaker*	Compositor	Herdsmen
		Hairdresser*	Bullockdriver
		Weaver	
		Tanner	
		Seamstress	
		Nailor	
		Flaxdresser	

employment for even the least skilled artisan.⁶⁰ This was of immense advantage to a family man, removing the uncertainty of family maintenance and one of the major obstacles to a large family.

Surprisingly the wage differences between the various categories of mechanics had very little effect on the size of the families. The indications are that the better paid mechanics had only marginally larger families than those of the lower paid but were better able to support them.⁶¹

In fact a wage of more than £117 per annum, the first pay category, should have allowed maintenance of a family of eight or nine children. The wage of those in the second category should have allowed them to support at least three children while that of the lowest paid would have been insufficient to support more than three. William Fielder, shipwright of Cambridge St., should have been able to support his wife Maryann and their eight children on his 7/- a day although it was probably a tight squeeze. It is hard to see how his wife or any of his children, except the eldest girl, aged 13, could have been of much use in supplementing the family income. This family was unusual for most families

⁶⁰ D. Taylor, Committee on Immigration, 1838, Minutes, pp95-6.

⁶¹ The average size of the families, for example, was 2.4 for the first and highest paid group, 2.3 for the second, and 2.2 for the third. However, when the proportion of children in families of different sizes within the three wage categories are examined some noticeable differences appear.

	Proportion of children in families with less than 4 children	With from 4 to 6 children	With 7 or more children
A Wages over 7/6 p.d.	45.4	25.8	28.8
B Wages 5/- to 7/6 p.d.	64.8	35.2	—
C Wages less than 6/- p.d.	67.4	32.6	—

They are not quite as dramatic as this however because of the skewing effect of one family of twelve in Category A. There would probably also be a tendency for the children of the lower paid mechanics to leave home earlier reducing the proportion of larger families in Category C.

as large as this had a much wider age range. Some of the older children were usually into employable age groups. John and Margaret Sparks, for example, were less fortunate in terms of a wage to support their family of nine children. John earned a nailor's wage of about 4/10d per day or just over £75 per annum, barely enough to support three children. The nailor trade, however, was one that could operate as a family enterprise and his family was old enough, from 19 to 2 years, to be of great help. Their combined income probably exceeded the £75 per annum by a substantial amount.

The difficulty of attempting to judge the economic viability of families from the flimsy evidence available through these records is well illustrated by the Smith family of Pitt Street. John was a shoemaker who should have earned between 4/- and 6/- (£62 to £93 per annum) in 1824, and should have averaged 5/7 per day (£87 per annum) in 1836. On this wage he should have been struggling to support his wife and six children, aged from 12 to 2 years, although the older children probably would have been of some help. Contrary to expectation he must have been most capable of supporting his family for listed with him are two female convict servants.

When the trade of the parent did not allow cottage industry or family participation the children were sometimes forced into independent employment to relieve the family of their maintenance. The Gorman family of Parramatta, for example, is listed in the 1825 muster as having eight children aged 18 to 2 years. It must have been exceptionally difficult to support such a large family on the 5/- a day Thomas Gorman earned as a wheelwright. Thus it is not surprising to find in the 1828 census that only two of his children, the two youngest, are listed at home with him. Three, the eldest boy, John, 18, Eleanor, 16, and Margaret, 6, are lost in the census. Eleanor had been remanded (fate unknown) while still 14 for theft.⁶² Catherine, 12, was a servant to Ester Hendle of Parramatta; Elizabeth, 15, was a servant to J. Bardsley of Parramatta; and Ann (or Maryann), 22, was the cohabitant of Samuel Fowler of Parramatta. The family had virtually disintegrated no doubt partly due to the economic pressure placed upon Thomas, and the family's poverty.

⁶² SG, 12/1/1826, 3(a).

The general opinion among contemporaries that a mechanic could not support, in comfort, more than four children seems to be correct. While most families within this group were smaller than this, a sizable proportion of the children in this occupational category, hence a sizable proportion of the children in the colonial child population, belonged to families with more than four children. It is possible then, that a large number of these children lived in some financial distress. This financial stress, coupled with the home industry nature of some of the trades, probably forced one or two children from a minority of families into the workforce at an early age.

I. Labourers

Over 37% of the free male population were labourers, but only 20% of them were married. The chances of a labourer getting married were slim (less than five to one) but the chances of a country labourer were even more remote (nearly half that of the city labourers).⁶³ It is not surprising then that families with a labourer as their head represent only 12.8% of all families with children; nearly three times less than one would expect. In reality the number was probably greater than this because many small landholders, especially those on less than 30 acres, would have been labourers as well as small landholders. In fact many small landholders, like Pryce Morris of Portland Head, listed themselves as labourers, but for the sake of this study were included in the small landholders. Pryce had 30 acres, six cattle, and his wages as a labourer on which to support his family of five children aged 9 years to six months. Many more country labourers had cattle which, in the absence of their own land, they presumably ran on the common, crown-land, or a friend's property. Bryan Mar, labourer at Bringelly, had no land but twelve cattle. William Hearn, a convict labourer of Airds, also had three cattle. This benefit was not exclusive to country labourers but the greater proportion were country dwellers. Laurence Moore, labourer of George St. (another convict apparently assigned to his wife) had three cattle.

⁶³ This disparity is immediately apparent from the census figures. Town labourers (mainly Sydney and Parramatta) represented only 9.8% of the free male population while country labourers represented 27.6% of the free male population. Yet married town labourers made up 9.1% of all married men while country labourers constituted only 7.7% of all married men. Put another way, town labourers represented only 26% of all labourers but married town labourers 55% of all married labourers.

People listed as labourers included some semi-skilled occupations such as mariners, miners, and quarrymen who received a wage near 5/- per day, the top of the range for labourers. It also included piece workers such as fencers and horsebreakers who could make good money, if they were good workers, but the work was irregular and often necessitated leaving the family. It also included some self employed workers such as limeburners, fishermen, and boatmen whose income was very dependent on their skill and sobriety. Some men who classified themselves as labourers were in fact government officials or belonged to a higher status occupation. Peter Howell, for example, listed himself as a labourer but he was Inspector of Outgangs under the Director of Public Works on a salary of £45/12/6. He is also an example of the low class entrepreneur using the status and wages of his position to best advantage. His wife, Henrietta, is listed as a washerwoman and living with him are nine convict women. It appears he and his wife carried on one of the biggest laundry services in Sydney.

A minority of labourers were convicts. Some were apparently assigned to their wives and operated on the daily labour market. Ann Richards had followed her husband to the colony with three of her children in 1825, three years after her husband, and bore two more children in the colony. Ann worked as a laundress to supplement the family income, no doubt assisted by her three eldest daughters aged 17 to 8 years. Other convict labourers were still assigned to a master who apparently supported their assignee's family, no doubt in return for labour from the other members of the family. Patrick Hagan who arrived in 1823 on a seven year sentence, was an assigned labourer to Charles Driver, a grazier of Petersham. It appears, however, that Hagan lived in Castlereagh St. with his wife Mary and three young boys aged 10 to 6 years, all of whom came to the colony in 1828. What Hagan actually did, how he laboured for Driver while living in Sydney, and how his family survived is hard to fathom.

It is difficult to know if the wives of those convicts married to free emigrant women, pursued the husbands using their own funds, or arrived as a result of the government's policy of rewarding good convicts. If it was the latter, one could argue that families reunited under this rule were regarded as having some chance of survival, for economic viability was one of the criteria determining family reunion.

The government's desire to discourage marriages amongst this class of men has already been mentioned. Those convict labourers who married or received their families as convicts must have been of the better or more sober class, at least as far as the masters were concerned, and in a better position to support a family otherwise the marriages would not have taken place. On the other hand some of the families were commenced when the convict held a ticket of leave and a subsequent "crime" had led to the cancellation of the ticket and presumably straightened circumstances for the family. Both Samuel and Ann Hughes were convicts, and, with their two very young children, were listed as labourer and servant to Richard Jones of Black Creek. Presumably they were meant to support their children on their rations, which, theoretically, was all they were entitled to receive. In 1825 Samuel is listed as having a Ticket of Leave and working for John Oxley at Minto, so he presumably got married when he held this Ticket, and was entitled to a wage, but lost his privilege and was reassigned leaving his family in a very precarious position.

The majority of the labourers were free. They received, in 1824, between 2/6 and 5/- per day, and, in 1836, an average of 3/3 per day. Agricultural labourers could earn between £15 and £20 per annum with board and lodging. Rations were provided for their families, at a reduced rate to that given to the wageearner, but often only in return for some menial labour by the wife and older children around the master's house or farm. A single wage, with or without rations, could have supported only a family with one or at most two children. T.E. Manning described one family arrangement in 1838.

They had 9 children two of whom, females, went into Service in Sydney, and the rest I engaged at my farm at Vermont, paying to them in money altogether £45 per annum, with 4 rations, which I estimate to be worth £15 each, and a cottage, rent free. I had no proof that the largeness of the family rendered these persons more anxious to please or willing to work; in fact the return of labour I received was quite inadequate to the expense I incurred for them.⁶⁴

On Manning's reckoning, and that should be treated with a fair measure of scepticism, these benefits and wages would have amounted to the equivalent of a wage of about £110 per annum. This would have been quite

⁶⁴ Committee on Immigration, 1838, Minutes, p79.

sufficient to support a family of seven children although it is obvious that from the original family of two parents and nine children, the two adults and four or five of the children would have been at work. This was probably not typical. Not only did it appear to be a more mature family than normal but it used several income supplementation techniques, especially service, spurned by many others.

Fortunately over 60% of labourers's families had one (34.2%) or two (26.3%) children and could probably have been supported by the wage of the father. These families, however, contained only 34.8% of the children in this occupational group, therefore, the majority of children belonged to families whose viability depended on schemes to supplement the heads' income or to minimise expenditure. 12.7% of all family children in the colony belonged to families in this occupational group; the third largest proportion. 41.5% of children belonged to families with four or more children, (9.9% of all the children in the colony living in families of that size) while 9.9% belonged to families of seven or more (a substantial 8.1% of the children living in families of this size).

Interestingly the families of labourers, with an average of 2.5 children per family, were slightly larger than those of the better off mechanics, but the number of very large families was smaller. The reason could be the advantages to country labourers (who had an average of 2.6 children compared to city labourers with 2.4) of cattle ownership and other methods of cost minimisation. Most mechanics and tradesmen were city dwellers where the costs were higher and family size more in line with the city labourers.

There are many indications that families larger than two children could be supported by supplementing the labourer's wage and minimizing their expenses. The most popular was the taking of piece work by the wife or children. This is explicitly acknowledged in some families where the wife's occupation is listed along with that of the husband. Another technique was to minimize costs by sharing accommodation or taking a lodger. In many cases the families in this group had no other option than to put older children, especially girls, into service. The instances of children belonging to families in this group who were in service is higher than average. A surprisingly large number of the

bigger families belonging to this group appears to depart from the normal two year cycle of childbirth with more widely spaced children. In these families the children either died in infancy, a strong possibility given the low status of this group, or the parents deliberately spaced their children. This allowed the wife to earn a wage between children, and allowed some of the children to reach an age where they could become independent wage earners, or family aides, before the family got too large.

There is little doubt that many children in this group belonged to economically and socially deprived families, especially the 41.5% of children belonging to families of four or more children. The schemes to maximise income and minimise expenditure depended to a large extent on the sobriety and goodwill of all members of the family and meant in many cases the breaking up of the family unit. The necessity for both parents to work long hours probably meant a lack of parental attention and affection. Most children probably received no education and once they reached the age of 8 or 9 would have been expected to make a wholehearted contribution to the family income as unpaid domestic help (freeing the parents and older children for paid employment), as unpaid assistants to either parent in their employment, or as paid employees of some extrafamilial employer.

J. Servants

The servants are the last group for which at least an outline of family viability can be gained. The distinction between servants and labourers is dubious as the census returns often interchange the terms. Ticket of leave man John Beavin (or Bivin), and his 9 year old son, are listed twice; once as servants and second as labourers to the same master. The term "servant" probably indicated domestic workers, such as houseservants, housekeepers and liverymen, or contract workers bound for a considerable length of time to the employer. All the emigrant families employed by the Australian Agricultural Company, for example, were classified in the census as "servants". It was also used extensively for heads of two parent families who were convicts assigned to a master other than their spouse. If the A.A. Co. servants are removed from the sample over a third of the families had at least one convict parent, most of them being the head of the family. Finally about 40% of the heads of families with children in this category were

women and a great number of these were also convicts.

It was impossible to understand how some of the families in this group continued to cling together, especially the convict families where the master was only obliged to offer rations. Isaac and Mary Williams, for example, were both convict servants of John Wood a settler of Bringelly. They had four children aged 6 years to two months, to support on nothing but their rations. The only possible explanation is that their master maintained the children in addition to the parents. John Wood is listed minus a wife, but with four children aged 11 to 4 years, so he may have been happy to have another family unit, even if it was convict, close at hand to help in the care of his children. There is little doubt that his 4,300 acres would have adequately supported this family group as well as his own.

The maintenance of assigned servants' children as a reward for good behaviour is implicit in some cases and explicit in others. Children were sometimes removed from the orphanage at the behest of their parent's master as a reward for the parent's good behaviour. Mrs. Street of Bathurst wrote to the Female Orphan School in May 1826 requesting the return of Catherine Dobbins to her convict mother. Her mother was Mrs. Street's assigned servant, a nurse, and an excellent one deserving the reward of the return of her 6 year old daughter. Mrs. Street would see to Catherine's continued education. Mr. Keane, however, argued that although the girl was healthy she was too young and too stupid (she could not spell and was in the 4th class) to be allowed to return. He would only allow it if Mrs. Street was willing to apprentice the child for seven years. This was obviously unacceptable to both Mrs. Street and Catherine senior (whose sentence would have expired before the seven years were up), for in 1828 the status quo prevailed.⁶⁵

In some cases it is obvious that the children were not to be maintained by the parents but were to take their place in the household of the master as servants. In November 1828 Henry Brooks, through his attorney James Norton, applied to have Isabella Hughes, 8, withdrawn from the F.O.I. Ann Goldie (alias Hughes) was transported and arrived in 1827 with her four daughters. The children were transferred

⁶⁵ Applications for Children out of the Orphanages, 1825-1828, NSWAO, 4/333, f23 et seq.

to the Orphanage. Ann's husband, Barney (or Bernard) Hughes, was also a convict and both were assigned to Henry Brooks. In 1828 Mary Hughes, 11, is listed as a servant to Norton. Elizabeth and Isabella Hughes are still in the orphanage and Margaret seems to have disappeared (except there is an unexplained Henry Goldie (alias Wright) listed with Ann). The application is very vague, possibly because Mary Hughes was originally released to Brooks and should not have been in Norton's house, but it appears that Brooks and Norton were acting at the behest of the parents and that the girl was to be employed as a servant.⁶⁶ The parents would, however, have greater access to the children if they were in service than they would if they remained in the orphanage and they would also have less difficulty reuniting the family when the parents' term expired. One wonders, too, how many of the children were supported by masters of female servants because they were the fathers of the child or because they in some way felt responsible for the children of their convict servants.

Those servants who were free could not expect the same moral obligation to motivate their masters. The problem of supporting a family must have been great, especially for the single women. Male servants received, at the absolute best, £20 per annum with board and lodging. Richard Boyd, groom to John Macarthur of Camden, had three small children to support apparently without the aid of a wife, on his wage and ration; a task that appears impossible. Others, like Benjamin and Elizabeth Baker, both free servants to Richard Brooks of Illawarra, at least had some chance of supporting their two children on a combined income of about £25 to £30 per annum, their rations, and the produce of their four cows. The A.A.Co. servants, in reality agricultural labourers, were probably a little better provided for. Many had at least one child old enough to be able to work for its own maintenance and possibly even supplement the family's income.

Most women servants received only about £8 to £10 per annum with board and lodging.⁶⁷ This would hardly have been enough to support

⁶⁶ Applications for Children Out of the Orphan Schools 1825-1828, NSWAO, 4/333, ff415 et seq.; Applications for Admission into the Orphan Schools, 1825-1828, NSWAO, 4/330; Female Admission Book 1817-1832; NSWAO, 4/350, nos 122-125.

⁶⁷ Bourke to Goderich, 24/9/1832, HRA, I, xv, p158; Bourke to Secretary of State, Enclosure No.I, 8/5/1835, HRA, I, xvii, p726.

the woman, let alone any children. Some were lucky and procured fairly lucrative positions.⁶⁸ Others had a child old enough to be virtually independent and certainly capable of contributing towards its own maintenance. Others appear as if they might have been married but were forced to live apart from their husbands in order to obtain employment or because of the nature of the husband's work.

Servants represent only 6.7% of the free male population. Families with servants as their heads represent only 3.8% of all families with children. Although the figures indicate that 22% of free males listed as servants were married the actual proportion was probably much less because nearly a quarter of the families had convict men as their heads. Only 93 family units are listed, with an average of 1.9 children per family, the smallest average of any occupational category. The average number of children per family would be significantly lower but it is inflated by the A.A. Co. servants' families who average about three children per family. The majority of families (57.9%) had only one child, and nearly three quarters of the families had only one or two children (compared to the colonial average of 54.9%). Only 37.8% of children (compared to the colonial average of 53.2%) lived in families of four or more children and if the A.A. Co. labourers are removed, the proportion would be close to insignificant. This 37.8% of children represented a tiny 1.7% of children in the colony living in families of that size. No families in this group has seven or more children.

Because so few of the families in this group had more than two children, the chances of maintaining the family were greatly enhanced. The scene may have been brightened, however, by excess children being put into orphanages or into service. There is little doubt that parents, and often the State in its role as parens patriae, constantly employed these techniques. The evidence indicates that all the members of these families had to engage all their wits and talents in order to sustain the family, even if they could not maintain it as a co-residing unit. For a large proportion of the children, care, affection and education would have been minimal, with work, drudgery, and deprivation a constant companion.

⁶⁸ Lucinda Watson, housekeeper to Governor Darling, received £45/12/6 per annum, plus her rations. None of her children were living with her.

AGE STRUCTURE 1828

The ages of most people were recorded in the census returns. The children's ages, where given, were recorded and tallied, as were all the women. The few whose ages were not given were distributed according to the proportions in each age group. The men were too numerous to individually tally so a sample of 1,576 men was selected of whom 1,214 had a listed age. 818 were convicts; 802 single and 16 married (51.9% of the sample compared to 52.5% of the male population). The ages of only 515 of these men (62.9%) were listed. 84 were Ticket-of-Leave men; 70 single and 14 married (5.3% of the sample compared to 5.4% of the population). The ages of 82 were listed. Finally 674 were free men; 483 single and 181 married (42.8% of the sample compared to 42.1% of the population). The ages of 633 were listed.

The known ages of the convicts were then used as a base to determine the proportion of convicts in each age group. The convicts with unknown ages were then distributed according to these proportions, the married convicts were added and new proportions determined. The new proportions were then multiplied by the listed number of convicts in the colony to arrive at the approximate number of convicts in each age group. The same method was used for the ticket-of-leave men. Because the ages of the married free men were higher, on average, than the single free men they were kept separate until the unknown ages were distributed. The same method was followed thereafter. The total of convicts, ticket-of-leave men and free men in each age group was added to gain an approximate number of men in each age group. The calculations are presented below.

		UNKNOWN	14-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60 +	
CONVICT	SINGLE	303	38	137	112	76	48	37	23	15	6	7	802
	PROPORTION KNOWN AGES		.076	.274	.224	.152	.096	.074	.046	.03	.012	.014	
	UNKNOWN		23	83	68	46	29	23	14	9	4	4	303
	DISTRIB. TOTAL PLUS MARRIEDS		61	220	180	122	77	60	37	24	10	11	802
			61	220	184	130	80	60	37	25	10	11	818
TICKET OF LEAVE	PROPORTION IN AGE GRP MULTIPLIED BY 12,835		.0746	.2689	.2249	.1589	.0978	.0733	.0452	.0306	.0122	.0134	
			957	3452	2888	2039	1256	941	580	393	157	172	A
	ALL UNKNOWN	2	-	1	12	19	12	12	9	10	2	5	84
FREE	DISTRIB. PROPORTION IN AGE GRP MULTIPLIED BY 1,317		-	1	12	20	12	12	10	10	2	5	84
			-	.012	.143	.238	.143	.143	.119	.119	.023	.059	
			-	16	188	313	188	188	158	158	30	78	B
	SINGLE	34	76	39	64	69	38	38	30	26	24	45	483
	PROPORTION KNOWN AGES		.164	.086	.142	.154	.085	.085	.066	.058	.053	.100	
FREE	UNKNOWN		6	3	5	5	3	3	2	2	2	3	34
	DISTRIB. PLUS MARRIEDS		83	51	102	113	68	59	51	45	39	63	674
	PROPORTION IN AGE GRP MULTIPLIED BY 10,283		.1231	.0757	.1513	.1677	.1009	.0875	.0757	.0668	.0579	.0935	
			1266	778	1556	1724	1038	900	778	687	595	961	C
	TOTAL IN AGE GROUP		2223	4246	4632	4076	2482	2029	1516	1238	782	1211	24,435

AGE STRUCTURE 1841

The census gives the following age groups: Under 2 years, 2 - 6 years, 7 - 13, 14 - 20, 21-44, 45-59 over 60 years. To obtain a reasonable idea of the population structure the number of persons in the 21 - 44 age group and the 45 - 59 age group were divided by five and three respectively thus giving average quintile age groups.

APPENDIX C

AGE STRUCTURE OF N.S.W.

1828 & 1841

		FREE EMIGRANT		COLONIAL BORN		EMANCIPIST		PARDONED		TICKET OF LEAVE		CONVICT		
		M	C	M	C	M	C	M	C	M	C	M	C	
MALES	FREE EMIG	WC	391	3	107	4	25	8	-	-	2	1	6	1
		YC	76	4	27	2	4	3	-	1	-	1	12	6
		AC	45	1	-	-	23	8	5	-	1	-	1	2
	COL BORN	WC	34	3	174	4	7	1	-	-	-	1	7	-
		YC	9	1	52	2	2	-	-	-	-	-	5	3
		AC	-	-	-	-	-	1	-	-	1	-	-	-
	EMAN	WC	94	13	136	9	199	51	7	2	10	4	65	21
		YC	16	7	42	9	63	31	1	-	6	2	81	31
		AC	7	2	-	-	130	70	5	3	3	5	17	5
	PARD	WC	38	2	43	2	82	28	12	1	3	-	9	4
		YC	5	1	5	2	8	5	2	-	-	1	2	2
		AC	9	4	-	1	61	37	3	1	3	1	5	4
	ToL	WC	67	-	60	2	52	8	2	-	6	5	23	8
		YC	7	1	12	1	19	8	1	-	2	-	31	9
		AC	3	-	1	-	28	28	-	1	6	5	10	2
	CONV	WC	73	2	41	2	27	5	1	-	-	2	22	2
		YC	14	-	10	3	5	3	1	-	2	-	27	3
		AC	7	1	-	-	6	4	1	-	-	1	4	-
FEMALES														

CIVIL STATUS OF MARRIED COUPLES.

1828

M = Married or apparently married.

C = Cohabiting or apparently cohabiting.

WC = Families with children living at home.

YC = Childless couple: woman of childbearing age.

AC = Childless couple: woman beyond childbearing age.

APPENDIX D

CIVIL STATUS OF MARRIED COUPLES

1822

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