



Topic 5.1: The colonies introduce Responsible and Representative Government and the impact on Aboriginal and Torres Strait Islander peoples

How Sir Frederic Rogers' scissors snipped out NSW independence

Up until the 1850s, the British had controlled the Constitutions of the Australian colonies and the powers that could be exercised in the colonies. But in 1850, the British Parliament passed the [Australian Constitutions Act 1850](#). It allowed the Port Phillip District of New South Wales to become a separate colony, to be called 'Victoria'. It also allowed the colonies of New South Wales, Victoria, South Australia and Van Diemen's Land (now known as Tasmania) to amend their Constitutions or create new ones. This was on the condition that they 'reserve' any constitutional change for the 'Queen's pleasure'. This meant it was up to Queen Victoria to agree to the new Constitution, by giving it 'royal assent' or to reject it, by refusing assent. The Queen, in practice, would act upon the advice of British Ministers in making this decision.

The politicians in New South Wales were not happy about this. They wanted greater local control. They resented the fact that they still did not have full control over unsold land in the colony (known as 'Crown land' or 'wastelands' of the Crown) and all money raised from their sale. They wanted to have control over what salaries were paid to the Governor and other officials. Most of all, they wanted full power to make laws about local matters, without having to reserve them for the Queen's pleasure, and without the Queen having the power to 'disallow' (i.e. undo or end the operation of) any law made in New South Wales within two years of its being made. In short, the Members of the NSW Legislative Council wanted to be independent in the way they dealt with local matters, leaving the British with control only over external matters, such as overseas trade and shipping, defence, foreign affairs, and anything directly relating to the Queen's powers.

They wrote all this down in what they called a 'Grand Remonstrance' (i.e. a big complaint) and sent it to the British Government.

In debating these complaints in the NSW Legislative Council, [W C Wentworth](#) pointed to the unhappy experience of the British with the American Colonies and how they lost them in a war of independence. Wentworth said that if the NSW grievances were not fixed, the time for petitioning will have passed and the colonists must prepare to secure their rights by means of resistance. Initially the British rejected these complaints as mere grumbles, but after further veiled threats of revolution, and the discovery of gold (which could fund a revolution), the British decided to compromise.



William Charles Wentworth
Source: Wiki Commons

An article in *The Times* of London commented that the colonies would obtain management of their lands, revenues and laws 'whether we wish it or not' and that it 'only remains with us to say whether this shall be gracefully conceded or wrested from us by tumult and violence'.

But the compromise made by the British only dealt with things like control over Crown lands and the money that came from the sale of this land. It did not give the colony complete control over local legislation. It was enough, however, to end all rumblings about revolutions.

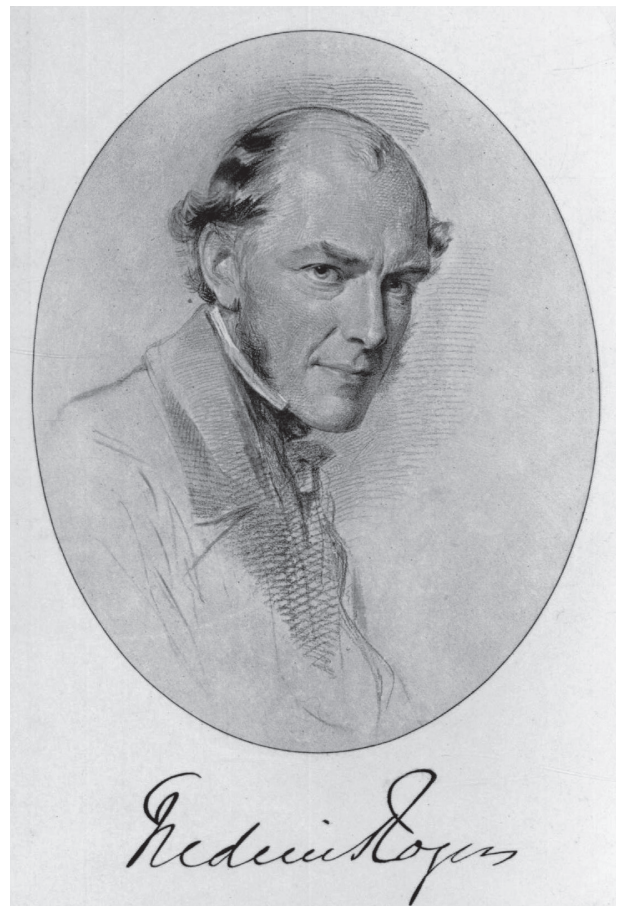
Drafting a new Constitution

The NSW Legislative Council went ahead with drafting its new Constitution. It wanted a system of 'responsible government' similar to that in the United Kingdom. This meant having a Parliament with two Houses where the government is formed, after an election, from the party or parties that are supported by a majority in the lower House. But the NSW politicians had not given up on their dream of local independence. So they included in the Constitution sections that granted full power to the NSW Parliament to make laws that related to matters of local concern.

They also limited the power of the British to veto NSW laws by requiring that they be reserved for the Queen's pleasure or the power to disallow any law passed within the colony. Disallowance and reservation would be confined to laws concerning Imperial matters, such as those concerning the monarch, shipping, overseas trade, defence or foreign affairs. Because this Constitution would be inconsistent with British laws that applied directly to the colonies (known as 'laws of paramount force') and therefore went beyond what was permitted by the 1850 Act, the NSW Legislative Council had to send the draft Constitution to London for approval. W C Wentworth and [Edward Deas Thomson](#) travelled with it to give it their 'zealous advocacy and support' and to 'combat any objections which may be made to it'. Victoria had the same problem and sent its draft Constitution to the United Kingdom too, whereas South Australia and Tasmania compromised by making less ambitious Constitutions that they were permitted to enact locally.

Sir Frederic Rogers brings out his scissors

Sir Frederic Rogers was the British official who dealt with the issue. He concluded that the draft NSW Constitution amounted to 'little less than a legislative Declaration of Independence on the



Portrait of Frederic Rogers,
1st Baron Blachford
Source: Wiki Commons

part of the Australian colonies'. The provisions about disallowance and the reservation of bills, and any instructions to the Governor about royal assent, were all unacceptable to him and to the British Government. Another section that he did not like said that the colony must give its permission, through legislation, before losing any more of its territory. (New South Wales had lost Victoria in 1850 and it was likely that it would also lose the Moreton Bay District – later to become Queensland – to its north). Rogers knew, however, that the colonists would become very angry if he changed the wording of the Constitution.

He then hit on a great compromise. He whipped out his scissors and cut out the offending provisions. He could then say that the British hadn't changed any of the words. They did not alter words that were there or add any. All they did was snip out the provisions that they did not like. The British Parliament then passed its own Act (to which Rogers did add some provisions), but which ultimately authorised Queen Victoria to give assent to the NSW Constitution (and separately, the Victorian Constitution) in the form attached in



a schedule to the Act. The version in the attached schedule was the one with the offending sections cut out. Wentworth, of course, objected strongly, but there was little he could do about it. It was not enough of a complaint to wage a revolution over.

Macquarie Street Sydney.
Originally part of the Rum Hospital. In 1856 a new Council Chamber was added to the south side (the right) of the Parliament.
Source: State Library of NSW

Constitutions not passed by any Parliament

This peculiar approach led to an even more unusual outcome. Neither the NSW Constitution nor the Victorian Constitution had, in its final form, actually been passed by a Parliament. While the Legislative Councils of New South Wales and Victoria had passed the original drafts of their Constitution, they had not passed them in the form that was approved by Queen Victoria. The British Parliament had not directly passed them either. Unlike the Commonwealth Constitution, which was contained in section 9 of an Act of the British Parliament, and therefore directly enacted by that Parliament, the same did not happen to the New South Wales and Victorian Constitutions. All the British laws did was authorise Queen Victoria to give assent to Constitutions in the form set out in a Schedule. They did not themselves turn those Constitutions, in that form, into law. So Queen Victoria assented to Constitutions that had not been passed by either Parliament, leaving it unclear why they were valid. It was all a bit of a mess, but at least it did not result in a war.





Topic 5.1 Lesson Three



AUSTRALIAN
CONSTITUTION
CENTRE

How Sir Frederic Rogers' Scissors Snipped out NSW Independence

Time/Lesson

- 1 hour

Learning Goal

For students to understand that the Australian colonies held strong ties of attachment to Britain, but also wanted greater independence. They used different means of making political points in an effort to be heard – formal complaints, threats of revolution, and cynical jokes. If the British had not compromised, things could have turned out quite differently.

Teaching Reference Documents:

[TRD 17 How Sir Frederic Rogers' Scissors Snipped Out NSW Independence](#)

Resources

- A copy of School Rules or Class Rules
- Scissors

Teacher Instruction

Lesson outlines and guiding questions:

- Ask the students to imagine what might have happened if the British Government had rejected all of the requests of the Australian colonies for a little more independence and treated them harshly.
 - What if there had been a war of independence, like in America?
 - What if the colonies had won and cut their ties with Britain and become separate countries that were republics in the 1850s?
 - Would they have allied themselves earlier with other countries, such as the United States?
 - Would they have dropped the British system of 'responsible government' in favour of an American presidential system of government?
 - Would they have adopted a Bill of Rights?
 - Would they have declined to participate in World War I?
- Split the class into groups and ask them to suggest two different alternative histories for Australia if the British had refused to compromise in the 1850s.
 - What would have been the benefits and costs both short-term and long-term of these scenarios?
- The British Government considered that it was not really interfering if it just cut words out of a draft Constitution, rather than adding words in or altering existing words. (They did the same thing to the Commonwealth Constitution in 1900, when they removed section 74 from it before introducing it in British Parliament. But in this case, the Australians negotiated a compromise, which got an altered version of section 74 put back in).
 - Ask students to consider whether snipping out words or sections of a document can make really substantial changes to its meaning.
- Get a document, such as a set of school or classroom rules. Print it in large font, give the students scissors and ask them how significantly they can alter its meaning simply by snipping out words, phrases and sections (while still ensuring that the sentences all make sense).