

EARLY RAILWAY MANAGEMENT LEGISLATION IN NEW SOUTH WALES

THE ORIGINS OF A PIONEER PUBLIC CORPORATION

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INTRODUCTION

Most British contributions to the literature of public administration, while not completely ignoring an earlier order of administrative boards, lay emphasis on the comparatively recent emergence of the public corporation. For example, Sir John Anderson (later Lord Waverley) described this in 1950 as "probably the most striking development in administrative technique of our generation"¹; and Professor W. A. Robson concluded, after surveying the nationalising statutes of the Attlee Labour Government, that the public corporation was not only a new organ of public administration but also "a political, social and economic invention of high significance . . . destined to play as important a role in the later part of the twentieth century as the joint stock company has played during the last 100 years".² As early as 1932, however, when Attlee himself was losing faith in ordinary departmental methods for the management of the Post Office,³ and when Herbert Morrison was devising his scheme for an expert and largely autonomous authority for the London passenger transport services,⁴ the Australian, Sir Frederic Eggleston, was lamenting that "British political thinkers who believe that social problems demand an extension of State action are still groping for an instrument and a set of sound administrative canons, apparently quite unaware that a relevant experience extending over fifty years is available in Victoria".⁵

It seems to be generally accepted that British experience with the public corporation in the modern sense began with Lloyd George's creation between 1908 and 1911 of bodies like the Port of London Authority, the Road Board and the Insurance Commissions. Those marked the first reaction against the almost complete nineteenth-century acceptance of

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¹ Sir Gilbert Campion *et al*, *British Government Since 1918* (London, 1950), p. 6.

² W. A. Robson (ed.), *Problems of Nationalised Industry* (London, 1952) p. 366.

³ Attlee was Postmaster-General in the Labour Government in 1931; he published his views in an article "Post Office Reform", in *The New Statesman and Nation*, 7/11/1931.

⁴ See Morrison's book, *Socialisation and Transport* (London, 1933).

⁵ F. W. Eggleston, *State Socialism in Victoria* (London, 1932), p. 41.

the ministerial department; but there was yet a further partial reversion to the department at the end of the First World War.⁶ By that time the public corporation, even if it was not then described by this name, was widely used in Australia, and it had been applied to a number of State railway systems since the 1880s. This kind of organisation is widely associated today with public enterprise, which poses problems of management somewhat different from those encountered in the traditional "law and order" departments. The early appearance of such enterprise in Australia, *vis-a-vis* the *laissez-faire* of nineteenth-century Britain, would seem to provide a fairly obvious explanation for the early appearance also of the public corporation. But it also meant that in this area of government Australia was unable to follow closely related British leads as she has so often been accustomed to doing. Indeed, even looking beyond Britain, it is doubtful if there were any models of sufficient relevance, for not only did public enterprise come early in the Australian colonies, but also most non-ministerial organisations in the past had operated in less democratic societies. In the invention of the public corporation, therefore, Australia had very largely to shape her own course.⁷

Certainly, the Australian colonies used administrative boards modelled on the patterns of an earlier era of British administration quite extensively before and even after their attainment of responsible government. But most of those boards disappeared in the late nineteenth-century movement in the various colonies towards integrated public services made up of more-or-less standardised departments, and most of them bore little resemblance to the modern public corporation. However, they varied considerably in form and function, and while their numbers were declining other non-ministerial organisations were appearing. Coupled with the virtual impossibility of defining the term "public corporation" precisely,⁸ this makes it difficult to decide just where or when the new device of public administration represented by the corporation in its modern form did originate in Australia; and it is not surprising that even those observers who have attempted an answer and who have restricted themselves

⁶ Robson, *op. cit.*, pp. 16, 242; F. M. G. Willson in *Public Administration* (London), Spring 1955, pp. 55-6, and diagram B; B. B. Schaffer in *Public Administration* (Sydney), Dec. 1958, p. 362 and Sir Arthur Street in *Campion*, *op. cit.*, pp. 157-9.

⁷ All this was underlined by W. M. Acworth in *The Economic Journal*, 2 (1892), p. 631. when he argued that Old World experience with government management of railways was restricted to certain States of continental Europe, especially Prussia, Austria and Russia, and that the relevance of this experience was limited by the fact that their governments were autocratic rather than democratic. Then, as Sir Charles Dilke pointed out, settlers in the United States and Canada preferred to "bribe" private companies to make and operate railways (*Problems of Greater Britain* (1890), p. 195). The result was that "if we wish to know how Government railways are managed by people of Anglo-Saxon race living under a democratic constitution, we must go to the Antipodes for an object lesson" (Acworth, *op. cit.*); and that "Australia tries for us experiments, and we have the advantage of being able to note their success or failure before we imitate or vary them at home" (Dilke, *op. cit.*, p. 185). But in fact Acworth (later Sir William Acworth, Professor of Railway Economics at London University, and an influential figure in railway inquiries and/or reforms in India, Germany, Canada and U.S.A.) was to misinterpret subsequent developments in Australia, and to write off the experiment of the railway corporations unreasonably as a complete failure; and as Eggiston pointed out Britain took little further notice of Australian developments.

⁸ For a relevant discussion, see D. N. Chester in *Political Studies*, vol. i, 1953.

to agencies conducting business-type activities have come to different conclusions. Eggleston, for example, saw the germination of the idea in the original savings bank at Port Phillip which was inaugurated with the appointment of trustees in 1841,⁹ and this verdict was endorsed rather sweepingly by the Commonwealth Parliament's Public Accounts Committee in its 1955 Report on the Australian Aluminium Production Commission.¹⁰ Elsewhere, however, Eggleston described this as an "inferior form of organisation",¹¹ and gave the credit for developing and refining the idea of the public corporation to the generation of Victorian politicians after 1900, particularly Irvine, Swinburne and Watt.¹² Professor F. A. Bland, who chaired the Public Accounts Committee, had earlier stated that it was Sir Henry Parkes who "developed the idea . . . of the statutory corporation" in connection with the reform of the New South Wales railway management in 1888.¹³ And more recently Professor G. Sawyer and T. H. Kewley have asserted that it was in relation to the Victorian State Railways that the first deliberate step was taken in 1883 to develop the public corporation as "a suitable instrument for government in business".¹⁴

The question is one which can have no absolute answer, and all those contributions clearly played their part in the evolution of the public corporation. However, it should be possible with more detailed study of the nineteenth- and early twentieth-century machinery of government to assess which were the more significant contributions in terms of deliberate effort to improve this machinery and major advances in organisational patterns. One thread in this development—the series of experiments in devising a suitable form for the New South Wales Government Railways, as shown through the legislation of 1854, 1858 and 1888—will be examined briefly in this article, with the intention of shedding a little more light on the question and in particular of assessing the relative importance of those statutes and the influences which shaped them in the evolution of the public corporation concept in this country.

I: FROM PRIVATE TO PUBLIC ENTERPRISE

The railway age came in earnest to New South Wales in 1846, in which year a Provisional Committee was appointed and plans begun for the

⁹ E. H. Sugden and F. W. Eggleston, *George Swinburne* (Sydney, 1931), p. 137. This agency was incorporated as the State Savings Bank of Victoria in 1887.

¹⁰ Joint Committee of Public Accounts, 21st Report (Canberra, 1955), para. 19.

¹¹ *State Socialism in Victoria*, *op. cit.*, p. 46.

¹² Eggleston's work in *George Swinburne* and *State Socialism in Victoria*, *op. cit.*, contains many tributes to the achievements of those men. He refers to them again in *Reflections of an Australian Liberal* (Melbourne, 1953), p. 10.

¹³ F. A. Bland in *Public Administration* (Sydney), December, 1941, p. 191; also "Public Administration and its Problems" in C. H. Grattan (ed.), *Australia* (United Nations Series, Berkeley, California, 1947), p. 128.

¹⁴ G. Sawyer, "The Public Corporation in Australia" in W. Friedmann (ed.), *The Public Corporation* (Toronto, 1954), p. 11; and T. H. Kewley in *Public Administration* (Sydney), March, 1957, p. 3. The terms "public corporation" and "statutory corporation" are usually interchangeable.

survey of a route between Sydney and Goulburn. A Select Committee of the Legislative Council reported in 1848 that railways were desirable and that the Government should offer certain inducements to encourage private enterprise. The Sydney Railway Company was incorporated by special Act in the following year, and construction of the Sydney-Parra-matta section began in 1850. The company received Government assistance in the form of a guarantee of interest and a grant of land for the Sydney terminal; but it found that its original estimates were far too low and it experienced great difficulty both in raising further capital and in holding labour against the attraction of the goldfields. There was also much dissension among the leading figures involved, and the company was lacking in both managerial and technical competence. The Government assisted again by direct investment and by bringing 500 labourers out from England; but in order to watch its own growing interest it now insisted upon appointing three out of the six directors (including the chairman), who were to be directly responsible to the Governor.¹⁵ The company's form at this stage could perhaps be likened to the so-called "mixed enterprises", such as Amalgamated Wireless (A/asia) Ltd. and Commonwealth Oil Refineries Ltd., before the Commonwealth disposed of its interest in them in 1952. A second company, the Hunter River Railway Company, was formed in Newcastle in 1853, but it was soon encountering similar difficulties. Despite the Government aid, complete cessation of work was threatened in Sydney in 1854, and a further Select Committee was appointed to consider measures needed to provide for the continuance and extension of railway enterprise in the colony. The Committee reported that the "private companies cannot succeed in constructing Railways without Government aid upon a scale which ought not to be conceded", and recommended that "these important works should be taken up by the Government".¹⁶ With similar developments in other colonies public enterprise was thus forced on unwilling Australian governments.

Once the decision to acquire the undertaking was made, the problem arose of providing management machinery in circumstances which presented few precedents or models other than the private companies themselves. The New South Wales Railways Centenary History may not be correct in claiming that "at that stage in the world's history no (other) Government had so far ventured to finance the construction of railways,

¹⁵ Statute 16 Vict. No. 39. Unless otherwise stated, general historical information in this article is drawn from "Report on the Origin and Progress of the Railways of New South Wales from 1846 to 1864 inclusive" by John Rae, Commissioner for Railways, in *Votes and Proceedings (V & P)*, Legislative Assembly, 1865-6 Session, vol. II; "History of the New South Wales Railways" by F. F. Vogel in *N.S.W. Railway and Tramway Budget* (Journal of the Railway Institute, Sydney), July 1913-June 1914; and the N.S.W. Department of Railways publication, *The Railways of New South Wales, 1855-1955* by Leonie I. Paddison (Sydney, 1956).

¹⁶ Final Report of the Select Committee on Roads and Railways, *V & P*, Legislative Council, 1854, I.

let alone to own and operate them"¹⁷; nevertheless, New South Wales must certainly be included among the pioneers in devising an organisation for the control of a State-owned railway.

II: THE 1854 RAILWAYS ACT, 18 VICT. NO. 40

The 1854 legislation created a three-member corporate body with the title "The Commissioners for Railways", to take over the activities of the private companies and to develop the railway system as a State enterprise. The circumstances of its creation, however, suggest that it was primarily a creature of the irresponsible¹⁸ Governor and Executive Council of the pre-responsible government period, and that the then part-elected Legislative Council gave its hurried consent to the proposal from agreement with the Government about the urgency of the railway situation rather than about the merits of the administrative arrangements involved.

A proposal for the establishment of a Board of Works had arisen from dissatisfaction with the supervision of public works contracts by the Colonial Architect's Department. It was further argued that the various and growing works activities dovetailed together and that the board form of organisation would allow "joint harmonious action".¹⁹ A Select Committee to consider the idea sat during 1853-4, and the Railways Committee of the latter year was content to suggest the vesting of the acquired railways in whatever administrative authority it should devise. But in the context of the contemporary march towards responsible government, the former Committee preferred the creation of a single Commissioner of Public Works, emphasising the need for him to have a seat in the legislature, to vacate his appointment with each change of ministry, and to be in a position "at all times to afford information to the House regarding the Public Works in progress".²⁰ A final decision was postponed until after responsible government was implemented; but in a forceful appeal for further consideration of the board idea in 1856, Governor Denison compromised with the democratic spirit to the extent of proposing that the president of the board should be a member of the ministry, the other members comprising the official heads of the subordinate departments to

¹⁷ At p. 29. That distinction must go to Belgium, where State Railways were established by a law of June 1, 1834: see e.g., Y. Guyot, *Where and Why Public Ownership Has Failed* (New York, 1914), p. 46, and W. M. Acworth, *Historical Sketch of State Railway Ownership* (London, 1920), p. 2. By 1850, Government railways were operating in Austria and some of the German States; and within Australia the first Government acquisition of a railway project appears to have occurred in South Australia, where an authority known as the Board of Undertakers was created in 1851 to complete the undertaking of a private company which had failed in its attempt to construct a line from Adelaide to Port Adelaide: see C. B. Anderson, "Transport—Railways" in *Centenary History of South Australia* (Adelaide, 1936), pp. 212-4.

¹⁸ i.e., except to the British Colonial Office.

¹⁹ See e.g., despatch from Governor Denison to Secretary of State for the Colonies, dated 14/7/1855, in *V & P, Leg. Assembly, 1858, III, p. 795*; and Paper by His Excellency the Governor on Public Works, tabled 7/8/1856, in *V & P, Leg. Council, 1856-7, III*.

²⁰ Report from Select Committee on Proposed Board of Public Works, in *V & P, Leg. Council, 1854*.

provide him with expert advice.²¹ Denison also proposed that the railways should be brought under the board. This was a pointer to the second rather than the first phase in the management of the State railways, although in the event the composite New South Wales authority was a single department under a responsible minister, and it was left to Victoria to create a Board of Lands and Works along the lines Denison had proposed.²²

In face of the imminent cessation of work by the private companies and the disbanding of the labour force which would result, it was clear that the railway question could not be delayed until this discussion was finalised. A Bill was therefore hastily drafted following receipt of the Railways Select Committee Report, embodying the principle of State ownership and the appointment of the Commissioners for Railways. It had a quick passage at the end of the session, and despite the already apparent desire to make departmental heads responsible to the legislature, it provided the commissioners with a large measure of independence. The fact that the initiative was taken by a still largely autocratic Government distinguished the authority thus created from later non-ministerial organisations set up by fully responsible governments and democratic legislatures. The form of this authority sought to preserve continuity in railway operations through retention of the Government side of the old board of directors of the company (*i.e.*, the chairman and two others), and in fact two of the directors on the joint board were appointed as commissioners. The new authority was thus little more than the old board of directors minus the company representatives and under a different name.

The Governor was to appoint three "fit and proper persons" as Commissioners for Railways. In an early expression of the corporate powers of statutory public bodies they were in their corporate name to have "perpetual succession and a common seal", they could "sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended in all courts and places whatsoever", and they were empowered "to purchase and hold lands . . . and also to sell and dispose of the said lands". The commissioners had power to appoint their own officers, and were responsible for "making, completing and maintaining the railways and carrying out the provisions of the Act". One was given the title of Chief Commissioner and was entrusted with the "general management and supervision of the officers of the undertaking and of the works to be carried out", subject to the control of a meeting of the commissioners, of whom two would form a quorum. Only the Chief Commissioner drew a salary; the others served in an honorary capacity. The Governor had power to remove or suspend commissioners, their expenditure was legally subject to the control of the legislature, and they were required to furnish reports of their proceedings and statements of accounts as directed by the Governor. Financial subjection to the general budget has in recent years proved a serious limiting factor in the independence of statutory bodies, but it would seem that those commissioners suffered very few of

²¹ Paper by His Excellency the Governor on Public Works, *op. cit.*

²² Victorian Statute, 21 Vict. No. 31.

the practical restrictions now applied to such bodies. They were, for example, free to fix fares and freight rates, to enter into contracts, and to do many other things now reserved for government sanction in statutes creating public corporations. It is interesting to note that for the first twelve months they leased the completed section of the Sydney line to a private individual to operate; but thereafter they controlled directly both construction and operation of the undertaking.²³

There were many assertions that in this form the organisation was nothing more than a temporary expedient, and it was destined to have only a short life. The pattern was set by the 1854 Act itself, the preamble of which stated explicitly that there had not been sufficient time "to prepare and duly consider a complete measure". A minor amending Act in 1855 (19 Vict. No. 32) referred to the principal Act as a "temporary provision", and a resolution of the Legislative Council in the same year sought immediate action to engage a competent person in England to direct the railways. Governor Denison's correspondence with the home authorities made it clear that he had no fixed idea about the position this expert would fill.²⁴ Further, his 1856 Paper on Public Works included an acknowledgment that "the present Board of Commissioners, two of whom are unpaid, and therefore to a certain extent irresponsible, is evidently an arrangement of temporary character, and has so been considered from the commencement". Denison added that while the Government had no reason to be dissatisfied with the way the commissioners had performed their duties, yet it could hardly be supposed that they would "be able to deal with the many intricate questions which will arise out of the development of the Railway system, questions which will call for constant reference to the Government, as upon the character of the decisions given consequences of the utmost importance may hinge".²⁵ In 1857 the accounting methods of the commissioners came under strong criticism, and ministers of the Crown were appointed to the unpaid commissionerships to enable the Government "to get a knowledge of the financial management of the Railways, and to reform it if necessary".²⁶

²³ In 1862 the Government again invited tenders from persons interested in running the railways under lease, but there was no response and the matter was dropped: see F. F. Vogel, *op. cit.*, 1/10/1913, p. 50. *The Australian Encyclopaedia* comments that the reason for the original lease was that the commissioners "so lacked experience in railway matters" (vol. vii, p. 360).

²⁴ Correspondence relating to the appointment of an officer of the Royal Engineers to superintend construction of railways and other public works in N.S.W., in *V & P, Leg. Assembly*, 1858, III, pp. 795-6.

²⁵ Paper by His Excellency the Governor on Public Works, *op. cit.*

²⁶ Papers in reference to Late Secretary and Accountant to Railway Commissioners, in *V & P, Leg. Assembly*, 1857, II, p. 538. The commissioners who held office under the terms of the 1854 Act were:

Original appointees: Capt E. W. Ward, R.E. (Chief), and Messrs. T. Barker and C. Kemp.

From July, 1855: Capt. G. K. Mann, R.E. (Chief, *vice* Ward resigned).

From Feb., 1856: Capt. J. S. Hawkins, R.E. (*vice* Kemp resigned).

From Feb.-March, 1857: J. Hay and S. A. Donaldson (Secretary for Lands and Colonial Treasurer respectively, *vice* Barker and Hawkins resigned).

From July, 1857: All three commissioners resigned on arrival of Capt. Martindale, R.E., and the new commission consisted of Martindale as Chief and one other, Capt. Ward (previously first Chief Commissioner).

They were instrumental in getting experimental reductions in fares and in reorganising the Secretarial and Accounts Branch, but resigned when Capt. Martindale, R.E., who had been brought from England following the 1855 resolution, took over as Chief Commissioner. Martindale was an experienced and competent officer; but the newly established democracy looked suspiciously on this irresponsible body and sought to make it more amenable to the dictates of popular opinion. Thus in November, 1858, 233 residents of Parramatta complained by petition about the fares it charged, suggested a reduced scale to make the railways popular, and concluded:

"The foregoing statements having been repeatedly pressed on the attention of the Commissioners, and disregarded by them, your Petitioners, therefore, have no confidence in their management, and are further of opinion that the appointment of a responsible Minister for Railways and Internal Communications would contribute powerfully to the development of this great national enterprise".²⁷

That petition has been described as a probable "deciding factor in bringing about a change in the agency of control".²⁸ But in the meantime another Select Committee had considered a proposed Sole Commissioner of Railways Incorporation Bill. It also favoured direct political control, and drafted legislation accordingly subject to certain qualifications about legal status which will shortly be discussed and which resulted in the more-or-less nominal retention of the title of Commissioner.²⁹

The Report of this Committee drew a comment from Martindale which, although without effect at the time, deserves to be noted for its undoubted relevance to the problems which later brought about a return to non-political management, and indeed to much of the more recent discussion about the management of public enterprises. In his 1858 Report,³⁰ Martindale referred to the new Railway Bill under consideration, and proceeded to make some "Observations on the Future Management of Government Railways". He stated that "some apprehensions have at times crossed my mind as to how far it would be possible to work the Railway efficiently as a purely Government Department", and described various methods of railway management, including the "extraordinarily successful" State management in Belgium³¹ and the disastrous failure of attempts in certain American States to operate railways under elected officials. From his own experience and from the lessons of other systems, both private and public, he drew the conclusion that "whatever

²⁷ Railway Management (Parramatta and Neighbourhood—Petition), dated 9/11/1858, in *Journal of the Legislative Council*, 1858, III, p. 571.

²⁸ F. C. Garside in *Public Administration* (Sydney), March, 1940, p. 24.

²⁹ Reports from Select Committee on "Sole Commissioner of Railways Incorporation Bill", in *V & P*, Leg. Council, 1856-7, III.

³⁰ Second Report on the Internal Communications of New South Wales, dated 17/4/1858, in *V & P*, Leg. Assembly, 1858, III.

³¹ According to Acworth, the Belgian State Railways were not able to maintain their early high reputation because of excessive political interference: *Historical Sketch of State Railway Ownership*, *op. cit.*

phase the department may assume, certain things appear to be essentially necessary in order to ensure the safety of the public and the prosperity of the Railways". His requirements included freedom from political bias and from political interference in details, direct and undivided control and responsibility in the hands of the executive officer entrusted with the direction of the system, the sanction of the Government to the executive officer to spend the sums voted by Parliament for working expenses without reference to higher authorities in matters of detail, full control over staff, and the ability to work the system "as if in the hands of a company" (*i.e.*, on commercial principles). But many of those suggestions ran counter to the mood of a country enjoying the first fruits of democratic responsible parliamentary government, and two-and-a-half decades were to pass before such ideas began to make an impression.

III: THE 1858 GOVERNMENT RAILWAYS ACT, 22 VICT. NO. 19

This Act "to make more effective provision" for the construction and regulation of railways by the Government repealed the earlier legislation and substituted for the three commissioners a single "Commissioner for Railways". The Governor with the advice of the Executive Council was to appoint to this office "some fit and proper person . . . who shall notwithstanding the incorporation of such Commissioner and his successors . . . be deemed to be an officer under the Government of the Colony and shall as such be charged with the duty of carrying into effect the provisions . . . (of) this Act subject to such regulations as shall from time to time be made by the Governor with the advice of the said Council". Subordinate officers were now to be appointed by the Governor as he thought necessary, not the commissioner (except that minor appointments might by order be vested in the commissioner; and the Governor was empowered to suspend or remove the commissioner as he thought fit, and to fix charges, make decisions about whether to lease the lines and review all by-laws and regulations. Parliament retained the power to approve new lines, but again it was the Governor who was charged directly with the execution of such approvals.

The subjection of the commissioner was so complete that the reason for his separate statutory existence (unlike many other senior public servants) must be sought on legal rather than managerial grounds. The clue was given in the proceedings of the Select Committee on the Sole Commissioner of Railways Incorporation Bill, and especially in the evidence of Capt. Mann, then Chief Commissioner.³² In regard to management generally, Mann believed that the railway head needed more powers than other departmental heads because, for example, he was frequently required to make very prompt decisions about services. He opposed a suggestion that the minister should be chairman, with a manager and engineer-in-chief serving both as board members and as branch heads separately responsible to the minister. He considered a head liable to be removed with each change of government quite inappropriate to an activity of such technical complexity and, moreover, that it would be a

³² *Op. cit.*

full-time job for a railway expert to co-ordinate the various aspects of the work. But despite those opinions the new democratic spirit served to concentrate power in the minister's hands even to a greater extent than the Act required, and branch heads were soon forging independent lines of control to the minister by-passing the commissioner. On the other hand Mann gave evidence that incorporation of the commissioner would overcome a large number of legal difficulties such as the settlement of claims which might otherwise remain open indefinitely. That view was accepted, the section of the Act dealing with incorporation containing the phrase "for greater convenience in respect of suits and otherwise". This was an indication of that early stage in Australian thinking about public corporations described by Professor Sawyer, *i.e.*, a recognition in the nineteenth-century context that, "owing to the cumbrous procedures connected with Crown property and the strict limitations on Crown liability to legal action", direct association with the Crown of enterprises likely to be involved in daily dealings in property and litigation was most unsatisfactory, and that this disability could be overcome by according the organisation a separate legal personality.³³ But it is important to remember that, while this realisation led to the separate incorporation of the commissioner and the careful prescription of his legal powers, it did not in this case involve any recognition of managerial autonomy. In the words of the present Commissioner, "the suggestion of corporate autonomy visible in the 1854 Act was repealed . . . and firm executive and legislative control of the railways asserted".³⁴

The Act came into force on 1st December, 1858, and Capt. Martindale became the first commissioner. He also assumed control of roads and electric telegraphs, and was accorded the general title of Commissioner for Internal Communications. But that arrangement was a short one, terminating with the division of the combined Department of Lands and Public Works. In October, 1859, the post of Commissioner for Railways was combined with that of Under-Secretary for Public Works, an arrangement which was to endure for many years. As an officer of the Department, the Under-Secretary/Commissioner was fully responsible to the minister, and the commissionership carried no separate remuneration. Martindale remained in the combined office until January, 1861, when he returned to England and was replaced by John Rae. Rae served as Under-Secretary/Commissioner for seventeen years, and was then replaced by Charles Goodchap. Up to 1888, the organisation was regarded as the Railways Branch of the Public Works Department.³⁵

³³ G. Sawyer, *op. cit.*, p. 10.

³⁴ Recent address to the N.S.W. Institute of Transport.

³⁵ When Goodchap was appointed in Jan., 1878, the offices of Under-Secretary and Commissioner were separated, Rae continuing in the former. This followed an investigation by the Secretary for Public Works (*i.e.*, the minister) into the circumstances of a narrowly-averted collision in 1877, when it became apparent that the volume of traffic had outgrown existing working instructions and that some administrative reorganisation was necessary to enable the instructions to be brought up to date and kept under review. But the commissioner remained nothing more than a branch head under the minister: see F. F. Vogel, *op. cit.*, 1/12/1913, p. 118.

During this period the system expanded rapidly. There were 143 miles of track in 1865, by 1880 the total had grown to 734 miles, and another 1,000 were added in the five "great railway years" to 1885. Between 1880 and 1885 the number of passengers increased from 4½ million to 13½ million annually, and the amount of capital invested from £10½ million to £22 million. But this growth brought with it many problems in management, which were eventually to suggest the inadequacy of the existing system of control. This was particularly true of the period of very rapid expansion after 1880. Even at that time it had become "a recognised axiom of government that the colony's finances depended upon healthy railway accounts". But the railway administration was subjected to all kinds of political pressures for sectional ends largely unconcerned with the overall results. For example, new lines were dictated by the strength of local pressures rather than by economic prospects. Various organisations in the electorates counted the achievements of their parliamentary representatives in terms of the roads, railways and bridges they were able to score for their district, and the "log-rollers" endeavoured to dictate construction policy. The railways to the Riverina were built with the aim of reasserting New South Wales as opposed to Victorian influence in that area. Considerations of profitability ran a very poor second. There were costly deviations in routes originally recommended by the engineer-in-chief, and when the lines were constructed there were agitations for all kinds of concessions. The engineer-in-chief fought against heavy odds for heavy durable lines and duplication of important connections; and against expert advice Governments used railway contracts as a means of encouraging colonial industry, despite the higher costs and sometimes inferior quality of the local products.³⁶ Political capital could even be made by stirring up dissension over a seemingly harmless thing like fencing a railway yard.³⁷ Within the railways organisation there was much antagonism between branch heads, who reported individually to a minister not primarily concerned with railway matters; lack of consultation, e.g., between the construction and existing lines sections, led to much useless and wasteful expenditure.³⁸ Further, the railways were over-staffed and inefficient, at least partly through the use of patronage in appointments and promotions. It was alleged that men so appointed regarded the politicians who sponsored them as their protectors, and were able to use this situation to rebut departmental attempts to impose discipline and even on occasions to reverse dismissals.³⁹ There were cases of defalcation of railway funds, and by the 1880s the condition of equip-

³⁶ *The Railways of New South Wales 1855-1955, op. cit.*, pp. 31-2, 37, 70, 75, 79-80, 88, 152.

³⁷ Evidence of James Byrnes, ex-Secretary for Public Works, before Select Committee on the Civil Service: see Committee Report, *V & P, Leg. Ass.*, 1872-3, I.

³⁸ Reports of Department of Public Works Inquiry Board, *V & P, Leg. Ass.*, 1887 (2nd Session), II.

³⁹ Evidence before Select Committee on the Civil Service, 1872-3, *op. cit.* See also Report from the Select Committee on the Disorganised State of the Public Works Dept., *V & P, Leg. Ass.*, 1863-4, V.

ment such as rolling stock and permanent way had deteriorated through want of proper maintenance.⁴⁰

It is difficult to measure accurately from the surviving documents of the period the extent of log-rolling in getting new lines built or of patronage in staff appointments, the two evils which were stressed most consistently as justifying a return to non-political management. Organisations certainly existed for the purpose of exerting pressure in favour of particular localities, and a glance at the railway map will confirm that many of the lines had no real hope of paying their way. Sir Robert Hamilton, Governor of Tasmania from 1887 to 1892, gave the following as the typical attitude of Australian politicians:

"We admit that they were made under local pressure, and that they are not the best that could have been selected; but still, railways can be nothing but an unmitigated good to a country, for they are bound to create a traffic of their own, and they add besides, indirectly, to the wealth of the country in numberless ways which cannot be measured by money".

At the end of his stay in Australia he concluded:

"It is this vague, mistaken idea about railways which, I believe, has had more to do with the construction of useless lines than log-rolling pure and simple".⁴¹

In any case, even when reforms were implemented Parliament retained for itself the power of deciding on new lines, the non-political authority serving in an advisory capacity only.

In regard to patronage Loveday argues of the period up to 1870 that, while this was one of the means of keeping political factions together, there were many real limitations on its use by politicians, and also that the patronage that was exercised was not regarded by inquiries of the period as a cause of inefficiency. Moreover, minor appointments were vested in departmental heads, although not to the complete exclusion of ministerial interference.⁴² Two items from the Parkes Correspondence tend to confirm that as late as the 1880's senior permanent officials remained powerful in such matters. Thus, Goodchap wrote that the Mr. Donohue whom Parkes had recommended for promotion was too old to be suitable. And W. M. Fehon, of Victorian Railways experience, congratulated the new Parkes ministry of 1887 on its proposals for reform for the rather novel reason that these would overcome the weaknesses caused by the existing supremacy of the officials over the minister:

"After a long experience I say emphatically that political management is a mistake, it simply means the permanent heads of branches having everything in their own hands, whilst the minister for want of

⁴⁰ E.g., Report of Board appointed to inquire into the System of Railway Accounts, in *V & P, Leg. Ass.*, 1870-1, III; and Parkes' minute concerning Goodchap's administration, in *Railways Mss.*, catalogued A281, in Mitchell Library, Sydney (This and extracts from Parkes' Correspondence quoted by kind permission of the Trustees of the Library).

⁴¹ R. G. C. Hamilton in *Nineteenth Century*, Aug., 1892, p. 197.

⁴² P. Loveday in *Public Administration* (Sydney), December, 1959.

technical knowledge is entirely at their mercy. It is simply impossible for a political head during the short time he is in office to gain a sufficient knowledge of the business or staff to render himself independent of, or in a position to satisfactorily argue any subject with the permanent officers, who really govern the railways without any responsibility".⁴³

According to Fehon, a strong commission with undivided control and acknowledged responsibility for the operations of the system would be a great improvement. But irrespective of whether patronage was mainly political or mainly bureaucratic — it was most likely a combination of both — the reformed management after 1888 was able to effect drastic reorganisations and retrenchments while at the same time improving the standards of service. And there is little doubt that members of Parliament were being constantly troubled by applicants for government employment. Parkes's biographer recorded an amusing conversation in which a politician advocated payment for members of Parliament on the ground that the handling of various requests for petty favours constituted a full-time job⁴⁴; while a Victorian ex-Minister for Railways complained picturesquely that the minister "must look under his bed each night to see if an applicant for a place is not concealed there".⁴⁵ The debates on railway reform in both Victoria and New South Wales in the 1880's contain numerous assertions of this kind from members of all parties. Politicians were clearly harassed by these applications, but there is also some evidence to suggest that their influence may have been over-rated, not least by those who pestered them for employment.⁴⁶

Perhaps then, the fears of patronage were exaggerated. Such exaggeration may well have been purposely designed by political factions to discredit existing regimes and, in fact, the abolition of patronage became a very popular electoral catch-cry. But it is certain that there was much

⁴³ Goodchap to Parkes, 20/12/1884; and Fehon to Wm. Clarke (Minister of Justice in Parkes' Ministry), 4/3/1887, minuted to Parkes—in Parkes Correspondence, A885, pp. 180-2, and A884, pp. 291-7, respectively, in Mitchell Library. In many cases, such as that of Mr. Donohue, it is very likely that the member involved was well aware of the applicant's shortcomings, and had no desire to see his request granted nor any expectation that it would be—the routine of forwarding and supporting the application being followed through in order that the member could satisfy the applicant (probably a constituent) that he had taken some action in the matter.

⁴⁴ C. E. Lyne, *Life of Sir Henry Parkes* (Sydney, 1896), pp. 480-1. The reported conversation between an M.L.A. (M) and an acquaintance (A) went like this:

M: We must have payment of members; oh! we must have it. Do you know my correspondence is so great that it takes up every moment of my time?

A: I have no doubt of it.

M: Oh! every moment of my time.

A: But you mean to say that you attend to all of it?

M: Attend to it! Of course I do. I have to. First you will get a long letter from a fellow who wants a billet; then another from a rascal who got the sack, perhaps for being drunk—he wants to be reinstated. Then another writes, asking for cancellation of a lease; and another scoundrel wants his lease extended. So it goes on.

A: It really must take up all your time.

M: Take up all my time! My feet are actually sore walking about the Government offices.

A: They must be if you attend to everything that is asked of you in that way.

M: I must attend to it, you know, or I should be simply kicked out at the next election . . .

room for improvement in personnel practices, and whether exaggerated or not, it was probably a good thing that this fear of patronage came to be a driving force in the administrative reforms of the later nineteenth century.

The New South Wales Department of Public Works was expanding rapidly with the development of railways and its many other activities, and by the mid-80s its sheer bureaucratic bulk magnified the consequences of the practices discussed in the preceding paragraphs. It also suggested the need for a division of the department into separate units of more manageable size better able to concentrate on particular specialised functions. The result was that in New South Wales as in Victoria (where the Board of Land and Works had become a politically dominated body) certain political leaders were beginning to advocate railway reform, and from the very nature of the outcry against the existing system it was inevitable that such reform would seek ways of reducing capricious political interference and linking responsibility and control in a strong expert management.

IV: REFORM MOVEMENT IN THE 'EIGHTIES

Suggestions for the creation of an expert controlling body divorced to some degree from normal political processes were current in Victoria at least as early as 1876, when a Bill to establish a railways board was given a first reading. Even at that stage the main cry was against patronage in staff appointments.⁴⁷ Only after a number of attempts had been made did the Victorian Parliament finally legislate in 1883 to create a statutory body, "The Victorian Railway Commissioners", with a large measure of managerial independence. The Victorian legislators were again largely concerned with patronage, but they were also beginning to recognise a companion evil in the "patronage to whole constituencies", or electoral bribery, involved in the "octopus" construction Bills of the 1880s. Victoria had also experienced since 1881 the sensational regime of Thomas Bent as Minister for Railways, which seemed to emphasise the inadequacy of an amateur and temporary manager for a system growing rapidly in technical and commercial complexities. In addition, it had suffered a number of serious railway accidents, which finally precipitated

⁴⁵ J. B. Patterson, in *Vict. Parl. Debates*, 17/7/1883, p. 185.

⁴⁶ E.g., in the debates on the *Vict. Railway Management Bill* of 1883 members of all parties recounted their experience with patronage. One who had been elected only a few weeks had already had 80 applications for government jobs; another claimed he received 30-40 letters a day from applicants; and a third estimated that such applications constituted 75% of each member's correspondence. On the other hand, there were others who argued that the patronage power had been over-emphasised, for although they had recommended "dozens upon dozens" or "hundreds" for appointment, they were sure that only "three or four" or "not more than a dozen" got appointments as a result of their intervention. George Gilder, prize-winning essayist in the *N.S.W. Railways Jubilee Celebrations*, wrote: "Prior to 1888 appointments to the railway service were, with but few exceptions, made by the heads of branches, and submitted to the Commissioner for approval".—*Fifty Years of Railway Making* (Sydney, 1905), p. 44.

⁴⁷ *Vict. Parl. Debates*, 16/11/1876, pp. 1425-7.

action for reform.⁴⁸ In New South Wales there were vague suggestions for a reorganisation of railway management along the lines of a commissioner or board with full staffing control early in the 1870s,⁴⁹ and dissatisfaction with the existing system had increased by the early 1880's with the recognition of the various weaknesses already referred to. But there was no minister so controversial as Bent, and no accident crisis to trigger off decisive action early in the decade. As a contemporary noted, Victoria had acted "before the idea assumed definite form in New South Wales".⁵⁰ The Victorian reform seemed to be what was needed in New South Wales to improve its system also, but the leaders hesitated a few years—the divesting of power over an important government activity from ministers to a body not directly accountable to the electorate was not action that could be expected to find immediate acceptance in a community prizing its democratic rights. Indeed, an English politician visiting Victoria had deplored the undemocratic character of the movement, expressing himself "astonished . . . and completely surprised at what a democratic people were doing in contradistinction to what they were doing at home".⁵¹

But towards the end of "the great railway years" of 1880 to 1885, the extent of railway construction for political ends could no longer be ignored, and the cry against patronage was growing. No doubt sensing the growing public dissatisfaction, Sir Henry Parkes resigned from Parliament in protest following its acceptance in 1884 of a £2 million proposal for new lines, some of which even members of the then Government had previously condemned as "utterly indefensible". Parkes's letter to his electors at Tenterfield explaining his resignation received wide publicity; he had also addressed a number of public meetings on contemporary extravagance in public finance. He was re-elected soon afterwards, and the Government immediately moved that his letter to the electors of Tenterfield be declared a gross libel. That motion was carried by a small majority, but another seeking his expulsion was overwhelmingly defeated. Parkes wrote in his autobiography that the railway votes of 1884 which led to those proceedings caused him to resolve that if ever the opportunity presented itself he would do his utmost "to change the system of originating railway expenditure".⁵² In fact, the opportunity to reform both the system of authorising new construction and the machinery for operating completed lines came with his return to the Premiership in 1887.

In the meantime, however, William Lyne, Secretary for Public Works in the Jennings Ministry, attempted to introduce reforms on the Victorian

⁴⁸ *Ibid.*, 1882 and 1883, various debates on railway management; and Victorian Railway Commissioners Act, 47 Vict. No. 767.

⁴⁹ *E.g.*, evidence of R. Moody before Select Committee on the Civil Service, 1872-3, *op. cit.*

⁵⁰ C. E. Lyne, *op. cit.*, p. 482.

⁵¹ Quoted in *Vict. Parl. Debates*, 5/8/1891, pp. 750-1.

⁵² Sir Henry Parkes, *Fifty Years in the Making of Australian History* (London, 1892), pp. 416-26.

pattern in 1886. His proposal was to create at the same time a new portfolio of Minister for Railways and a body of autonomous Railways Commissioners. He claimed that the object was to lessen political pressure and that the shape of his proposal was dictated by successful Victorian experience. Victoria already had a separate Minister for Railways when the Commissioners were created in 1883, whereas in New South Wales the railways had worked under the Secretary for Public Works. Replying to the motion for leave to introduce the legislation, Parkes agreed that it was highly desirable to withdraw the undertaking from political interference, but criticised Lyne's proposal as a "Bill to create additional ministerial voting power and to emasculate responsible government". He pointed to the great inconsistency in appointing commissioners with many statutory protections and not subject to conventional ministerial power, and at the same time creating a "responsible minister who will really have no rational responsibility". That would cause all sorts of awkward situations and would be a blow at responsible government. He desired to see the railways removed from political influence, but he had an equally strong desire to preserve the spirit and letter of responsible government, and would do nothing to impair it in the slightest degree. What had happened in Victoria was "inconsistent with the genius of responsible government".⁵³ Parkes' position here seemed ambivalent, but his own legislation of 1887-8 went some way to clarifying the difficulty in reconciling removal from political influence and preservation of responsibility, and at the same time highlighted certain weaknesses of the Victorian legislation.

Lyne took note of his objections to the extent of deleting the new minister and concentrating on the commissioners only. He wanted three commissioners of standing, selected for their special qualifications, to work the railways on commercial principles. The conditions of appointment, tenure, suspension and dismissal of the commissioners, the staffing rules, the association of construction and management under the commissioners, and certain reservations about authorising new lines and the supply of new materials, were copied with only minor changes from the Victorian Act. Lyne argued that this model should be followed because it had removed "the great incubus of political patronage which exists wherever railways are under a political head", because it contributed surpluses to the general revenue, because it was giving general satisfaction, and because it had permitted the recruitment of an overseas expert of high quality as Chief Commissioner.⁵⁴ And yet within a few years Victoria was to entertain grave doubts as to whether it had achieved any of the successes Lyne credited it with. Lyne's proposals were broadly supported by the Department of Public Works Inquiry Board appointed in 1886,⁵⁵ but he was accused of wanting the chief commissionership himself and eventually withdrew the Bill.

⁵³ *N.S.W. Parl. Debates*, 5/8/1886, pp. 3850-3.

⁵⁴ *Ibid.*, 4/10/1886, pp. 5330-5.

⁵⁵ Reports of Department of Works Inquiry Board, *op. cit.*

This left the way clear for Parkes, whose fourth ministry began on 20th January, 1887. He had promised the electors of St. Leonards that if he were returned to the premiership he would legislate to withdraw "these great national properties . . . from all political influence", and to see that they were worked "on principles of economy and efficiency, and of commercial benefit to the State as well as of general convenience to all classes of the people".⁵⁶ In February he visited Melbourne to examine the working of the Victorian Act, conferring both with the Government and the commissioners and making his own assessment of the strengths and weaknesses of that law.⁵⁷ In March the letter from Fehon already referred to, furnishing additional arguments in favour of the proposed reform and offering his services as a commissioner (an offer which was accepted), passed into Parkes' possession.⁵⁸

V: THE 1888 GOVERNMENT RAILWAYS ACT, 51 VICT. NO. 35

Parkes's conclusions about the Victorian system at a time when the sister-colony was still persuading herself that she had "solved" the railway problem in a highly successful way revealed remarkable insight and, in fact, predicted at least some of the difficulties which were to arise in Victoria by 1890. To New South Welshmen who wanted to accept the Victorian assurances, he would reply that "there really has not been sufficient time".⁵⁹ Parkes was prominent among nineteenth-century Australian statesmen as a scholar of parliamentary and constitutional procedures, and he did not hesitate to correspond with authorities such as Alpheus Todd, Sir Arthur Helps, Sir T. Erskine May and Professor W. E. Hearn for advice on related matters.⁶⁰ But apart from the Victorian experience there was little precedent to follow in the matter of state railway reform.⁶¹ Virtually lone-handed, he set out to modify the Victorian law in such a way as to make it consistent with the principles of responsible government.

Parkes first introduced his Railway Bill in June, 1887, but this lapsed at the end of the session. It was reintroduced in October, 1887, with a few modifications to increase the powers of the commissioners to be appointed. As assented to in 1888, it established a corporate body to be

⁵⁶ Election address, quoted in Parkes, *op. cit.*, p. 453.

⁵⁷ C. E. Lyne, *op. cit.*, p. 482; and letter from Parkes to Victorian Premier D. Gillies, dated 20/2/1887, copy in Parkes Correspondence, A916, pp. 91-2, in Mitchell Library.

⁵⁸ Fehon was to serve as a commissioner from 1888 to 1907, but the circumstances of his initial appointment brought about the defeat of that Parkes Government—see C. E. Lyne, *op. cit.*, pp. 483-4.

⁵⁹ *E.g.*, *N.S.W. Parl. Debates*, 9/6/1887, p. 2001.

⁶⁰ See Parkes, *op. cit.*, pp. 248-50, 257-9, 328-31.

⁶¹ It has been suggested to the writer that this was not Parkes's first experience in creating large-scale non-ministerial organisations, and that the Council of Education which he played an important part in fashioning in 1866 may have provided a precedent. But he made no reference to this in his case for the Railway Commissioners. Moreover, this body consisted mainly of members of Parliament and had given way to a conventional department before 1888. It was therefore more an example of what F. M. G. Willson has described as a "half-way house" in the road from the earlier non-responsible agency to the fully responsible ministry (*op. cit.*, p. 51).

known as "The Railway Commissioners of New South Wales", consisting of three commissioners appointed for seven-year terms and responsible for the management of the Government railways and tramways, the appointing of staff, and the carrying out of all details of administration, subject to certain strictly defined checks lodged with the Governor in Council. The commissioners were protected to the extent that no suspension by the Government for misbehaviour or incompetence could succeed unless affirmative resolutions were passed by both Houses of Parliament.

In designing this authority Parkes was concerned to make several important changes from the Victorian pattern. First, he remained adamant that New South Wales should not create a full ministerial portfolio for railways. Rather (as is now the accepted arrangement for the supervision of public corporations under, *e.g.*, the United Kingdom and Australian Commonwealth Governments) this supervision should be regarded as a secondary function of a minister whose primary duty was the continuous and comprehensive control of a conventional department. To Parkes anything more would be inconsistent with the responsibility of ministers and, indeed, when William Shiels became Minister for Railways in Victoria in 1890 he had a lot to say about his own "anomalous" and "constitutionally . . . unique" position. He complained that the commissioners could refuse to consult with him in their board-room or to give information or to allow him to speak with officers of the undertaking.⁶²

Secondly, and also opposed to the Victorian practice, Parkes insisted on separating the functions of constructing new lines and operating completed lines. The former he regarded as demanding the exercise of ministerial responsibility in its fullest sense: "In all great expenditure for the alleged improvement of the country (there should be) not a paid commission but a minister responsible to Parliament . . . the origination and construction of railways . . . must necessarily form a vital part of the policy of the Government". He therefore introduced a companion Public Works Act, which required all new proposals for railway or other works to be referred for examination and report to a Parliamentary Standing Committee on Public Works. The three-fold aim was to "hold the Government responsible for its proposals, to ensure an independent investigation, and at the same time to preserve the authority of Parliament unimpaired over the expenditure". In fact the scheme, which Parkes claimed to be original (and which was copied by other Australian Parliaments), made use of the very same politicians whose vote-catching and partisan tactics had been responsible for so much extravagance, but it converted their efforts to a form of semi-judicial inquiry in the interests of sound finance. Both the planning and the execution of new construction projects remained with the Public Works Department, and the minister's responsibility here was therefore not in the least diminished.⁶³

⁶² *Vict. Parl. Debates*, 9/12/1890, p. 2461ff.

⁶³ *N.S.W. Parl. Debates*, 9/6/1887, pp. 1992-3; Parkes, *op. cit.*, pp. 460-4; Sir Thomas Bavin, *Sir Henry Parkes—His Life and Work* (Sydney, 1941), pp. 39-40; and Public Works Act, 51 Vict. No. 37.

However, "the management of the railways completed and handed over for public traffic ought to be kept distinctly separate from the policy of the Government". At this stage they assumed "an entirely different character", they became "great created properties of the State", and should be withdrawn entirely from political influence. Once finished, the railways should be "worked for benefit of the people apart from all patronage, all pressure, all attempts to bring party or political influence to bear"; they should be worked on "principles of commercial probity and intelligence" by commissioners who would be regarded as "simply a business authority".⁶⁴

But Parkes was not content to ensure that the principles of ministerial responsibility would be preserved in construction activities. His most interesting arguments concerned his attempts to reconcile the independence of the "business" commissioners with those principles—an exercise which has presented so many difficulties in later experience with the public corporation. He asserted that:

"I am not one of those, and never have been and never shall be, who would create any board or commission or constituted body whatever to take away the duties . . . of responsible ministers. Responsible government, if it means anything, means that in all the absolute executive work of the country, as well as in the administrative work of the country, there should be someone directly responsible to Parliament; and so far as I am concerned, I will never be a party to weaken, or loosen, or diffuse that responsibility, but will endeavour to keep it clear and intact as between the government of the day and the parliament of the day".

He even grew impatient with supporters of his Bill who said loosely that management of the railways should be absolutely free from the control of the minister. It was political influence, not ministerial control, he wished to eliminate. Otherwise, "the theory of responsible government goes to the winds . . . So long as I have breath in my body, and have the power to exercise influence, I will never consent to anything belonging to the public affairs of this country being removed absolutely from the ministry . . . It is quite consistent that this body, who are to manage our railways, may be removed from all possible pressure of political influence, and yet be, as they ought in law and reason to be, subject to the constituted government of the country".⁶⁵ Today this may appear somewhat naive, but it is significant that it was in the context of such opinions that he was able to make his important contribution to the idea of the public corporation.

He proposed to ensure the ultimate responsibility of the Government for the work of the commissioners through strictly defined means such as the power of suspension and removal (subject to parliamentary review), the need for government approval of by-laws and of estimates of expenditure prepared by the commissioners (with subsequent parliamentary

⁶⁴ Parkes, *op. cit.*, p. 463; and *N.S.W. Parl. Debates*, 9/6/1887, pp. 1992-5.

⁶⁵ *N.S.W. Parl. Debates*, 27/10/1887, pp. 803-4, and 3/11/1887, p. 932.

appropriation of funds), and certain other reservations of government power as in the disposal of lands and the purchase of supplies. It is here that his other main deviations from the Victorian precedent become apparent. The first concerns the formal nature of such controls. Parkes avoided a number of parochial restrictions on the commissioners' powers in petty matters, such as alterations in Sunday train services and the closing of country workshops, which found their way by committee amendments into the 1883 Victorian Act. They were substantially augmented in 1891, and many of them still cling to their antiquated foothold in the Victorian statute-book.⁶⁶

The other difference was brought out more clearly in the treatment of the commissioners after their appointment than in the Act itself. It was related very closely to Parkes's attitude on the responsible government question, and highlighted his views on reconciling this with the autonomy of the commissioners. Service and Gillies, who fathered the Victorian Act, had attempted to justify their scheme to the Liberals (who had been very vocal during the 1870s in opposing the Conservative liking for boards, such as the old education bodies and even royal commissions of inquiry) by assuring them that the legislature would retain adequate powers, e.g., through suspension and removal of commissioners, retention of the power of authorising expenditure, regular reporting of the commissioners to Parliament, and annual audit by the Audit Commissioners who were themselves "officers of Parliament". In fact, they sought to make the commissioners subject to Parliament rather than to the executive Government.⁶⁷ But this was quite foreign to Parkes's conception of responsible government. To him, it was the members of Parliament who had previously tampered with details of railway administration, and the Act was designed to prevent this; the political influence to be avoided was the influence of Parliament itself. Parliament was to be confined to laying down in the Railways Act the broad policy it desired the commissioners to follow. Beyond that it was the responsibility of the ministry of the day to see that the commissioners carried out the provisions of the Act. All Parliament could do would be to turn out the ministry if it were not satisfied with its conduct of the administration, or to alter the overall policy by amending legislation. This meant also that members had no right to demand direct answerability of the commissioners through parliamentary questions—the minister was a channel of communication, but he could not compel them to answer. Even the ministry had no right to interfere unless it could be shown that the commissioners had contravened their Act, and so long as they acted in

⁶⁶ Eggleston described these Victorian reservations as revealing the "capricious character of Ministerial control": *Public Utilities in Victoria*, Harbison-Higinbotham Prize Thesis (University of Melbourne), ch. 4, p. 3.

⁶⁷ *Vict. Parl. Debates*, 10/7/1883, p. 103ff. As a contemporary reviewer put it, in Victoria "the railways were, as it is called, removed from political influence and placed under the control of a board of three commissioners, who were rendered independent of the Government of the day, and responsible only to Parliament": J. Reid in *Sydney Quarterly Magazine*, June, 1887, pp. 140-1.

accordance with its terms their actions must be sustained. But the ministry did hold a watching brief to be exercised in a "continuous, constant and searching manner".⁶⁸

Parkes seemed at times to be approaching the American constitutional concept of complete separation of the executive from the legislature, as, *e.g.*, when it was argued that if an inquiry were needed the executive itself was the proper authority to undertake it, and that Parliament had no right to appoint a select committee to go into administrative details. It had supreme authority, but it must not interfere with the executive functions of government, otherwise "the country is on the highway to anarchy and disruption" (as happened, according to Parkes, in the railways before 1888). In fact, it is sometimes difficult to sort out his belief in a general need for clear separation of the "three great provinces" of government, legislative, executive and judicial, from his belief in the particular need to differentiate between the railways and other departments.⁶⁹

There were further difficulties about Parkes's reasoning. For example, the ministry had to oversight the commissioners, and it was in turn responsible to Parliament. But it was not easy to see how ministerial responsibility could be extracted if the minister might refuse to answer questions about the railways. Certainly Parliament retained control over railway finances through annual appropriations and approval of loan raising programmes, but this in itself was to raise grave problems in later years. Again, Parkes's caustic reply to a query about whether general political influences (as distinct from the acceptable ministerial oversight) might not on occasions find expression in the ministry's power to appoint and re-appoint commissioners—"Who, in the name of common sense, does the hon. member . . . suppose is to appoint them? Is the Opposition . . . to appoint them? Is the Chinese League to appoint them?"—was realistic enough. Yet it entirely begged a question which worried the Victorian Liberals in the 1870s and has worried many others since then.⁷⁰

And yet out of those difficulties a further line of thought emerged which is pertinent to any understanding of the nature of the public corporation, and which was implicit in the 1888 Act and governed its operation for many years afterwards. This was consistent with Parkes's opposition to the creation of a separate railways portfolio. He explained it in this way:

"All through the Bill what I may call the dormant authority of the Government has been studiously preserved. I use the words "dormant authority" in contradistinction to any active authority. It has been intended, and the whole object of the Bill is, to allow the commissioners

⁶⁸ *E.g.*, *N.S.W. Parl. Debates*, 27/10/1887, p. 804; and subsequently in defence of commissioners, 30/5/1893, pp. 7667-70; also Treasurer Bruce Smith's statement, 29/9/1891, pp. 2171-2.

⁶⁹ *E.g.*, *ibid.*, 29/9/1891, pp. 2144-7, 2172.

⁷⁰ *Ibid.*, 3/11/1887, p. 932. For a much more recent discussion of this problem, see The Liberal Party of Australia, N.S.W. Division, "Political Appointments by the State Labour Government" in *Research Bulletin*, March, 1954, and supplements.

virtually the control of the railways; but it never was for a moment contemplated to give up the authority of the Government of the country . . . the design throughout . . . is to preserve the authority of the Government in any emergency or in the last resort".⁷¹

The railway undertaking was therefore to be subordinate to the Government, but one step further removed from the direct control which characterised the conventional ministerial departments. The Government control was reserved for use in emergencies, obviously expected to arise through excesses or failings on the part of the commissioners. In the last resort ministerial responsibility was preserved, and the new status in relation to Government and Parliament reduced the possibility of the enterprise being hampered by capricious political influences. Viewed from the vantage point of a further seventy years experience with the public corporation, this would seem to be a more satisfactory rationalisation of the device than that the Victorians attempted in 1883. The latter argued that it would be divorced from the Government but still responsible to Parliament (some recent observers argue similarly that corporations parallel ministers in their relation to Parliament).⁷² On the other hand, it still complicated the normal techniques of answerability to the elected representatives of the people, as the problem of the parliamentary question indicated.

In the years which followed the appointment of Messrs. Eddy, Oliver and Fehon as first commissioners under the 1888 Act, it was clear that Parkes and his ministers, having confidence in them, did honour their independence. Schey, the secretary of the railwaymen's association and a frequent trouble-maker, moved a resolution in 1891 to curb the powers of the commissioners, but Parkes stated that even if the resolution were passed his Government would not obey it. The railways administration was generally held to be very successful, and must not be crippled by dangerous, mischievous, vexatious or unjustifiable interference from Parliament collectively or from its individual members. McMillan, who as Treasurer watched over the Railway Department, answered more of Schey's criticism with the statement that the trouble in Victoria was that its Act "has not been carried out in its integrity . . . because political influence has worked its way into the management of the railways", and the claim that his whole aim as minister had been to defend the New South Wales Commissioners from a similar fate. His successor, Bruce Smith, continued in the same tradition, objecting to answering detailed

⁷¹ *N.S.W. Parl. Debates*, 18/4/1888, p. 4060. Even classical exponents of ministerial responsibility, such as Jeremy Bentham and Prof. Hearn, saw some justification for separate boards where these were associated with ministers or departments by a degree of responsibility and subordination. For Bentham's views, see B. B. Schaffer in *Aust. Journal of Politics and History*, Nov., 1957, p. 61ff. For Hearn's description of a similar relationship between the U.K. War Ministry and the Army Command, see *The Government of England* (Melbourne, 1867), pp. 255-6. However, Acworth preferred to view the Australian railway commissions as despotisms which might last one generation if sufficiently benevolent and enlightened: *The Economic Journal*, 2 (1892), p. 636.

⁷² See W. J. Campbell, "The Statutory Corporation in New South Wales", and Sir Richard Boyer, "The Statutory Corporation as a Democratic Device", in *Public Administration* (Sydney), Sept., 1952, and March, 1957, respectively.

questions, e.g., about the material being used in the construction of a particular railway bridge. He pointed out both to Parliament and to deputations that the railways were in a very different position from other departments and that the Government could interfere only if the commissioners contravened the provisions of the Act.⁷³ This ministerial protection contributed to an "entirely new standard of administrative efficiency" up to the death of Chief Commissioner Eddy in 1897, and the example of political restraint endured for many years despite Lyne's apparent reversion in 1893.⁷⁴ This was in marked contrast to Victoria, where parliamentary pressure for sectional ends continued virtually unrestricted in everything except staff appointments after 1883, leading to a further crisis in 1891-2, far more serious than any which the 1883 Act had been intended to rectify, and to a substantial modification in the commissioners' autonomy.⁷⁵

Many features of the 1888 Act remain in the current consolidated New South Wales Government Railways Act (No. 30 of 1912, as amended and affected by other Acts), but there have also been important changes. For example, experiments in the number and relative status of the commissioners themselves have been made in consequence of internal squabbles as well as changing administrative needs. There have been attempts to integrate the railways in various transport co-ordination schemes. Arising from a combination of factors such as Labor Party hostility to "irresponsible" public bodies and lack of sympathy with Parkes's fine discrimination about degrees of control, growing financial difficulties since the First World War, and the problem of transport co-ordination itself, much more comprehensive ministerial controls have been provided. And there is that contradiction of terms under which the governing body, which now consists of a single commissioner, is incorporated under the title "The Department of Government Railways"—Parkes's legislation was careful to use the term "authority" as distinct from "department". But they are all developments of the twentieth century, and are outside the scope of this article.

CONCLUSION

It would seem that the original corporate public authority considered in this article, The Commissioners for Railways of 1854-8, being a creation of the pre-responsible government period and never more than a temporary

⁷³ *N.S.W. Parl. Debates*, 15/12/1890, p. 6407; 28/9/1891, p. 2064; 29/9/1891, pp. 2144-8, 2171-2. Similarly, John See, Treasurer in the Dibbs Ministry which followed Parkes, *ibid.*, 30/5/1893, p. 7662. Eddy and Fehon were in their first five years' administration tormented by accusations of improper practices from Schey and others who had found their influence so drastically curtailed, but were exonerated by a series of official inquiries. The Assembly on 17/11/1892 passed a resolution by a large majority severely condemning Schey's unfounded charges and expressing the opinion that he should resign his seat.

⁷⁴ F. C. Garside, *op. cit.*, p. 24. For Lyne's change of heart, see "Australian Character Sketches—The Political Leaders of N.S.W." in *Review of Reviews* (Melbourne, July 20, 1894). There is, however, no evidence that he attempted to change the system during his premiership in 1899-1901.

⁷⁵ See also at note 84.

expedient, did not play any part in the evolution of the public corporation as we know it today. It was not considered a model during the debates of the 1880s—the model was always the Victorian Act of 1883. Its significance, in fact, lies chiefly in its quick closure after the attainment of responsible government. This is equally true of the transfer of the activities of the other railway board of the period, the South Australian Board of Railway Commissioners (which had replaced the Board of Undertakers in that colony in 1856), to a new ministerial Public Works Department in 1859. Both changes were indicative of a general, though sometimes gradual, recognition by the new Parliaments “that the device which offered the best means of ensuring that administration was carried out in accordance with (their) wishes was . . . the individual responsibility of Ministers”, fully accountable for the activities of the departments they headed.⁷⁶ Thus, many general and some technical education boards and commissions throughout Australia gradually “gave way to an arrangement more in keeping with the general pattern emerging in the political administration of each State. This involved centralised control with executive responsibility vested in a minister of the Crown”.⁷⁷ Again, in Western Australia, after the attainment of responsible government in 1890, numerous activities were quickly converted to accord with that pattern. An official publication recorded, for example, that “the control of the aborigines was transferred from the irresponsible board to a sub-department of the State, under the control of a responsible Minister of the Crown”.⁷⁸ All these were assertions of the right of democratic Parliaments to exercise overall control of the administration through responsible ministers, and as such were part of a strong movement away from boards and commissions which continued through to the early twentieth century. But for this very reason, they also underlined the major departure from the general trend involved in the railway legislation of the 1880’s.

Little more need be said about the intermediate period of administration by the Department of Public Works, one of whose officers was incorporated as Commissioner for Railways for reasons of legal convenience. The numerous weaknesses which appeared with the rapid growth of the system, caused by an excessive play of political influences and by conventional nineteenth-century departmental methods, paralleled those experienced in other colonies. Indeed, there were similarities between the New South Wales experience and weaknesses, or fears of such weaknesses, in other far removed public enterprise contexts as shown, for example, by Prussian attempts to “hive off” executive operations from the administrative or policy-making departments,⁷⁹ by the decisions of Italy

⁷⁶ F. M. G. Willson, *op. cit.*, p. 49. This comment was made in relation to the House of Commons after the 1832 Reform Bill, but is equally applicable to the Australian Parliaments.

⁷⁷ “Technical Education in Australia” (Commonwealth Office of Education, Sydney, 1958), p. 4.

⁷⁸ *Western Australia Year Book* (1902-4), p. 106.

⁷⁹ Referred to in B. B. Schaffer, *op. cit.*, p. 75.

and some American States to scrap State railways altogether,⁸⁰ by the comments on administrative requirements by people like Sir Rowland Hill who were abortively advocating public ownership of railways in nineteenth-century Britain,⁸¹ and by the views of Messrs. Attlee and Morrison quoted at the beginning of this article. The efforts to distinguish between the traditional "governmental" activities and business-type public enterprises in terms of organisational pattern, and the emergence of broadly similar but in the main independently motivated forms and ideas for the management of public enterprise in many different countries, are surely significant. They suggest a measure of inevitability that detailed ministerial control would not meet adequately the requirements of such enterprise, especially in democratic countries; that alternative managerial techniques would therefore be sought; and that the public corporation along lines more-or-less similar to those developed in the Australian colonies would be the result.⁸²

And yet, in New South Wales, one qualification is suggested. Probably the worst features of political management were patronage in staff appointments (whether this was exaggerated or not, the feeling against it was a potent force in the 1880s), the absence of a professional "permanent head" in the modern sense recognised as both the co-ordinator and the channel of communication with the minister, and the extravagances in the authorisation and construction of new lines. The problem of patronage was not confined to the railways, and it led to the passing in 1895 of legislation creating a Public Service Board to eliminate political patronage and control recruitment by examination in the other departments.⁸³ Under the stimulus of this Act, and as part of a general improvement in departmental techniques, the concept of a single permanent head for each department was being recognised by the turn of the century. And thirdly, Parkes did not use the Railway Commissioners to overcome the construction abuses but created a Public Works Committee for that purpose. If the first attempt at public service reform in 1884 had been more successful, and if the railway authorisation issue had been more clearly separated from the management issue and settled beforehand as part of a general public works reform, then departmental management might well have proved more adequate and the movement for return to a commission far less urgent. Indeed, this speculation is strengthened by the continuing existence and wide acceptance of the Post Office in its improved departmental form. But it is now a rather pointless speculation, for a combination of all these problems came to a head first in the railway undertaking; and it is a matter of history that the device of the public corporation was chosen as the attempted solution.

⁸⁰ Acworth, *op. cit.*, p. 636; and J. Hole, *National Railways* (London, 1893), pp. 274-6.

⁸¹ Hole, *op. cit.*, pp. 343-6.

⁸² The developments in Victoria before the close of the nineteenth century have been repeated so often in subsequent experience as to suggest that this sequence could be completed by a further "inevitability": that the autonomous corporation would sooner or later prove offensive to forces within a democratic community, and that by one method or another it would eventually be subjected to much more extensive Government controls.

⁸³ Public Service Act, 1895, 59 Vict. No. 25.

What then of the 1888 Act? Parkes's estimate of the Victorian situation was vindicated in a number of ways. The continued existence there of a political office concerned especially with railway matters, despite the drastic legal reduction of its powers, brought about a situation hardly reconcilable with the concept of ministerial responsibility and resulted inevitably in some overlapping of authority and encroachment on the commissioners' powers. That position contributed to the personal difficulties soon to arise between minister and commissioners, and it encouraged other members of Parliament to continue to regard the railways as a legitimate field in which to play the game of politics. By 1891 a crisis had developed largely as a result of those weaknesses, and amending legislation of that year restored a large measure of statutory political control over the commissioners.⁸⁴ Parkes's foresight in modifying the Victorian Act before introducing it to New South Wales and his insistence that the spirit of the Act be honoured succeeded in insulating the commissioners from dictation by sectional and political interests for a much longer period than in Victoria. Again, his insistence on separating management and construction functions was seemingly vindicated by problems of amalgamation, such as disputes between government and commissioners on construction policy, which caused Victoria to return construction to the political Board of Land and Works in 1891. But in neither case could there be an absolute answer; New South Wales was to transfer construction to the commissioners in 1916, and in 1950 it drastically modified the statutory autonomy of its railway corporation by making it "subject to the control and direction of the Minister".⁸⁵ Notwithstanding this, in the late nineteenth-century context the reform Parkes introduced was timely and more successful than that of the sister colony.

There were weaknesses in his Act; one involved the equality of power of the three commissioners, as opposed to the power Victoria gave its chief commissioner to overrule his colleagues. For reasons of personality that was to lead in the first years of the twentieth century to an unfortunate internal conflict and to amending legislation in 1906 which went to the other end, as it turned out, equally unfortunate extreme.⁸⁶ A second weakness, and one New South Wales shared with Victoria, was the assumption that, notwithstanding the legal and managerial separation of the railways from the public service proper, no change was necessary in the established financial procedure; there was in fact a remarkable lack of questioning of this aspect. All earnings of the commissioners had to be paid into Consolidated Revenue, and they were subject to the same annual estimating procedures and the same dependence on Treasury goodwill and parliamentary appropriation for their working expenses as any other

⁸⁴ Victorian Railways Act, 1891, 55 Vict. No. 1250. But that Act did not "altogether abolish" the commission, as Acworth (*op. cit.*, p. 634) and other railway writers following him stated.

⁸⁵ Government Railways (Amendment) Act, No. 69 of 1916; and Transport and Highways Act, No. 10 of 1950.

⁸⁶ See F. C. Garside, *op. cit.*, pp. 24-6.

department. Political considerations could still come before railway requirements even in the disposal of railway revenue, with the possibility of indefinite postponement of expenditure on maintenance and renewals and even of eventual financing of such work from loan moneys; "fictitious capital" would thus be created, on which the railways were required to carry the full interest burden. The commissioners were also expected to meet working expenses and interest on developmental lines, frequently built in spite of their opposition and with no chance of paying their way. Uncertainty as to availability of finance would prevent long-term planning, and the loss of unspent balances at the end of each financial year would mean interruption to work programmes. Those difficulties were later to be recognised by a number of expert inquiries both in New South Wales and in Victoria, and separation of the railway accounts from Consolidated Revenue was recommended. But although the New South Wales Act of 1928 made some concessions the railways corporation has never enjoyed real financial autonomy.⁸⁷ There is little doubt that this state of affairs has contributed to the present unhappy condition of railway finances. If the railways were to be worked on commercial principles as Parkes suggested, surely new financial arrangements were required. As Professor Hytten wrote in 1930, State railways need to be put "on a paying basis . . . before they are given independence of management".⁸⁸ It was a vital weakness of the later nineteenth-century railway Acts that they did not do so.

But the magnitude of the consequences to follow that neglect could not have been imagined in the 1880s, and it should not be allowed to detract from the general achievement. The 1888 reform converted an inefficient and overmanned department into a tightly organised and soundly run organisation. The Act received wide support, and most who queried it sought merely to follow the Victorian Act more closely—much of the debate was concerned with who should be appointed to the commissionerships, who should be placed on the free pass list, and, in the context of the contemporary free-trade or protection controversy, whether the commissioners should have unrestricted powers to purchase equipment overseas. The outstanding contribution to administrative theory and practice stemmed directly from Parkes's own assessment of the special administrative needs of public enterprise in a democratic system of government. Even if, like Service and Gillies in Victoria, he was able to gain electoral support by expounding his ideas on the need for reform it did not lessen their importance; if that had not been so he may never

⁸⁷ E.g., Royal Commission into the Railway and Tramway Services, 1924 (N.S.W.—the Fay-Raven Commission); Royal Commission on the Control, Management, Working and Financial Position of the Victorian Railways, 1928; and the official report *Transport in Victoria* by John Elliot, 1949. The N.S.W. Act was the amending Railways Act, No. 37 of 1928. For comments, see Garside, *op. cit.*, pp 33-4. The official centenary publication, *The Railways of New South Wales 1855-1955*, accepts (*op. cit.*, p. 231) that "the railways are partly an instrument of Government policy and therefore cannot be commercialised"—that is a far cry from Parkes's position in 1888.

⁸⁸ T. Hytten in *The Economics of Australian Transport* (Supplement to the *Economic Record*), August, 1930, p. 30. See also F. A. Bland, "The Administration of Government Enterprises", in *Economic Record*, May, 1929.

have been in a position to implement them. He did not claim that the commission idea was original; he was much indebted to the Victorian Act both for what he copied and for what he learned to avoid, and no doubt he also received suggestions and advice at home. But the determination with which he planned and executed what was for a politician virtually a self-denying ordinance suggests that it was a matter of real conviction to him.

One thing further needs to be said about Parkes' achievement. It is not sufficient to design a form of organisation capable of being worked efficiently, it is also necessary to find competent leaders to make it work thus. Parkes not only created the organisation but he was successful in recruiting as Chief Commissioner "perhaps the ablest railway man that England has produced in this generation, a man, moreover, of inflexible determination and quite exceptional force of character".⁸⁹ Under the leadership of E. M. G. Eddy the railways showed in the years after 1888 a very healthy improvement in working results and a great improvement in the condition of equipment despite a 10% reduction in staff and a depression in the early 1890s. In 1892 an address of confidence signed by over 20,000 electors was presented to the commissioners at an enthusiastic meeting in Sydney.⁹⁰ Parkes designed the Act and got Eddy to make it work; Eddy excelled in this task and in turn was unstinting in his praise of that Act.⁹¹ The two were on terms of close mutual regard, and Eddy's vast railway experience, his competence, tact, determination and sound common sense made it easy for Parkes to allow him the full reins when with a lesser man the situation could well have been different.

Parkes wrote in his memoirs: "Few acts of my public life have given me more unmixed satisfaction than this change in the management of the State railways. I had the warm support of my colleagues all through in resisting every attempt of political influence either to give a sinister twist to the clauses of the Bill in committee or to bring the weight of personal favouritism to bear on the appointments".

After citing evidence of the improvements which followed the new legislation, he added: "I think I and my colleagues of 1888 may be pardoned some feeling of pride at this practical vindication of the railway legislation of our Administration. It is worth the abuse we received from those who wished to make these great State properties a field for the exercise of their unwholesome influence, and the means of serving their friends and supporters".⁹²

⁸⁹ Acworth, *op. cit.*, p. 633. For other eulogies of Eddy's administration see e.g., *Sydney Morning Herald*, 15/8/1891; *The Engineering Review*, 21/1/1895; *Review of Reviews* (Melbourne), 20/11/1894; and G. A. Gilder, *Fifty Years of Railway Making* (N.S.W. Railways Jubilee Prize Essay), 1905.

⁹⁰ Acworth, *op. cit.*, p. 634.

⁹¹ *Ibid.*, p. 635; and memos. Eddy to Parkes, in Parkes Correspondence, 9/8/1893 and 6/8/1894, A921, pp. 676-7, 685-6, in Mitchell Library.

⁹² Parkes, *op. cit.*, pp. 470-1, 473.

Parkes's biographer considered the twin Government Railways and Public Works Acts of 1888 to be "measures which have done . . . as much for the colony, in the public interest, as any legislation effected in its history", and the "magnum opus" of that Parkes Government.⁹³

The events of the 1880s tend to confirm the view that the Victorian Railway Commissioners Act of 1883 was the most important single step, in terms of inventiveness and lack of precedent, in that process of administrative development which was destined to make the public corporation so popular in this country. But the Victorian Act and particularly the spirit with which it was executed needed much improvement, and Sir Henry Parkes's contribution in New South Wales in 1888 would seem to be as significant in the development of the public corporation after 1883 as the contribution of Eggleston's Victorian heroes, Irvine, Swinburne and Watt, in the opening years of the twentieth century.

⁹³ C. E. Lyne, *op. cit.*, p. 481.