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William and Mary Windeyer in Colonial New South Wales:
Simultaneous bearers of two traditions

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1995
I attest this thesis is my own work and has not been presented in submission for any other degree.

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ABSTRACT

In their lives and work William and Mary Windeyer brought together a conservative gentry tradition and a reforming liberal-radical tradition. These two traditions informed their activities in the fields of education, politics, law, philanthropy and women's rights.

Their position on education not only reflected the dualism of their whole philosophy, but was also central to reconciling it. Believing in the potential of all individuals, they offered all classes access through education to values and behaviour which could both empower and make them socially mobile without threatening existing social structures. As a politician and judge, William combined conservative values and liberal policies in a way that defies broad categories and simple labels. As social reformers, the Windeyes combined motives for reform that historians have tried to separate; reactive elements, based on fear and self-interest, joined with those that were pro-active, based on altruism, duty, or propagation of their values. Their charity work satisfied their sense of traditional obligation, but at the same time imposed conditions to counter pauperism. They combined traditional faith in voluntarism with a futuristic desire for state co-ordination, control and funding. Their approach to gender issues further illustrates the poverty of simple labels such as 'conservatism' and 'radicalism'. They believed self-sacrifice and nurturing were intrinsic to the nature of women, but they also believed in equality and justice for women.

In all their work the Windeyes were conservative in that they reinforced traditional values and hierarchical structures, but reforming in that they facilitated individual mobility within that hierarchy and aimed to make the colony of New South Wales 'better' according to their criteria.
ABBREVIATIONS USED IN THIS WORK:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>A.A.N.S.W.</td>
<td>Archives Authority of New South Wales</td>
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<tr>
<td>C.S.I.L.</td>
<td>Colonial Secretary's In Letters</td>
</tr>
<tr>
<td>J.R.A.H.S.</td>
<td>Journal of the Royal Australian Historical Society</td>
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<td>M.L.</td>
<td>Mitchell Library</td>
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<td>N.S.W.L.R</td>
<td>New South Wales Law Reports</td>
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<tr>
<td>N.S.W.V.P.L.A</td>
<td>New South Wales Votes and Proceedings of the Legislative Assembly</td>
</tr>
<tr>
<td>N.S.W.P.D.</td>
<td>New South Wales Parliamentary Debates</td>
</tr>
<tr>
<td>P.C.</td>
<td>Parkes Correspondence.</td>
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<tr>
<td>S.C.R.B.</td>
<td>State Children's Relief Board</td>
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<tr>
<td>S.M.H.</td>
<td>Sydney Morning Herald</td>
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<tr>
<td>S.U.A.</td>
<td>Sydney University Archives</td>
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<tr>
<td>W.C.T.U.</td>
<td>Women's Christian Temperance Union</td>
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<td>W.F.R.P.</td>
<td>Windeyer Family Records and Papers</td>
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<td>W.S.L.</td>
<td>Womanhood Suffrage League</td>
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NOTE: In citing correspondence between family members, only the Christian name is used where the writer and the recipient are William, Mary or Maria Windeyer.
Acknowledgements

I would like to thank the Windeyer family for their help and support. Lady Windeyer’s gracious generosity extended beyond provision of access to documents to providing more edible sustenance to the historian closetted in her library and the present Judge Windeyer has provided assistance and encouragement.

The work would not have been possible without the patient assistance of the staff at the Mitchell Library, the N.S.W. State Archives and the Sydney University Archives, not forgetting the friendship and encouragement of the librarians at the Truskett Library on my own campus. I particularly thank Iris Atkinson for her tireless pursuit of inter-library loans. Helpful fellow researchers have included Alan Bolton who shared his knowledge of the Bolton side of the family and Jack Sullivan who provided some useful material from the Newcastle locality.

At the head of the list of personal mentors must come my supervisor, Stephen Garton, whose ability to extend me while being unfailingly encouraging has been much appreciated. I would also like to acknowledge the help and advice at various crucial moments of Jan Woolley, John Tulloch, Robin McLachlan and Warwick Franks. For encouraging me to get started, I am also indebted to Warwick Blood. For reading various drafts and helpful suggestions, I thank my parents, Jan Woolley, Jenny Grantley and Jenny Gardiner. I also thank those close to me for encouragement, listening to my endless testing of new ideas and moral support. Last, but by no means least, my thanks to my long-suffering neighbours, without whom my cat may have starved to death while I was absent on frequent research trips.
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INTRODUCTION

This thesis is a biographical study of two people whose lives illuminate the history of nineteenth century New South Wales. It explores the public careers of a husband and wife, William and Mary Windeyer, as influential representatives of significant streams in nineteenth century Australian thought and action. It examines their aspirations for their own age and for the future and their efforts to shape colonial society by creating enduring social institutions. It thus seeks to use the Windeyers as a means of investigating significant dimensions of colonial politics and social reform.

It explores the Windeyers as the bearers of two important traditions: a gentry tradition that revered the 'old world' of pre-industrial Britain and a liberal-radical tradition that explored the possibilities of the new world of competitive individualism. Both William and Mary were born in England of English parents and they treasured British cultural and intellectual traditions, which they wanted to perpetuate in the antipodes. This gave them backward-looking ideals and placed them in what Connell and Irving have identified as a pre-industrial class who wanted 'to reassert the moral unity of society in the new conditions'. In contrast to this, however, they were also forward-looking reformers with strong colonial pride, a radical social vision and belief in the post-Enlightenment liberal tenet that individuals could improve
themselves and their society, defined by Macintyre as 'an absence of history and a corresponding freedom to invent the future'.

They were thus caught in a philosophical tension that they spent their lives attempting to resolve. In this they fit A.W. Martin's hypothesis that 'Australian political history might well be explained largely by reference to an uneasy and hence varying balance between the inbuilt democratic and conservative propensities of a major stratum of Australian society'. They were examples of those who wanted, according to Cole, to 'build anew with old bricks', creating 'a new and better race of white men by stressing both the virtues of the new Antipodean and traditional Anglo-Saxon ethnocentrism'. The challenge of the Windeyers lies in understanding the way their contribution to the colony of New South Wales was shaped by this combination of approaches, the tension between their traditional ideals and their reforming activities, their simultaneous focus on past and future, old and new.

The Windeyers are important because they were involved in a wide range of activities that impinged on the social, political and intellectual development of the colony. William Charles Windeyer was born in 1834 and died in 1897. He worked as a barrister and was an active politician from 1859 until he became a puisne judge of the Supreme Court in 1879. He also played a prominent role in

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a number of charities and served long terms on the governing bodies of The University of Sydney, Sydney Grammar School and the Sydney Mechanics' School of Arts. Mary Elizabeth Windeyer (nee Bolton) was born in 1836 and died in 1912. She married William in 1857 and bore him nine children, of whom eight survived to adulthood. At the end of her child-bearing years she became involved with a number of charities primarily concerned with women and children. She then emerged as one of the crucial group of philanthropists who went on to support women's emancipation and in the 1890s became a leading suffragist.

They were both members of the governing class: William through his political and legal positions and Mary as his wife. When William's career culminated with appointment as a Judge he had reached what Duman describes as 'the heart of the governing elite'. Ultimate recognition within this class took the form of an English knighthood, which Windeyer received in June 1891. During the 1890s Sir William and Lady Windeyer were frequently

3 Mary's entry in the *Australian Dictionary of Biography* says she was born in '1837?' but the memorial plaque in the family chapel at Tomago gives her date of birth as 26 September 1836.

4 D. Duman, *The English and Colonial Bars in the Nineteenth Century*, Croom Helm, London, 1983, p. 105. The descriptive categorising of a class as 'governing' is both functional and relative and is therefore preferred as a definition of those classes that possessed power, influence, education, wealth and privilege, to 'middle classes', 'middling classes', 'bourgeois' or 'ruling' because of the materialist implications inherent in such terms. Here I am suggesting that the social aspects of colonial society's cultural and political determinations were as important, if not more important than material ones.
found on the guest lists of prestigious functions, charitable and otherwise. In June 1897 the Queen approved Windeyer, recently retired, bearing the title of 'honourable' for life.

The Windeyers' public lives were lived in Sydney through a period of rapid urban expansion founded on a growing commercial and industrial base. Their active lives link two significant turning points in colonial history, the gold rushes of the 1850s and the troubled 1890s. The gold rush era in which their careers began was of particular significance in the evolution of New South Wales' society and politics. Emigrants flooded to the goldfields. Many of them were semi-skilled or skilled artisans. Their arrival facilitated the development of diverse commercial activities and boosted the emergence of an urban capitalist middle class. This group spearheaded a struggle against the political power of the squatters, culminating in the achievement of self-government for the colony and the enfranchisement of all male citizens in New South Wales in 1858.

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The decade of the 1890s, in which the Windeyers' public careers ended, is regarded as another major 'turning point' in Australian history. In this decade the economic crisis of the early 1890s ended a long economic boom; serious industrial clashes between capital and labour and the emergence of the Labor Party indicated that distinctive class relations had replaced previous hopes of social harmony; the suffrage movement reflected women's growing political awareness; and the move towards federation demonstrated political maturity. Barcan identifies it as 'a golden age of nationalism, radicalism, and cultural upsurge'. In more recent revisionist histories it has been variously depicted as a time of aggressive and self-conscious masculinism or the height of pessimism. Conflicting interpretations have led Deacon to describe the 1890s as a period of 'multiple and contradictory voices'. Similarly Docker has attacked both the radical nationalist interpretations and newer revisionist critiques as being 'in search of essences and unities', and therefore disregarding 'the presence of heterogeneity' represented by 'multiple, inconsistent, conflicting, uncertain, contradictory' values. While these histories disagree on their interpretation of the 1890s, none fails to indicate the decade as an historical watershed.7

The general parameters of the developments that followed the gold rushes and led up to the 1890s are well known, but recent

research has begun, in Macintyre's words, to erode the 'old verities'. Social, cultural, labour and women's histories have contributed to the creation of an increasingly complex picture of late nineteenth century Australia. The Windeyers, because of the range and variety of their concerns, bring some of these themes together so that a study of their lives contributes to a better grasp of the diverse currents that propelled colonial society and politics.

The philosophical and political tension that marks the Windeyers' lives suggests the interaction between colonial conservatism and liberalism was a pervasive feature of colonial society. Interpretations of colonial conservatism and liberalism, however, depend on assumptions about the degree of transfer of British patterns to the colonial context. Macintyre's study of three Victorian visionaries examines a generation of Victorian reformers whose values and assumptions were similar to those of the Windeyers. He suggests that, in comparison to British conservatism, the colonists had nothing to conserve and very little to defend from liberals or radicals. Other historians, such as Barcan and Connolly, agree that there was an absence of conservatives according to the traditional British definitions, but see the pre-gold rush settlers, particularly the squatters, as an equivalent conservative class because of their vested political and economic interests. Dyster, however, challenges this view. Drawing on a traditional definition of conservatism, he suggests 'the anarchy of squatting could surely be as offensive to believers in the settled manor and parish' as the other extreme of democratic

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anarchy. Along with other historians such as Hirst and Roe, he points out that there was an imported ethos that was close to British conservatism because there was an English-style landed gentry and men who 'fully accepted the old-world certainties' concerning class, creed and politics. Atkinson accepts this latter position, but posits the evolution of a unique colonial conservatism from this English basis as a sense of local tradition emerged in New South Wales.⁹️

A similar debate arises concerning the comparability of British and colonial liberalism. For Martin, 'The colonial 'Liberal' was tolerant of state paternalism, but in other respects he saw eye to eye with his English namesake.' Irving, however, suggests British ideological models were significantly modified for colonial Australia and Macintyre goes further, saying that because the classic liberal canon had 'no room for the creative contribution of nineteenth-century Australians', a peculiarly colonial liberalism emerged.¹⁰️

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Analysis of the transfer of liberalism is particularly complicated because its basic tenets did not remain static in Britain in the nineteenth century. The initial elitist individualism of Locke and the philosophers of the Enlightenment emphasised freedom. This was modified by John Stuart Mill in response to the growth of democratic ideals and in an attempt to accommodate his own residual utilitarianism. The pragmatic political experience of liberals in power in Britain after 1868 further altered liberalism, leading to emphasis on the mutual obligations of the individual and the institutions of state. This allowed liberals such as the British Prime Minister, William Gladstone, to encourage the role of the state to grow even while they continued to proclaim the freedom of the individual. This trend culminated in the philosophy of the New Liberals, led by Oxford based Christian idealist, T.H. Green, who asserted that there was an organic relationship of mutual dependence between society and the individual and that stability and security were important for general welfare and therefore necessary conditions of liberty. The absence of a universally accepted definition of liberalism has led some Australian historians to stress its composite nature rather than its definitive characteristics, producing such descriptions as Loveday and Martin's, 'a web of hopes and demands woven around a number of fixed points', and Macintyre's, 'a way of seeing the world'.

Historians have the same problem as that faced by mid-nineteenth century liberals: how to reconcile individualism with democracy. Macintyre attempts to reconcile these by characterising the liberal world view as faith in the capacities of the autonomous individual, performing in a sphere of freedom under a representative government operating on principles of tolerance, privacy and the rule of law. He acknowledges the potential for tension when he points out that in the Australian democratic political context there was a potential conflict as moral principles 'had to be realised in numerical majorities'. Rowse acknowledges a similar conflict in his study of Australian liberalism when he suggests that, although liberalism is susceptible to a range of interpretations, it was opposed to outright democracy as it supported 'a certain institutional ordering of society, the dominance by a ruling class over subordinate and fragmented social classes.'

This study of the Windeyers contributes to understanding of the relationship between colonial conservatism, liberalism and democracy, because, as Macintyre indicates, it is by understanding political ideology 'through the lives of its practitioners ... that its far-reaching implications become apparent. By considering the practitioners as historically bound figures we can learn something about the construction of traditions and their fragility.'

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This study challenges the polarisation which marks most depictions of liberalism in relation to conservatism. It disputes the view propounded by a number of historians, including Hirst, Roe, Loveday and Martin, that in mid-nineteenth century New South Wales there was a clearly defined conservative position, based on the values of the landed gentry, that was overturned by 'liberals' through the constitutional reforms of 1858 and the land law reform of 1861. It questions Macintyre's implied polarity in the suggestion that, 'where there were few traditional forms and no established ruling class, there seemed precious little for liberals to contest'. The Windeyers were simultaneously landed gentry attempting to re-establish traditional forms in colonial society and reforming 'liberals'. They were not alone in this. When confronted with a similar pattern in his study of Higinbotham, Macintyre labelled him 'paradoxical'. This thesis seeks to make such paradoxes understandable.14

One agreed characteristic of colonial liberals that was shared by the Windeyers is that they believed social progress came about through enrichment of the individual. They therefore favoured institutions of social reform which focused on the improvement of individuals, particularly through education. The motivation for establishing such institutions is, however, another

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area that is widely contested by historians. Current debate focuses on the motives behind social reform and the relationship between structure and agency. Four main positions are taken by historians within this debate. The first is the so called 'Whig' model, represented by such historians as Harrison in the British context and Kewley in Australia. This depicts reform as humanitarian progress. It stresses the unselfish motives of Christianity, the obligations of citizens to their society, concern for the national interest and the potential of welfare provisions to enable the disadvantaged to improve themselves. The second is the pragmatic model, advocates of which include Rothman in the U.S.A., Gough in England, and Windschuttle, Bacchi and Dickey in Australia. This approach presents social reforms as provoked by a society in crisis and sees nineteenth century institutions, charities and laws as immediate responses to preserve or regain a stable and orderly traditional way of life in the face of the external pressures of social change. The third position is the 'social


control model' or 'revisionist' view which depicts social reform as a controlling strategy of the ruling classes. This sees philanthropists as self-interested, 'reform' as 'a deliberate instrument of oppression' and emphasises the judgements, hidden agendas, controls and restrictions in all welfare provisions. Within this model there are subdivisions between the Marxist model, of which Kennedy is a recent Australian exponent, and the 'public interest' model espoused by such historians as Calhoun and F.M.L. Thompson. The Marxist model depicts an omnipotent and omniscient ruling class manipulating the social structure to maintain their dominance, while the 'public interest' model sees social control as contributing to the stability or growth of the society as a whole. The latter view contests the Marxist contention that the workers were merely passive recipients of ruling class actions by positioning them as active agents in the reform process.\(^{18}\) The fourth view is critical of the basic premise of the social-control model that the state played a significant role. Van Krieken suggests that historians have exaggerated this role. Jill Roe and Garton accept that dependence on the state was present from the first white settlement, but argue that continuation of this

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dependence was 'disguised and evaded if possible'. They point out that colonial philanthropists continued to promote the virtues of private benevolence even while their efforts were being underpinned by government initiatives.\(^{19}\)

Dickey, Roe and Garton also suggest that the pervasive dichotomies based on polarising control and humanitarianism are unhelpful. This study of the Windeyers reinforces these conclusions. It reveals the complexity of the motives of individual reformers, showing that in the same person elements of fear and self-interest combined in varying circumstances with altruism, duty, and a desire to extend social control for the common good. It also illustrates the mixed feelings of individuals about state intervention, which was sought in some areas at the same time as it was rejected in others.

Many of the reforming activities of both the Windeyers were directed at improving the condition of women in their society. This study, therefore, also illuminates debate about the characteristics of first wave feminism.\(^{20}\) Many historians have seen a tension


between belief in the need for equal rights for women and belief in gender-based differences. This perception has shaped recent feminist historiography. In the 1970s and early 1980s 'domestic feminism' with its emphasis on gender difference and female moral superiority was depicted as incompatible with advocacy of the rights of women based on abstract principles of equality and personal autonomy. These histories selectively represented first wave feminists as conservative, emphasising their traditional models of womanliness. Some historians including Cott, Searle and Dixson, went further, arguing that emphasis on women's domesticity weakened the cause and implying that it could only be explained by inherent conservatism. Others, such as Bacchi, Grimshaw and Godden maintained the converse, that women's domestic role gave a legitimacy and purpose to women's activities and, from a pragmatic and opportunist point of view, it was not surprising that the suffragists generally upheld it. In both cases, however, domestic feminism was assumed to preclude the feminism of equality. A different but equally delimiting duality has been posed by Offen who rejects the equality/difference contrast as 'unhelpful' but substitutes a duality of her own, 'relational' versus

'individualist' feminism. This separates those women who focused on women's rights in a familial context from those who demanded independent participation in political and economic spheres. More recent writers, such as Allen, Hamilton, Caine and Pateman, acknowledge the multi-faceted nature of feminism and explore the possible co-existence of 'belief in equality' with 'belief in the differing natures' of male and female. Similarly, Macintyre shows that belief in 'natural differences' in the private sphere was compatible with rejection of 'artificial inequalities' in the public one. Analysis of the Windeyers' position will reinforce this view.

A related debate concerns the term, 'feminism'. It is problematic because the word was not coined until the early twentieth century. The main protagonist in this debate is Nancy Cott who sees feminism as being born in the 1910s as the 'New Woman's' reaction against the woman movement's emphasis on self-sacrifice, nurturant service and moral uplift. Cott has been criticised in a number of recent accounts. Banks argues that there is no definitive position that can be encompassed by the label so any articulate and active women concerned to advance the interests of women as a group are feminists. Caine and Allen also

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defend the use of 'feminism' in the nineteenth century but take a more definitive position, arguing that feminism requires a focus on women's autonomy and self-determination combined with particular activities. In recognising 'the spectrum of discourses that might be present in feminism at any historical moment', Caine and Allen have focused on individuals in order to understand the characteristics of feminism and how they changed over time. This study of Mary Windeyer will add further to this genre and will suggest that Mary may be classified as a feminist as her position presented 'unmistakable challenges to male dominance'.

Adding William Windeyer to the study of feminism adds another dimension and illuminates historical debate about the relative roles of males and females in changing the position of women in Australia in the late nineteenth century. The early historiography minimises women's active role in changing their situation, suggesting they were 'passive recipients' of reforms handed down by men who had the ulterior motive of using women to promote morality and social control. Later writers acknowledge that women were active as well as men but indicate that this activity was initiated within a separate 'women's sphere'. Godden suggests that this women's sphere was based on


'differences rather than inequality', but Goodnow and Grimshaw indicate that its existence promoted inequality in that it served to exclude women from other arenas. According to this school of thought women's sphere philanthropy formed the basis for the eventual politicisation of women, but this meant that women entered politics without freeing themselves from their distinctive role. This is reinforced by focusing on the Women's Christian Temperance Union as the first organisation through which women entered into public life.26

Most recently writers such as Allen and Caine have begun to explore the possibility that women who were actively pursuing rights were doing more than extending women's private sphere activities; they were actively challenging their oppressive relationships with men in both private and public spheres. Caine points out, however, that even in this opposition to male dominance, 'men were essential to the cause' and some feminists were very greatly dependent on male friendship and male support.27 Studying William and Mary in relation to each other allows exploration of both the possibilities and limitations of the involvement of enlightened men in challenging male oppression of women.


This thesis uses a biographical focus in order to transcend established arguments and generalisations, to connect individuals to historical periods and social/political structures and to unite several historical strands through the perspective of two human lives. A number of historians have recognised these functions of biography in coming to an understanding of colonial society and politics and some major biographies have been written.  

This study offers an alternative to either traditional political biography which concentrates on a man and often neglects family life, or feminist biography which concentrates on a woman and often neglects the surrounding significant males. It presents a parallel focus on a male and a female who were linked by marriage but who each had a record of individual achievement. It is not primarily a study of their relationship because it concentrates on each individual in the context of the public sphere. For each of them, however, their relationship made a significant contribution to their public work and this will be acknowledged.

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By looking at the Windeyes in parallel it is possible to see how their marriage was important for each of them and how each of their lives was shaped by the other. They were connected by both interdependence and interaction. They shared similar philosophical outlooks and goals. These included a world view which saw men and women as having complementary roles and this affected their lives and work. William regarded Mary as neither subordinate nor as intellectually inferior. Their partnership would seem from all their letters to have been based on mutual friendship and love and their marriage was apparently strong and happy.

The potential for tension between them must, however, be acknowledged; differences of gender created differences of perspective. As a governing class male, William was in a powerful and privileged position and was therefore trying to accommodate a changing society without affecting his status. As a governing class female, Mary was in a more anomalous position, being without direct access to legal or political power. She was able to exercise some control over the behaviour and attitudes of the lower classes through her educational and philanthropic activities, but her public activities were limited by a need for respectability and consideration of her husband's position. She was therefore restrained by their marriage in a way that he was not.

While it was a marriage in which Mary developed as a strong independent character, it was also a marriage in which her ultimate role remained that of William's wife and the mother of his children. Between 1859 and 1876 she gave birth to a larger than
average size family. Only as the demands of motherhood eased in the late 1870s was she able to turn significant attention to public causes. Her public life was, in fact, largely confined to a twenty year period between motherhood and widowhood. Its abrupt ending seems particularly indicative. She gave up all her philanthropic and political work in Australia to follow her husband to England in 1896, but remained busy in the public arena, fulfilling a number of public engagements while she was there. Her last significant public engagement involved a long-standing commitment to attend the Toronto White-ribboners world's convention in October 1897 as an Australian delegate. This occurred shortly after William's unexpected death in September 1897. When she returned to Australia after his death she went into retirement from public life, except for her involvement with local charities and the Newcastle Kindergarten. This is, perhaps, merely a reflection of acceptance of her subordinate position as wife and her dependence on the status that it gave her. It might also, however, indicate the extent to which their marriage was a true partnership in that she felt unable to continue her work beyond the local scene without his strength beside her.

While this thesis does not attempt to be in any way a complete biography, it acknowledges the co-existence of the private and public spheres and will explore aspects of the intersection between them. In his study of a number of liberals,

29 Wives born in the late 1830s bore seven children on average, Mary bore nine. - P. Grimshaw et. al., Creating a Nation, p. 119.

30 New York Daily Tribune, 24 October 1897.
Macintyre has acknowledged the 'disjuncture' created by the 'demarcation of private and public spheres of behaviour, with distinct codes appropriate to each'.31 This applies to both the Windeyers. There is a significant contrast between depictions of William Windeyer with his family and on his estate and those of him in public life. In the former situation he was 'a friend and father to his people', 'a good, kind, emotional man, adored in his home circle, respected and loved, by his friends'. In the latter role he was depicted as frightening and severe, a 'stern and inflexible Judge' who 'hid a generous soul beneath a personality which was often repellent'.32 Mary also appears to have lived two lives, a private one based on devotion to William and her children and another as a public identity. This was well summed up towards the end of her married life by a feature writer who wrote, 'In every way, as is well known, Lady Windeyer has been an invaluable helper to her husband, and an earnest advocate of everything that tends to advance the status of woman.'33

The Windeyers also, however, illustrate the difficulty of segregating public and private spheres. William's public interests often reflect private sphere issues related to women and children,


32 Daily Telegraph, 25 December 1886; Obituary, The National Advocate, 16 September 1897.

such as nursing, education, and care of neglected children. Mary crossed from the private realm of home and family into the public sphere through philanthropic work and suffrage campaigns. William's sensitivity and sentimentality may well be regarded as private and feminine attributes whereas Mary's strength of character and political competence may be regarded as public and masculine.

There has been no previous major study of either of the Windeyers. Their significance in the fields of politics, feminism, law, health, welfare and education has led to references to them within numerous historical studies, but none of these explores the crucial dimension of their motives, the totality of their work or their intersections with each other. Golder, for example, presents a thorough account of Windeyer as a divorce judge; Martin deals in some detail with William's relationship with Henry Parkes and Turney gives information on William's role in the history of The University of Sydney, but none bring all his roles together. Taken together the totality of references, in fact, presents contradictory pictures. Some present William as a reformer, a compassionate man and a philanthropist, others present him as a conservative intellectual and yet others denigrate him as a 'hanging judge'.

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Mary has been seen as a reformer and a campaigner for women's rights, but also as a conservative exponent of morality and womanly virtues.\textsuperscript{36}

The Windeyers' influence on each other is also a source of comment and speculation in some secondary sources, but in each case the observation is skewed by the focus of the work. Mary's character and interests are sometimes used to explain William's apparent sympathy for women's causes. William's role as a public figure who supported women's causes in general, and his wife in particular, is sometimes used in accounting for Mary's entry into public life.\textsuperscript{37}

This thesis will show how all these diverse representations of the Windeyers are valid. It will illuminate the way in which reforming and conservative behaviour came together to serve the Windeyers' purposes. It will show the significance of their relationship to the work of both William and Mary.


Primary resources for this study were extensive. The Windeyer family had a strong sense of its place in history and much family correspondence has been preserved although it is spread through a number of archival and private collections. This correspondence has been approached circumspectly. Tosh says private letters tend of all sources to be 'the most spontaneous and unvarnished, revealing both the calculated stratagems and the unconscious assumptions of public figures', but the Windeyers' strong sense of importance, which they shared with similarly placed families, makes it difficult to be sure when private letters were written for a purely private audience and when they were written with a consciousness of the public view of posterity.\textsuperscript{38}

There is also a danger that, through reading letters either to or from the subject of a biography, the prejudices and biases of the subjects themselves will come to play too great a role in developing constructs of them. Intimate letters contribute to the development of a personal relationship between the researcher and the subject, a well known threat to the objectivity of writers of biography. Overcoming this identification with the subjects has entailed awareness of two levels of interpretation: the subjects' interpretations of their interactions and the biographer's interpretation of the subjects' interactions. Interpretation poses the methodological question of verification. Kathleen Barry suggests that the solution to this lies in the back and forth reading of the subjects' lives, because 'the life itself will test out the interpretations one is making of it by living up to them'. She suggests that

'anomaly [becomes]... the source of lines of questioning that will generate new formulations.' 39 This was particularly so in the Windeyers' case as neither existing liberal nor conservative models were found to be wholly satisfactory.

Private sources can be evaluated and placed in context through the different view of public sources. The public sources of the Windeyers' period are rich in information about them. A desire to balance the treatment of both people as public figures has, however, been hampered because, through activity in the male spheres of Parliament and the Law Courts, William's presence in recorded history is far more prominent than that of his wife. Much of the public information on Mary's activities comes from after 1881 as she increasingly entered the public spheres of philanthropy, education and politics.

Barry suggests that the central act of 'committing a life to biography' is 'that of interpreting it in its own social, historical, and political context' and that through this biography may become 'an approach to the restructuring of history itself'. 40 This thesis aims to understand the Windeyers and their reforming work within the structures and values that they constructed and articulated, in which they believed and which supported them. In doing this it attempts to discern the social and political environment in which they moved and challenges some of the assumptions of existing historiography. Traditional biography as 'grand narrative' with a definite chronological form can lack context and scholarly critique. This thesis attempts to avoid these dangers through placing the


Windeyers within the broader structures and dynamics of society. Because it is not an attempt to tell the story of the Windeyers' lives, but an attempt to explore the layers of understanding that made up their world view and to examine the effects of that world view in particular arenas, the structure of this thesis is thematic rather than chronological.

The first chapter seeks to illuminate the forces that shaped the Windeyers' ideas, careers and the range of their concerns. It examines their family patterns and expectations, formal education, religious beliefs and the literary, philosophical and national influences that affected them. Explanations are sought for the origins of their strong commitment to the possibility of human improvement, their desire to retain traditional values and their preparedness to take society and social relations in new directions.

The second chapter looks at the crucial role of education in the Windeyers' 'liberal' social and political model through examining their active support of a range of educational institutions. Their educational work is explored, showing how they aimed to raise all people to the maximum realisation of their capacity for responsible citizenship, while they also desired to select and train the intellectually merited to be virtuous leaders. They stood out against cultural currents but nonetheless made significant contributions in many fields of educational development.

The third chapter focuses on William's career as politician and judge. His role as a supporting actor in the struggle for power is examined in the context of the working of the faction system in the New South Wales Legislative Assembly. The effect of his early desire to be a virtuous leader in a civilised state is discussed along with its subsequent compromise by his political and judicial
experiences, so that the young radical ended his life as the 'hanging judge'. This chapter illuminates Windeyer's struggle to combine faith in democracy with liberal elitism and conservative values.

The fourth chapter discusses the Windeyers' reactions to the lowest strata of society through their philanthropic work and aspects of William's judicial work. Their combination of the traditions of *noblesse oblige* with contemporary forward looking ideas of individual improvement and self-help is explored. The chapter shows how the disadvantaged were divided into categories depending on whether or not they were salvageable and depending on whether or not they were 'deserving'. The application of these categories is illustrated in the context of the philanthropic institutions with which the Windeyers became involved.

The final chapter looks at the Windeyers' ideas on the status of women, showing how the traditional notion of co-operation between men and women is central to both their positions. It explores how re-establishing this traditional notion in a world in which women's roles had been debased involved the Windeyers in campaigns to elevate womanhood and in reforms to remove the institutional barriers that perpetuated female oppression. The Windeyers' contributions are discussed in the areas of opening up opportunities in higher education and in the nursing profession, improving the legal rights of married women, including their access to divorce, and the movement for womanhood suffrage.

The conclusion attempts to weave a coherent whole out of the Windeyers' simultaneously nostalgic and reforming ways of
viewing the world and examines how this study of the Windeyers challenges the existing historiography.
Chapter I

SHAPING TWO LIVES

The year 1859 might be regarded as the year William and Mary Windeyer came of age. In that year he turned twenty-five and entered Parliament, she turned twenty-three and gave birth to their first child. It marks the beginning of two careers that were devoted to leaving the colony better than they found it; careers that were the product of family patterns and expectations, formal education, religious belief, and the literary, philosophical and national influences that shaped the young couple.

Family Patterns and Expectations

William and Mary came from ambitious families and their lives were shaped by family aspirations from an early age. Both families strove for gentry status. Mary's was wealthy and educated. Her paternal grandfather, Richard Thorley Bolton (1763-1818) had built up his fortune by trading in Baltic timbers in Russia where he became Mayor of Narva in Estonia. Mary's father, Robert Thorley Bolton (1803-1881), lived in Russia until he was twenty-one, then went to Cambridge where he gained an MA before joining the Church. He gained a reputation as a scholarly, conservative, High Church Anglican. He came to NSW in 1839 as the foundation Anglican Minister at Tarro Church in Hexham, having been recommended to Lord Glenelg by the Society for the Propagation of the Gospel and approved by the Bishop of London. Mary's mother, Jane Martha (nee Ball, 1807-1900), was from a family
described as 'wealthy and privileged' and was reputed to have grown up in 'comparatively luxurious circumstances'.

William's origins were more mixed. His maternal grandfather, William Camfield (d. 1851), was a Kentish squire. His paternal grandfather, Charles Windeyer (1780-1855), was of lower status, a newspaper reporter who rose to become a magistrate. His father, Richard Windeyer (1806-1847), entered his profession on his son's baptism certificate simply as 'gentleman'. He spent his early life as a newspaper reporter and lawyer. His emigration to Australia in 1835 facilitated his social ambitions by allowing him to become a landowner. His father, Charles, had come out in 1828 with the intention of settling the land, but had instead become the Chief Clerk to the bench of Magistrates. Richard had remained in England, believing that there were too many lawyers in the colony, but by 1834 he felt opportunities for colonial barristers had improved as a result of legislation which prevented attorneys from practising as barristers. He acquired his land at auctions over the following three years. The source of his original capital is unclear. Perhaps he had brought some savings out with him. He bought his first lot of 640 acres in August 1835 with a deposit of £16 and had paid off the full amount of £144 by September 1836. In New South Wales he established himself as a leading barrister, politician,

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1 Family tree, W.F.R.P., scrapbook, M.L., "D 159, p. 285; Glenelg to Gipps, 8 December 1838, Governor's Despatches, M.L., A 1278, pp 643-4; Bolton Family History project, unpublished work of Alan Bolton of Oatley, NSW.
philanthropist, landlord and scientific, if uneconomic, farmer and wine-maker.²

Land was crucial in cementing a respectable position in the colony. Between 1836 and 1838 Richard Windeyer established 'Tomago', an estate of 5,000 acres on the Lower Hunter. Connell has classified the Australian governing classes as either mercantile bourgeois liberals or squatters.³ The Windeyers were of the governing classes but they do not fit comfortably into either of these groups. Rather they fall within the ambit of studies by Atkinson, Hirst and Roe, among others, on the gentry in Australia. Richard Windeyer was not a squatter but an owner and one who, like the Macarthurs at Camden, attempted to create an English-style landed gentry with a grand house, loyal tenants and a school and church on the estate.⁴ At Tomago Richard used convict labour to build an impressive home, consisting of a sandstone mansion with a slate roof. It had 10 bed-rooms, a hall, drawing-room, dining-room, bathroom, pantry, kitchen, servants' sitting room,

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scullery and laundry, four attics and commodious wine cellars. He ran the estate on the basis of a traditional relationship between landlord and tenant, paternal and caring on the part of the former and deferential and respectful on the part of the latter. He established a school for employees' children in the day and working boys and young men in the evening. Richard did not build a church but his widow, Maria, did, in 1860 from stone left over from the house. Every child of William and Mary Windeyer was christened there and in 1879 it was renovated by the people of Tomago as a Memorial to Maria.\(^5\)

Being a landed gentleman meant more than the mere acquisition of land and its material accompaniments. It included moral qualities which combined Christian ideals of brotherhood with the classical Athenian ideal of the responsibilities of citizenship. These were expressed in a revival of medieval models of chivalry emphasising generosity, courage, courtesy, honour, mercy, protection of the weak, defence of the wrongfully oppressed and service to the nation. William was reared with these ideals. They were taught by his parents, reinforced at his schools and promoted when he attended the University, where the Principal, John Woolley, told the students to emulate 'the young aspirant for knightly renown'. Mary came from a similar enough background to share these values. She wanted William to be remembered at the end of his life primarily as a 'Courteous Gentleman', while, for herself, she reached towards the philosophy of her parents'\(^5\)

generation for 'Faith, Constancy, and religious inspiration' and offered her children's generation 'Hope, Charity, and patriotic aspirations'.

Elevation of the gentry and their values was accompanied by denigration of vulgar wealth and materialism. This was represented in the work of such philosophers as Carlyle and Ruskin who believed that people should relate to each other through bonds of community rather than market forces and the cash nexus. This attitude is evident in young William's fears, reflecting the view of many colonists, that the 1851 gold rush would be bad for the country. To William the gold rush represented 'that worst of all evils befalling us, our wealth outgrowing our civilisation'. Wealth was only justified when it was used for the good of others. Power and privilege were only justified when accompanied by a sense of responsibility for the welfare of the less privileged classes. This was inherent in the notion of noblesse oblige, which was intrinsic to the ethos of the Windeyes.

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7 Windeyer addressing complimentary banquet to Professor Badham on the occasion of his seventieth birthday, S.M.H., 22 August 1883. There are many expressions of these attitudes including: William to Maria, 17 May 1851,
William's family supported many movements and organisations aimed at improving the lives of the less fortunate. Charles Windeyer was an honorary member of the London Vaccine Institution. Charles and Richard were both involved with the setting up of the Sydney Mechanics' School of Arts and Richard was the first President of its Debating Society. Richard was also a founder member of the Aborigines' Protection Society, on the committee of the Benevolent Society, a member of the New South Wales Temperance Society and a subscriber to the Sydney Infirmary. William's mother, Maria Windeyer, donated to the School of Industry. Mary's background also appears to have been strongly affected by the notion of service. Her father's duties as a Minister included providing religious instruction to convicts in remote districts and the family established a small school in which her mother taught.

The application of noblesse oblige in the political arena meant that the educated and moral elite had both a right and a duty to participate in government. Those individuals who made the strongest commitment to the common good and who demonstrated the most virtue were those most fit to be leaders. This ideal involved a conflict between the desire for individual power and recognition and the drive to be altruistic, ethical and responsible. This conflict appears as a major theme in many Victorian lives.

Whittemore has seen it as a problem 'of Victorianism itself'. A number of accounts, including Robert Lowe's obituary, suggest Richard Windeyer fitted this pattern. He was seen as devoted to the good of the colony on the one hand and vain, egocentric, ambitious, aggressive and uncompromising on the other. It was a dilemma inherited by his son. William summed the conflict up in his school boy notes when he wrote, 'the two great springs of human action are fame and conscience'. He manifested both motives in his youthful ambition to serve his country, his determination to become an eloquent speaker and writer and his admiration of, and desire to emulate, such historical figures as Clive of India and Pericles.

The effect of equating virtue with power, however, was that the powerful became self-righteous and the virtuous expected recognition as their reward. Both these flaws marked Windeyer's development. His letters and essays suggest that at school his earnestness and commitment to work bordered on priggishness; he was self-righteous, had high ideals of friendship and was unforgiving of weakness. Tension between his ideals and his

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arrogance, often in the form of contradictions between his commitment to legal principles and the power of his private feelings, marred his later public life.\textsuperscript{11}

The Windeyers conceived of a hierarchical society because they grew up in such a world and knew no other. They probably also approved of such a society because they were among the privileged and powerful. They were born into a world in which a few people had the power to affect the lives of others by controlling their chances of survival, their access to power, their opportunities for education and the curriculum of that education. They assumed the inevitability of some sort of social hierarchy. As Nott points out, even 'disinterestedly benevolent liberals of the governing class did not question their right to rule'.\textsuperscript{12}

The Windeyers' position as members of the colony's gentry was threatened by the economic crisis of the 1840s which devastated many of the elite group of land-holders in New South Wales. It was further jeopardised by Richard's premature death in 1847 and the subsequent bankruptcy of the estate. Richard left Tomago mortgaged and debts amounting to about £9,000. For such a family a financial crisis of this magnitude meant not only a drive to recover the family fortune but also a renewed emphasis on the cultural attributes of being a gentleman.

\textsuperscript{11} These characteristics are frequently evident in early letters from William to his mother, for example, William to Maria, 3 December 1849, 5 August 1850, 11 November 1851, Windeyer Family Papers, M.L., MSS 186/7.

Maria salvaged the homestead and surrounding land under cultivation using a combination of money from her father, a fund raised by political colleagues in memory of Richard and her entitlements in return for releasing her dower. William was thus able to maintain the status of landed gentleman. His letters suggest he valued Tomago and never ceased to appreciate his mother's rescue of it. He was able towards the end of his life to acquire property lost at the time of his father's death and he also worked at restoration and improvement. When William was busy, Mary managed the estate and after he died she retired there, feeling 'that to live in it is like nestling in his heart'. At this time Tomago consisted of about 2,000 acres.

Richard's death left William as an only child with responsibility for his mother. Their letters suggest strong emotional bonds. He was made to feel that her future happiness depended on him being dutiful and affectionate. In response his attachment and devotion were apparently intense and unquestioning. Until her death in December 1878 he remained close to her, liking to return

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13 Maria's position was made easier because she had not relinquished the right to dower - a good thing before married women's property legislation. - W.J.V. Windeyer, Address at Conference of Historical Societies of the Hunter River, Raymond Terrace, 3 March 1879, typescript held by Alan Bolton, p. 13. Numerous letters attest to the difficulties facing the family at this time. See for example Maria Windeyer to William Camfield, 24 June 1848, Windeyer Family Papers, M.L., MSS 186/7; George King to Maria Windeyer, 15 July 1848, Windeyer Family papers, M.L., MSS, 5221 X.

14 William to Maria, 22 March 1855, Windeyer Family Papers, M.L., MSS 5221 X; Mary Windeyer to Alexander Oliver, 22 December 1897, Alexander Oliver papers, S.U.A., P. 7., box 12.
to Tomago to visit her and to work in the garden. Their relationship appears to have been very close even before Richard's death. She conducted William's early education herself. In many letters she is very protective and anxious about his health. She was a strict disciplinarian; her expectations of her son were high and threaded with strong religious imperatives. William lived in fear of her displeasure and craved her affection. When he was fifteen, he wrote to her: 'I have you to love me and watch over me and advise me with a mother's love and I am sure my dear mother I shall ever have your love as long as I am worthy of it'.

William's strong relationship with his mother had a powerful influence on him. Her constancy, strength and independence demonstrated abilities and capacities that may account for much of William's later admiration and sympathy for women. His mother and his wife were the two pillars of his life and they never let him down. All the significant men of his early life, by contrast, either died, deserted him or proved unreliable. His father died in 1847 and his grandfather in 1855. His mentor, Robert Lowe, returned to England in 1850. His good friend, a master from King's School, G. Schilling, went overseas in 1852 and never returned despite promises to do so. His patron, Sir Charles Nicholson, retired to England in 1862. His hero, John Woolley, went to England in 1865 and died in 1866. His political champion, Henry Parkes, abandoned him for many months when he went to England for a visit in 1861 and, worse, embroiled Windeyer in political controversy in 1866. William was thus forced back onto his own

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15 William to Maria, 3 December 1849, Windeyer Family Papers, M.L., MSS 186/7.
resources and thrust into a lone and independent male role from an early age. He had to prove himself worthy of this role, ever reliant on supportive women, mindful of his duty to protect these women and live up to their expectations.

William was only thirteen when his father's death forced him to adopt the mantle of adulthood. He was anxious not to be too much of a financial burden to his mother and their correspondence often expressed concern about money, which at times became oppressive to him. On one occasion he wrote to his mother with a cry from the heart, 'I can't bear this word money [emphasis in the original]'\(^\text{16}\). The family's change of fortune also made him aware of the need to succeed by his own academic ability. He partly supported himself through university by taking pupils but also won the Wentworth scholarship the first time it was offered which earned him £50 per year for the three years of his undergraduate course.\(^\text{17}\)

There is much less information about Mary's childhood and upbringing than there is about William's. Comparable private correspondence sources are lacking as she did not leave home to study and public sources are few as her parents were less prominent than the Windeyers. The sources that do exist suggest that their financial position was comfortable. As a well educated High Church Anglican Minister her father held a position of social

\(^{16}\) William to Maria, 25 March 1851, Windeyer Family Papers, M.L., MSS 186/7.

respectability. His salary began at £150 and increased later to £200. They lived at first at Abbey Green near Singleton but by January 1843 were settled at the Parsonage of Hexham. Reverend Bolton acquired some land but ran into trouble over quit rent. In July 1846 he was raided and nearly everything belonging to him was seized to pay the arrears. As there was a political and legal challenge to quit rents at this time, in which Richard Windeyer was a leading player, Bolton's failure to pay may have been more a matter of principle than poverty.18

Although Mary's mother appears as a shadowy figure, the centrality of domesticity in her life may be presumed from the eleven children she produced and reared. As the fifth child and second daughter Mary probably had to contribute to the work of the household and possibly learned social and domestic skills from her mother at an early age. William certainly commented when he was courting her about how hard she worked at home. Her youthful 'noble conduct' and 'good temper, good sense and affectionate

18 Governor Gipps to Lord Russell, Ecclesiastical Return, 5 August 1841, Governor's Despatches, M.L., A 1225, p. 386; S.M.H., 14 October 1859; NSW Registry of Baptisms, 1843, Vol. 27, entry 1720; Maitland Mercury, 4 July 1846. Quit rents were recurring debts to the Crown incurred by owners of granted land. They became an issue in 1846 because Gipps had enforced payment of quit rents on lands granted by the Crown although collection had been left in abeyance for so long that the rents had come to be considered a mere formality which the crown had relinquished. They were a serious issue for the landed gentry because they placed them at a disadvantage compared with the squattocracy.
unselfish disposition' were all noted by William's mother.\textsuperscript{19} The families knew each other because the parsonage was a mere boat row up the Hunter from Tomago and Bolton became William's tutor in Greek. Mary first met Maria in April 1849 when she dined at Tomago with her father. Thereafter she became a regular visitor and was strongly influenced by Maria Windeyer to whom she reacted with a mix of devotion and indebtedness. In 1897 the sixty year old Lady Mary Windeyer paid tribute to her late mother-in-law saying, 'She had never considered herself a worthy successor of her whose influence had done so much good in Tomago'.\textsuperscript{20}

**Religion and Education**

The Anglican backgrounds of both William and Mary validated their sense of social superiority and obligation. William had a strong personal faith imbued by his mother and claimed to be motivated by 'the noble altruism of Christianity'. He believed in the power of prayer, and attributed his own success in even such personal achievements as the gaining of scholarships to the Will of God. His comfortable Anglicanism saw God as essentially benevolent and interested in the ultimate well-being of earth as well as heaven. Even his father's death was taken as a reason to trust in God and

\textsuperscript{19} See William to Maria, 24 October 1852, S.U.A., P.1; William to Maria, 7 April 1854, Windeyer Family Papers, M.L., MSS 5221 X; Maria to William, 12 January 1855, Windeyer Family Papers, M.L., MSS 5221 X.

\textsuperscript{20} Mary Windeyer, address to tenants at Tomago, *Evening Times*, 30 January 1897.
William focused on 'his merciful goodness' in providing them with friends and support in their adversity.21

University broadened William's beliefs by introducing him to secular religion based on the diffusion of knowledge. This was largely the result of the teaching of John Woolley who based his philosophy on a Socratic understanding of the ultimate moral value of truth. This involved tracing Christianity's connection with preceding religions, including Greek paganism, and portraying all beliefs as manifestations of the Divine Will.22 Windeyer's secular altruism found ultimate expression in his own desire to be cremated if possible 'as so doing may tend to promote a system of disposing of the dead that will benefit the living'.23 His wish was able to be carried out, although cremation was still illegal in Australia. He died in Bologna in Italy and his daughters who were with him had him cremated there and then returned his ashes to Australia.

For William, the broad search for religious truth eventually led to an interest in spiritualism, which began when he attended several seances in Melbourne at which a medium appeared who seemed to be his daughter, Wilhelmina, who had died in childhood. He felt this gave him evidence of life after death. It was an interest which he shared with a number of intellectual liberals, including his


22 See J. Woolley, Lectures, pp 74, 122, 228.

23 Will of William Charles Windeyer, Register of Deceased Estates, A.A.N.S.W.
friends, Sir Charles Nicholson and Emily Clark. It was not shared by Mary, although he tried to convince her of his faith in 'unseen friends' and the hereafter.  

Many accounts of Mary's words and actions suggest she had a simple personal Christian faith, which emphasised the charity of both giving and forgiving. She was, like William, tolerant of sectarian differences. She had a strong respect for any compassionate religion, even the Unitarian Church whose teachings denied the Holy Trinity and the existence of Hell, but whose good works and individual philanthropists contributed in her view to 'the work of mercy and goodness'. She identified religion as peculiarly the cause of women, because it satisfied their need to do good, and she was a strong supporter of women's work, such as sales of gifts, which supported churches.  

Education was important to both the Windeyers and the Boltons and it played a major role in shaping the outlooks of William and Mary. Mary was unusually well educated for a girl growing up in the 1840s. Her education included 'higher


intellectual training and culture' with French as one of her accomplishments. William indicated in letters to both Mary and his mother that he enjoyed her rational conversation and that she appealed to him as an intellectual partner as well as an emotional one. She attended her father's school and was also educated at home by her older sister, Anne Jane Bolton, 'Annie', and later by a tutor. Annie seems to have had a strong influence on Mary. They had earnest conversations and later Annie wrote Mary many letters developing her awareness of the difficulties arising out of the legal and social position of women. Annie, who was seven years older than Mary, became a pioneer of higher education for women. In 1871 she was one of the first two women to do the Senior Public Examination in New South Wales and she won the inaugural Fairfax Prize of £20 established by John Fairfax to encourage female candidates in the public exams. Then, possibly encouraged by William Windeyer, she went to study at Canterbury University in Christchurch, New Zealand, becoming the first Australian woman to receive a University degree. She went to Melbourne around 1875 as an art pupil of Monsieur Louis Buvelot. She never married and in 1881 returned to England to nurse her dying father. She remained at Stowe with her ageing mother until the latter's death at the age of 94 in 1900. Annie then went to Oxford where she coached young students in Greek and Latin until she died in 1906 aged 76.26

26 William to Maria, 3 June 1851, Windeyer Family Papers, M.L., MSS 188/7; William to Mary 6 August 1854, S.U.A., P1; Bolton Family History project, unpublished work of Alan Bolton of Oatley, NSW; Obituary of Anne Jane Bolton, unidentified English newspaper, Scrapbook of Jane Windeyer, Windeyer Family
Mary's education was also strongly influenced by William, who was three years older. They read Tennyson together and William recommended books to her, such as *Paradise Regained*, and authors such as Lamb and Ruskin. William's education thus contributed indirectly to Mary's. This was not uncommon in an age when there was a marked imbalance between the education of men and women and if an intellectual male wanted an intellectual mate he had to educate her up to his standard himself.27

William's schooling was classical, traditional and, as befitting someone from his class, elitist. His preparatory schooling took place from the age of eight in Sydney with an Anglican clergyman, Mr Geylls, under whom William enjoyed Greek and made good progress in Latin and French. His instruction also included dancing, fencing, drawing and singing, all the accomplishments of a young gentleman.28 William's senior schooling took place in institutions which emulated the tradition of the reformed Great English Public Schools. It began at Elfred House Private School, which was run by W.T. Cape, a respected classical teacher and strict disciplinarian, who demanded high standards of his pupils and was described as 'the Dr Arnold of Australia'.29

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28 Maria Windeyer to Eliza Camfield, 29 July 1843, 5 October 1845, Windeyer Family Papers, M.L., MSS 5221 X.

29 *The Cyclopaedia of N.S.W.*, Sydney, 1907, p. 237. This is a reference to Dr Arnold, the famous headmaster of Rugby school in England.
William was a pupil at Cape's school when his father died. His mother's main concern at this time was that William's schooling should continue to be the best she could afford. In this she was aided by two benefactors, friends of Richard Windeyer, Charles Nicholson who offered William board and lodging while he continued at Cape's School and Robert Lowe who paid the first account for school fees. Apart from this one set of fees, however, Maria Windeyer supported William through his education from the proceeds of 'Tomago' and with some help from her father.\(^{30}\)

Towards the end of 1848 Windeyer became unhappy at Cape's. He had failed to make the first class and felt that Cape's behaviour towards him had changed after his father's death. He left in 1849 and after a short time at home was sent to The King's School, Parramatta. This school had been established by Archdeacon Broughton in 1831 as an Anglican secondary boarding school for the children of the colonial elite. The principal at this time was the Reverend Robert Forrest, a man of liberal views who appealed to William. The narrowness of the denominational orientation of the school, however, affected William's relationships with the other masters and with his fellow students and his experiences there reinforced the hatred of denominationalism which infused his later work on education.\(^{31}\)


\(^{31}\) See William to Maria, 2 August 1848, first letter from King's School - 7 October 1849, 15 April 1850, 2 September 1850, 11 February 1851, Windeyer Family Papers, M.L., MSS 1867.
William was a conscientious student and in late 1850 had a near breakdown as a result of concentrating too much on study. He recovered by taking up recreational and outdoor activities, including cricket and hockey. This may help to account for his later commitment to the ideal of a rounded education which included physical as well as mental activities. While William was finishing his schooling there was discussion about the new university to be established in Sydney. As early as September 1850 he expressed his ambition to become a student there. That ambition was realised when he was present in the first intake of students at The University of Sydney's formal inauguration in the Hall of Sydney College on 11 October 1852. The inauguration speeches emphasised the obligation of the students not to disappoint their friends and countrymen. Such thoughts were in accord with William's strong sense of obligation and from the outset he aimed to do well both for himself and to impress others. In his undergraduate career he won several prizes and he graduated on 5 February 1856 with a distinction in Classics, at the head of the six graduates in his year, making him the most senior of all Australian graduates. He was awarded his MA in 1859. William Windeyer was the University's first success story, held up by both contemporaries and historians as a paragon of what the University could achieve.

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32 See William to Maria, 2 September 1850, 12 March 1851, 25 March 1851, 23 July 1851, Windeyer Family Papers, M.L., MSS 186/7.

33 See William to Maria, 16 September 1850, Windeyer Family Papers, M.L., MSS 186/7; William to Maria, [?] August 1854, S.U.A., P.1; Sir Charles Nicholson's address, Inaugural Addresses on the Opening of the University of Sydney, 11 October 1852, Joseph Cook, Sydney, undated, p. 15; Vice-
During the period of his formal education, William's developing world view was influenced by two of the colony's major intellectuals, Dr Charles Nicholson and Dr John Woolley. Nicholson was the earlier influence. During his stay with Nicholson while he attended Cape's school, he became 'quite close' to the Doctor. Nicholson was a graduate in medicine from Edinburgh University who established himself in New South Wales as a statesman, landowner and businessman. He was also a connoisseur who collected rare books, antiquities, pictures and manuscripts. He was an active politician during the time William shared with him, having been elected to the Legislative Council for the Victorian electorate of Port Phillip in 1843 and being Speaker from 1846 to 1856. He was also a member of the Temperance Society and the Sydney Mechanics' School of Arts. He objected to denominational education and was a member of Governor Fitzroy's National Board of Education. Described by Barrie Dyster, as an 'urbane grandee', he detested party bickering, and espoused the ideals of the eighteenth century country gentleman. He believed that material advancement was useless without moral and intellectual progress.\(^3^4\) He summed up his ideals when he admonished the University's first undergraduates, who included William, to be distinguished by 'virtue, piety, moderation, humanity,

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wisdom'.

Nicholson thus contributed to the more traditional aspects of Windeyer's philosophy.

Nicholson later became estranged from Windeyer, as the latter became more radical. William's political radicalism owed much to the person who had the strongest influence on his intellectual development, the Principal of the University and Professor of Classics, John Woolley. William summarised the radical philosophical outlook he came to share as 'the love of truth that dreads no discussion of first principles, of liberty which teaches toleration to all, and that spirit of love for men which makes all gifts but trusts for the benefit of others'. Woolley lectured on political economy and constitutional history and used his teaching of the classics as a vehicle for developing 'enlightened liberalism' in his pupils. The more conservative intellectuals of the colony, including Nicholson, feared that Woolley was too radical but the enthused young Windeyer felt Woolley to be 'not subversive but constructive and conservative, not a vulgar demagogue but a true patriot', and became one of his chief defenders. Windeyer's own political ambitions to be elected as a radical liberal in 1859 were seen by conservatives as 'absurd' in one so young and attributed to Woolley's influence.

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36 Windeyer, testimony to John Woolley, S.M.H., 27 March 1866.

Woolley was a fine orator and a charismatic teacher. He was imbued with English educational tradition, having been head of King Edward VI School at Norwich and prior to that a Fellow of University College, Oxford. He took Thomas Arnold, the famous headmaster of Rugby, as one of his educational models. Windeyer was immediately attracted to him because he was charitable and gentle, strongly motivated by love for his fellows, a romantic and a liberal who spoke without 'humbug'. William's feelings were reciprocated and they developed a close friendship.38

The friendship was ended, but the hero-worship cemented, by Woolley's tragic drowning in the wreck of the 'City of London' on 11th January 1866. It was an ending that lived up to chivalrous ideals of heroic shipwrecks, described by Maria Windeyer as 'noble', and by the undergraduates of the University as 'distinguished by a moral grandeur that proved his fitness for Immortality'.39 Woolley was returning to Sydney after a long sojourn in London. The 'City of London', however, was terminally damaged in a severe storm. It took several days to sink. Survivors reported that throughout the ordeal Woolley assisted in manning the pumps and when not on duty prayed and encouraged those still


39 Maria to Mary, 17 March 1866, in family papers held by Lady Windeyer; Undergraduates to Mrs Woolley 26 March 1866, S.U.A., P1.
working. In Windeyer's words, 'In those last dread hours hoping, working, praying, he summed up the thrice-sustaining principles of human life.'

The melodramatic impact was enhanced by Woolley's apparent premonition of his death. He wrote to William from New Zealand on the outward journey on 6 January 1865, exactly a year before he left Plymouth on the journey to his death, 'I cannot help writing as if it were farewell. I feel half-dead already and it seems to me only logical that I should cease soon to cumber this upper earth.' In this letter he asked William to look after his wife and children if anything happened. After the subsequent tragedy, Windeyer helped to establish a subscription fund for them and also moved, albeit unsuccessfullly, in the Legislative Assembly for £1,000 to aid Woolley's family in consideration of Woolley's services to education. William vowed to devote his life to Woolley's memory and to 'emulate the saintly purity of his character and his self-sacrificing spirit of devotion to the public good'. Repeated reverential references to Woolley marked the rest of Windeyer's long connection with the University.

It was apparently through Woolley that Windeyer became a Freemason in 1857. He joined Woolley's lodge and was initiated

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40 Windeyer, testimony to John Woolley, S.M.H., 27 March 1866.

41 Woolley to Windeyer, 6 January 1865, in family papers in the possession of Lady Windeyer.

42 Windeyer, testimony to John Woolley, S.M.H., 27 March 1866; see S.M.H., 23 March 1866, 4 April 1866; Windeyer, Legislative Assembly, S.M.H., 28 March 1866, 21 April 1866.
by him. He thought it would give him useful contacts in his practice of law.\textsuperscript{43} Freemasonry reinforced William's developing radical philosophy. It was based on an assumption of 'a natural harmony of interests' between all classes and emphasis on the welfare of the whole community. It was also based on the meritocratic view that leaders should be found from those whose natural endowments gave them great potential for well rounded development and the discovery of truth. Woolley espoused these views at the University, when he taught the Platonic ideal of government by those whose golden natures made them fit to rule. He held that mere ambition or ability to govern were insufficient qualifications because fitness only came through education combined with commitment to duty, which he defined as the 'desire to be useful in our generation'.\textsuperscript{44}

Woolley strengthened Windeyer's belief in the possibility of 'the gradual elevation of human society' through education and reform. He was basically optimistic, believing that 'man' was naturally social and a lover of truth and that political life could be based on 'sympathy', 'truth' and 'concord'. At its extreme, this optimism became Victorian romanticism, a belief that the harsh realities of daily life could be combated by the individual efforts of the virtuous. It was epitomised by John Woolley's statement: 'God is coming back to earth again ...[in the form of] the search for truth,

\textsuperscript{43} William to Maria, 8 May 1857, Windeyer Family Papers, M.L., MSS 5221 X.

\textsuperscript{44} J. Woolley, 'Schools of Art and Colonial Nationality', \textit{A Lecture Delivered at the Inauguration of the Wollongong School of Arts}, 28 May 1861, Reading and Wellbank, Sydney, 1861, pp 8-9, 14; J. Woolley, \textit{Lectures}, pp 199, 321.
and the earnest effort for reformation'.\(^{45}\) William's life's work was shaped by this romantic interpretation of the future of mankind and his view of his own heroic role in shaping it.

William's romanticism was strengthened through literature. His favourite poet was Tennyson who depicted the virtues of chivalry through verses on the mission of King Arthur and his Knights of the Round Table.

This reinforced the ideal that the mission of a gentleman was:

To ride abroad redressing human wrongs,
To speak no slander, no, nor listen to it,
To honour his own word as if his God's,
To lead sweet lives of purest chastity,

... Not only to keep down the base in man,
But teach high thoughts and amiable words,
And courtliness, the desire of fame,
And love of truth, and all that makes a man.\(^{46}\)

William was particularly fond of Tennyson's 'In Memoriam'. He wrote lovingly about it for the University Magazine in 1855 and forty years later he told students that it contained 'the most profound and subtle analysis of the human mind as affected by the passion of grief that has ever been written'. Mary shared William's

\(^{45}\) J. Woolley, Lectures, pp 86, 110, 123.

\(^{46}\) Alfred Lord Tennyson, 'Guinevere', quoted in M. Girouard, The Return to Camelot, pp 182-3.
feelings for Tennyson as a writer of 'justice, purity, and truth'. When Tennyson died in 1892 she wrote to Lady Tennyson conveying 'an offering of reverent homage, profound sympathy, and the tears of the thinking women of Australia'.

Love of romantic literature is also revealed in William's continuing loyalty to 'Hamlet'. In his youth he was passionately affected by seeing the play and forty years later he still thought it 'the grandest play that the world has seen'. Hamlet appealed to him because he wanted authors to 'aim at the analysis of character, and in the form of a tale discuss the problems of social life, and propound the deepest questions of morality'. Both Tennyson and Shakespeare appealed to him for their faith in humanity and human virtue over mechanistic and materialistic philosophies.

Thomas Carlyle appealed to Windeyer for similar reasons. Carlyle played an important part in adapting the concept of chivalry to Victorian life, especially promoting the two qualities of moral toughness and idealism. He urged his fellow Victorians to 'resuscitate' their 'soul and conscience'. William regarded him as a prophet and a genius. They shared two key philosophical tenets.


The first was belief in the virtuous individual as the key to social salvation. Carlyle conceived of heroes forming a dedicated, disinterested and just governing class, which validated both William's sense that history was made up of the works of great men and his ambition to be such a man. The second was the importance of seeking harmony with physical and moral laws in order to sustain the essentially organic nature of society.50

William's strong streak of romanticism coloured his reading of the other dominant philosophy of his age - liberalism. John Stuart Mill, after Carlyle, was William's favourite philosopher. Mill focussed on the situation of the individual rather than social unity and saw mental conditioning rather than innate will and spirit as the sure road to human progress. This seems at odds with Carlyle but, in his reading of Mill, William focused on Mill's optimistic view of the social nature of humans, which allowed belief in individual autonomy to be combined with belief in co-operation and the pursuit of the greater good. This facilitated William's development of a philosophy which combined Mill with Carlyle and emphasised the organic nature of the relationship between society and individual, the value of the preservation of social stability in facilitating individual freedom and the necessity for action from above in the individual's interest. This marriage of key elements of romanticism and liberalism came to resemble the later ideas of Oxford based Christian idealist, T.H. Green, which have been called New Liberalism. Green's theory, first published in 1882, gave a positive role to the state, based on the rationale that

50 Windeyer, address at Sydney Grammar Prize-giving, S.M.H., 18 December 1886; Windeyer, lecture at the School of Arts, S.M.H., 16 July 1869.
government should influence citizens by acting persuasively on their own better natures. It differed from 'old' liberalism in accepting a measure of social determinism by arguing that self-development could only occur when prevailing social circumstances were suitable. It therefore promoted state action to alleviate poverty, promote education, preserve social stability, give individuals security and ensure sufficient personal autonomy for citizens to act as rational moral agents, all of which were justified as necessary conditions of liberty. Stress on the general good as opposed to sectional and class interests was one way in which the New Liberals sought to distinguish themselves from both Conservatives and Labour.51

William's development of this philosophy was quite independent of its British genesis. It is expounded in two talks he gave on 'The Spirit of the Age' in 1869 and 1894.52 This challenges Docker's view that 'new liberalism' did not develop in Australia until late in the nineteenth century, with the impact of Deakin and Murdoch. In understanding William's apparently


52 William Windeyer, lecture at the School of Arts, S.M.H., 16 July 1869 and Sir William C. Windeyer, An Address delivered before the University Union. Oddly, they were almost identical. This suggests his ideas may not have developed very much after 1869, although it is, of course, possible that he merely recycled an old talk because of laziness or busyness. That does, however, seem out of keeping with his conscientious personality.
independent evolution of these principles, it is significant that his circumstances resembled those of Green and his followers as, "academic men in a sheltered society when the prospects of peace and progress seemed good." 53

William was also influenced by the ideas of Australian liberal, George Kenyon Holden, on relations between capital and labour, profit sharing and the establishment of co-operative societies. Holden was a generation older than Windeyer, having been born in 1808. A leading lawyer and businessman, he served on the Legislative Council from 1856 to 1862, as Chair of the New South Wales National Schools Board and as President of the Sydney Mechanics' School of Arts. He was an admirer and correspondent of John Stuart Mill and closely associated with Henry Parkes. In 1867 William chaired a lecture by Holden at the School of Arts in which Holden expounded his ideal of a society in which democracy was based on education and there were no divisive popular movements, separate classes or contesting parties. William subsequently referred to Holden's ideas in his speeches on the spirit of the age. This was an area where William's views seemed to become more extreme as he grew older. In 1869 he referred to 'schemes for the better remuneration

of labour', but by 1894 he espoused 'the recognition of the right of
the labourer to a share of the profits created by his labour'.

By the late 1850s then, under the impact of influential
teachers and broad reading, Windeyer was strongly committed to
the principles of radicalism and liberalism, leavened by a romantic
sensibility and a belief that enlightened leaders needed to act for
the social good. This good entailed the attainment of civilised
existence and social responsibility through education, democracy
and fair remuneration for the working man. William saw himself as
one of the enlightened leaders and was motivated by a personal
imperative to have a practical effect in improving society. This
attracted him to the world of politics, which he saw as an arena in
which he could be effective.

Political influences
William's philosophical inclination was reinforced by the political
influences of his early life. His father played a crucial role in
shaping his earliest political views. Richard has been variously
described as 'conservative' or a 'liberal conservative'. Although a
firm believer in gentry paternalism, he was known as a reformer
and a supporter of Robert Lowe and Governor Gipps against the
squatting interests. He was also a strong advocate for
representative institutions and responsible government. He
established himself with Wentworth and Lowe as the leaders of the
elected members in the Legislative Council. They came into

54 S.M.H., 4 September 1867; William Windeyer, lecture at the School of Arts,
S.M.H., 16 July 1869 and Sir William C. Windeyer, An Address delivered before the University Union, p. 11.
the rights of the Council to control revenue and cutting the salaries of Government officers.\footnote{55}

William was also directly influenced by Richard's political ally, Robert Lowe. Lowe was a lawyer and distinguished Oxford scholar who migrated from England in 1842. He was appointed to the Legislative Council by Gipps, but resigned after he turned against the Governor in 1844. The following April he returned to the Council as an elected member representing the liberal principles of universal education, government economy and constitutional government. In the general election of 1848 he was an anti-squatter candidate in a campaign organized by men of comparatively humble rank led by Henry Parkes. He appealed to the working-class radicals because of his professed faith in the working classes and his opposition to squatters, the importation of pacific islanders and convict transportation.\footnote{56}

As mentioned above, Lowe became a friend and supporter of the Windeyer family after Richard's death. When 'Tomago' was put up for auction, he acted as agent for the family in a successful attempt to buy it back; he encouraged Maria to continue William's classical education and helped with a bill for William's schooling; he also prevailed upon friends to contribute to a fund for the family rather than erect a monument to Richard. William was a regular visitor to the Lowes at Bronte after he started at Cape's school and


often spent the weekend there while he was living with Nicholson. Robert Lowe and his wife both took an active and sympathetic interest in William's academic progress and Lowe urged the young Windeyer to go to the Bar as soon as he was old enough. Lowe also took William to political meetings, including a rally against the resumption of transportation. When the Lowes left Sydney in 1850, William wrote to his grandfather, of Lowe, 'he will be a great loss to me for he was a fine scholar himself and always took a great interest in me'.

Mary was initially more conservative than William on political issues. Their difference of position is illustrated in a dispute they had about the virtues of Oliver Cromwell, with William defending him from Mary's criticism. William accused her of having 'old-world notions on politics' and concluded, 'I wonder you can make up your mind to such a radical as I am in your opinion'. She was probably initially influenced by her father, who 'never entirely agreed' with William, but under William's tutelage she gradually became more liberal in her political thinking.

Henry Parkes, the colony's leading radical publicist, was a significant influence on both the Windeyes in the mid 1850s. Parkes advised William to prepare himself for 'an honourable and useful political career' by studying Peel, Fox and Elton. Their writings and careers represented an old fashioned radicalism based on a notion of society operating as an organic whole,

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balanced by the mutual obligations of rulers and ruled. Parkes' particular brand of radicalism reflected these principles, being based on faith in the capacity of all people to improve. He believed that the lower classes could be uplifted through social reform and that this would in turn cure social ills such as crime and poverty. Parkes' idealised version of the working classes allowed romanticism and political radicalism to be compatible. It was based on attitudes brought with him when he left Birmingham in 1838, incorporating the mood of 1832 when the middle and working classes combined to achieve Parliamentary reform, with the common goal of gaining political representation. He was also influenced by the early ideals of Chartism, having sailed in March 1839 before the violent clashes with the authorities that marked the English summer of that year. His Birmingham background is significant as it was a place where artisans still aspired to becoming small masters and there was an indigenous radicalism with some middle class support. In Birmingham, Chartist and radical reformers represented workers in traditional crafts who were fighting against the disruption of traditional social relations by the industrial revolution.59

William first came to Parkes' attention when Parkes was sent a copy of the first edition of the Sydney University Magazine published by William. Parkes published a very encouraging review in his Empire. A strong personal friendship later developed between the two men and Parkes was welcomed as a regular guest in the Windeyers' home. He developed an appreciation of

Mary Windeyer for her graciousness and intelligence and she responded with kindness and sympathy.\textsuperscript{60} Parkes' influence over the Windeyers was irrevocably damaged by a series of political events from 1866 onwards which they saw as betrayals. Nonetheless Parkes' radical stamp left its mark on Windeyer.

Many British liberals, including J.S. Mill and T.H. Green, believed an individual's attachment to the common good derived from national feeling as the nation was a focus for a sense of moral unity with others. For many colonials, however, national feeling was complicated by the competing loyalties of location (Australia) and home (Britain). By the middle of the nineteenth century there was a growing sense of Australian nationalism, which manifested itself in a rhetoric that asserted that nativity gave a peculiar right to be heard in public debate. William claimed in his later life that, 'He had been taunted, as a young man of the colony, that the offices of the country were not filled by natives of the soil.' In response to this, he repeatedly declared his attachment to the colony and even lied to Parliament in 1861, claiming to be Australian born.\textsuperscript{61}

In the Windeyers' case, as for many colonists, colonial loyalty was combined with attachment to British roots. Both William and Mary had British parents. Their influential friends, Woolley and Parkes, also spent their formative years in England. William's

\textsuperscript{60} See A.W. Martin, \textit{Henry Parkes}, pp 94-95; 155-6.

education was based on English models. It is not surprising, therefore, that the Windeyers were strongly influenced by English culture. Mary and William, themselves, however, had come to New South Wales at a very early age. He was only 14 months old when the family arrived in Sydney on 28 November 1835. Mary was about three when she accompanied her parents on the "Strathfieldsay", arriving in Sydney on 25 July 1839. Hence, it is not surprising that they also developed strong feelings of colonial identity.

They saw no conflict between these loyalties. Their sense of British heritage co-existed with the desire to establish an independent colony of which they could be proud. William suggested he could adopt the motto of The University of Sydney, 'Mens sidere eadem mutato', which he interpreted as 'we have changed our land, but our hearts remain unchanged'. The cultural link led William to have a special feeling for Captain Cook, who met his need for colonial heroes as well as for a connection with all that was best and British. He saw Cook as a link between colonial intellectual life and the 'great procession' of English history.62

The Windeyers' national perceptions were coloured by their romanticism. They idealised a pre-industrial version of England, a mythical golden age of order and moral superiority, a pastoral dream. Similarly, the colony of which they were proud was their vision of what it could become rather than its vulgar and materialistic reputation, of which they were critical. They held the common view that in a new country they had the chance to avoid

62 Windeyer, S.M.H., 3 December 1869; Chancellor's Address, University Commemoration, S.M.H., 22 April 1895, p. 5.
the mistakes of the 'mother country'. Their romantic view was summed up by William towards the end of his life when he told the graduands of The University of Sydney, 'Our poetry is not of the past but of the future. With us the glorious anticipation of hope must take the place of the memory of a splendid past.'

The result of feeling heirs to a combination of Britain's romanticised past and the Colony's romanticised future was a commitment to progress, but progress built on tradition. To the Windeyers Australia was out of balance as a colony, as a transplanted and partially formed society and yet when they looked to England they saw an equally unbalanced society as a result of rapid industrialisation and urbanisation. They wanted therefore to transplant pre-industrial civilization onto Colonial soil. This desire dominated both the Windeyers' future careers.

Public Careers

William's public career followed the family model of journalism, law and politics. Journalism was the first profession of three generations. His grandfather, Charles, had gained distinction as the first newspaper reporter permitted to take notes in the House of Lords. Richard began his professional life in England as a Parliamentary reporter for The Times, The Morning Chronicle (the leading liberal newspaper of the time) and The Mirror of Parliament and the originator of Todd's Parliamentary Companion. He taught William shorthand, perhaps intending he would follow in his footsteps. William ventured into print when he established and

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63 Sir William Windeyer, Address as Chancellor of the University of Sydney, 20 April 1895, typescript, M.L. AW 77/2, p. 4.
edited the first *Sydney University Magazine* in partnership with Alexander Oliver and James Stewart Paterson. It was a daunting task but he hoped that, although other magazines had failed in New South Wales, the 'common nucleus' of the University would make this one work. In 1881 G.B. Barton described it as 'undoubtedly the most scholarly magazine ever attempted in the colony'. After his graduation, William wrote for Parkes' newspaper, *The Empire*, as its Law Reporter. He was also the anonymous author of several feature articles which were critical of contemporary politicians and politics.

The family pattern was also evident in William's entry to the legal profession. Charles Windeyer had been Chief Clerk to the bench of magistrates after he emigrated to New South Wales in 1828 and was appointed Second Police Magistrate in 1830. Richard was admitted to the English Bar in Middle Temple in 1834 and, after emigrating to New South Wales, became the leader of the Sydney Bar. William was admitted to the Colonial Bar in 1857.

Similarly, William's political career was stimulated by a family history of political involvement. His grandfather, Charles, was appointed the first (interim) Mayor of Sydney in August 1842 and ran unsuccessfully for the Legislative Council in 1843. His father, Richard, represented the County of Durham in the NSW

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64 'Literature in N.S.W.' by G.B. Barton, *S.M.H.*, 14 July 1881.

65 These articles included an attack on Wise, a criticism of the judgement of the Chief Justice in Cook's case and a denunciation of the Upper House. William's authorship is known through acknowledgment in his letters - William to Mary, 25 May 1857, William to Maria, 22 February 1858, 14 May 1858, Windeyer Family Papers, M.L., MSS 5221 X.
Legislative Council from 1843 to 1847. Family correspondence highlights the family expectations that William would live up to his father's political reputation. These were reinforced by repeated references by relatives and friends to William's apparent resemblance to his father in manner and appearance.\(^{66}\) Comparison of William with his father continued all his life. Even after his death, one obituary claimed that, 'much of the individuality, force, intellectual ability, and political instinct which Sir William Windeyer possessed are traced in the career of his father'.\(^{67}\) We can only guess at how much the sting of comparison drove William on in his public career.

William initially planned to stand for his father's old electorate of Durham as soon as he was ready to enter public life. The political scene altered with the Electoral Reform Act in 1858, however, and when he did first nominate in May 1859 it was for the Legislative Assembly seat of Paddington. He nevertheless invoked his father's reputation 'as the guardian of the rights and political liberties of this country'. William later became ambivalent about his father's role in his life, probably as a result of repeated comparisons. In 1871 he rebutted suggestions that he had risen on the career of his father by claiming he had always stood upon

\(^{66}\) This is a recurring theme in many letters. See for example, Maria Windeyer to William Camfield, 13 June 1844, Windeyer Family Papers, M.L., MSS 5221 X and Maria to William, 27 October 1852, Windeyer Family Papers, M.L., MSS 186/8.

\(^{67}\) Obituary of Sir William Windeyer, \textit{S.M.H.}, 15 September 1897.
his own merits. William eventually served three terms in the Legislative Assembly between 1859 and 1879. He then retired from politics to become a puisne judge of the Supreme Court.

William also followed the family pattern of interest in educational and philanthropic ventures. He was a member of the University Senate from 1866-97, including terms as Vice-Chancellor (1883-6) and Chancellor (1895-6). He was also at various times a trustee of Sydney Grammar School, a trustee of the Free Public Library, the President of the Sydney Mechanics' School of Arts and a member of the Board of Technical Education. He was President of the 1873 Royal Commission on Public Charities and his own charitable work included being foundation President of the Discharged Prisoners' Aid Society and a Vice-President of the City Night Refuge and Soup Kitchen.

Mary's public career parallels that of many other women in that it was in many ways an extension of her life as the wife of an important man; it was comparable to that of other wives of prominent men who extended their nurturing role to encompass the disadvantaged through philanthropic work. Through it, Mary became known as 'an earnest, large-hearted helper of women and children'. She served on the committee of the Ashfield Infants' Home 1877-85, was an inaugural member of the Boarding-Out Society 1879-81 and served on the State Children's Relief Board

68 William to Maria, 14 November 1856, M.L., AW 77/6; Windeyer, election speech, S.M.H., 23 May 1859; Windeyer, Legislative Assembly, S.M.H., 10 March 1871.

69 Sydney Mail, 4 July 1891; also Mary Windeyer, obituary, Daily Telegraph, 5 December 1912.
from 1881 to 1886 and 1889 to 1897. She also started a Temporary Aid Society for women in financial difficulties, was Vice President of the Thirlmere Home for Consumptives and the first President of the Board of Directors of the Women's Hospital in Sydney. Like a number of others, her philanthropic work led her into political activity, pursuing the vote for women as an avenue for promoting the welfare of humanity. She served as the inaugural President of the Womanhood Suffrage League and later supervised the Suffrage Department of the Women's Christian Temperance Union.

Following the patterns set in their developing years, both William's and Mary's careers were marked by a powerful sense of duty, a strong commitment to the possibility of human improvement, a desire to retain traditional values and a preparedness to take society and social relations in directions in which they had never been before. Central to all this was the philosophy described by Bellamy as 'ethical liberalism' based on belief in 'a meritocratic society of self-reliant and responsible citizens, who freely contracted with each other for their mutual advantage' and who were working towards mutually enhancing individual, social, material and moral improvement.70 This seemed to be threatened by the individualism and conflicting group interests of the emerging market economy. At the same time, the ideal of ethical government by a public-spirited elite was threatened by the emergence of a mass electorate. Moral improvement was necessary to counter these anti-social and disruptive tendencies and it was expected to be primarily brought about by education.

70 R. Bellamy, Liberalism, pp 3-5.
The next chapter examines the key role of education in the Windeyers' work and social ideals.
Chapter 2

Education: The key to social improvement

'More schoolmasters and fewer policemen'! ¹

In this simple motto, William Windeyer summed up the crucial role of education in his program of social reform. He contributed to the development of a number of educational institutions in New South Wales during 'the second major phase of educational development in New South Wales'.² This period was marked by the emergence of a comprehensive state system of secular elementary education and by the state supported development of higher education at Sydney Grammar and the University of Sydney; it concluded with the appearance of the first state high schools. Mary was also active in promoting education but she was most visible in the 1890s in the extension of education to women and to pre-school children.

The extension of education in the nineteenth century has been seen as a triumph for 'the liberal ideal' of educational opportunities for all. More recently it has been depicted as also having a reactionary element. Hirst points out that conservatives became supporters of universal education because 'the evils of democracy were less severe if the people were educated'. The

¹ Windeyer, nomination speech, S.M.H., 11 December 1860.

Windeyers' motives include elements of both these positions. They saw education providing opportunities for individuals and producing a more ethical society. For them these goals were complementary. Like many colonial liberals, including John Dunmore Lang, John Henry Plunkett and Henry Parkes, they believed in the improving power of liberal and humanist education.³

This style of education reflected the philosophy of John Stuart Mill, who believed education should have 'the express purpose of bringing us somewhat nearer to the perfection of our nature'. This perfection was judged in terms of moral and spiritual personal qualities. Mary summed up this view when she said 'The primary aim of all education from the kindergarten to the university should be the unfolding of all that is best in the human brain, of all that is wisest in the mind, tenderest in the heart, and loftiest in the soul.'⁴ The goal of individual character development was central to the development of a more ethical society and predicated a liberal and humanist rather than utilitarian approach to education.

The Windeyers feared the effects of what they perceived as a lack of social ethics in the society that was developing in New


South Wales. William blamed this on materialism. He reproached the colonists for their preoccupation with economic success at the expense of the search for knowledge. He saw those of the capitalist class who claimed the right to rule through wealth rather than education as being a threat to society. In a lecture at the School of Arts in 1869 and in an address to the University Union in 1894 he delivered the identical message that 'They degraded the higher function of knowledge when they encouraged the idea that its chief aim was success in some business in life, rather than its capacity to promote social, moral, and spiritual growth.'

Both William and Mary believed that everyone could benefit from a liberal education. William was convinced that regardless of whether a student was training to be a professional man or a mechanic, or whether education was for the intellect or manual dexterity, its 'highest object' was 'the development of his character'.

The Windeyers' concern to make the same education available to all was connected to their belief that every occupation should be accorded equal dignity. This would improve society in two ways. Firstly, people would choose their occupation on the grounds of personal suitability rather than status. Secondly, social unity would follow if the working classes felt at one with society, that the work they did had equal value with other types of

5 Windeyer, lecture at the School of Arts, S.M.H., 16 July 1869 and Address by the Hon. Sir William Windeyer, S.M.H., 30 July 1894.

6 W.C. Windeyer, Commemorative Address on the Celebration of the Fiftieth Anniversary of the Sydney Mechanics' School of Arts, Sydney, Batson and Atwater printers, 1883, pp 19-20.
occupation. To encourage such social unity, William supported the integration of manual arts with the development of mental knowledge in elementary education. He believed this would overcome prejudice against mechanical work. The Windeyers' belief that all classes could profit from education was reflected in the range of their personal educational interests. They attended to the potential governing classes through Sydney Grammar School and The University of Sydney, to the lower classes through kindergartens and elementary schooling and to the skilled and semi-skilled working classes through the Sydney Mechanics' School of Arts.

Within their chosen fields of educational activity both Windeyers managed to achieve influential positions. William was a leading figure in the histories of several major educational institutions and his work in this area brought him both private accolades and the public recognition he craved. He served the University as Esquire Bedell from 1855 until 1866, as a member of

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8 There are numerous references to the value of Windeyer's educational work in both private and public sources, see for example: Masters of Sydney Grammar to Windeyer, 3 June 1891, Windeyer Family Papers, M.L., MSS 186/10; A.J. Cape to Windeyer, 7 December 1896, Windeyer Family Papers, M.L., MSS 186/11; Report from the Trustees of Sydney Grammar School for 1886, *N.S.W.V.P.L.A.*, 1887-8, Vol. IV, p. 574; Chancellor's Address, University Commemoration, *S.M.H.*, 20 April 1896.
the University Senate from 1866 to 1897, and in the offices of Vice-Chancellor from 1883 to 1886 and Chancellor in 1895 and 1896. He joined the Committee of Management of the Sydney Mechanics' School of Arts in 1856, was elected Junior Vice-President in 1866 and Vice-President from 1867 to 1873. In February 1874 he was elected President and held that post until 1880 and again from 1883 to 1886. He played a significant role over a long period in the support and governance of Sydney Grammar School. He was elected a Trustee in April 1866, holding that position until 1896 and serving as Chair of the Board from 1884.\(^9\) He was also one of the original members of the new New South Wales Board of Technical Education and a valued member of the Board of Trustees of the Free Public Library from 1884 until his death in September 1897.

Mary achieved influence as the Vice-President of the ladies' fund-raising committee of the Women's College at the University from 1890 to 1896, a member of the East Sydney Schools Board from 1890 and the President of the Newcastle Free Kindergarten from 1907 to 1910. She may have developed her connection with the Women's College and her interest in elementary education, at least in part, through William, but the Kindergarten Movement was her own project. It was the only major cause she pursued after William's death. She was probably encouraged in this interest by

\(^9\) When he became a judge, there was some debate as to whether this made him ineligible as an officer of the Government. Windeyer was, however, re-elected to the Trustees on 9 July 1883. See Sir Alfred Stephen to Windeyer, undated but postmarked 1881, in family papers held by Lady Windeyer; Report from the Trustees of Sydney Grammar School for 1883, *N.S.W.V.P.L.A.*, 1883-4, Vol. VII, p. 1211.
her daughter, Margaret, who brought the idea of a Kindergarten Union back to New South Wales from America in 1895 when she spoke publicly of the 'kitchen gardens' of New York and the kindergartens' display at the 1893 Chicago exhibition.¹⁰

There were clearly differences in areas of concern between William and Mary. It is possible that these reflected gender expectations. As a male, William was concerned with higher education and the classics. As a female, Mary was concerned with local education and small children, areas which could be legitimately classed as within the woman's sphere.¹¹ This gendered division was not, however, completely clear cut. Mary was also well known for her interest in his University work and her support of the Women's College and William also concerned himself with elementary education.

**Free and Secular**

The Windeyes' attention to education for all classes arose from their desire for a more homogeneous society. For them, a major goal of education was to modify what they perceived as deepening social divisions and to restore their organic social ideal by propagating a universal set of virtues. This committed William at the outset of his public career to the reform of an education system which he believed perpetrated sectarian and class divisions. When he entered Parliament, the colony had a dual system of elementary education, with a National Board and a Denominational...

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¹⁰ *S.M.H.*, 1 June 1896.

Board as parallel authorities. This had been set up in 1848 by Governor Fitzroy in an effort to resolve a long history of sectarian dispute. This compromise, however, had produced rival elementary structures which proved expensive and inefficient and compounded rather than solved the sectarian rivalry. The dominance of religious private schools in secondary education also promoted sectarian intolerance.

Windeyer believed the existing system also exacerbated class divisions, the disadvantage to the poorer classes being perpetuated by the cost, ineffectiveness and unavailability of elementary education. In government schools parents had to provide one third of the building costs and pay fees which formed part of the teacher's salary. As a result, many schools had makeshift buildings and untrained teachers. Access was also limited. By the 1860s the available schools were still educating fewer than half of the colony's children. Higher education was even more inaccessible and the exclusiveness and inadequacy of the available secondary schooling meant that in Windeyer's view the educated elite were distinguished more by their wealth than by their virtue. The failure of the University to attract students reinforced fears that the elite were interested in material rather than intellectual pursuits. The lack of connection between the various levels of education also restricted access to the higher levels and perpetuated class divisions. All these factors threatened to substitute divisiveness for the Windeyers' ideal of social unity as the outcome of education.12

In place of the existing mixture of systems, William supported the creation of a unified hierarchical system 'of which the university was the summit, and the primary schools the foundation stone'. In this model, he regarded the over-arching control of the university as crucial. In 1879, when Norman Selfe, a leading engineer who had been closely associated with the School of Arts, suggested the establishment of a second, 'industrial', university, Windeyer vigorously opposed him. He argued that it was essential that all classes of learners be under one body and that a second university would 'perpetuate the old mistake of a sectarian system of education, merely substituting class prejudice for polemical animosity'. Windeyer tried to encourage the integration of all levels of education by facilitating common membership of the different bodies that governed the various institutions. In 1877 he nominated Sir George Wigram Allen, who already represented secondary education as a Trustee of Sydney Grammar School and primary education as a member of the Schools Board, to the Senate of the University, and in 1878, albeit unsuccessfully, he

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13 W.C. Windeyer, Address to the Electors of the University of Sydney, Delivered at a public meeting, 18 August, 1876, Sydney, James Reading & Co., 1876, p. 8. Windeyer did not originate this model it was supported earlier by both Nicholson and Woolley and probably originated by William Wilkins, when headmaster of the National Board's model school. See A.G. Austin, Australian Education, 1788-1900, Pitman Pacific, Melbourne, 1972, p. 58; G.L. Simpson, 'Reverend Dr John Woolley and Higher Education', in C. Turney, ed., Pioneers of Australian Education, p. 85.

14 W.C. Windeyer, Commemorative Address on the Celebration of the Fiftieth Anniversary of the Sydney Mechanics' School of Arts, pp 19-20.
nominated Edward Butler to the Senate in recognition of his support for national schools and the Public School Act.\textsuperscript{15}

Windeyer's belief in a unified and homogeneous education system made him strongly opposed to the divisiveness that he believed was inherent in denominational education. He regarded it as evil because it segregated children and taught them to be intolerant of those who did not share their religious views. He made this clear in a speech in October 1859 opposing Cowper's Education Bill for its 'sectarian element'.\textsuperscript{16} This bill attempted to make the Executive Council the controlling board of education in New South Wales, with powers to dispense grants to schools and to determine whether or not religion should be taught in them.

In 1862 Windeyer supported an amendment to the Estimates to reduce the vote for the support of Denominational Schools because he 'could see no reason why they should go on year after year giving strength to a system which they believed in their hearts was a bad one'.\textsuperscript{17} This amendment failed but in the same year the Grant for Public Worship Prohibition Act began the process of cutting off state funds to the Churches and Cowper attempted to pass a Bill to Promote Elementary Education. Pressure of business caused the bill to lapse but it would probably have failed in any case as it did not tackle the religious question, which brought down several further attempts at education reform.

\textsuperscript{15} Windeyer to Convocation, \textit{S.M.H.}, 18 December 1877, 9 August 1878, 12 August 1878.

\textsuperscript{16} Windeyer, Legislative Assembly, \textit{S.M.H.}, 20 October 1859.

\textsuperscript{17} Windeyer, Legislative Assembly, \textit{S.M.H.}, 31 December 1861.
Political instability also impeded progress until 1866 when the strength of a coalition ministry formed by James Martin and Henry Parkes made it possible for Parkes to introduce a Public Schools Bill creating a Council of Education which controlled all schools receiving government money, including certified denominational schools.18

Windeyer was so strongly committed to secular principles that, while he strongly supported Parkes' Bill, he found himself among a minority of three in opposing one of its clauses. This clause modified the provision that a denominational school could only co-exist with a public school if the public school had at least 70 pupils. It specified that, where a public school’s attendance declined to fewer than 70 pupils because children had transferred to a denominational school in the same area, that denominational school might remain. Windeyer opposed this clause as a concession to the denominationalists. 19

One outcome of this legislation illustrates the vacillation between principles and passion that was often evident in Windeyer. After the Act was passed, he was so incensed by a Catholic campaign against it that his rhetoric carried him beyond the bounds of prudence. He accused the Catholics of 'superstition and ignorance' and attacked the clergy for 'attempting to dictate to their peoples'. Ironically, this was the very type of divisive behaviour which usually formed the basis of his objections to

18 See A. Barcan, Two Centuries of Education in New South Wales, pp 89-90, 108.

19 Windeyer, Legislative Assembly, S.M.H., 11 December 1869.
denominationalism. Recognising this, Windeyer later made a conciliatory speech, in which he tried to regain his position as a moderate, promising, "in future fairly to hold the balance between all parties, and to do his duty honestly to all".  

Windeyer was also strongly committed to preserving the secular nature of the University. As a university student he had enjoyed mixing with men of different creeds and learning from a wide range of philosophies. This was in marked contrast to his disagreeable experience of sectarianism at The King's School.\(^2\) The ideal that the University was to be a strictly secular institution, equally accessible to students of all denominations and free from the divisiveness of sectarian teaching, was vital to him. This was threatened by the creation of affiliated religious colleges, which contravened the original model that the University would be an examining body with teaching colleges, similar to the University of London. The Affiliated Colleges Act of 1854 provided that sites would be granted for colleges from the four major denominations: Church of England, Roman Catholic, Presbyterian and Wesleyan. It also compelled every student to produce a certificate of religious attainment from the Head of the College of his particular denomination in order to graduate. Windeyer vehemently opposed this. He was not against religiously supervised residences \textit{per se} but he was against their encroachment on the conduct of the

\(^{20}\) Windeyer speeches, \textit{S.M.H.}, 2 December 1869, 7 December 1869, 8 December 1869.

University and he objected to the recognition by the University of any religious affiliation.

He saw the requirement for students to produce a certificate 'of competent religious attainment' as a particularly serious threat to the secular nature of the University and took a leading role in the campaign to overturn this provision. When it was first invoked in 1857 after the opening of St Paul's College, there was a major conflict between the Senate which invoked it and the Professors who opposed it. A few days after the Senate dismissed the professorial protest, William Bede Dalley, who was an admirer of John Woolley, introduced a Bill in the Legislative Assembly to repeal the relevant section of the Affiliated Colleges Act. This Bill, which was supported by the Professors, Graduates and Undergraduates of the University, had been drawn up by Windeyer who also supported it in the press. He later took credit for its successful passage and claimed that, 'if he had done nothing else for the University than that, he had done good service'.

Even after the religious certificate requirement was repealed, Windeyer remained set against the affiliated colleges. In the report of the 1859 Select Committee on the University, of which he was a member, the affiliated colleges were condemned as 'a grievous mistake'. The Report recommended that all connection between them and the University should end. The report saw them as a violation of the principle of secular instruction and pointed out that by allowing only four churches to have affiliated colleges, the

others were unfairly excluded. This aspect of the report was, however, neither acted upon by the government nor by the Senate, perhaps because the affiliated colleges had not materialised. St Paul's was the only College in existence, attracting only a few students and in financial difficulty.\textsuperscript{23}

Windeyer was also concerned that the University's governing body be free from sectarian influences. He regarded a clause in the original University Incorporation Act which provided that four Fellows be clergy, representing each of the recognised denominations, as 'objectionable'.\textsuperscript{24} In order to be consistent with the repeal of legislation providing for state aid to the four denominations in 1862, a convention developed whereby clergy on the Senate were replaced by laymen when vacancies occurred. In 1885, the breaking of this convention with the nomination of the Anglican Bishop of Sydney, Dr Barry, to fill a Senate vacancy led Windeyer into a major public debate. The issue escalated because it was suggested by Barry's supporters, led in the University Senate by Christopher Rolleston, that he was 'the proper man' to succeed to the Chancellorship. Windeyer feared that Barry's nomination was intended as the first step towards a clerical

\textsuperscript{23} 'Report from the Select Committee on the Sydney University', \textit{N.S.W.V.P.L.A.}, 1859-60, Vol. IV, report, pp 9, 11; evidence, p. 48, Windeyer, 885, p. 53, Windeyer, 988. See W.C. Windeyer, \textit{Address to the Electors of the University of Sydney}, p. 8; C. Turney et. al., \textit{Australia's First}, p. 107; H.E. Barff, \textit{A Short Historical Account of the University of Sydney}, Angus and Robertson, Sydney, 1902, p. 10.

Chancellor and he strongly opposed his candidacy, claiming that such a Chancellor would lead to sectarian strife. As an alternative Windeyer proposed William Bede Dalley, who declined. He then suggested Sir James Martin as a strong secular candidate, supported by a requisition with ninety-two signatures. For this, he received a very rare accolade from The Bulletin, which was expressly opposed to the presence of ecclesiastics on the Senate. At the convocation Barry withdrew his nomination and Sir James Martin was elected unopposed. The Catholic lobby were incensed by Windeyer’s actions and he was viciously attacked in the Freeman’s Journal which accused him of opposing Barry because he wanted the Chancellorship for himself.25 Ironically, by the time the Chancellorship next became vacant, Martin had died and Barry, who was later elected to the Senate unopposed, had resigned to take up an episcopal position in England. Windeyer became the next Chancellor.

All the educational work of the Windeyer’s opposed sectarian or social divisiveness. Homogeneity in their view was essential to achieving their primary aim of constructing an ethical society with common goals. Through education, progress would take the direction they desired towards reconstructing their idealised golden age in a modern world. Within this ideal society democracy would succeed because a well educated electorate would choose the most worthy amongst them to be their leaders.

The learned elite

The Windeyers believed that the perfect society could only be achieved through a leadership of the elite, consisting of the intellectually fit and talented. William believed that liberals and philosophers were the elite and he rested the responsibility for the future of civilisation and the welfare of the lower classes on those who made it successfully to the pinnacle of the education system. Mary believed that 'the venerable and the wise, the learned and the thinking' should lead the woman's cause.²⁶

Smith has argued that combating crime and ignorance in the colony's population and lecturing on the finer points of mathematics and Latin to a social elite were 'starkly opposed' justifications for the University.²⁷ For Windeyer, however, they merged, as any improvement in the 'civilization' of the leaders would effect the greater social good. The role of higher education was to provide an intellectual elite of noble men and women who would contribute to the future progress of the nation as teachers, philosophers and leaders. He compared 'the mission of an educated class in the community' with 'knights in pursuit of the San Grael', believing each member of it should leave the world 'a little better than he found by exhibiting 'earnestness', 'love of truth', 'self-control', and 'interest ... in the public life of the country'. He saw both Sydney Grammar and The University of Sydney as having a major role in turning out

²⁶ Mary Windeyer, speech to W.S.L. Meeting, Daily Telegraph, 13 June 1891.

men who were interested in public affairs and who would maintain the respect of the masses for higher education. The goal of nourishing the few was thus to elevate the whole. Windeyer illustrated the two ways in which higher education could accomplish this when he instructed the boys of Sydney Grammar, to 'discharge their duty by looking not only to themselves but to the interests of others, and by maintaining the principles of truth loyally and straightforwardly and unvaryingly'.

His commitment to the production of virtuous leaders was evident in his prescriptions for Sydney Grammar School, which he was able to pronounce year after year as Chairman of the Board. He made it clear that Grammar's role was not just to fit boys academically for University entrance but also to build character for citizenship and leadership. He was more concerned that boys did their best than that they won prizes. He emphasised 'diligence', 'duty' and 'moral tone'. He urged boys to develop 'a character for truthfulness and honesty' and said it was more important to be 'true' and 'one who could be relied upon' than to be 'clever or brilliant'. When the boys produced a magazine, Windeyer commended the writings for their 'manly vigour and earnestness of purpose'. His ideal character combined the virtues of classical Greece with medieval chivalry, both of which focused on striving for moral and physical perfection. In keeping with this, physical training was important to Windeyer as an aspect of character development. He campaigned for fifteen years at Sydney Grammar School.

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28 Windeyer, address to complimentary banquet to Professor Badham on the occasion of his seventieth birthday, S.M.H., 22 August 1883; Windeyer, address at Sydney Grammar Annual Prize-giving, S.M.H., 18 December 1886.
Grammar to achieve improvements in the playground and the building of a gymnasium although it severely taxed the school's finances.29

He wanted Sydney Grammar to produce men who were a credit, not only to themselves but to the school and to the colony. He hoped to build a reputation for the school 'such as that enjoyed by the old public schools of England, like Eton and Rugby' and welcomed signs of 'that feeling of pride in its success which was one of the great factors in assuring the success of an institution'.30 Windeyer's ambitions for the reputation of the school were initially threatened by concerns about lax school discipline and he contributed to the pressure which led to the resignation of William John Stephens from the position of Principal in 1866. The problems were largely solved by the appointment, on the advice of a committee which included Windeyer, of Albert Bythessea Weigall of Brasenose College, Oxford. He had an immediate and lasting effect as Principal, at least in terms of Windeyer's criteria of developing the characters of both the boys and the school. He remained headmaster until his death in 1912.31

29 Windeyer, addresses at Sydney Grammar Annual Prize-givings, S.M.H., 18 December 1876, 17 December 1885, 18 December 1886, 17 December 1891.

30 Windeyer, addresses at Sydney Grammar Annual Prize-givings, S.M.H., 16 December 1869, 18 December 1876, 20 December 1895.

31 See S.M.H., 21 December 1866, editorial, 4 January 1867; C. Turney, Grammar, Allen and Unwin, Sydney, 1989, pp 60-63. Windeyer was one of the prime movers behind the University Senate's rejection of Stephens when he applied for the position as Professor of Classics. - Senate minutes, 3 May, 9 May, 1866, S.U.A..
The primary aim of producing virtuous leaders explained Windeyer's commitment to a classical curriculum. He believed that the key to forming values and training character was the study of the classics - Latin and Greek language and history. This curriculum could be simplistically depicted as conservative in that it had traditionally made up the education of the elite and came from the old models of Oxford and Cambridge and the great English public schools. For Windeyer, however, the values of the past were the key to future progress. He believed that the classics contained universal truths about human nature, offered valuable mental training and opened up wider fields of knowledge. A widespread understanding of the social obligations of the Athenian citizen would promote social stability while the pursuit of truth would direct social change. The mental training involved would foster individual excellence while at the same time contributing to the whole community by producing leaders of the quality of Pericles.

Furthermore, Windeyer believed training in the classics could open up opportunities to all classes. Like John Stuart Mill, Windeyer was a Platonist in that he not only believed in government by the best, but also had confidence that the 'best' and 'wisest' could be readily identified and trained. He was convinced that, given the opportunity of a classical education, even labourers or mechanics could 'become fit for dealing with the highest problems that can engage the attention of man' because the classics would open up the wisdom of antiquity to train their minds and give them a sense of the greatness of public affairs. His hero, John Woolley, had said of the masses, 'Give them a chance;
educate them; and then try whether they are or are not made of the same clay as ourselves.'

Windeyer therefore believed that widespread classical education would lead to the emergence of an elite based on merit rather than wealth or class. In keeping with these beliefs, he attacked the utilitarian version of mass education as 'elitism' because he believed that confining the education of the lower classes to utilitarian subjects excluded them from 'enjoyment of the higher duties of life'; he believed real equality meant equality in opportunity of education. For Windeyer 'bright intellectual spirits' of all classes should be given the opportunity of rising through education to the highest position they could achieve.

This was not an original view in colonial circles. George Allen, for example, had advanced similar ideas in the 1840s. Implementing this ideal, however, posed the problem of how to pay for the education of those who could not pay for themselves. Windeyer grappled with this in the context of Sydney Grammar School, which he saw as playing a major role as a channel for able boys of all classes from elementary school to the University. He worked both to increase access to the School for able boys of humble backgrounds and to keep the School viable. At the

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32 Windeyer, lecture at the School of Arts, S.M.H., 16 July 1869; J. Woolley, 'The Idyls of the King', A Lecture Delivered Before the Darling Point Mutual Improvement Association, 18 December 1860, Hanson and Bennett, Sydney, 1861, p. 30. For a discussion of this aspect of Mill's philosophy see F.W. Garforth, Educative Democracy, pp 24-5, 171-2.

33 Windeyer, lecture at the School of Arts, S.M.H., 16 July 1869; Sir William C. Windeyer, 'Technical Education in New South Wales', p. 1038.
beginning of his political career he moved for and chaired a Select Committee of inquiry to look at ways of increasing access to the School. The Committee canvassed two ways of doing this, lowering fees or introducing scholarships. In the beginning Windeyer favoured lowering fees, but during the course of the inquiry, possibly influenced by the evidence of Charles Nicholson and John Woolley, he became convinced that this was not the answer as it would result in a deterioration of Sydney Grammar through loss of resources and in a deterioration in the colony's secondary education through the destruction of good private schools if they were undersold. The final report recommended fifty scholarships to be determined by competitive examination. This provision was, however, rejected in the Legislative Assembly when John Dunmore Lang argued that reduced fees were preferable to scholarships because scholarships would discourage self-reliance. In reply Windeyer probably reflected on his own dependence on scholarships to complete his education when he said that, 'It was an insult to the sons of the working classes to say that they should be put on a different footing to the children of more wealthy parents. All ought to compete on an equal footing for a chance of a free education in the manner he had proposed.'

Windeyer remained keenly aware of the need to make the school accessible. In July 1867, when the Trustees adopted regulations for the admission of free scholars with up to three

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foundation scholarships to be awarded each year, Windeyer thought that these scholars might then proceed to the University by means of a further scholarship and worked towards this end. In 1882 he suggested in the University Senate that the annual vote of Parliament should be used for scholarships for 'boys proceeding from the Primary to the Grammar School and thence to the University'.

Windeyer also remained aware of the need to keep the school viable. The pressure to reduce fees continued and in 1867 a committee, of which Windeyer was a member, recommended that the working expenses of the school should be reduced so that fees could be cut. Windeyer suggested this should include saving money by reducing the salaries of the masters but this was rejected because at least two of the masters had come from England with guaranteed salaries. Windeyer then tried unsuccessfully to argue that the circumstances of the masters should fall with the circumstances of the colony and that, after fifteen years, the Trustees should not be held to their original agreement. The high salaries of masters led to continuing financial problems and in 1870 the Trustees found that they could not appoint a French master because it would leave no funds for contingencies.

35 Sydney Grammar, Report for 1867, S.M.H., 12 January 1869; Windeyer, second reading of the Honorary Degrees Bill, S.M.H., 9 August 1867; Minutes of Senate Meeting 7 June 1882, S.U.A..

There was a temporary end to concern about both accessibility and viability in 1876 when the number of boys in the school reached 400, the maximum on which the Trustees had agreed. This allowed Windeyer to extend his campaign for opportunities in higher education and he incorporated scholarships and the provision of state supported grammar schools in a proposal he put to Parliament in 1878. He argued that Sydney Grammar should be the model because it was the best, judged by results in public examinations. At this time the only other avenues for secondary education in New South Wales were religious colleges, some small private schools and grammar classes at some public schools. Of these, the public schools were accessible to the financially disadvantaged, but Windeyer believed they could not reach high enough standards in preparing children for the junior examination and feared that the lack of adequate secondary schooling meant that the University had to lower its standards.37

Windeyer also suggested that separate grammar schools should be established for girls. He justified this in terms of producing 'worthy mothers of the race', but it reflected his belief that women should have access to the same type of education as that offered to men. The equality Windeyer offered to women was based on his assumption that they would share with men the love of learning, literature and art that could be fostered through a classical education. This made the type of education he would offer to women appear conservative. Mary demonstrated this

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37 See editorial, S.M.H., 12 August 1876; Windeyer, address at Sydney Grammar Annual Prize-giving, S.M.H., 18 December 1876; Windeyer, Legislative Assembly, S.M.H., 4 December 1878.
traditional view of curriculum when, as the organiser of the education section in the Women's Industrial Exhibition of 1888, she promoted higher education for girls. She included essays in Latin and Greek in the section on languages. This did not seem to be in keeping with colonial ideas of women's education and it 'did not attract very much attention'.

Windeyer's proposal for high schools was unanimously agreed to in Parliament, but this did not indicate widespread support. The *Sydney Morning Herald* saw the vote as more a result of apathy than active support and outside Parliament there was doubt about the validity of the state extending 'interference' or state aid to higher education. He was really only supported by the colony's intellectual elite. The University Chancellor, Sir William Manning, acknowledged the importance of Windeyer's resolutions and used them to campaign for more grammar schools. Windeyer's radicalism was therefore elitist in that the opportunities he wanted to extend to the children of the lower classes were opportunities which were valued by an educated minority and promoted as a means of shaping others in their image.

The lack of support reflected the prevailing anti-intellectual ethos. The success and influence of squatters, merchants and gold-diggers led to status being measured in material terms and to

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38 Windeyer, Legislative Assembly, *S.M.H.*, 4 December 1878; *S.M.H.*, 11 August 1888, 3 October 1888.

a belief that individuals could succeed by their own efforts. These self-made men, whose achievements were the result of hard work and business acumen rather than formal education, were more likely to employ their sons on their land or in their businesses than to seek higher education for them. Young men were tempted away from education by plentiful opportunities and by stories of men who were virtually illiterate making their fortunes in the gold rush or on the land. Among these people there was no place for Windeyer's position that a classical education was beneficial for all classes and that the diffusion of classical enlightenment should be a major social goal. This was an on-going problem for those who tried to promote higher education in the colonies. John Woolley had despaired in 1854 that it was 'almost impossible for a young man to devote to preliminary instruction the space of time allowed at home; he is inevitably allured by the temptation of high remuneration, and the prospect of advancement, to cast away his school books.' Twenty four years later, the public response to Windeyer's motion on grammar schools included the suggestion that 'A clerkship in a merchants office, or the ownership of a few hundreds of sheep to start with, open up to our colonial boys a much brighter and a more congenial prospect of comfort and independence than any that can be obtained from the study of books'.

These attitudes, derided by the Windeyers as cultural philistinism and parochialism, affected even the professions, where there was little pressure to acquire cultural enlightenment and classical excellence as shortages in most professions resulted in a mediocre level of intellectual leadership. Where formal education was desired it was often for utilitarian rather than intellectual purposes. In recognition of this, the curricula in secondary schools had from the first been based on a compromise between classical and commercial subjects.  

In spite of opposition, the Government did create 'high schools' in the 1880 Public Instruction Act, partly as a result of Windeyer's 1878 resolutions. This Act established a Department of Public Instruction, which was empowered to establish and administer a number of types of schools, including fee paying high schools with special entrance exams for both boys and girls. The curriculum was to include modern languages, history, mathematics and science. In addition the boys were to be taught ancient languages and literature, and the girls, music.  

Following this provision, eight high schools were established, a girls' and a boys' high school in each of Sydney, Bathurst, Goulburn and Maitland. The fates of four of these

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42 See A. Barcan, Two Centuries of Education in New South Wales, p. 141.
schools suggest, however, that Windeyer had misread the colonial mood with regard to higher education. In 1886 the two high schools at Goulburn were closed and in 1887 and 1898, respectively, the boys' and girls' high schools in Bathurst met with like fate. There was no market for this education at either end of the social scale. Fees of £2.2s per quarter were charged by the high schools so poorer parents chose to send their children to the free Superior Public Schools established in the 1880 Act to provide additional lessons in the higher branches of education. At the other end of the scale, wealthy parents continued to prefer the reputation of private colleges and in these particular towns there were existing private and denominational secondary schools.43

Sydney Grammar School also failed to live up to Windeyer's expectations when it was badly affected by the economic troubles of the 1890s. There was a drop in the number of boys attending as a result of an increase in the school fees to meet shortfalls. By 1895, which was Windeyer's last active year as Chairman, fees were up to £4 per quarter in the lower school and £5 in the upper school and attendance had fallen to 368. Windeyer justified the School for its influence 'in furthering the cause and upholding the standard of education', but it might be argued that, given the colonists' desire for utilitarian education, Windeyer's commitment to classics as necessary to establish an appropriate standard for

higher education was the reason for the limited success of his proposals to extend that education. 44

The University of Sydney was another arena for Windeyer's battle against cultural philistinism. He hoped the University would create a native born intellectual leadership and was strongly connected with it throughout his life. After he was elected unopposed to the University Senate in 1866 he was a political force in the shaping of the University until his departure for England in 1896. He played a significant role in the offices of Vice-Chancellor from 1883 to 1886 and Chancellor in 1895 and 1896. His election as Vice-Chancellor coincided with a prolonged absence from the country of the Chancellor, Sir William Manning, so Windeyer chaired the Senate until April 1884. His success and popularity with his peers were demonstrated when he was unanimously re-elected to the Vice-Chancellorship at three successive elections, being nominated at the first by Christopher Rolleston, his defeated rival. In 1895, in an unanimous decision of the Senate, he became the first Sydney graduate to be elected Chancellor of the University, an honour of which he was well aware. The position was not a purely honorary one and he was an

active working president of the Senate and its committees, as well as the chief executive administrator of the University. 45

The University combined tradition in the form of 'the prestigious precedents of the ancient universities' and an 'overly narrow curriculum', with the novelty of being 'a non-sectarian, non-residential teaching institution, founded and endowed by the State [sic]' 46. Windeyer was attracted by both these attributes. He believed the colonists would and should share his pride in the development of a colonial university which emulated those of the old world. This view was not widely supported, however, because the classical curriculum of the University was incompatible with the colonists' perceptions of their needs. In 1859, as a response to the mismatch of high expectations (and expenditure) and low enrolments, a Select Committee was formed to inquire into the state of the University. Windeyer was a member of, and also gave evidence to, this committee. This evidence is uncharacteristically incoherent and suggests a struggle between his loyalty to the university and his awareness that it was not living up to expectations. For instance, he stated:

that even as a teaching institution, considering the young state of the country, and the early period at which many young men are withdrawn from educational

45 See Minutes of Senate Meetings 7 February 1866, 12 February 1883, 6 December 1886, 11 March 1895, S.U.A.; A. Barcan, A Short History of Education in New South Wales, p. 115.

46 C. Turney, et. al., Australia's First, p. 92.
training, that even in that respect - although it has not, perhaps, been so successful as it might have been under different circumstances - yet I think it has been fairly successful.47

In several speeches throughout Windeyer's career he emphasised his belief that the University existed 'for the people' and that it must not be perceived as representing a class or clique.48 In pursuit of this ideal he campaigned for increased democracy in University governance. This was symptomatic of his mix of conservatism and willingness to do things in new ways. He wanted a traditional style university curriculum but a radical power structure. In the beginning the Senate was a closed body electing its own members. Windeyer regarded this as 'an improper state of things' and, in April 1861, as a result of Woolley's campaigning and Windeyer's support in Parliament, the University Act was amended to create ex-officio professorial places on the Senate and to give young graduates a voice in Senate elections. This was controversial and was recalled by Francis Merewether as the only occasion of 'unpleasantness' in the development of the University.


48 For example, Windeyer, second reading of the Honorary Degrees Bill, S.M.H., 9 August 1867; Windeyer, nomination speech, S.M.H., 8 September 1876.
Appropriately, Windeyer, himself, was the first Fellow to be elected in accordance with this Act.\(^4^9\)

Windeyer's ideal of a Senate controlled by the University convocation was threatened by a proposal by James Martin to allow the Senate of the University to confer honorary degrees on graduates of other universities as well as other notable people. This would have conferred voting rights along with the degrees and Windeyer felt this potentially gave the Senate too much control over an electorate which voted not only for the Fellows but would eventually return a Member to the Legislative Assembly. He campaigned successfully against the Bill.\(^5^0\) A very similar Ad Eundem Degrees Bill was introduced by Dr Arthur Renwick in January 1881 after Windeyer had retired from Parliament. By this time the fear that such a provision might allow sinister influences to be brought to bear was no longer seen as valid because convocation had become too large to be easily swamped so the Bill passed easily. During his second reading speech Renwick alluded to Windeyer's previous attempts to bring in such legislation and said that Windeyer had introduced the 1871 Bill with its 'objectionable' provision for honorary degrees for people of high standing. Ever quick to defend himself from perceived injustice, Windeyer wrote to the *Sydney Morning Herald* to put the record

\(^{4^9}\) See W.C. Windeyer, *Address to the Electors of the University of Sydney*, p. 7; F. Wentworth, nominating Windeyer, *S.M.H.*, 8 September 1876; F.L.S. Merewether, *University of Sydney, Reminiscences*, Islington Hall, 1898, p. 3; C. Turney, et. al., *Australia's First*, p. 149.

\(^{5^0}\) Windeyer, Legislative Assembly, *S.M.H.*, 9 August 1867; *S.M.H.*, 24 August 1867.
straight, by reminding people that he opposed the 1871 bill 'on account of the objectionable provisions referred to.'\(^5^1\)

Windeyer also attempted to make the University 'of the people' in 1888 by increasing public access to the proceedings of the Senate. He moved a motion authorising the Registrar to publish the minutes of meetings, using his discretion to withhold confidential matters.\(^5^2\) Thereafter, proceedings appeared monthly in the *Sydney Morning Herald*.

True to the ideal of drawing from all classes to create a meritocracy, Windeyer sought throughout his career to find ways to increase direct access to the education offered by the University for those who could not afford to be full time students. In 1883 as Vice-Chancellor he recommended evening lectures for students who could not attend during the day, providing they passed the same matriculation and other exams as ordinary students. The course was to be five years with attendance three nights per week and fees adjusted to be equivalent to those paid by full time students. In March 1884 these recommendations were embodied in a series of by-laws; a time table of lectures was established for the forthcoming year and, after some persuasion, the Government provided an annual grant of £2000. By 1890 there were 49 enrolments and it was decided to continue, subject only to the continuation of the Parliamentary grant. In another move to extend access to the University, in June 1891, Windeyer was placed on a Committee to look at University extension into country districts.

\(^{51}\) *S.M.H.*, 21 January 1881, 27 January 1881.

\(^{52}\) Minutes of Senate Meeting 21 May 1888, S.U.A..
This was a less successful venture, however, and the inauguration of courses in country areas had to wait until 1924.\textsuperscript{53}

Windeyer also supported the extension of the University's curriculum beyond its classical base, although he fought hard to retain that base. He wanted to shape the colony's scientific and technical education in a direction that left it integrated with, and under the influence of, the liberal classical curriculum. He believed the curriculum of the university should be broadened in order to retain the university's control over all aspects of education and moved the adoption of several changes in 1874, which increased the scientific content of the curriculum.\textsuperscript{54}

In order to facilitate this expansion of the University, without affecting existing classical offerings, he had to gain an increase in funding. In 1878, he proposed legislation to gain increased Government support to promote technical education within the University and to provide for a medical school and for a school of law. In spite of government promises, however, and many approaches by Windeyer and the Senate, no bill was passed and extra funds to the University continued to be handed out in an \textit{ad hoc} manner. A major bequest by John Henry Challis in 1880 finally made it possible to extend the University's offerings without jeopardising its classical foundations. Windeyer was closely

\textsuperscript{53} See Minutes of Senate Meetings, 13 November 1883, 5 December 1883, 18 February 1884, 7 March 1884, 1 June 1891, S.U.A.; \textit{S.M.H.}, 26 September 1883, 16 February 1884, 12 March 1884; Chancellor's Address, University Commemoration, \textit{S.M.H.}, 15 April 1890; C. Turney et. al., \textit{Australia's First}, p. 479.

\textsuperscript{54} Minutes of Senate Meetings 4 February 1872, 11 May 1875, S.U.A..
involved in the deliberations which finally settled, in July 1889, on a mixture of classical, liberal and scientific studies, with Classics, Mathematics, Chemistry, Physics, Geology and Physiology being funded from the Permanent Endowment, and Law, Modern Literature, History, Logic and Mental Philosophy, Anatomy, Engineering and Biology from the Challis Bequest.\(^{55}\)

Two areas of vocational education, medicine and law, had particular appeal to Windeyer because their introduction would enable Sydney to emulate the British universities. He supported the introduction of a University Medical School and played a significant role in having the Prince Alfred Hospital built near the University as a teaching hospital.\(^{56}\) He was also influential in the development of the University's Law School. At first the Faculty of Law examined but did not teach. Windeyer served as one of the examiners and in March 1884 was elected Dean of the Faculty of Law, then largely an honorary title. In 1885 and 1886 he served on committees which investigated the best means to establish a

\(^{55}\) Minutes of Senate Meetings 25 September 1878, 13 November 1878, 25 March 1889, S.U.A.. Challis was a member of an eminent mercantile firm in Sydney, who retired to England. The University received the Challis bequest in 1890. When the fund was finally settled it came to a net amount of £222,000. See Chancellor's Addresses, University Commemorations, S.M.H., 12 July 1880, 16 April 1894; S.M.H., 13 April 1891.

\(^{56}\) Windeyer addressing meetings, S.M.H., 15 September 1868, 19 September 1868.

A Faculty of Medicine had existed from 13 June 1856 but only examined in spite of several proposals for teaching courses in conjunction with the Sydney Infirmary. For details of developments see J. A. Young, A.J. Sefton, N. Webb, eds, *Centenary Book of the University of Sydney Faculty of Medicine*, Sydney University Press, 1984, p. 1.
teaching Law School. They reported that it was not practicable at that time but successfully recommended evening lectures with an examination at the end of each course and arrangements to substitute these certificates for Board examinations under the rules of admission of Barristers and Solicitors. When the Challis bequest made a full teaching Law School possible in March 1890, Windeyer became an ex officio member of the Faculty as a member of the Senate from the legal profession and also remained Dean of the Faculty.\footnote{57 Minutes of Senate Meetings, 5 March 1884, 20 July 1885, 1 March 1886, 17 May 1886, S.U.A.; S.M.H., 24 March 1890; Chancellor's Addresses, University Commemorations, S.M.H., 16 April 1888, 15 April 1890.}

Windeyer's support for Medical and Law Schools did not involve compromising his belief in the fundamental value of a classical and liberal education. When the new by-laws for the Faculty of Medicine were published in August 1882, there was a requirement that students pass their first year in Arts or the Senior Examination before going on to medical studies. The LL. B., which was established in 1890, consisted of a three year course after completing two years of Arts.\footnote{58 S.M.H., 2 August 1882; Professor Pitt Corbett, 'The Law School, Sydney University', S.M.H., 16 July 1890.}

As Chancellor, Windeyer emphasised the University's success in his terms. He referred to 'the expansion which has made the University so much more useful to the community' and asserted that 'The great mass of our students come not from the ranks of the well to do, but from the rank of those whose very limited incomes make it a great struggle to send their sons and
daughters to the University'.

He was, however, only too well aware of the need for continued government funding to keep it viable and accessible. Government cuts in 1893 forced the Senate to create a retrenchment committee and to look into its finances. Windeyer successfully recommended actions which did not affect courses offered or student access. They included reducing library expenditure on periodicals and binding, abolishing the awarding of books as prizes and making medals only of bronze, cutting gardening staff and minimising the appointment of additional examiners.

In order to bring all classes within the influence of the University and to create a corporate feeling amongst the educated men of the colony, Windeyer suggested the extension of the University's influence by the introduction of public exams. The original idea seems to have come to Windeyer from John Woolley and Windeyer mentioned it in an early petition which he organised against the granting of degrees to candidates who had not attended lectures. In the Senate, Windeyer did not propose the idea but he seconded a motion of the Chancellor that a committee consider the 'Examination of Schools under the auspices of the University'. The By-Laws that were drawn up as a consequence of this were not, however, implemented, until the arrival from England of Professor Badham. As Vice-Chancellor, Windeyer increased

59 Windeyer, Address as Chancellor of the University of Sydney, 20 April 1895, typescript, M.L., AW 77/2, p. 9; reported in S.M.H., 22 April 1895.

60 Minutes of Senate Meeting 17 July 1893, S.U.A.; editorials, S.M.H., 27 April 1894, 5 December 1894.
the value of the Senior Exams by successfully moving that in relevant subjects they would be accepted for matriculation.61

The exams reinforced the role of the University in maintaining standards of education in the colony and thereby contributed to the uniformity of that education. The Senior Exam might have had limited effect as it was directly linked with progressing to the University but to increase the influence of the University over the school syllabus there was also a Junior Exam which, according to Windeyer, was intended to be 'a credential of educational attainments' for 'a boy leaving school to begin the business of life'.62 The exams helped to define the senior school curriculum and exerted control through the fact that the results were used to identify the leading academic high schools. They also allowed Windeyer to include the Sydney Mechanics' School of Arts in his unified model, providing a 'certificate of competency' for the School of Arts students. When a technical college was developed under the auspices of the School of Arts, Windeyer wanted to include it, too, by having its students examined by the University. In 1883 the Board of Studies of the University even considered the expediency of holding periodic examinations of the students of the Technical College. The Board conferred with

61 See Woolley to Windeyer, 25 December 1864, Windeyer Papers, S.U.A., P.1; Minutes of Senate Meeting 21 March 1867, S.U.A.; W.C. Windeyer, Address to the Electors of the University of Sydney, Sydney, James Reading & Co., 1876, p. 11; Chancellor's Address, University Commemoration, S.M.H., 31 May 1886.

62 Windeyer, address at Sydney Grammar Annual Prize-giving, S.M.H., 17 December 1885.
Windeyer in his capacity as President of the School of Arts and recommended the idea to the University Senate (of which Windeyer was also a member) but the proposal went no further.63

Towards the end of the century Windeyer’s concern for popular enlightenment over practical training and material advancement was unusual and increasingly irrelevant to the thrust of educational policy. By this time, the extension of higher education was dominated by a utilitarian desire for technicians and trained scientists, which even affected the University Senate. It added a science subject to matriculation in 1875 and several science subjects to the junior examination in 1878. Edward Dowling, a committee member of the School of Arts to whose ‘energy’ Windeyer attributed the foundation of a national scheme of technical education, was one of the leading exponents of this desire. In 1877 when Windeyer moved in the Legislative Assembly for Grammar Schools to be established he received a letter from Dowling pointing out that such schools would not meet the criterion of ‘the greatest good to the greatest number’ and that there was a pressing want for technical scientific skill. Dowling’s 1881 Report from the Committee of the Technical College was influential in recommending the increasing propagation of utilitarian knowledge.64

63 Windeyer, lecture at the School of Arts, S.M.H., 16 July 1869; W.C. Windeyer, Commemorative Address on the Celebration of the Fiftieth Anniversary of the Sydney Mechanics’ School of Arts, p. 21; Minutes of senate meeting, 4 July 1883, S.U.A.

In this cultural climate, classical education had neither practical nor personal value but Windeyer failed to understand this. He lost public and political support when he attacked Premier Farnell in 1878 for his lack of culture. The *Sydney Morning Herald* reminded him that: 'such acquirements are lightly estimated, and, apart from sound judgement and force of character, are not of the highest value' and 'cultured men are for the every day purposes of life often the weak, while the uncultured are the strong'.

**The morally elevated artisan**

The mis-match between Windeyer's single-mindedness about the value of classics and colonial expectations was particularly evident at the Sydney Mechanics' School of Arts. He saw the School of Arts as a major avenue for providing access to higher education to those who had not achieved it as children, had to combine learning with working and wanted to cultivate their mental faculties. From 1856 Windeyer was an active member of the School of Arts debating class, served as a Trustee of the Government Grant and subscribed the substantial amount of £25 to the building fund. His re-election as Vice-President from 1867 to 1873 was a mark of his status in the institution as his attendance never surpassed 50 per cent of meetings held. In February 1874 Windeyer was elected President. He held that post until 1880 and again from 1883 to 1886.

His goal was to elevate even the 'mechanics' through a classical and liberal education so that the most able could enter the

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65 *Editorials, S.M.H.,* 25 January 1878, 2 February 1878.
top levels of society through matriculation to the university. From 1865 to 1867 he, himself, taught both elementary and more advanced Greek, which he justified in 1869 as 'the master-key unlocking the treasures of ancient philosophy, eloquence, and poetry'. After pressure of work forced Windeyer's resignation in February 1867 these classes continued under Weigall, the new headmaster of Sydney Grammar School. Windeyer also gave the inaugural lecture in a series of open and free lectures at the School of Arts on 13 July 1869. The subject matter reflected his faith in the intellectual potential of his audience. It was wide-ranging, philosophical and based on his ideas about liberalism, science and the search for truth.66

Windeyer's position was consistent with the direction that the institution had taken, but it was not a direction that met with widespread approval. The Sydney Mechanics' School of Arts was established in 1833 for the 'diffusion of scientific and other useful knowledge' among the working classes. It failed, however, to achieve its original aspirations. During the 1840s membership declined and in the 1850s, when Windeyer first became involved, it was going through a crisis, which was a culmination of the continuing effects of the 1840s depression, members going to the Fitzroy Diggings, the creation of many similar institutions, the illness of the Secretary, poor buildings and the absence of a demand for educated tradesmen. As the working classes withdrew their patronage, it became a 'middle class' institution with Greek, Latin, French, English Grammar and Mathematics included in a

66 Windeyer, lecture at the School of Arts, S.M.H., 16 July 1869.
curriculum which Windeyer had to defend from attack by those who thought that 'too much attention' had been paid 'to subjects of no practical utility'.

In supporting classical education for 'mechanics' Windeyer did not seek to exclude technical education. He did not see the enemy of civilisation in science or technology per se but in the abasement of learning by confining it to narrow occupational and commercial objectives. He freely acknowledged the contributions of scientific discoveries and mechanical improvements to human progress and attributed the economic success of the British people to their superiority in this area. As a politician, he attempted to protect inventors as well as a fledgling colonial intelligentsia with a Copyright Act, which, in addition to copyright on literature, included fine arts, manufactured goods, and industrial designs. He also successfully moved the Patents Law Amendment Bill, specifically to provide protection for inventions at the 1879 International Exhibition in Sydney. In 1880 he urged the Government to take steps to support the development of technical education, including the introduction of physical science to the curriculum of the public

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schools. As a judge, he used the opportunities presented on Circuit to pay appreciative visits to technical museums in country towns.\textsuperscript{68}

What Windeyer objected to was the displacement of classical learning, poetry and philosophy by material and utilitarian subject matter. He regretted the supremacy of the production of material wealth as a motivation and the concomitant loss of the ideal that knowledge and virtue should be pursued for their own sake rather than from hope of reward. For Windeyer, therefore, 'The metaphysical and poetic' had to go 'hand in hand with the positive and scientific'. He offered a graphic example of this in his two 'spirit of the age' lectures, when he said, 'Puck has put his girdle round the earth in forty seconds, and men cease to recognise in the every-day fact of electric telegraph the wild dream of a poet's fancy.' When he enumerated the miracles of telephone, phonograph, steam train and canal, he did it in language that was more of poetry than of science:

The message from the counting house or the whisper of the lover may be delivered to the listening ear miles away with no confidant to the secret but a vibrant membrane, and years after death the phonograph may recall to us the sound of a voice that is still, ... the travelling [man] is borne in ease and comfort by the iron horse

\textsuperscript{68} Windeyer, Legislative Assembly, S.M.H., 2 November 1878; S.M.H., 16 November, 1878, 21 March 1879; 42\textsuperscript{o} Vict., No. 20 and 42\textsuperscript{o} Vict., No. 27; Windeyer addressing Technological Conference, S.M.H., 30 October 1880; Sir William C. Windeyer, 'Technical Education in New South Wales', pp 1036, 1040.
... Seas are united by the piercing of isthmuses.69

Integration was the key to Windeyer's resolution of conflict between the need for scientific and technical progress and the need for a liberal classical education. His desire for an integrated system came, however, into direct conflict with those who believed the chief goal must be material progress through the development of scientific and technological expertise and that classical education was a useless waste of time and resources. Windeyer's desire to combine science with more traditional curricula led to his involvement in moves to develop technological education. He chaired a Technological Conference held in 1879 under the auspices of the School of Arts and participated in another one a year later under the joint auspices of the Trades and Labour Council and the Committee of the Technical College. These conferences were marked by conflict. Some speakers including Windeyer and Sir William Manning wanted to see scientific and technical education developed within the existing system, including the extension of the Technical College under the auspices of the Sydney Mechanics School of Arts. Others, including Norman Selfe and Edward Roylance, Secretary to the Trades and Labour Council, wanted a separate narrowly practical system of technical education.70

69 Sir William C. Windeyer, *An Address delivered before the University Union*, pp 1-2. He has added the telephone and phonograph to the comparable section of his earlier speech at the School of Arts, *S.M.H.*, 16 July 1869.

70 *S.M.H.*, 11 October 1879, 30 October 1880.
Windeyer had his strongest influence in this area as President of the School of Arts during the period in which it expanded to include technical training by establishing a working men's technical college. This was originally suggested by John Woolley but nothing came of it until 1873. Action was motivated when a Government and Mining Act appointed lecturers to the new School of Mines. The School of Arts wanted to gain a share of the available funding for technical education. During the 1870s Windeyer worked towards its expansion so that technical education could be developed within its control, tempered with classics and humanities. He devoted considerable time and energy to extending the School to accommodate the extra classes. He drafted legislation to form the School into a corporation and made an attempt, albeit unsuccessful, to raise government funding. He also supported the building of a new hall which could be used to raise revenue through rent from entertainers.71

The School of Arts established its Technical School (or Working Men's College) at the beginning of 1880, supported by Government grants. Windeyer regarded it as an 'essential feature' of the School of Arts, but the curriculum of the Technical College was far from purely utilitarian. Classes included Pure Mathematics, Natural Philosophy, English Literature, Geography, French, German, Latin, Italian, and Ladies' Drawing as well as more

practical subjects such as Engineering, Bricklaying, and Practical Electricity.\textsuperscript{72}

This mix of subjects reflected a hybrid of Literary School of Arts and Technical School and represented a compromise between the goal of intellectually improving the working classes and the development of practical knowledge.\textsuperscript{73} This middle course led to criticisms from the Inspector of Public Charities and trade and professional groups, such as the Trades and Labour Council, the Architects' Association and the Engineers' Association, who wanted the curriculum to focus on practical utility. As a result, a committee of the Trades and Labour Council was set up in 1882 and convinced the Government to take over industrial training. Windeyer opposed this even while accepting appointment as one of the original members of the new New South Wales Board of Technical Education. He was present at the first meeting on 14 August 1883, when a sub-committee (of which he was not a member) was formed to report on the expediency of taking over the Technical College. This proposal was accepted by the Government, and, under pressure of financial realities, Windeyer as President of the School of Arts had no option but to agree. The Board took over the Technical College on 1 October. Windeyer cannot have been happy about this but he was among those

\textsuperscript{72} Sydney Mechanics' School of Arts, President's Annual Report, \textit{S.M.H.}, 4 February 1880; W.C. Windeyer, \textit{Commemorative Address on the Celebration of the Fiftieth Anniversary of the Sydney Mechanics' School of Arts}, p. 17.

present on 14 December 1883 at the formal opening of the Sydney Technical College in Sussex Street.\textsuperscript{74}

Nadel suggests this marks the end of 'Australia as the home of the educated and morally elevated artisan' and the birth of 'Australia as the unregenerate workingman's paradise.'\textsuperscript{75} If so, it marks the end of a Windeyer dream although he fought on for a while longer in the School of Arts. In 1883, after a two year retirement, he ran against the retiring Chairman, John Sutherland, who represented the practical men, and won, but by only 118 votes to 107. He resigned at the beginning of 1886 because he felt he no longer had the active support of the members.\textsuperscript{76}

**Education for citizenship**

The desire to develop an educated and morally elevated working class also motivated the Windeyers' interest in elementary education. They expected that education would turn the lower classes into civilised individuals with a sense of civic responsibility. For them this was an essential adjunct to democracy; once all individuals were educated to actively support existing values and


\textsuperscript{75} G. Nadel, *Australia's Colonial Culture*, pp 271-2.

\textsuperscript{76} *S.M.H.*, 7 February 1883; Windeyer, letter of resignation, *S.M.H.*, 20 January 1886, p. 11.
systems, democracy could safely extend power to the people. Interestingly, William's father, Richard Windeyer, had advocated an 'academic' franchise, basing the right to vote on a diploma issued to all men educated to a specified level and had admitted that 'if there were universal enlightenment there would be no danger in universal suffrage'.\textsuperscript{77} William's belief that universal education could train the populace, 'to look with reverence on legitimate authority and on those high standards of truth and justice - those constitutional guarantees which we placed high above even our own reach' allowed him to embrace democracy without abandoning his ideal of a moral and intellectual oligarchy.\textsuperscript{78}

It was thus the task of education to establish universal social values. The virtues to be propagated included altruism, industry, honesty, integrity, justice, prudence, self-reliance and commitment to a liberal democratic state. The goal was to re-enforce the existing social structure, emphasise discipline, and inculcate respect for authority and intelligence. Even Mechanics' Schools of Art were expected to act as an 'antidote against social misunderstanding' and to teach the worth of existing political structures and the values they represented.\textsuperscript{79} If a stable homogeneous society was to be achieved, individualism could only


\textsuperscript{78} Windeyer, Election speech, \textit{S.M.H.}, 23 May 1859.

\textsuperscript{79} J. Woolley, 'Schools of Art and Colonial Nationality', \textit{A Lecture Delivered at the Inauguration of the Wollongong School of Arts}, 28 May 1861, Reading and Wellbank, Sydney, 1861, p. 17.
be encouraged within the application and acceptance of these parameters.

This ideal, based on individuals who willingly accepted the duties of citizenship, was most at risk from those people at the bottom of the social scale who had least investment in the status quo. The same people, however, also had much to gain if they could acquire the attitudes and behaviour that would enable them to improve their situation, elevating themselves within existing social structures. The Windeyers believed that appropriate educational measures could convince the lowest classes of the benefits to them of existing social and political structures as well as equipping them with the attitudes and skills that would enable them to partake of these benefits. Individual improvement could thus ultimately raise the whole society, as the sum of its individuals, above a perceived threshold of respectability. Mass education was, for the Windeyers, simultaneously an instrument for social conservation, a tool for social improvement and a means of individual mobility.

Basic education, therefore, had to provide the lowest classes with the opportunity for upward mobility onto the base of the education pyramid through which they could then rise by their own merits. This can be seen as a compromise between social determinist beliefs that lower class children were disadvantaged by lack of opportunity and individualist beliefs that all individuals were responsible for their own fate. Universal elementary education would provide all individuals with opportunities to overcome their environment and to change their own circumstances so that the onus for subsequent personal success or failure remained with the individual. The provision of elementary education thus crossed the
boundary from old-fashioned unconditional charity to self-help and allowed the Windeyers to believe in both. There was thus a close relationship between their work in education and their charity work. Mary believed, 'The best benefit which charity can bestow is 'humane and sympathetic instruction'.\textsuperscript{80}

In fulfilling this function education had to equip individuals with the necessary skills for social as well as academic success. Individual 'moral improvement' as a goal of education was not seen as an imposition on the working classes because the Windeyers did not think in terms of classes but in terms of individuals. They assumed that all citizens aspired to achieve respectability within the liberal model. Universal education was seen as a boon to the people of the lower classes because it would equip individuals to interact with the society for their mutual benefit. William and Mary both believed that to make someone a good citizen was to do them a favour as being good would make them happy. William told his son, 'when you are good you are always happiest yourself'.\textsuperscript{81}

Raising the base level of the sum of the individuals would also contribute to the good of society as a whole. Windeyer saw education of the individual as the antidote to poverty, misery and, especially, crime, and, therefore, the primary means of 'advancing the social and moral welfare of the people'.\textsuperscript{82} He also expected that elementary education would develop the skills and attitudes


\textsuperscript{81} William to Willie, 7 February 1877, in family papers held by Lady Windeyer.

\textsuperscript{82} Windeyer, election speech, S.M.H., 23 May 1859.
necessary to support a democratic form of government by ensuring that the voters chose their leaders wisely. It would persuade all citizens to take an interest in government and teach them the values of freedom and truth.

Both the Windeyers supported the principle of universal elementary education. William supported Parkes' 1866 Public Schools Act, not only because it was secular, but also because it aimed to establish the basis of a universal system of elementary education by creating a Council of Education and providing more schools by rationalising resources. He made a strong speech in support of it after which the cheering from both sides of the house was so great that the next speaker could not be heard.\footnote{Windeyer, Legislative Assembly, \textit{S.M.H.}, 11 October 1866. See A. Barcan, \textit{A Short History of Education in New South Wales}, pp 127-3; A.G. Austin, \textit{Australian Education}, 1788-1900, pp 123-5.} William was also active in extending education to the adults of the working classes through evening classes at the School of Arts, the Free Public Library and popular lectures. He supported the opening of the Sydney Mechanics' School of Arts Reading Room, the Public Library and the Museum on a Sunday which was 'the only day when the working classes could have time to get access to them'.\footnote{Windeyer addressing public meeting, \textit{S.M.H.}, 26 April 1878.}

Mary supported elementary education in a practical way when she served on the East Sydney Schools Board. She also reached out to the mothers and children of the working classes through the Kindergarten Movement. Her interest in kindergartens followed soon after the advent of the Kindergarten Union in...
Australia. Experiments with kindergartens in New South Wales dated back to a 'nursery school' at Fort Street Model School in 1856, but they had been ineffective because they were insufficiently differentiated from primary schooling. In 1895 a Kindergarten Union was formed in New South Wales with the aim of opening free kindergartens in poor neighbourhoods. It focussed on social concern for lower class children at a time when poverty and degradation created by depressed economic conditions made the philanthropic appeal of the kindergarten particularly strong. The children who seemed most in need of 'civilising' were from families where both parents worked or where mothers were seen to have failed in their duties of education and control. These children were seen to be not only a threat to themselves but also to other children whom they would 'infect' with 'vice' when they met them in school.85

The Kindergarten Movement aspired to produce citizens who were self-controlled and, therefore, not in need of overt coercion. The emphasis was on moral reform through love, purity, hope, faith, unselfishness, cleanliness and good manners. Mary Windeyer thought 'gentleness and politeness' could be promoted through an aesthetic kindergarten environment and committed teachers. She told the story of a public school teacher who was impressed because a child trained in kindergarten said 'please' and 'thankyou'. The role of the kindergarten was thus to spread to the children of the poor, the vicious and the indolent those 'civilising'

85 S.M.H., 1 June 1896.
universal attributes that were seen as the key to both individual and national improvement.86

The Kindergarten Movement also attempted to pass moral values on to the children's parents. The goal, according to the Principal of the Kindergarten Teachers' Training College, Elizabeth Jenkins, was 'self-help, making not only the children self-reliant but the mothers also, reaching through the children to the whole of the family'. It therefore met broad social needs. The supporters of kindergartens saw themselves as 'high minded men and women ... working together for the common good'.87

The Kindergarten Union was based on an American model introduced by Mary's daughter, Margaret Windeyer. It took a women's philanthropy format, based on branch committees, rather than trying to attach kindergartens to existing education department structures. This separation from the education department allowed the Kindergarten Union to adhere more strictly to the Froebel system than previous New South Wales' experiments. This system was based on children's love of play and encouraged learning through activities, such as craft work, games, stories and songs. It had a strong appeal for Mary Windeyer. She referred to children becoming 'learners who will find "tongues in trees books in running brooks sermons in stones and good in everything"' and said, 'To learn how to learn is the

86 Notes in Mary Windeyer's writing, Windeyer Family Correspondence, Newcastle Region Public Library, A 155; editorial, White Ribbon Signal, 11 March 1898, p. 4.

87 Newcastle Morning Herald, 15 February 1907.
pupil's first work. To make the pupil enquire is the first object of the enlightened teacher.88

When an affiliated Kindergarten Society was formed in Newcastle in 1901 by Mrs J.R. Wood, Mary was among the founder members. In November 1902 when the Newcastle Free Kindergarten was officially opened, with 60 children attending, she became its 'patron'. In 1907, when Mrs Wood retired, Mary became President of the Newcastle Kindergarten Society. At this time the Newcastle Morning Herald prided itself that Newcastle was ahead of everywhere but Sydney in the promotion of kindergartens. Mary resigned because of ill health in June 1910, but continued her fund-raising activities until her death, lending her signature to appeals even after she had retired from active involvement. The Newcastle Kindergarten Society wrote to her on her retirement recording their 'high appreciation' of her 'valued and lengthy services'.89

Mary's interest included kindergarten teacher training. The Newcastle Society's teacher training course was given full credit by the Sydney College and in February 1907 the Newcastle centre was affiliated with the Sydney Kindergarten Teachers' College. By then there were six free kindergartens and a small private one, all connected with the training college. In 1909 Newcastle held its

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own graduation ceremony and four students received their certificates from Lady Windeyer.90

Both national and individual improvement motivated Mary's involvement with the Kindergarten Movement and both were emphasised by her at different times depending on her audience. In seeking funds, the potential of kindergartens to contribute to the national good was stressed. In an appeal which targeted the squatters in the north of the state Mary argued that, 'the future of our country is best safeguarded by laying the foundations of a strong and law-abiding community in the young children, before a bad environment has sown the seeds of vicious habits'. In a set of speech notes, however, Mary referred to the potential of the kindergarten to extend individual children, as well as its socialising role. This suggests she was not just concerned to raise them to respectability but wanted to give them the opportunity to succeed in life according to their own ability and by their own effort.91

Conclusion
The Windeyers believed that both individuals and society could benefit from universal education and that if the system allowed all people to rise on their merits a meritocratic order would emerge. To achieve these outcomes, education had to elevate the lower classes to respectability and responsibility; it also had to create a

90 Newcastle Morning Herald, 15 February 1907; Programme, 10 December 1909, Windeyer Family Correspondence, Newcastle Region Public Library, A 155.

91 Appeal letter, 12 December 1911, Windeyer Family Correspondence, Newcastle Region Public Library, A 155; Notes in Mary Windeyer's writing, c. 1910, possibly ideas for a speech, W.F.R.P., M.L., *D 159.
virtuous intellectual elite from which to draw the teachers, philosophers and leaders. In pursuit of these goals, both William and Mary Windeyer devoted time and energy to educational institutions. William's interest was life-long and applied to institutions in the public sphere. Mary's contribution was towards the end of her life and consistent with her work in the women's philanthropic sphere. They were both motivated by their faith in the power of education to raise all people to the maximum realisation of their capacity for responsible citizenship and to select and train the intellectually merited to be virtuous leaders.

In pursuing their goals, they stood out against other educational currents. Their intellectual elitism was opposed to the cruder forms of egalitarian democracy that were emerging in the colony. Their belief in classical education and the importance of moral virtue and intellectual achievement was out of touch with developing materialism and a utilitarian view of education. Their belief in moral obligation to the good of the whole was in conflict with pragmatic individualism and emerging class consciousness. They nonetheless made significant contributions in a number of areas. Even Windeyer's work at the Mechanics' School of Arts, while he ultimately failed to hold utilitarianism at bay, contributed much to the vitality and viability of the institution during the time he held office.

Education was the basis of the Windeyers' faith in the possibility of social reform, but this in turn depended on belief that the educated man would fulfil his responsibility to develop a full public career. William's commitment to a political and legal career was his personal attempt to live up to this expectation.
Chapter 3

The public career of William Windeyer

William Windeyer claimed to have early 'imbibed the sentiment of the Athenian citizen ... that he who took no interest in public affairs was not simply an idle but a useless man'.¹ Following a classical model of public service, he embarked on a career in law with the intention of entering the Legislative Assembly as soon as he was sufficiently established.² He served as the Member for Lower Hunter from 1859 to 1860, West Sydney from 1860 to 1862 and 1866 to 1872 and The University of Sydney from 1876 to 1879. In spite of this relatively long political career, he achieved recognition in the form of ministerial office on only three short occasions: as Solicitor-General in the Martin administration of 1870-72 and Attorney-General under Parkes in 1877 and 1878-9. In 1879 he stepped from politics onto the Supreme Court Bench and in 1888 became the senior puisne Judge. His legal career was recognised

¹ W.C. Windeyer, Address to the Electors of the University of Sydney, delivered at a public meeting, 18 August, 1876, Sydney, James Reading & Co., 1876, p. 6.


The content of these letters challenges Parsons' thesis that it was the other way around, that Windeyer 'looked forward to becoming a judge as early as 1856, and possibly because of that ambition entered politics in 1859' - R.J. Parsons, 'Lawyers in the New South Wales Parliament 1870-1890', Ph. D. thesis, Macquarie University, 1972, p. 94.
with the award of an honorary LL.D by Cambridge University in 1887. As a final endorsement of his public role he was created a Knight Bachelor in 1891. He retired on a pension in 1896.

This spare outline of a career, mostly successful, but far short of what Windeyer himself hoped to achieve and less than many others expected of him, does not reveal the full ambit of his influence. While he did not achieve lengthy periods of political office and failed to become more than a puisne judge, he achieved a significant measure of influence through his powerful speeches, as a member of committees and commissions of inquiry and in his judicial decisions. His impact is perhaps best indicated by the level of public debate over many of his actions.

Windeyer began his public life with a vision of himself as hero-citizen playing a leading role in an idealised virtuous body politic. His early political activity was marked by radical idealism. As his career progressed, however, he failed to resolve the tension between his vision of an ethical citizenry co-operating to achieve common goals and the vulgar reality of pragmatic people in social and political conflict. As a result he retreated from a radical democratic stance to a more paternalistic and authoritarian position. By the latter stages of his life he emphasised strong and virtuous leadership. He had plentiful opportunities to demonstrate this in his judicial role, in which he played the paternalistic pre-industrial squire attempting apparently single-handedly to strengthen 'civilisation'.

Windeyer's political career spanned a significant period of colonial development. In 1858, the year before he entered politics, universal male suffrage was granted in New South Wales. According to Dickey, the ensuing period was 'of intrinsic
importance' in the political history of New South Wales. It was a
time of transition between the old leadership of the gentry and the
new representation of the masses; the old power of the educated
elite and the new power of public opinion; the old ideal of political
independence and the new realities of faction politics. Windeyer
was caught up in these changes and his experience of them
significantly affected his political stance, bringing increasing
disillusionment with both the electorate and the calibre and
effectiveness of the elected parliament.

The Idealist Politician
As a young politician, a self-proclaimed 'liberal' and a 'democrat',
Windeyer had great faith in the potential of legislative processes
and the law. His goals were to serve a state that was worthy of its
citizens and to shape citizens who were worthy of their state. His
notion of citizenship was based on both rights and obligations.
These early principles motivated him to support the formation of a
voluntary citizen militia. He argued that 'If good government and
liberty were worth gaining and maintaining, they were worth fighting
for to enjoy' and saw military service as being, like jury service, 'at
once the right and the duty of every freeman'. He also saw it as
an important contribution to the development of Australian
nationalism, because it would facilitate the withdrawal of British
troops and help the colonists realise the strength of their own
resources.

3 B. Dickey, ed., Politics in NSW 1856-1900, Cassell Australia, Melbourne, 1969,
p. vii.

4 Windeyer, Legislative Assembly, S.M.H., 21 December 1859, 9 August 1867.
The first New South Wales volunteer corps was founded in 1854 as a result of the fears of a Russian invasion that accompanied the Crimean War. Windeyer's support for the establishment of this force motivated his first ever piece of public writing. This was a newspaper letter published in April 1854 headed 'Russians in Sydney', which he wrote 'to stimulate our men to get up a rifle corps'.\(^5\) Shortly after, when such a militia was formed, he joined the first company of rifles. By the time he entered parliament these volunteers had fallen into abeyance so he campaigned for a new citizens' force. In December 1859 he supported Parkes' move in the Assembly to supplement the maintenance of regular troops by the formation of a citizens' militia. When government action stalled the following year, he joined a number of citizens who acted privately to organise a force under existing legislation. These volunteers operated under the old Act until 1867 when Parkes carried a Volunteer Force Regulation Act, which Windeyer supported, although he thought it was still 'only a step towards what we must eventually raise namely, a permanent militia'.\(^6\)

Hirst alleges that this volunteer movement was elitist. This was not Windeyer's intention. The structure he envisaged for this force was the epitome of his idealised organic society. It was similar to that propounded by John Woolley who believed

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\(^5\) William to Maria, 7 April 1854, Windeyer Family Papers, M.L., MSS 5221 X.

volunteers should cement citizenship 'by the spirit of good
time.ship and the reciprocity of kindness' and promote social co-
operation because all classes served 'shoulder to shoulder'.
Windeyer's belief in the importance of the volunteers being
democratic was reinforced by his own bad experience as a private
in the first volunteer movement, in which all commissioned officers
were appointed by the Governor. He believed this had failed
because 'The officers were all appointed through flunkeyism and
back-stairs influence.' He urged successfully that the new
volunteers avoid 'exclusiveness' by electing their officers. His own
popularity was evident when he was elected Captain of both
Number Two and Number Three Companies. After a second
ballot, on 4 December 1860, he was gazetted Captain of the
Second Central Sydney Company. He continued to serve in the
volunteers until 1868 when he attained the rank of Major.7

For Windeyer it was important that the Volunteers serve to
protect the people, not subvert their liberties. He thought it unlikely
that they would ever be needed 'for the purpose of keeping down
any internal dissensions', but said that if such a situation did arise,
'he should be found siding against the military rather than with

7 J.B. Hirst, The Strange Birth of Colonial Democracy, Allen and Unwin, Sydney,
1968, p. 68; J. Woolley, 'Schools of Art and Colonial Nationality', A Lecture
Delivered at the Inauguration of the Wollongong School of Arts, 28 May 1861,
Reading and Wellbank, Sydney, 1861, pp 17-18, 24; Windeyer, Legislative
Assembly, S.M.H., 21 December 1859.

It is notable that Windeyer's promotion of the Volunteers is consistent with
Connell's model of the bourgeois liberals using militarism as a way of containing
working class culture. - R.W. Connell and T.H. Irving, Class Structure in
them'. The first active duty of the Volunteers was to take over guard duty from the regular troops sent to the Lambing Flat riots in February 1861. Windeyer regarded this as 'a very ill-advised step on the part of the authorities'. He felt that the Volunteers might find themselves coping with riots in Sydney and it was improper to call them out to suppress civil commotion. In the Volunteer Force Regulation Bill of 1867 he successfully moved the omission of the words which might have led to volunteers being used to put down domestic insurrection or rebellion. Windeyer's stand on this also led to a memorandum of clarification from the War Office, which stated that Volunteers only had the same obligation to suppress and quell riots as did ordinary citizens.

Windeyer's faith in the Volunteers was based on the expectation that all classes would share his social and economic goals. This belief also gave him confidence in democracy. Believing the working classes were made up of rational individuals like himself, he was confident they would vote wisely and the result would be an elected elite of educated and virtuous representatives who eschewed self-interest and pursued the national good. He therefore desired enfranchisement of all men, but in the expectation that he and his peers would wield political power on their behalf. This was consistent with a widely held liberal view, reflected in the statement of J.S. Mill that 'The people ought to be the masters, but they are masters who must employ servants more

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8 Windeyer, Legislative Assembly, S.M.H., 21 December 1859; S.M.H., 25 February 1861, 16 August 1867, 30 August 1867.
skilful than themselves. Accordingly, Windeyer participated in the pro-democracy political demonstrations leading up to the 1858 Electoral Act.

Experience reinforced his early faith in the working classes. When he spoke at Henry Parkes' testimonial in 1857 and when he first ran for parliament in 1859 he had gratifying experiences of personal popularity and the support of working men. In this early flush of idealism he identified himself as a poor man and a friend of poor men opposing privilege and vested interests. In his first, albeit unsuccessful, election campaign in the seat of Paddington he opposed Sir Daniel Cooper, a wealthy landlord and member of the political establishment. Cooper called himself a 'liberal' but was seen by radicals as betraying the cause of liberalism with his foreclosure on Parkes' radical newspaper, The Empire. Although he lost this election, Windeyer won the divisions of Redfern, Waterloo and Paddington which encouraged him to believe he was supported by the working class portion of the electorate.

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10 Cooper was a major creditor of Parkes and held a mortgage on The Empire. When the loan became due in 1857 Parkes could not pay and Cooper advertised the paper for sale. Parkes' friends, including Windeyer, rallied to save it. Cooper was persuaded to postpone the sale and was temporarily paid off by the subscription of promissory notes. In May 1859 when Cooper decided to enforce the payment of the notes he precipitated a bitter public brawl with Parkes which revolved around the exact nature of the agreement which had been exchanged for the promissory notes. - See S.M.H., 23 May 1859, 4 June 1859, 9 June 1859, 11 June 1859, 13 June 1859; A.W. Martin, Henry Parkes, Melbourne University Press, Carlton, 1980, pp 143-5.
At this time elections were conducted for different seats on different dates so several seats could be contested successively by the same candidate in the same election. Windeyer went on to challenge unsuccessfully for the seat of Canterbury and then at the end of June won the seat of Lower Hunter. When he entered parliament as one of 46 new representatives, he quickly established himself as a brash young radical. His maiden speech was marked by radical rhetoric and a blatant disregard for the political establishment. He suggested that experienced members had no right 'to be listened to as authorities by their new but perhaps more rational fellow members'.

His opposition to the political establishment meant that he also opposed an appointed Legislative Council, advocating an Upper House elected on the basis of manhood suffrage. In 1860 he took the opportunity to attack the Legislative Council when a Bill of Indemnity had to be introduced after it was discovered that ministers had spent money without the consent of the Upper House. Windeyer criticised the Legislative Council's right to interfere in financial matters when it was not an elected body. He revealed the romantic and traditional roots of his radicalism when he cited the rights of the British subject under Magna Carta and referred to the Glorious Revolution of 1688, declaring that 'taxation without representation was tyranny' and maintaining that the constitutional position of the Legislative Assembly was at stake.

11 Windeyer, Legislative Assembly, S.M.H., 2 September 1859.

12 Windeyer, Legislative Assembly, S.M.H., 22 June 1860.
Windeyer established his credentials as a friend of working men with his positions on expenditure and taxation. In his early election campaigns he argued that taxation should be revised to increase equity and that civil service expenditure should be cut. He did not, however, follow up these issues once he was in parliament, although he did oppose the equalising of the rum duty and the imposition of duties on tea and sugar on the principle that these duties would particularly disadvantage the working classes.\textsuperscript{13}

The Parliament Windeyer entered contained no clearly defined parties. The Government was led by Charles Cowper, a moderate who had gained office through the support of the more liberal John Robertson and his followers. This Government called itself 'liberal' but the Opposition included self-identified 'independent' liberals. The most significant of these were: Henry Parkes, a new-comer who dreamed of creating a great new liberal party; William Forster, who was supported by a mixture of 'conservatives', 'liberals' and 'independents'; and James Martin, a defector from an earlier Cowper ministry, who came to be distinguished by his protectionist policies. Each of these men in time became the focus of their own faction.\textsuperscript{14}

Parkes was the most radical, differing from the more conservative Cowper on such issues as the abolition of the taxes upon tea and sugar, opening the Grammar School to the children

\textsuperscript{13} Windeyer, election speeches, \textit{S.M.H.}, 1 December 1860, 4 December 1860; Windeyer, Legislative Assembly, \textit{S.M.H.}, 7 February 1861.

of the working classes and the eight hour working-day. He was seen as a strong champion of the working man and for this reason, as well as personal attachment, Windeyer supported him. In 1859 in his role as independent liberal critic, Parkes moved successfully for the establishment of a Select Committee to Inquire into the Condition of the Working Classes with himself as the Chair. Windeyer was a member of this Select Committee, which 'disclosed a state of things most lamentable'. He urged the report be accepted because 'If the motion were negatived, he feared it would tend to destroy the confidence of the working classes in the House.' The report was, however, rejected because it favoured protection and the majority of the Legislative Assembly were free traders.15

Free trade versus protection was one of the major political debates at this time. While the majority of liberals favoured free-trade, which served the interests of both merchants and squatters, there were some who believed that protection of local industries from overseas competition would create jobs and encourage colonial self-sufficiency. The latter position was consistent with John Stuart Mill’s view that tariffs were necessary to support new industry in a new country and to protect workers from having to compete with cheap foreign labour. The only time when protectionism was in the ascendant during Windeyer's political career was in 1863 when James Martin formed a ministry with the support of the small group of protectionists in the Assembly. From the fall of Martin in 1865 until the 1887 election, New South Wales

was singularly committed to free trade, using tariffs to raise revenue when necessary but not to protect industry. Windeyer began political life as a protectionist but changed his mind and became a free trader following Parkes' conversion to free trade by radical political economist, Richard Cobden, while Parkes was in England in 1861.16

Windeyer's commitment to improving the lives of the working classes led to a significant contribution to the preservation of public open space and public health. He successfully moved to preserve land adjacent to the cattle market 'for the recreation and enjoyment of the citizens of Sydney', adding 'if this land were never put to any use whatever, excepting lying there unoccupied as one of the lungs of the city, it would be highly valuable'. Less successfully, in 1862 he moved 'for levelling and planting the open ground on Flagstaff-hill, Church-hill, and the reserve for public recreation near the Haymarket'. This motion was opposed by Cowper as Premier and Robertson as Minister for Lands. Windeyer did not, however, give up on public open space. In November of the same year he successfully opposed a proposal to sell some land at Watson's Bay because 'Watson's Bay was now a great place of holiday resort for the public, and ... it would be most undesirable that the public should be deprived of it.' Later in his career, he evinced further concern for public health. In 1868 he supported legislation to incorporate an area between Glebe and the city, known as No Man's Land. This area was seen as a major

16 See Windeyer, election speech, S.M.H., 1 December 1880; Windeyer, Legislative Assembly, S.M.H., 7 February 1861; A.W. Martin, Henry Parkes, p. 196.
health hazard as no council took responsibility for it. There was
growing concern about colonial slums as sites of frequent
outbreaks of diseases such as typhoid and cholera. Windeyer
argued that the parlous state of 'No Man's Land' was responsible
for the high mortality rate of Glebe and Redfern. In 1869, for
similar reasons, he supported a motion for the Government to take
control of the city's water supply to enable it to prevent outbreaks of
disease resulting from sanitary defects.\(^{17}\)

Windeyer's environmental concern followed a paternalist
pattern rather than the laissez-faire principles of liberalism, but it
was consistent with his belief in progress and perfectibility as part
of Australia's national destiny. He shared the growing belief that
poverty was, at least partly, a product of pemicious environment
and that it could be combated by environmental improvement. He
was convinced that in promoting these reforms he was improving
the lives of the people and increasing the wealth of the state.\(^{18}\)

Like many idealistic liberals, Windeyer became ambivalent
about the masses who made up the electorate. His political career
was marked by a personal struggle between radicalism and

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\(^{17}\) Windeyer, Legislative Assembly, *S.M.H.*, 20 February 1861, 27 November 1861, 10 September 1862, 27 November 1862, 20 March 1868, 16 April 1868, 16 January 1869, 13 February 1869, 23 March 1870, 20 November 1878.

meritocracy. This conflict was partly a product of his idealisation of the working classes in terms of middle class virtues. He denied the validity of a separate working class culture. As A.W. Martin has said of 'liberals' in general, 'It is a safe bet that none of these men had ever heard the word 'mateship'." As Windeyer was repeatedly confronted with working class attitudes and behaviour that did not live up to his expectations, his vision of himself as a servant of the people was increasingly overshadowed by his vision of himself as a heroic individual destined to save them from themselves. While in his speeches he remained careful not to insult the electorate, his asides sometimes revealed a more derogatory attitude. By 1867 he was apt to contrast parliament as an assembly of 'educated men' with 'a roistering host of unthinking electors'.

This change in Windeyer is revealed by contrasting his attitudes in the elections of 1860 and 1876. In 1860 he was proud to be representing Western Sydney 'as a democratic electorate', but in 1876 he was proud to represent the University of Sydney, the most elite electorate in the colony, because it was made up of 'intelligent, educated men'. He admitted that a University seat was 'somewhat of an anomaly in our electoral system', but argued that it enhanced the colony's democracy because the highly educated nature of the electorate would make it true to the 'principles of constitutional liberty'. Windeyer's experience illustrates Macintyre's


20 Windeyer, Legislative Assembly, S.M.H., 18 October 1867.
point that: 'Tossed and buffeted in the bear pit of politics, even the most resilient liberal eventually wondered whether 'the people' for whom he acted was anything more than an ideological abstraction dignifying the factious impulses of a fickle multitude.' In addition to Windeyer's loss of faith in the people, he experienced progressive disillusionment with the colonial parliament. He belonged to a group, which also included Henry Parkes and William Forster, described by Hirst as having 'laboured hard in the popular cause' but then having become disgusted 'with the new type of representative' and 'the quality of the parliament'.

The idealistic phase of Windeyer's career lasted from his first election in 1859 to his first retirement from parliament at the end of 1862. The positions Windeyer took on the major issues at this time illustrate his faith in legislation as a tool to realise his vision of an organic society of ethical citizens. He desired an agricultural, secular, Anglo-Saxon community. To this end he focussed his political energies on land law reform, removing state aid to religion and controlling Chinese immigration.

**Land, Religion and Race**

Land occupancy was one of the dominating political issues at the time Windeyer entered parliament. Much Crown Land was occupied by the grazing interests of squatters, but their runs were mostly unsurveyed and their tenure was insecure. Their powerful

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political and economic position was challenged as a result of the flood of population that followed the discovery of gold in 1851. Thousands of men who had come as diggers found that the gold-mining industry could not support them after the alluvial gold was worked out. These men were forced to return to the cities where they risked poverty and unemployment. Supporters of land-law reform pointed out that after the gold rushes in America many of the diggers had been settled successfully as farmers and there was a growing demand that the Government should give the ex-diggers farms in the colony. The best land, however, was in the hands of the squatters. By 1859 squatters were a focus of popular agitation and land law reform had become the most significant political issue of the day. Opposition to the squatters was common to all who ranged themselves on the 'liberal' side of colonial politics and land laws had been proposed but defeated in 1856 and 1857.

There were many motives for supporting land law reform, reflecting the range of people opposing the squatters. They included land-owners, merchants, business and professional men, urban workers and tenant farmers. Some leaders of the anti-squatter alliance, such as Charles Cowper, seemed primarily motivated by the potential of land law reform to settle popular dissatisfaction with existing conditions arising out of the agitation of disappointed diggers. In 1857 Cowper proposed that squatters' land should be gradually resumed, surveyed and then sold at auction. This was successfully opposed by the more radical land reformers led by John Robertson who wanted to go further and destroy the advantages which the existing land laws gave to the pastoralists. Robertson pointed out that auction sales would favour rich squatters and that poor men needed the protection of a fixed
price, but he could not raise much support in parliament. Henry Parkes also supported opening up the land, but his motive was primarily to help poor men to acquire land. In 1857 his newspaper, *The Empire*, encouraged the formation of the Land League, a working class organisation campaigning for free selection.23

Windeyer aligned with Parkes and took up a radical position on land reform before he entered parliament, although he denied directly supporting the Land League to avoid accusations of extreme radicalism. After his election, he supported radical land reform at every opportunity. In the election of 1860, which was fought on the issue of 'free selection', he took pride in this early position and pointed out that his stance had not changed since he had been, 'looked upon as a visionary enthusiast, who went about promulgating views that never could be brought to operation'.24

Windeyer's motives for supporting land-reform were diverse. He believed it would encourage immigration, improve the colony by establishing an agrarian yeomanry and unsettle the entrenched squatters. He saw the creation of an equitable system of land settlement as an important contribution to increasing the quantity of immigration without direct government expenditure. He opposed


any source of revenue (such as gold tax or land sale) which would discourage immigration and sought to give every immigrant the opportunity of owning land. When the land bills were finally passed, he made a contribution to their final shape to enhance their appeal to settlers, successfully moving an amendment to make the marking of boundaries compulsory immediately on selection, instead of optional as had been originally proposed. He argued this would prevent many disputes which could arise if a second selector contested the ground before it was pegged out. 25

Windeyer believed that agrarian settlement would be good for the colony. This reflected his faith in the yeoman ideal. He believed agricultural settlement would promote the development of a stable and harmonious society by avoiding the class conflicts that existed in England between landlord and tenant and between capitalists and employees. It would facilitate 'equality of condition, [and] equality of property', which he believed were essential bases for democracy. He also assumed that it would create a social base of responsible citizens, following the dictum of John Woolley that 'there is no greater teacher of morality than property in land' because land ownership was a motive for 'abstinence, sobriety, and good conduct'. Windeyer repeatedly referred to the creation of 'smiling fields' and even favoured allowing selectors to defer

25 Windeyer, Legislative Assembly, S.M.H., 10 December 1859, 15 February 1861; Windeyer, election speech, S.M.H., 23 May 1859. Windeyer was, however, opposed to assisted immigration. After his election, he successfully moved to reduce the amount spent on assisted immigration from £60,000 to £30,000 because of opposition on principle 'to the sending of money out of the country to introduce population'. - Windeyer, Legislative Assembly, S.M.H., 3 May 1860.
payments because, 'for the trouble the individual takes in making a smiling field where before was a waste, he well deserved to get it for nothing'.

The main reform necessary to facilitate yeoman settlement was the simplification of land transactions. Windeyer was in the vanguard of the liberal position on this issue and claimed to be the first person in the country to use the term 'free selection', which became the campaign's catch cry, described by Hirst as 'a master-stroke'. It meant that potential settlers would be able to select small blocks and purchase them on easy terms without having to await survey. One of its failings was that it ignored the problem of much of the land being already occupied by squatters. In support of this model, Windeyer, like Robertson, cited the American experience of land settlement, overlooking that in America the farmers who moved ahead of the surveyors were often the first European settlers with no pastoralists to dispossess and that where

26 J. Woolley, 'Social Difficulties', from Sydney University Magazine, April 1855, Lectures Delivered in Australia, Macmillan and Co., Cambridge and London, 1862, p. 148; Windeyer, election speeches, S.M.H., 23 May 1859, 6 June 1859, 11 December 1860; Windeyer, Legislative Assembly, S.M.H., 3 November 1860. Windeyer's moral idealism challenges Davidson's cynical analysis of land law reform as merely an 'attempt to defuse social unrest by the bribery of grants of land at low prices'. - A. Davidson, The Invisible State, Cambridge University Press, 1991, p. 197. Gamage has posed a dilemma between the 'common historical opinion' that land law reform was intended to implement the yeoman ideal as the epitome of egalitarianism and the possibility that it was merely meant to open up the land to anyone with capital - B. Gamage, 'Who gained, and who was meant to gain from land selection in New South Wales?' Australian Historical Studies, Vol. 24, No. 94, April 1990, p. 111. Windeyer comes closer to the former position, seeing the yeoman ideal not just as the epitome of egalitarianism but as the basis of an organic society.
there was previous ranching settlement conflict between the farmers and the cattlemen resulted in armed hostility.\textsuperscript{27}

Windeyer’s championship of the settlers, of necessity, involved a challenge to the squatters whose land monopoly was seen as the major obstacle to small-scale farming settlement. He also, however, opposed the squatters as a matter of political principle. This followed family tradition. Richard Windeyer had been a member of the ‘constitutional’ party, which opposed the squatters in the 1840s when there was a danger that they would acquire the ownership of their grazing lands. The materialistic, individualistic ethos of the squatters was the opposite of the Windeyers’ ideal of virtuous and responsible citizenship. The ‘gentry’ of established land owners clashed economically and ideologically with the squatters, because squatters were seen to be wealthy and powerful without assuming the civic obligations or other attributes of gentlemanly behaviour.\textsuperscript{28}

\textsuperscript{27} Windeyer, election speech, \textit{S.M.H.}, 23 May 1859; Windeyer, Legislative Assembly, \textit{S.M.H.}, 27 July 1877; J.B. Hirst, \textit{The Strange Birth of Colonial Democracy}, pp 91, 137. For a discussion of the major problems that ensued from this policy see \textit{ibid.}, pp 147-151.

When Robertson proposed a land bill in 1860, Windeyer was critical of it for not going far enough. He particularly objected to a provision that certain lands might be bought at auction at five shillings an acre because he thought that would enable the squatters to snap up the best bits very cheaply. He believed that there should be no auction system and that the land should be sold at a uniform price. He also moved an amendment to limit the pre-emptive right of squatters to 640 acres in the whole, but it failed. Robertson led the opposition, which was based on the grounds that it would disadvantage squatters who had more than one run, that the change had not been part of the bill when it had been sanctioned by the electorate and that it was appropriate to allow more to the larger squatters than to the smaller ones.29

Windeyer was proved right in his suspicions of the squatters when, contrary to the spirit of the 1861 Land Act, many of them used it to consolidate their holdings. It did not lead to the social harmony Windeyer hoped for, but to bitter class antagonism and often disappointment. It also influenced men to seek a livelihood by traffic in land rather than by its cultivation. The new legislation had seemed to promise a large body of free-hold farmers,

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29 Windeyer, election speech, S.M.H., 1 December 1860; Windeyer, nomination speech, S.M.H., 11 December 1860; Windeyer, Legislative Assembly, S.M.H., 13 February 1861. Gammage and Baker both argue in favour of cynical motives for land law reform by looking at the outcomes of the legislation, pointing out that the auctions provided for an elite of the very rich and that high purchase and improvement costs served to reward capital and provide a tenancy from failed freeholders - B. Gammage, 'Who gained, and who was meant to gain from land selection in New South Wales?', p. 115; D.W.A. Baker, 'The Origins of Robertson's Land Acts', pp 103-126. Windeyer's motives cannot, however, be evaluated in terms of the outcomes because they did not fully reflect his goals.
increased productivity and floods of immigration, but all three declined following its passage.\textsuperscript{30}

Windeyer continued to pursue his ideals after the 1861 legislation. In 1867 he supported the Land Laws Amendment and Freehold Bill because he thought it addressed some of the problems in the 1861 legislation. He argued for the clauses facilitating freehold settlement, which included the provision that immigrants would receive an equivalent in land to the amount of passage money they paid. He also supported a provision that the charge for squatters' leases be increased. In a clear attempt to impose his ideal of \textit{noblesse oblige}, he called on the squatters to 'merge the pastoral interests in what was obviously for the public welfare'. His call fell on deaf ears. The opposition to the Bill was led by Robertson but included a range of interests; squatters opposed it because it denied them any compensation for improvements they made on leased land; others believed its clauses creating freehold settlement to encourage immigration disadvantaged native settlers. The second reading was defeated by 32 to 30.\textsuperscript{31}

Windeyer also supported a land law amendment bill in 1872, hoping to 'put an end to the power which was given to the squatters', but this bill lapsed when the government was defeated on another matter. Mary strongly supported William's stand on the land question. When the 1872 legislation lapsed, she wrote, 'it seems to me that with the Land Bill in prospect it is wrong to have a


\textsuperscript{31} Legislative Assembly Debates, \textit{S.M.H.}, 18 October 1867.
dissolution on any less important matter' and made her position quite clear when she added at the end of the letter, 'Robertson for ever. Freehold homesteads for the Squatters! Freehold homes for the people! Hooroo! Down with Absentees. Lets have our Country occupied by those who make it their Country.' [emphasis in the original].

Windeyer's continuing discomfort with the land laws sometimes placed him in a difficult position. It led to the downfall of a government in 1877, when he was asked as Attorney-General for an interpretation of the 31st clause of the 1875 Lands Amendment Act. This clause specified that a squatter could purchase no more than 'one square mile within each block of five miles square out of each lease'. As Attorney-General, William Bede Dalley had interpreted the words to specify geometric shape as well as area. This advantaged the settlers by increasing the land available for free selection. Protest against this interpretation was referred to Windeyer after he became Attorney-General. He reversed the opinion of Dalley and advised that the right of selection or provisional purchase was determined by the size or area of the run, not its geometrical configuration. Windeyer must have had a strong conviction that this was the correct legal interpretation as it was not to his personal advantage. It advantaged the squatters, which not only went against Windeyer's personal preference, but also against the political interest of the Government. With a general election approaching, the Opposition attacked the Government as the enemy of free selection. Windeyer did not

argue the issue on this principle but as a matter of law. After his stance placed the Parkes' government in serious jeopardy, he offered to resign, but Parkes supported him with the result that the government fell.\textsuperscript{33}

Windeyer's betrayal of the free selectors and his political miscalculation can only be understood in terms of his concept of law as the fundamental basis of a stable state; he believed that obedience to constitution and law was the primary duty of every citizen. It is important, however, to realise that Windeyer's own interpretation of the law was the one to which he gave primacy. Once he became a judge, he continually used his judgements to criticise the 'loose wording' and 'faulty construction' of the existing land laws which were a source of frequent litigation.\textsuperscript{34}

The complexity of the land laws led to a number of cases being appealed as far as the Privy Council. The outcomes of some of these appeals led to Windeyer becoming frustrated with the Privy Council's inability to comprehend colonial laws. One of the most significant of these cases was Alison v. Burns. This followed legislation in 1884 which repealed the preceding Land Acts, but replaced them with a new system that was restricted by the effects of the old one. Free selection was not abolished but each pastoral holding was halved with one part being withdrawn from conditional purchase and the other thrown open to it. One innovation under

\textsuperscript{33} Legislative Assembly Debates, \textit{S.M.H.}, 26-27 July 1877, 1 September 1877.

this Act was the establishment of local land boards whose powers included appraising land values. Their authority conflicted with that of the Minister for Lands, who, in exercising his right to set rents, set aside the appraisements of local boards in many cases. This was the main point of contention in Alison v. Burns which, therefore, potentially affected all cases in which the Crown was receiving rents for pastoral leases. The Supreme Court, including Windeyer, upheld the authority of the Minister under the Act but Windeyer thought it 'a subject rather for comment in Parliament than for investigation in a Court of Law'. The Supreme Court's judgement was reversed by the Privy Council, in a decision of which the Sydney Morning Herald said, 'there is no room for any feeling but astonishment' because it was based on policy and previous legislation rather than on the current Act.\textsuperscript{35}

At about the same time, another Privy Council judgement based on Australian land law came under attack. In Barton v. Muir the use of a dummy selector was the issue and the Privy Council upheld the validity of the dummy. Windeyer argued that this judgement was morally wrong, based on failure to understand Australian conditions. He believed that the errors of the Council weakened respect for it, yet he wanted to retain the link with Britain that it represented. He suggested as a solution that the Privy Council should include 'Judges acquainted with Australian topics of legislation'. A difficulty in the selection of an Australian judge, however, was that the land laws were different in each

colony. One judge would only solve the problem for one colony. Windeyer, perhaps hoping for the position for himself, said that the judge should be chosen from New South Wales because its land laws were the most intricate and, therefore, the most liable to lawsuits and Privy Council appeals. In 1895 the British Parliament did legislate to add an Australian judge to the Privy Council. This was welcomed by Windeyer but his personal ambitions were disappointed when the most senior Chief Justice in the Colonies, Mr Justice Way of South Australia, gained the appointment.36

Windeyer's political and judicial efforts on land law were motivated by his desire to facilitate small-scale agricultural settlement. This reflected his faith in agrarianism as a source of social morality but it was also a product of his radical belief in the people's right to the land. Another radical principal which Windeyer pursued through his public activities was secularism. When Windeyer entered parliament, state aid to religion was enshrined by law. In 1836 Governor Bourke had abolished special privileges for the Church of England but had implemented a new system which gave public funds exclusively to Anglicans, Catholics, Presbyterians and Methodists. The result was a civil list which reserved £28,000 yearly for the four main Christian Churches. From the early fifties there was growing liberal and democratic opposition to this subsidy and a society was founded to campaign

36 Tooth v. Power, S.M.H., 8 August 1889; draft letter Windeyer to Lord Carrington, 24 March 1890, Windeyer Family Papers, M.L., MSS, 186/9; William to Mary, 5 June 1896 and 18 June 1896, in family papers held by Lady Windeyer.

Windeyer argued that 'four State-paid churches were almost as bad as one', that 'if aid were granted to any denomination, it ought to be granted to all' and that state aid was 'evil' because it gave men a vested interest in the support of specific doctrines. He played a significant role in 1862 in ensuring the efficacy and passage of legislation to phase out state aid. The success of the legislation was in doubt when it only passed its second reading by 29 to 28. Windeyer was among those who voted against the bill because it was not strong enough to restrain future parliaments from granting money for public worship. To strengthen it, the bill needed to repeal the specific sections of previous legislation which had established aid to religion. Windeyer played a key role in getting these amendments in place. Between the committee stage at which the bill only passed by 27 to 25 and the third reading, Windeyer was deputed by the 'uncompromising opponents of state aid' to communicate with Cowper and persuaded him to include the repeal provisions. This alteration enabled many, including Windeyer, to change their vote and the bill passed easily.\footnote{Windeyer, election speech, *S.M.H.*, 1 December 1860; *S.M.H.*, 25 July 1862; Legislative Assembly Debates, *S.M.H.*, 14 August 1862, 21 August 1862, 28 August 1862; Windeyer giving evidence at Central Police Court, *S.M.H.*, 5 September 1862; Windeyer's victory speech, *S.M.H.*, 11 December 1869. Powell suggests that Cowper agreed to amend the bill after the committee stage because of the closeness of the second reading vote. - A. Powell, *Patrician Democrat*, p. 112.}
Windeyer subsequently opposed attempts to reinstate any form of nexus between church and state. In 1866 William Macleay moved that a debate on the appropriation for public worship be adjourned for one month with a view to having a call of the House on that day. Windeyer successfully moved an amendment to delay for two months, because he believed state-aid was an issue on which the populace ought to have their opinion represented. A call of the House was a rare event involving a formal roll call with a view to compelling members to attend. When the call of the House was held Windeyer, asserting his belief in religious liberty, refused to comply as a matter of principle.39

In other matters of religion Windeyer maintained the secularism of the state by insisting that belief was essentially a private matter. In the framing of the 1861 census, he was among the minority who opposed the inclusion of a question on 'religion'. When a daily prayer was introduced to parliament, he was strongly opposed, particularly because the prayer was to be said 'after business had commenced' so the need for a quorum could compel members to be present. He replied to the argument 'that a majority had agreed to it' that this 'was the plea that had been advanced by every advocate of spiritual tyranny throughout all time'. On principle, defending those who objected to the forms of prayer that were offered, he stated that 'he would never take part in it, or never

39 Windeyer, Legislative Assembly, S.M.H., 22 September 1866, 19 November 1866.
be present during its performance'. The prayer was rescinded after a few days of practice.

Consistent with Windeyer's defence of the consciences of others, he introduced a private members bill to give relief to those who were unwilling to swear on the Bible in a court of law. He argued that the only safeguard of truth was 'reverence for truth itself' and pointed out that any one who would tell a lie would also swear a lie. He further pointed out that the existing law, while based on the assumption that all atheists were liars, in practice meant that only those atheists who did lie could give evidence. His bill was defeated on the casting vote of the Speaker. More successfully, he supported an amendment to the 1867 Necropolis Bill which allowed rites or ceremonies to be conducted which were different from those of the denomination in whose portion the burial was taking place. Windeyer, himself a Freemason, gave Freemasonry as an example of rites which ought to be allowed.41

After becoming a judge, Windeyer continued to promote religious liberty. One particular landmark case permitted Winifred Butler to be educated in the religion of her Protestant mother rather than the Catholicism of her deceased father. Windeyer attacked the law which compelled children to take the religion of their father as 'disgraceful to our civilization', and 'a tyrannical exercise of power'. He pointed out, however, that the judgement did not interfere with the general law that a child should be brought up in

40 Windeyer, Legislative Assembly, S.M.H., 14 February 1861, 28 June 1862.

41 Windeyer, Legislative Assembly, S.M.H., 2 July 1862, 12 July 1862, 6 September 1862, 15 November 1867.
the religion of the father 'before she had formed opinions of her own'. In this case the Court set a precedent when it questioned the girl, herself, on her religious views. Windeyer, with his elitist views of intelligence and education, defended this by comparing favourably 'the religious convictions of an intelligent, well-instructed boy or girl of 13' with those of 'a full grown intelligent rustic with no advantages of education'. He also, however, pointed out that 'with the mass of mankind' religious belief was based on 'sentiment or prejudice' and that what was significant to the Court was 'the existence of a settled conviction, not the theological knowledge displayed in its defence'. Windeyer was widely praised for his judgement in this case and the Chief Justice paid him the compliment of saying that he had felt quite satisfied with his own judgement until he had read Windeyer's.42

Windeyer also used his judicial position to contribute to the secularisation of Sundays. One case, in particular, contributed to changing the law. This was the case of Walker v. Solomon which related to a prosecution for running commercial Sunday concerts. The Full Court, including Windeyer, found with regret that the Sunday concerts had been illegal. In his judgement, Windeyer, pointed out that the law was out of 'harmony with rational modern ideas upon the Sunday question', because the masses saw 'no moral wrong in listening to noble music on Sunday in a theatre because they have paid for the privilege of doing so'. He

42 Re Winifred Butler, N.S.W.L.R., 10, 1889, (E), pp 85-142; The Echo, 1 October 1889; The Mirror, undated, scrapbook, W.F.R.P., M.L., *D 159, p. 80; The Bulletin, 5 October 1889; Sir Alfred Stephen to Windeyer, 15 October 1889, in family papers held by Lady Windeyer.
concluded with the hope that the law would be reformed to bring it in line with public opinion and this was, indeed, the outcome.  

Windeyer's secularist stance appears at odds with the centrality of Anglicanism to the gentry tradition to which he subscribed, but it reflects his desire for social unity. Anglicanism was consistent with the desire for a homogeneous society when it was the dominant religion, as in pre-industrial England. In Australia, however, Anglicanism had never been predominant and denominational loyalties were seen as divisive. Windeyer recognised the pluralist spirit of the age and believed religious tolerance within clear moral and behavioural parameters was crucial to the creation of a harmonious society.

The ideal of social harmony was also central to Windeyer's position on the third major issue in his political career, Chinese immigration. In the late 1850s, lured by gold, large numbers of Chinese came to Australia. They used the ports of New South Wales because both Victoria and South Australia had restrictive immigration policies. During 1859 and 1860 about 20,000 Chinese entered New South Wales and they accounted for more than half of the colony's mining population. Windeyer was one of many who raised an outcry against this influx, based on a complex mix of economic, social, political and racial arguments.  


44 A.T. Yarwood, M.J. Knowling, Race Relations in Australia, Methuen, North Ryde, 1982, p. 171. The discourse on anti-Chinese motives is only peripherally relevant to Windeyer's career but is important in colonial history. See, for example, J.B. Hirst, The Strange Birth of Colonial Democracy, pp 159-60; C.N.
Like many others, he considered the Chinese to be social poison. He believed that, in order to allow diversity while maintaining harmony, it was necessary to exclude those who would pose a threat to the social good. In New South Wales the Chinese, alien in terms of race, colour and culture, were placed beyond the pale of the brotherhood of man. Windeyer summed up this xenophobia when he told a public meeting that Chinese immigration was 'impolitic and injurious' because 'their social habits are repulsive to ours'. He saw them as jeopardising the public peace and injuring 'the character of this colony as a field for immigration of British enterprise and industry'.

Windeyer objected to the Chinese, not as individuals, but collectively as a threat to society. He clarified that he did not object to a few Chinese traders, but to Chinese immigration 'in such numbers as to endanger our social institutions, materially to interfere with the British character of the community and injuriously to affect the moral, physical and intellectual status of the people'. He saw three possibilities. One was that the Chinese would remain an inferior people, in which case they must be reduced to 'absolute slavery' which would threaten the ideal of an equal and democratic society. The second was that they must be given equality but this was unthinkable because the Chinese were 'absolutely useless' and 'an inferior race'. The third was that they might eventually


45 Windeyer addressing anti-Chinese meeting at Sydney Town Hall, S.M.H., 1 August 1861.
outnumber the European population of the colony and take it over.\textsuperscript{46}

Stringent anti-Chinese legislation was part of the liberal platform and Windeyer ardently subscribed to this, entering the fray after feelings of hostility towards Chinese on the goldfields came to a head with the Lambing Flat riots of 1860-1. These riots were clear evidence for him that the Chinese were a threat to civil peace and this provided him with a legitimate rationale for excluding them. He justified his own role in the ensuing agitation by saying it was intended not to be inflammatory but to press the question upon the attention of the Government and got up by the most respectable of our citizens.\textsuperscript{47} The results of the agitation were a Goldfields Regulation Act and a Chinese Immigration Restriction Act. In the debates on this legislation Windeyer took the extreme view that the Chinese should be completely excluded from the goldfields of the colony by banning the issue of any miner's rights to Chinamen already in the colony as well as those who might arrive. He believed the British and the Chinese races were 'incompatible' and he was 'ready to go to any length to withdraw every inducement for [the Chinese] to come here'. Others, such as William Forster, William Piddington, and Joseph Leary took a more moderate view, which prevailed, focussing on restricting Chinese immigration and

\textsuperscript{46} Windeyer, Legislative Assembly, \textit{S.M.H.}, 15 June 1860, 12 September 1861, 19 September 1861.

limiting those gold fields to which Chinese with miners' rights had access.48

The 1861 Goldfields Bill limited the areas covered by a miner's right for 'aliens'. In the debate on this provision, Windeyer strongly supported Joseph Leary's amendment that the word 'aliens' be replaced by the word, 'Chinese'. The ensuing debate illustrated the strength of the specifically anti-Chinese position held by many members of parliament including Windeyer. Cowper wanted to keep the word 'aliens' because he argued that many Germans and Americans were also found troublesome on the diggings, although even he acknowledged that 'the habits of the Chinese were obnoxious to the habits of the Europeans'. He believed that the solution to the racial tensions was to 'set the ground apart for aliens'. Forster also opposed the amendment; he argued that 'aliens' were definable but 'Chinese' not. David Buchanan pointed out that all other 'aliens' could change their status by taking out citizenship so that 'aliens' virtually discriminated against Chinese anyway. The vote on the amendment was tied, defeated by the casting vote of the Chair and the legislation was passed in its original form.49

Windeyer's assumption that the Chinese were incorrigibly inferior was clearly at odds with his commitment to a democratic society in which all individuals had equal rights. His ascribing

48 Leary, Legislative Assembly, S.M.H., 11 September, 1861; Windeyer, election speech, S.M.H., 4 December 1860; Windeyer, Legislative Assembly, S.M.H., 11-12 September 1861, 19 September 1861.

49 Legislative Assembly, S.M.H., 12 September 1861.
simultaneously to the two positions led to some apparent anomalies in his attitudes to the Chinese. At times his racism inhibited his commitment to justice but at other times his commitment to justice inhibited his racism. The debate on the 1861 Chinese Immigration Restriction Bill provides an example of Windeyer's antagonism towards the Chinese overriding British principles of justice; he placed the onus of proof on the accused. He successfully moved 'that it should be sufficient proof of any person being a Chinese (unless the contrary be shown) that a person was by general repute known to be a Chinese from his habits, manners and customs'. To protect those innocent of being Chinese he added that it should be a misdemeanour to maliciously and wilfully accuse a person of being Chinese if they were not.\textsuperscript{50}

Windeyer displayed a similar attitude in supporting the Chinese Immigration Bill of 1879 which provided that the Master of a vessel bringing Chinese to the colony should have to pay £10 for every Chinese imported. The original bill included indefinite imprisonment of any Chinese who had not been paid for on entry. When this was objected to, Windeyer replied with a callous, 'If Chinamen would come to the colony in spite of the law, they must be made to know that they would be punished.' He was, however, persuaded by the arguments of Joseph Leary and Samuel Terry that a set penalty would be fairer and Windeyer, himself, then moved an amendment that the penalty should be six months. (This was ultimately extended to twelve months on the amendment of Thomas Garrett.) Windeyer's change of position during the debate

\textsuperscript{50} Windeyer, Legislative Assembly, \textit{S.M.H.}, 13 April 1861.
reflects his concern that the law should be exact. This bill was eventually rejected by the Legislative Council because the Chinese were not seen as coming to NSW in large enough numbers to warrant the legislation. Some Members including Sir George Innes, Charles Campbell and Professor John Smith even argued that Chinese depravity was exaggerated. There was also a feeling that the Legislative Council should not, in Smith's words, 'bow to every gust of public opinion'.

On some occasions Windeyer's commitment to justice inhibited his racism. This was illustrated when, as a judge, he defended the civil rights of Chinese arriving in the colony, reflecting both his respect for the rule of law and his differentiation between Chinese en masse and Chinese as individuals. This was consistent with his fear that treating the Chinese as an inferior people, once they arrived, would threaten the ideal of an equal and democratic society. His position was that, as all people who were within the territory of New South Wales were expected to obey the law regardless of nationality, they must also be protected by that law. This was put to practical test during 'The Chinese Difficulty' of 1888.

After two commissioners from China investigated the condition of Chinese residents in Australia in 1887, Australians feared there might be an increase in Chinese immigration. At the beginning of May 1888 there were widespread public demonstrations when four vessels, including the 'Afghan', entered Sydney bearing a total of 580 Chinese passengers. In response, 

51 Legislative Assembly, S.M.H., 13 March 1879; Legislative Council, S.M.H., 3 April 1879, 10 April 1879, 23 April 1879.
the Government refused to allow the Chinese to land. One of them, Lo Pak, had been previously resident in the colony and on leaving had obtained an exemption certificate under the provisions of the Influx of Chinese Restriction Act of 1881. He applied for a writ of *habeus corpus* to prevent his being held on board ship. Windeyer heard the application and ruled that Lo Pak was being held in 'unlawful custody' and was entitled to disembark. Windeyer also indicated that the Government's action threatened the right of any captain to land any passenger who had been brought to Australia under the provisions of the law. He concluded that the real issue was not Chinese immigration but the right of the Executive Government to set aside an Act passed by the Legislature. As a result of the ruling, all those whose papers were authenticated were allowed to leave the ship, but to avoid public outcry they were disembarked at 3 am. The press in this instance was on the side of the judge. Despite its notorious racism, The *Bulletin* attacked the Government, suggesting Government persecution of the Chinese foreshadowed the possibility of persecution of Australians. The *Sydney Morning Herald* took the more moderate but still critical position that the government was guilty of 'weakness, if not illegality'.  

Subsequent Supreme Court cases confirmed that those who were subject to the law were also entitled to its protection, but this general principle was defied by the Executive, led by Parkes as Colonial Secretary. On 16 May he suspended standing orders to put a discriminatory bill through parliament and to indemnify his

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illegal action in preventing the Chinese landing. The bill, which was
retrospective to 1 May, stated that 'all acts done by any member of
the Executive Government in preventing the landing of Chinese'
were 'in all courts and elsewhere [to] be deemed to have been
properly and lawfully done'. It provided that no certificate of
naturalisation be issued to any Chinese for any reason and that
Chinese leaving the colony did so at their own risk. It placed the
onus on the Master of any vessel arriving to present a list of
Chinese passengers, to carry no more than one Chinese per 100
tons of vessel and to pay £100 for every Chinese permitted to
land.\textsuperscript{53}

Following this, fifteen Chinese were illegally detained on the
steamer, 'Changsha'. In the resulting case of Woo Tin, Windeyer
made clear the strength of his feeling against illegitimate actions
when he said that if the illegally detained Chinese 'killed anybody it
would not be murder, because they are illegally restrained contrary
to the distinct order of the Court'. The Chief Justice supported this
statement. Even \textit{The Bulletin} was again on the side of Windeyer,
illustrating that supporting the rule of law in defence of the
underdog or, perhaps, political pragmatism and hatred of Parkes
had ousted racism as its primary consideration.\textsuperscript{54}

In spite of his rulings on Lo Pak and Woo Tin, Windeyer had
not modified his general opposition to the Chinese. This became
evident in the case of Lau You Fat, who claimed his entitlement to

\textsuperscript{53} \textit{S.M.H.}, 17 May 1888.

\textsuperscript{54} Re Woo Tin and others, \textit{N.S.W.L.R.}, 9, 1888, (L), pp 493-96; \textit{S.M.H.}, 6 June
enter the colony on the basis of letters of naturalisation from Victoria. Windeyer refused to accept credentials from any other colony as valid for New South Wales, indicating that the purpose of the 1881 Influx of Chinese Restriction Act was 'to preserve the British character of this colony by preventing the influx of Chinese in undue numbers' and warning of the influx of Chinese from British colonies near China if the application was upheld.\textsuperscript{55}

The Chinese were not the only aliens whom Windeyer wanted to exclude from the colony. He also spoke strongly in 1879 in favour of the Foreign Criminals' Influx Prevention Bill which was motivated by fears of arrivals from the French penal colony of New Caledonia. It provided penalties against those who shipped passengers from New Caledonia without a certificate as to their \textit{bona fides}. It was controversial because many of the French prisoners were communists who had been imprisoned after 1871. It was not, however, aimed at political prisoners but at 14,000 non-political prisoners alleged by Windeyer to be held on the island. Windeyer intended to keep out the French criminals because they 'could not be readily absorbed in our population, nor could they, from their want of knowledge of the language, readily obtain employment, and they came here with all the instincts of the criminal class.' As with the Chinese, he placed these people outside the principle of onus of proof. He did not think they should 'hamper' the legislation with any provisions about proof of a passenger's criminal record. In this legislation the onus of proof

was on the Master of the vessel to prove that his passengers were innocent.\textsuperscript{56}

Windeyer's concern to exclude people who would not fit in was consistent with his concern for the welfare of the community as a whole and his ideals of democracy and equality. His strong commitment to statute law and the rights of the citizen reinforced his position. If citizenship guaranteed the right to vote and legal protection, it was essential that it only be conferred on those who merited it.

**Principles v. Power**

The experience of colonial politics continually confronted Windeyer with choices between his principles and his desire for power. His desire to be an old-style independent politician promoting traditional values did not fit the world of patronage, faction politics and 'parish pump' democracy in which he had to operate. As his political career progressed, he found it increasingly difficult to sustain a position based on principles and ideals. He did not alter his belief that government should be by the righteous and that he was one of the elite who should rule. He did, however, come to question his idealistic view of colonial parliament and colonial people. By the end of his life he saw himself as a victim of parliament, press and public opinion.

\textsuperscript{56} Windeyer, Legislative Assembly, *S.M.H.*, 10 July 1879. There was a clause excluding political convicts and Windeyer expressed personal sympathy for many of the communists as 'the best and noblest spirits of their time'. The legislation lapsed when Parliament was prorogued.
From the outset of Windeyer's political career, he was forced to confront the discrepancy between personal ideals and the state of colonial politics. In the beginning, his youthful energy and crusading spirit led him to try to raise the standards of politics to fit his expectations. He established himself as the enemy of patronage. When he was a young journalist working for Parkes' Empire he attacked the appointment of Bernard Wise as Solicitor-General as 'jobbery' and when he entered parliament he joined in the opposition's attack on the Cowper Government for corruption and inefficiency.57

During this phase, youthful idealism and passion sometimes carried him beyond moral righteousness into petty persecution. A particularly striking example of this was his part in an attack on Sir Alfred Stephen, the Chief Justice, when the effects of over-work forced Stephen to take leave of absence. There was strong opposition to granting him full salary during this leave. Windeyer joined this opposition, attacking Stephen for both his politics and his conduct as a judge. It is possible that on this occasion Windeyer was personally motivated as Stephen had been responsible for Windeyer's father spending his last Christmas in Darlinghurst Gaol. This resulted from a quarrel between Richard Windeyer and John Darvall when they were both appearing as advocates before Stephen. Darvall struck Windeyer after Windeyer accused him of being a 'liar' and both were found in contempt. The rationale for William's attack on the Chief Justice, however, was

57 The Empire, 25 May 1857. The article is not attributed but Windeyer acknowledged authorship of the attack on Wise privately - William to Mary, 25 May 1857, Windeyer Family Papers, M.L., MSS 5221 X.
that the common good required opposition to profligate expenditure of public money. In pursuit of this ideal a Windeyer election pledge was that civil service expenditure should be cut. In 1860 he moved for a Select Committee 'to inquire generally into the mode of expending money voted by parliament for specific objects,' so 'that there might be no mistrust in the public mind'. Windeyer chaired the Committee which found no corruption but did make some recommendations to increase efficiency.58

Windeyer saw politics as an arena in which ethical men put principle ahead of power and worked for the good of the colony. This led to an expectation that all liberals should work together to promote common causes. Such was not, however, the case in the New South Wales Parliament which he entered in 1859. Lack of effective opposition had left the liberals split into their own factions, all of which gave priority to gaining and retaining power. This caused serious political instability which resulted in failure to pass much legislation. Loveday and Martin argue that the factions were 'capable of yielding stable government' but it is notable that in order to support their case they explicitly exclude nine of the twenty three ministries formed between 1856 and 1887.59


Windeyer's first experience of cynical political reality came shortly after he was elected. In September 1859 he supported Parkes' motion to remove customs duties on tea and sugar which led to the Cowper Government being defeated by one vote. Cowper resigned, but the opposition could not form a government and he returned to power. Cowper then put a recision motion on the tea and sugar tax as an issue of confidence in the Government. In keeping with his principles, Windeyer did not change his vote, but in the interests of political stability others did and Cowper retained power. Windeyer was appalled by this evidence of political opportunism but it was only the beginning of a long process of disillusionment.60

Windeyer initially aligned himself with Henry Parkes. He did not see this as sacrificing his independence or making any concession to factionalism; he had a naive faith in the integrity and policies of Parkes. He even became the care-taker of Parkes' faction in 1861 when Parkes went to Britain to promote immigration. Windeyer's potential importance in the factional fray was recognised in attempts to seduce him away from Parkes with several offers of the Solicitor-Generalship and with an invitation to join the Victoria Club, over which Robertson presided. Windeyer refused, partly as a matter of principle and partly because he

60 Windeyer, Legislative Assembly, S.M.H., 3 September 1859; William to Maria, 20 October 1859, Sir W.C. Windeyer Letters to His Mother, M.L., Aw 77/9.
believed he would gain a position when Parkes eventually came into power. He turned down six ministerial positions in all (Solicitor-General five times and Attorney-General once), in each case ostensibly, and possibly genuinely, because he was not prepared to sacrifice the principle of independence 'for place and pay'.\(^{61}\) Windeyer's ability to play the faction game was thus weakened by his loyalty to Parkes and his desire to give principles precedence over the pursuit of power, both of which caused him to sacrifice his own potential early influence.

During his first period in parliament from 1859 to 1862, he was an unequivocal supporter of Parkes. This placed him in a position of simple opposition to the Cowper-Robertson combination which controlled the administration for most of the period. In his later Parliamentary career, as he slowly discovered that he could not achieve the influence he desired without playing the faction game and that Parkes was an idol with feet of clay, he became first of all disillusioned with the political process and then a participant in the factional struggles. From 1866 to 1868, he remained a supporter of Parkes and the Parkes-Martin Government but lack of advantage to Windeyer and his friends led to his subsequent defection. In September 1868 when Parkes left the coalition, Windeyer felt no more loyalty to it and he joined Robertson in an

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attack in October 1868 which brought down the government. This did not, however, indicate a defection to Robertson. Windeyer had not intended to bring Robertson to power but rather had hoped that the fall of Martin would result in an election. He became a vocal opponent of the ensuing Robertson Ministry, describing it as 'the most ignorant, corrupt, and most unworthy Government Australia had ever seen'.

Windeyer remained in opposition in 1870 when Robertson was replaced by Cowper. After Cowper fell on 16 December, however, Windeyer managed to overcome his former antipathy to Robertson to become Solicitor-General in the Martin-Robertson Ministry. This marked a complete shift in factional allegiance as it placed him on the opposite side of the House to Parkes. Windeyer's loyalty to the Martin-Robertson coalition caused him to lose his seat when they lost the 1872 election. When he returned to parliament in 1876, Robertson was Premier and Windeyer took an unaligned position, placing himself on the cross-benches until March 1877 when Parkes toppled Robertson and Windeyer accepted the position of Attorney-General, but without a seat in cabinet. The political situation at this time was extremely unstable. This government was short-lived and replaced by equally short Robertson and Farnell Ministries. Windeyer returned to the cross-benches until December 1878, when this period of instability was resolved by the unlikely combination of Parkes and Robertson forming a government and Windeyer became their Attorney-

62 Windeyer, Legislative Assembly, S.M.H., 29 September 1869. For Windeyer's disillusionment, see Windeyer to Parkes, 22 September 1868, P.C., M.L., A 913, pp 380-86.
West Sydney because it suited Parkes' political manoeuvring. Robertson was a leading supporter of Cowper and the manoeuvre was part of a concerted effort by Parkes and Martin to deprive Cowper of power.64

Windeyer did not want to run because he was not ready to restart his political career and in any case felt that opposing Robertson was inappropriate as he believed that Robertson's land legislation had served the people well. There was, nevertheless, an element of indecision in Windeyer's reaction to his nomination which suggests he was, at least briefly, tempted to return to political life. He was initially unaware of Parkes' machinations because he was absent from Sydney at Tomago. When he learned of them he did not immediately refuse to run. He said he would telegraph his final decision. Perhaps he needed more time to think or maybe he wanted to discuss the matter with Mary who had remained at Tomago. In his telegram, Windeyer again did not absolutely decline nomination but, somewhat ambiguously, intimated that he had made up his mind not to sit if elected. The telegram was either ignored or genuinely arrived too late for its contents to be conveyed to the committee for Windeyer's election before the nominations at the hustings. After Windeyer received a telegram saying the show of hands favoured him, he not only telegraphed his regret to the committee but also sent a telegram to the Sydney Morning Herald, stating that if elected he would refuse to sit. Windeyer's supporters replied with an advertisement

64 For more detailed study of this political strategy see P. Loveday and A.W. Martin, Parliament Factions and Parties, pp 36-7, 65-67.
alleging completely falsely that the telegram was a fabrication of Robertson's camp and Windeyer was elected.65

After he won, Windeyer found he could not resign immediately because the constitution required 30 days notice. His resignation was then delayed as he was seriously distracted by news of the death of John Woolley and absent from parliament as a result of ill health in the winter of 1866. By the time he could resign, Parkes had replaced Cowper as Premier and Windeyer's resignation would have discredited the new Government. Windeyer would not do this as he still believed that only a Parkes administration could 'be of use to the country' and he was particularly enthused by Parkes' proposed Public Schools Bill.66

Windeyer's faith in Parkes was further shaken, however, by his experience of a Parkes government. Notwithstanding the passage of the Schools Act, the next two years were politically unproductive for the colony and personally disappointing for Windeyer, who came to feel Parkes took him too much for granted.67  Parkes and Martin never resolved fundamental


66 William to Maria, 30 March 1866, in family papers held by Lady Windeyer; S.M.H., 18 January 1866, 6 February 1867, p. 5; W.C. Windeyer, Address to the Electors of the University of Sydney, pp 17-18; A.W. Martin, Henry Parkes, p 217.

67 Windeyer to Parkes, 22 September 1868, P.C., ML, A 913, pp 380-86.
differences over such policies as tariffs and this weakened their joint leadership. In September 1868, when Parkes resigned from the Martin-Parkes coalition, Windeyer's bitterness and his complete absence of loyalty to the Martin side of the coalition led to a powerful attack on the government. This speech was instrumental in bringing down the Ministry, convincing John Dunmore Lang, who had remained till then on the Treasury benches, to defect. The result was an even division, the resignation of the Ministry and a new period of instability in which Robertson, Cowper and Martin followed each other in forming three governments, none of which survived more than fifteen months.68

After the collapse of the Martin-Parkes Government, Parkes turned again to Windeyer as a political ally. Windeyer felt the relationship could be renewed because he had established his significance by bringing down the Government and because Parkes was in a weak position and needed him. In recognition of Windeyer's role, and probably in the hope of weaning him from Parkes, Robertson, then in government, offered him the post of Attorney-General. Windeyer declined, citing his low opinion of his potential colleagues. This putting of principle before place left Windeyer on the edge of politics. During 1869 he achieved very little. It was a time of depression and disillusionment and he even thought of leaving New South Wales to seek his fortune elsewhere. He fell back on his portrayal of independence as his major virtue,

68 Windeyer's victory speech, S.M.H., 11 December 1869; J.D. Lang, Brief Sketch of My Parliamentary Life and Times, John L. Sherriff, Sydney, 1870, p. 30. The significance of bringing over Lang was that he was regarded as a sort of political barometer - editorial, S.M.H., 15 October 1868.
while at the same time attacking the lack of virtues of the political leaders. He also had another major falling out with Parkes which led Windeyer to describe him to Mary as 'very treacherous'. On the third reading of the Matrimonial Causes Bill, which had been passionately supported by Windeyer, Parkes changed from being a supporter of the bill to an opponent and attacked Windeyer's speech as being 'full of false assumptions'.

Windeyer's experience of powerlessness at this time, combined with a desire to see a strong government break the paralysing tyranny of factionalism, led to his final desertion of Parkes and his acceptance of the position of Solicitor-General when Martin and Robertson formed a coalition in December 1870. Windeyer believed it would be an effective government and justified his defection and his abandonment of a stance of independence as being in the public interest. The odd political marriage was cemented with Windeyer and Robertson running together for West Sydney.

The early collapse of this government over border duties confronted Windeyer once again with the difficulties of maintaining

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69 Parkes to Windeyer, 12 November 1868, P.C., M.L., A 1050, Vol. 2; Robertson to Windeyer, undated [December 1868], Windeyer Family Papers, M.L., MSS 186/11; Windeyer, election speech, S.M.H., 7 December 1869; William to Mary, 4 December 1870, in family papers held by Lady Windeyer; S.M.H., 30 March 1870.

70 William to Mary, 4 December 1870, in family papers held by Lady Windeyer; W.C. Windeyer, Address to the Electors of the University of Sydney, p. 18. The Solicitor-General assisted the Attorney-General. The position was abolished by Parkes in November 1873, when a new Ministry of Justice was created to be controlled by a layman.
principles in a political environment. He agreed with the principle of getting money from Victoria in lieu of tariffs but disagreed with the Government's tactic of collecting dues on the border when negotiations broke down. Windeyer threatened to resign but his colleagues favoured a dissolution and successfully put pressure on him not to desert. Mary also put pressure on him to stay, suggesting it would appear too self-interested if he were to resign because he lost office. A second consideration, which Mary shared, was antipathy to Parkes. If the Martin-Robertson faction was brought down, Parkes would become Premier.71

In the ensuing election the government was decimated and Windeyer lost his seat. Privately he welcomed the defeat as a way out of his political commitments. He told Mary, 'pecuniary obligations', his 'duty to our children' and his health all made him inclined to leave politics. Publicly, however, he kept open his options to return to public life.72 This marks the nadir of Windeyer's relationship with Parkes. When Windeyer re-entered politics as the first member for Sydney University in 1876, the relationship seems to have improved as Parkes wrote friendly and encouraging letters. In the interim, Parkes, who had indeed become Premier, made Windeyer President of his Royal Commission into Public

71 William to Mary, 26 January 1872, Windeyer Family Papers, M.L., MSS 186/13; Mary to William, 28 January 1872, Windeyer Family Papers, M.L., MSS 186/8. The customs issue was not significant to Windeyer's career but was important in colonial politics - see P. Loveday and A.W. Martin, Parliament Factions and Parties, pp 75-76.

Charities. This can be seen as a political pay-back or, perhaps, as a political wooing with an eye to the future. Less cynically, it could be seen as Parkes' recognising and using Windeyer's ability. Whatever the reason, there was no doubt that Windeyer was qualified for the task.73

The Royal Commission gave Windeyer some influence and allowed him to show what he could do as a public servant untrammelled by parliament and faction politics. He excelled in this role and through it had more of an impact on the history of New South Wales than in his entire Parliamentary career. His first report was a landmark in the history of the Sydney Infirmary. Although the key recommendation that the old infirmary building be demolished and replaced by a new one took twenty years and several protests by medical staff to come to fruition, the Commission report did have an immediate effect on the administration of the Infirmary and confirmed the establishment of the Nightingale system of nursing, which had been introduced in 1867. Brian Dickey, despite his criticism of the Report's lack of 'scientific' content and outdated medical theories, has conceded its importance in stimulating public awareness and public education regarding hospital standards.74

The second report, which focused on institutions in receipt of government support, was even more of a personal success for

73 Parkes to Windeyer, 4 April 1873, 16 August 1876, 30 August 1876, P.C., M.L. A 1050, Vol. 2.

Windeyer. He was acknowledged as almost solely responsible for it and given a £100 bonus in recognition of his services. It was highly praised, given wide publicity and Windeyer, himself, described it as 'a landmark' in the history of reforms.75 Nevertheless, major recommendations of the Commission, such as the establishment of a Comptroller of Private Charities, stringent precautions against the abuse of outdoor relief and inter-colonial legislation against deserting husbands, were ignored or only introduced at a much later date. Windeyer admitted in 1876 that 'the vicissitudes of political life' had prevented any practical legislation up to that point.76 The lack of response to the recommendations of his Commission thus added to Windeyer's disillusionment with politics in the colony.

75 Note by Henry Parkes, 16 June 1874, C.S.I.L., 74/3073, A.A.N.S.W., 1/2256; Windeyer addressing the electorate of the University, S.M.H., 19 August 1876.
John Ramsland describes the Report as 'the most important landmark in nineteenth-century social-welfare history'. - J. Ramsland, Children of the Back Lanes, New South Wales University Press, Kensington, 1986, p. 234. It has been more critically received by Brian Dickey who says that it was 'not a very perceptive assessment' of charity in general because of its narrow focus on Boarding-Out. This narrow focus was not entirely Windeyer's fault. It resulted from the origins of the Commission in a growing concern about the cost of the Orphan Schools and from the suggestion in the original motion to set up the Royal Commission that boarding-out should be considered as a solution. - B. Dickey, 'Charity in New South Wales 1850-1914', Ph. D. thesis, A.N.U., 1966, p. 58; editorial, S.M.H., 31 January 1873; Captain Onslow, Legislative Assembly, S.M.H., 5 February 1873.

76 Windeyer addressing the electorate of the University, S.M.H., 19 August 1876.
Windeyer returned to parliament in 1876, drawn back by the opportunity to become the first member for Sydney University. He brought with him a renewed desire to remain independent of factions, but this once again meant powerlessness. Politics had settled into a pattern of alternating Parkes and Robertson ministries. Robertson was Premier at the time of Windeyer's re-election. Windeyer remained on the cross-benches until December 1878, apart from a brief period from March to August 1877, when Parkes was in government. In the renewed hope that Parkes might be good for the colony, Windeyer accepted an invitation to be his Attorney-General. In December 1878, following a twelve month interruption to the Parkes/Robertson pattern when Farnell was Premier, Parkes formed an alliance with Robertson and Windeyer was again offered the position of Attorney-General. He accepted because the Ministry promised more co-operative government than factionalism. Windeyer turned this into a career move when he used it to create a temporary judgeship and persuaded Parkes to appoint him to that position.

Windeyer left politics without having lived up to the expectations of his early career. He was too independent, perhaps too arrogant, maybe naive and inept, to successfully play the factional game. In his political career after 1866 his major achievements lay in the success of a number of his private

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77 The Electoral Act of 1858, 22° Vic., No. 20, §15, specified that as soon as there were 100 graduates of Sydney University with Higher Degrees, the University should return a Member. In July 1876 this situation occurred. Petition to the Governor, Sir Hercules Robinson from the Chancellor, Deas-Thomson, C.S.I.L., 76/4855, (with 76/6982), A.A.N.S.W., 1/2343.
member's bills. They included his attempt to protect a fledgling colonial intelligentsia with the Copyright Bill, consolidating English law on copyright on literature, fine arts and manufactured goods, and conferring copyright on authors of industrial designs and his Patents Law Amendment Bill, specifically to provide protection for inventions at the 1879 International Exhibition in Sydney. Such bills took on a particular importance while factionalism was limiting the legislative effectiveness of successive governments.\textsuperscript{78}

Windeyer also had some impact during his term as Solicitor-General because that position placed him ex-officio on the first official Law Reform Commission of New South Wales. It was the first of its kind in Australia and led to a Bill to Consolidate Criminal Law which was prepared by Sir Alfred Stephen, greatly assisted by Windeyer, whose later professional relationship with Stephen was cordial in spite of their early tensions. This bill finally became law in March 1883.

While Mary is a shadowy figure during the period of William's political career, largely occupied with bearing and rearing children and running the household, she was not without influence. Their letters suggest he consulted her about politics, that she had strong opinions of her own on such matters as the land question, matrimonial issues and William's political loyalties and strategies

\textsuperscript{78} 42\textdegree Vict., No. 20; S.M.H., 16 November, 1878; 42\textdegree Vict., No. 27; S.M.H., 21 March 1879. Other significant legislation successfully introduced by Windeyer as a private member included: Judicial and Other Offices Qualification Amendment Act, 25\textdegree Vic, No. 9; 1867 Fisheries Act Amendment Act; 1869 Sydney Corporation Act Amendment Act; Act for the Better Regulation of Common Carriers, 41\textdegree Vict., No. 21; 1879 Married Women's Property Act, 42\textdegree Vict., No. 11; Costs in Matrimonial Causes Act, 42\textdegree Vict., No. 3.
and that she sometimes influenced his actions. She also provided strong emotional support, accepting the demands of his work and always according him what he referred to as her 'dear wifely help'.

**Judge Windeyer**

By the time Windeyer became a judge in 1879, his disillusionment with colonial politics had convinced him more than ever that, in the Carlyle model, great men of principle and truth must rise above the selfish, pragmatic vulgar herd. He had more autonomy as a judge than as a member of parliament and this allowed both his best and worst attributes to appear more forcibly. He belonged to what Judith Allen describes as the last generation of paternal and magisterial judges. His approach reflected his perception of himself as a guardian of civilisation and revealed his tendency to operate as an eighteenth century squire. He maximised his exercise of personal power at a time when Attorney-General Dalley said, 'the all but absolute power which is now held by Judges is out of harmony with the spirit of the age, and prejudicial to some of the best interests of society'.

In the civil courts Windeyer was at his best and his paternalism came across as strength and courage. His civic-mindedness, sectarian tolerance and chivalry all contributed to his reputation as a liberal interpreter of laws. Even when he was

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outvoted by other judges he publicised his views to press for change. In the Appeal Court, where legal interpretation was the central issue, he gained a reputation as a wise and erudite judge and established a number of important precedents regarding interpretation and admissibility of evidence in criminal cases. He established that in cases of theft, if the question of the guilt or innocence of an accused thief was not at stake, the specific ownership of the stolen goods did not have to be established. He also set the precedent that while the commission of one crime could not be proved by evidence of another, evidence of the commission of another crime was admissible where it would explain motives or conduct in the transaction which was the subject of the trial. He further established that it was not necessary that a fact be proved by 'irrefragable inference' but that it was enough if its existence was 'highly probable'. This was in an appeal which made legal history, showing how technical issues could provide avenues for reviewing proceedings in major criminal trials.81

Arguably Windeyer's most famous and influential appeal judgement was *ex parte* Collins in 1888. This case dealt with the issue of public education on the subject of birth control and Windeyer's judgement was an illustration of the contribution a judge could make to debate on serious social issues. In 1877 English woman, Annie Besant, produced a 50 page pamphlet on birth control, *The Law of Population*. It described the poverty,

misery and overcrowding caused by excessively large families. In Chapter three it described methods of birth control in detail, including a description of the sex act and of the necessary equipment. The Australian publisher, William Whitecuse Collins, was found guilty of selling an obscene book. He appealed to the Supreme Court, arguing 'that the book or publication was not an obscene book, but a scientific and philosophic treatise in relation to social and political economy'. The appeal was rejected by the Chief Justice but upheld by Windeyer and Stephen. The basis of Windeyer's judgement was partly Malthusian philosophy and partly genuine compassion with the plight of the poorer classes. He concluded that birth-control information was available in medical texts and suggested it could not 'be pure, chaste, and legal in morocco at a guinea, but impure, obscene, and indictable in a paper pamphlet at sixpence'.

Windeyer was complimented on his judgement by the Chief Justices of Victoria, South Australia and Queensland and its importance has been acclaimed by contemporaries and historians alike. It was widely disseminated. Windeyer published it as a

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pamphlet and Collins included it in a new magazine, *Freedom: an advocate of social, political and religious liberty*, launched in February 1889. It was also published in London, where the *Westminster Review* proclaimed it 'one of the noblest judicial pronouncements ever delivered in a court of justice ... animated by the very spirit of enlightened wisdom'. Its importance lasted beyond Windeyer's lifetime. In 1903 the Royal Commission on the Decline of the Birth Rate drew attention to 'the remarkable coincidence' between the promulgation in 1888 of Windeyer's Judgement and the sudden fall of the birth rate in 1889, blaming Windeyer directly for the spread of neo-Malthusian propaganda, which they saw as a major contributor to the decline.\(^\text{84}\)

A testament to Windeyer's reputation as an appellant judge was his appointment as a Temporary Judge in Queensland in 1891 to hear an appeal in a dispute over whether a grant for land by the Crown was a good title and secured the land for the holder. The Queensland Investment Company had charged Grimley, A.H. Palmer, T. McIlwraith, F.H.S. Hart and E.R. Drury with gross and culpable negligence in the investment of their money. Thirty-seven days into the original hearing of the case, when it had become obvious that the original plaint would fail, the Chief Justice suddenly allowed the plaintiff's pleadings to be changed, without hearing argument from the defendants. The claim was added that

the lands held as security had been 'dummied'. The Chief Justice then based his judgement solely on the amended pleadings which he justified as 'avoiding expense'. He also over-ruled the jury's answers to some of the questions that had been put to it. The case went to the Full Court on appeal, but there were insufficient Judges competent to constitute the Court. The Chief Justice was ineligible and two Northern Judges, Cooper and Chubb, disqualified themselves as having had political associations with the defendants. A special Act of Parliament was passed allowing an inter-state judge to replace the Chief Justice on the bench.\textsuperscript{85}

It was a case dear to Windeyer's heart. It allowed him to demonstrate his commitment to public morality as the defendants were prominent men in Queensland and the ethics of Chief Justice Charles Lilley's conduct of the original case were also at issue. To those who appointed him, Windeyer's reputation for moral correctness was as important as his high standing in the legal profession. It was 'a unique honour among Australian Judges' because it was the first time an inter-Colonial Court of Appeals was convened. After a long and complex hearing, Windeyer reversed the decision of the Chief Justice in a judgement which was welcomed as one which would re-establish Queensland's credit as a colony.\textsuperscript{86} In this case, at least, Windeyer had lived up to his


\textsuperscript{86} \textit{Sydney Mail}, 25 September 1897, p. 658; editorial, \textit{Brisbane Courier}, 13 October 1892.
ideals of himself as a great and virtuous man who contributed to the development of a moral state.

In his divorce jurisdiction Windeyer was also responsible for some landmark judgements. Two of these resulted in direct changes to the matrimonial laws. In Tyson v. Tyson Windeyer attempted to influence the law in what he saw as a sensible direction. The crux of this case was whether a marriage was legal even if there were no preliminary declaration of absence of impediment. Windeyer gained public approbation when he found that it was. This decision was, however, reversed by the full court. There was a public outcry reflecting the fear that thousands of marriages in the colony might be invalidated. The direct outcome was a Marriage Validity and Marriage Law Amendment Bill designed to retrospectively validate all existing marriages and to enforce the declaration from there on.87 In Jones v. Jones, Windeyer's interpretation changed the law. He reversed a ruling of Judge Hargrave that conversations between petitioner and respondent were inadmissible as evidence. Hargraves' ruling was in accord with the Evidence Act of 1858 (22° Vict., no. 7). This was supposed to have been repealed by the Divorce Act but the similarly numbered Scab in Sheep Act (22° Vict., No. 10) had been repealed instead by mistake. Windeyer ruled on the side of common practice and that the repeal had taken place 'by

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87 W.C. Windeyer, Judge's Notebooks, Divorce, A.A.N.S.W., 2/7443, p. 159; N.S.W.L.R., 12, 1891, (D), pp 238-52; S.M.H., 18-20 June 1891, 10 December 1891; Daily Telegraph, 8-10 December 1891; Christian World, 10 December 1891; O'Connor, second reading speech, Legislative Council, S.M.H., 17 February 1892.
intendment'. He also pointed out that it would be impossible for a woman to give evidence of her husband's cruelty unless she were able to repeat what he said. Both these judgements illustrate, as has been seen on other issues, that Windeyer's commitment to the law was often modified by a desire to have the law shape society according to his views. In the relatively new area of divorce law he expected to have a decisive effect in creating appropriate precedents.

In the criminal courts his judicial stance was much more problematic. He seemed to feel that he personally represented the powers of ethical civilisation against its enemies and his authoritarianism sometimes appeared as disregard for the due processes of justice. His belief in his role in preserving civilisation made him both the champion of victims and the avenger of wrongs. His judgements must, however, be placed in the context of his narrow moral ideals. All who did not share his standards of civilized behaviour appeared to him as deviants. He believed that 'The world would have little need of penal statutes if a consideration of the rights of others activated the conduct of all mankind'. He was particularly offended by those who represented serious challenges to his ideals. These included male youth gangs, militant trade unionists and those whose white-collar

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crimes for gain represented a failure to accept the obligations that went with positions of power.

Windeyer's authoritarian stance made his relationship with juries ambivalent. He welcomed their participation when they behaved as he believed they should, but rejected it if it did not meet his expectations. He believed in trial by 'an intelligent jury, fitted by education and knowledge of the world for the discharge of their duties', but colonial juries rarely seemed to meet his criteria. Jury membership was limited by property qualifications, but this was not sufficient for Windeyer who respected education rather than wealth and mistrusted the ill-educated nature and lack of 'intelligence' of many of those from whom the juries were drawn. This mistrust was not entirely misplaced. The exemption from jury duty of many professionals meant juries were often made up of men of poor education. In one case of doubtful judgement Windeyer wrote to the Attorney-General suggesting that all the members of a jury were either stupid or corrupt and the Attorney-General concurred, expressed his 'astonishment' at the verdict and ordered all the jurymen concerned to be struck off the rolls.90

Even as a young member of parliament and practising barrister, Windeyer expressed doubts about juries, believing that, 'In criminal cases there were often very nice points of law, materially affecting the question of guilt or innocence, which juries were unable to appreciate.' This belief dictated the stand he took in 1862 against the New Trials Limitation Bill, which provided that jury decisions could not be set aside on the ground of having been

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90 R. v. McLeod, N.S.W.L.R., 11, 1890, (L), p. 235; S.M.H., 26 November 1885; The Bulletin, 5 December 1885, p. 4.
arrived at against evidence. He pointed out that juries might be 'led away by prejudice, passion, feeling, or their susceptibility to the influence of public opinion' and thought that judges should have the power of revising juries' verdicts 'as they were not infrequently in opposition to the evidence'. He saw judges by contrast as never granting new trials unless the verdict was demonstrably wrong. This feeling of the superiority of the judge over the jury was not unique to Windeyer.91

In civil and divorce cases, Windeyer favoured settling matters without a jury where possible, thereby reducing costs. Between September 1883 and May 1886, no divorce case progressed to jury trial in New South Wales. This changed after the 1886 Divorce Procedure Amendment Act, introduced by Sir Alfred Stephen to solve a number of procedural difficulties, gave parties the right to have matters of fact tried by a jury. Windeyer did not oppose this. He had already set the precedent that matters of fact (such as whether adultery had been committed and whether the petitioner had been guilty of cruelty towards the respondent) were appropriate for juries to consider but that subjective issues (such as the degree of damage done by an adultery or whether the degree and effect of cruelty was conducive to adultery) were not. At times, however, he directed the jury even on the factual inference they were to draw from the evidence.92

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91 Windeyer, Legislative Assembly, S.M.H., 17 January 1861, 9 August 1862. For general discussion of the relationship between judges and juries see A. Davidson, The Invisible State, p. 143.

92 See Horwitz v. Horwitz, N.S.W.L.R., 4, 1883, (D), pp 3-4; Letter from John Parkinson, S.M.H., 27 January 1894; Fattorni v. Fattorni, S.M.H., 16 September
Windeyer's most serious doubts about the reliability of juries occurred in criminal cases where he believed prisoners often abused their right of challenge in order to stack a jury. He could be quite aggressive towards prisoners whom he thought were treated with unjustified leniency by the jury and he frequently offered gratuitous opinions of the jury's verdict. These were usually complimentary of conviction and critical of acquittal and included vehement disagreement with recommendations for mercy. His most notorious attack on a jury came during a trial in Wagga Wagga, when he said of a previous 'not guilty' verdict in Deniliquin, that it 'was a disgrace to the jury who returned it'.

His mistrust of the judgement of jurors was also evident in the explicit directions he often gave them. In one murder case, he told a jury they did not have to find a motive because 'the law assumes that every man intends the natural consequence of his own action'. The dogmatic nature of his directions to juries was compounded by his idiosyncratic interpretation of the presumption of innocence. He believed that it was removed by the evidence rather than by the verdict and, therefore, only lasted until 'enough evidence is adduced to establish the guilt of the prisoner in the mind of the jury, and at this point the presumption vanishes'.

1879, 7 December 1893, 19 May 1886; 50° Vict., 12; Thompson v. Thompson and Fowler, S.M.H., 21 May 1886.


When Windeyer thought the facts were quite clear, he became exasperated if the verdict was delayed. He was particularly frustrated by reluctance to convict when a death sentence would follow. This was most likely when the capital crime was not murder. Attempted murder and rape both carried the death penalty. These trials were often difficult and frustrating to Windeyer. In attempted murder cases, even where assault was proven, the jury was reluctant to assume the murderous intent of the accused and in rape cases abhorrence of hanging often led to a dead-locked jury or not guilty verdict.\textsuperscript{95} Juries were also reluctant to convict when the defendant was a woman. It took three trials to convict Louisa Collins for murdering her husband, although Windeyer, who presided over the second trial in November 1888, 'considered it one of the clearest cases that ever came before a jury'. He warned the jury 'to take every care that they were not carried away by the natural feeling of abhorrence at the idea of the commission of a crime of this kind' but they failed to agree on a verdict after being locked up overnight.\textsuperscript{96}

Windeyer often completely disregarded the needs of juries in conducting trials at a fast pace. His reasons for exerting such pressure reflected his mix of egoism and altruism. He had enormous energy and powers of concentration and was intolerant


\textsuperscript{96} R. v. Louisa Collins, S.M.H., 8 November 1888; Louisa Collins appeal, S.M.H., 29 December 1888.
of those with less. His altruism motivated him to work to the fullest extent of his capacity because there was great pressure on the Sydney courts, which were over-burdened with a back-log of cases. There were also time pressures when the Judges travelled to the country Assizes and here, too, Windeyer was often notorious for his stamina. At the Mount Rennie rape trial Windeyer asked the court to sit from nine and a half to eighteen and a half hours a day and his final summing up took ten and a half hours.97

Windeyer's faith in his own judgement affected his relationships with witnesses as much as with juries. At times it seemed the witnesses were more on trial than the accused. His strongest reaction occurred when he gaolied two witnesses in Tamworth for contempt of court because he believed they had deliberately sabotaged a trial by appearing too drunk to give evidence. This action was later condemned in parliament but supported by the Chief Justice and the local press. Windeyer laid down various tenets about the veracity of evidence, including that discrepancies between witnesses' accounts made them believable, because the story was unlikely to be concocted, and that an alibi given immediately on arrest was most believable, although he did point out that 'a false alibi can be glibly asserted at once on an accusation being made'. He believed he could tell by looking at someone whether he was telling the truth because it was easy for an experienced judge 'to distinguish between the blundering

confusion of the nervous or stupid witness and the inconsistencies
and prevarication of the lying shuffler'. His consciousness of the
crucial role of testimony in the legal process made him very severe
on perjury, but he rarely believed defendants who accused
witnesses of lying, saying 'The habitually criminally minded man
rarely failed to stigmatise every witness brought against him as a
perjurer and a felon.'

He believed that a prisoner's defence and his mode of
conducting it was a better indicator of character than character
witnesses, but he generally mistrusted defendants as witnesses
and on several occasions passed the observation that criminals
'lied to the last'. When the Criminal Law Amendment Act of 1883
gave the accused the right to make a statement without being
liable to cross-examination, Windeyer warned of the dangers of
giving too much credibility to such a statement. He set precedents
limiting the exercise of this right when he ruled that the judge was
not bound to tell the prisoner that he had this right and that a
written statement from a prisoner was not admissible. He felt
differently about evidence given under oath. When the 1892
Criminal Law Amendment Act increased the opportunities of
prisoners to give evidence by providing that they were competent
but not compellable to do so, he found it a 'wise and humane'
provision; a law which was 'found inconvenient by guilty men', but

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98 R. v. Francis Roach and Henry Jeffries, S.M.H., 13 April 1889; Adjournment
debate, 15 May 1889, N.S.W.P.D., Vol. 38, pp 1244-1264; Darley to Parkes, 5
August 1889, P.C. Vol 10, pp 325-7, M.L., A 880; The Tamworth Observer, 7
September 1889; Draft Mount Rennie Report, 27 July 1888, Windeyer Family
Papers, M.L., MSS 186/12, item 1; Letter from William Windeyer, The Times, 6
advantaged 'the innocent man, with truth on his side, proof against cross-examination, fearless of informations for perjury'. If the evidence prisoners gave on their own behalf was implicitly refuted by a guilty verdict, he committed them for perjury. 99

Windeyer assumed all innocent men would make use of this provision. In his detailed judgement in the appeal in R. v. Kops, he made it clear that he believed that the silence of a prisoner on any matter which he might explain amounted to evidence against him on which the judge might comment and from which an inference of guilt might be drawn. Following this case, a bill was introduced to limit imputation of guilt if a prisoner chose not to give evidence. Windeyer was strongly opposed to this as he felt it favoured the criminal. It was also opposed by the Attorney-General, Edmund Barton, who had congratulated Windeyer on his judgement in Kops' case. The bill was lost at the second reading stage.100

Press and Parliament

A hero-citizen trying to salvage civilisation was an anachronism in an increasingly egalitarian social and political environment. As Windeyer maintained this role into his middle age, he became alienated from parliament and the popular press. He was vulnerable from the outset of his judicial career because his appointment was perceived as political. Parkes had shown some


100 R. v. Kops, N.S.W.L.R., 14, 1893, (L), pp164-166; N.S.W.P.D., 1893, 1st series, Vol. LXVIII, 1 December, pp 1597-1603; Barton to Windeyer, 15 September 1893, in family papers held by Lady Windeyer.
hesitation in making it and it certainly threw Windeyer's moral position into some doubt, especially as he had himself created the temporary judgeship while he was Attorney-General and had made it quite clear to Parkes that he felt entitled to the position as a step towards a permanent appointment. He did not acknowledge, and perhaps even privately did not see, the doubtfulness of his position. He remained convinced that he would do what was good for the country, retained his public stance of personal righteousness and justified his elevation to the bench in terms of his own moral superiority. ¹⁰¹

His self-righteousness, his presumptuous attitude and his over-bearing behaviour in court led to continual difficulties with the press. These troubles began in December 1879, when an article in the Evening News, headed 'The Temporary Judge', attacked Windeyer's judicial conduct in such a malign fashion that Judge Manning suggested that, if the influential members of the Bar had been available, a Bar meeting should have been held to repudiate 'such a base attack'. ¹⁰² Windeyer then presided over three suits against Alfred Bennett, the registered printer, publisher and one of the proprietors of the Evening News, and on each occasion found

¹⁰¹ Windeyer to Chief Justice, 6 March 1879, 'Administration of Justice, correspondence', N.S.W. V.P.L.A., 1879-80, Vol. III, p. 4; Windeyer to Parkes 17 July 1879, in family papers held by Lady Windeyer; Parkes to Windeyer, 4 August 1879, W.F.R.P., M.L. D159; Windeyer to Parkes, 5 August 1879, P.C. Vol. 43, pp 472-3, M.L. A 913; Windeyer, Legislative Assembly, S.M.H., 12 March 1879; S.M.H., 13 June 1879, 12 August 1879.

¹⁰² Manning to Windeyer, 22 December 1879, in family papers held by Lady Windeyer.
for the plaintiff. The *Evening News* took the first opportunity to retaliate. In another case concerning the *Daily Telegraph*, the *News* attacked Windeyer for 'utter want of judicial impartiality'. The Full Court responded by fining for contempt. This raised the issue of the freedom of the press versus the sanctity of the Court. During the ensuing debate, there were strong personal attacks on Windeyer and some papers, including *The Bulletin*, suggested the case could mean the end of Windeyer's judicial career. He was defended in the *Sydney Morning Herald*, but then this paper usually sided with him.¹⁰³

J.F. Archibald, the editor of *The Bulletin*, was the main antagonist. He campaigned against the powers of judges in general and Windeyer in particular. He saw himself as champion of the underdog and Windeyer as 'the living embodiment of the System' to which he was implacably opposed. Windeyer's meritocracy was unacceptable to Archibald's egalitarianism; his chivalry was out of tune with Archibald's misogyny and his patriarchal severity was out of step with Archibald's radical nationalism. The attacks could be very personal and were often in the form of cartoons. When Windeyer left for a holiday in England in 1887, *The Bulletin* hoped he would never return. Even in death he was not immune to *Bulletin* ridicule.¹⁰⁴

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¹⁰⁴ Examples of attacks in *The Bulletin* include: 20 March 1880, p. 5, 3 April 1880, p. 4, 4 September 1880, pp 1, 12, 2 October 1880, p. 13, 5 December
Archibald's opposition to capital punishment fuelled his antagonism. Through his judicial career, Windeyer became known as the 'hanging judge' but this label was not entirely deserved and was more a result of adverse publicity, particularly in The Bulletin, than of handing down more than his share of death sentences. Windeyer handed down a total of 43 death sentences. Of his contemporaries, Judge Faucett handed down more, 51, and Judge Manning was comparable with 41. Windeyer, however, handled more than his share of rape cases, including two gang rapes, and became a victim of general debate about capital punishment for offences other than murder.105

Windeyer's reputation for severity arose mainly out of two cases which received wide publicity and highlighted the tension between his paternal judicial position and the egalitarian, masculinist culture that was developing in New South Wales. These were the 1879 trial of the Wantabadgery bush rangers and the 1886 Mount Rennie rape case. The Wantabadgery trial took place while the Kelly Gang was still on the loose, adding to the public interest and the demand from some sectors of the community that the law be used to protect public safety. It involved Andrew George Scott (alias Captain Moonlight), Thomas Rogan, Thomas Williams (alias Frank Johns) and Graham Bennett,


105 From information in Register of Criminal Indictments, A.A.N.S.W., 9/2630 - 9/2632. For Archibald's attitude to capital punishment see S. Lawson, The Archibald Paradox, pp 16-17.
who were charged with having murdered a police constable. All were sentenced to death but, on account of their youth and previous good character, the sentences of Williams and Bennett were commuted. The trial had many of the characteristics for which Windeyer became infamous later in his career—long sittings, problems with witnesses, problems with the jury and judicial passion.  

In 1885 Windeyer sentenced Frank Johns (alias Thomas Williams) to death for a second time. At this time Johns was adopted by The Bulletin as a cause celebre. At the trial of the Wantabadjery bush rangers Johns had been singled out for special condemnation by Windeyer for having betrayed his previous good character. During the ensuing period in gaol he stabbed another prisoner, apparently under some provocation. During the subsequent trial The Bulletin expressed concern that Johns was being tried before a Judge who had already sentenced him to death once and who clearly disliked him. When Johns was again sentenced to hang, Windeyer refused to endorse the jury's recommendation of mercy. This led to a public outcry including an outpouring of opprobrium against Windeyer.  

The Bulletin launched its strongest attack over the Mount Rennie case in 1886. This case has been dubbed by Judith Allen as 'the most sensational case of the late nineteenth-century

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106 R. v. Scott, Rogan, Williams and Bennett, S.M.H., 9-12 December 1879. For contemporary criticism see editorial, Evening News, 20 December 1879; editorial, S.M.H., 6 January 1880

period'. It followed an incident in which about 20 young men either observed or participated in the brutal pack rape of Mary Jane Hicks, a teenage orphan. Eleven youths were committed for trial, of whom two were acquitted and nine were sentenced to death. Subsequently, five were reprieved and four were hanged. The respectable press and many of the churches damned the criminals even before the trial, but *The Bulletin* pointed out that 'justice and decency would seem to require that the pulpits should have reserved judgement until some real facts were established'. After the trial and sentence, the daily papers in New South Wales supported Windeyer, but *The Bulletin* described the trial as 'a disgrace to civilization' and suggested that Windeyer put his roles as social cleanser and crusader for the rights of women above his reputation as an impartial judge. Bogler, the foreman of the Mount Rennie jury, alleged that his letters to *The Bulletin* defending Windeyer were suppressed and that the paper deliberately lied.109


Both the Wantabadjery and Mount Rennie trials pitted Windeyer against the ethos of 'mateship' which was promoted by The Bulletin. In both trials the offenders were young and male; in both trials 'gangs' were involved. To combat the 'gang' ethos epitomised by both larrikinism and bushranging, Windeyer was intent on not allowing culprits to hide within the group. He ruled, therefore, at both Wantabadjery and Mount Rennie that all those proved to be present at the crime were equally guilty. This caused particular concern after the Mount Rennie trial, as it was popularly felt that those who were present but not participating were less guilty and should avoid the death penalty.

The Mount Rennie case also elicited a heated debate about the punishment of rape. Those who thought rape should not be a capital offence confronted those who believed the hanging of the young rapists would be a valuable deterrent to others. Mount Rennie had been preceded by a number of multiple rapes followed by trials at which the accused had been acquitted. Of these, the Woolloomooloo case of 1883 and the Mount Carmel case of 1884 were the most notorious. Windeyer was not the judge at either of these trials but prior to the Mount Rennie case he had presided over sixteen rape trials, in only three of which had the prisoners been found guilty. The resulting high level of frustration may have enhanced his desire to make examples of the Mount Rennie rapists.¹¹⁰

Much of the subsequent debate confused issues in favour of commuting the particular sentence with argument about altering

¹¹⁰ See editorials, S.M.H., 8 January 1884, 12 March 1884; editorial, Daily Telegraph, 29 November 1886.
the law. The death sentence was prescribed for rape under the 1871 Criminal Law Amendment Act and, although this law had been thoroughly debated on a number of subsequent occasions, it was confirmed in clause 39 of the Criminal Law Amendment Bill of 1883 when an attempt to repeal the clause was resoundingly defeated. One reason why the Governor refused to reprieve all the prisoners in the Mount Rennie case was to avoid signifying a de facto repeal of the law. On the other hand, the jury's guilty verdict carried a recommendation of mercy based on the criminals' youth and, when this recommendation of mercy was ignored, it was feared other juries would refuse to convict.\footnote{Minute on Mt Rennie case from Lord Carrington, Minute 2, 6 January 1886, Executive Council Minute Books, A.A.N.S.W., 4/1576.} Both sides could claim victory in retrospect. Mount Rennie was the last pack rape recorded in the colony for over a decade, which the Sydney Morning Herald attributed in part to Windeyer's 'exemplary sternness'. It is a moot point, however, whether this sternness meant rapes did not occur or whether it merely made police reluctant to indict.\footnote{Editorial, S.M.H., 18 June 1896.}

The timing of Mount Rennie invoked wider issues than the particular crime and sentence. It occurred at an inauspicious time. 1887 was the Queen's jubilee year and 1888 was the colony's centenary. Public image and the colony's reputation were at stake. Contemporary publicity divided. On the one hand, the crime was seen to represent the worst aspects of colonial life, but, on the other, the death sentences on the young criminals disgusted
many.\textsuperscript{113} The position taken by \textit{The Bulletin} had much to do with Archibald's abhorrence for the death penalty as well as his personal hatred of Windeyer. Archibald, himself, attended the Supreme Court throughout the hearing. He remained obsessed with the Mount Rennie case and Windeyer's role in it for the rest of his life. When the remaining Mount Rennie prisoners were released in June 1896, the \textit{Sydney Morning Herald} attributed this mercy to the improved moral condition of the colony but \textit{The Bulletin} suggested that this was only possible because Windeyer was out of the way in England. In the same year, when reporting Windeyer's campaign for a colonial judicial position to be established on the Privy Council, \textit{The Bulletin} again raised the 'ghosts of Mount Rennie', claiming 'the altar of Mount Rennie still smokes'. It was from this trial that Windeyer gained the sobriquet of the 'hanging Judge', which never left him.\textsuperscript{114}

The hostility felt by Archibald towards Windeyer was exacerbated by Windeyer's involvement in the resignation of Julian Salomons from the post of Chief Justice in 1886. Salomons occupied the office for several days but was never sworn in. Archibald felt sympathy for Salomons, whose Jewishness struck a cord with Archibald's own assumption of Jewish heritage. Archibald described Salomons as a 'bright, genial and learned little


gentleman' with 'maturity of judgement and logical precision'.\textsuperscript{115} Windeyer, although a friend of Salomons, felt he was unfit for the office of Chief Justice. He believed Salomons' health and temperament were too uncertain. He also believed that it was improper to offer the post to Salomons, who was not a judge, ahead of the other judges, particularly Judge Faucett. Windeyer presumed upon the friendship to call on Salomons and tell him this. Salomons then resigned on the grounds that he did not have the confidence of the other judges, particularly Windeyer.\textsuperscript{116}

In spite of a public brawl with the press acting as adjudicators, the exact nature of the exchange between the two men remains a mystery. In response to an invitation from the \textit{Daily Telegraph}, Windeyer wrote claiming 'no personal feeling of hostility to Mr Salomons' but admitting that he 'thought the appointment of Mr Salomons a grave mistake' and had told him so. The Government wanted no part in the affair but the publication of a memorandum from Salomons to the Premier led to more public acrimony between Salomons and Windeyer. Windeyer's behaviour in the affair can be seen as a reflection of his view of himself as a guardian of the standard of public officials, but his self-depiction of aloof moral rectitude was tarnished by the publicity, some of which was seriously misleading. The press reported that a bar meeting had condemned 'the brutal conduct' of Windeyer and asked

\textsuperscript{115} \textit{The Bulletin}, 19 March 1881, p. 11.

Salomons to withdraw his resignation. This report was said by M.H. Stephen, who had chaired the meeting, to be incorrect.\textsuperscript{117}

In Wagga Wagga in 1888 Windeyer provided more ammunition for Archibald (who saw himself as a spokesman for the workers) when he handed down long gaol sentences to Brookong union shearers for kidnapping blackleg shearers. He was supported in the respectable press but \textit{The Bulletin} attacked him as an 'uncouth functionary' who, 'while sentencing the Union shearers, had the bad taste to compliment the jury on their decision'. It went on to urge that juries be defended from 'the insults of politically appointed officials' who 'too often seem to be wholly on the side of the dominant class'.\textsuperscript{118}

Windeyer's difficulties with \textit{The Bulletin} reflect how perceptions of him had changed from radical man of the people to authoritarian representative of the establishment. His authoritarian tendencies as a judge also brought him into direct conflict with parliament on several occasions. These clashes continued a long history of struggles for supremacy between judiciary and


\textsuperscript{118} \textit{The Bulletin}, 17 November 1888, p. 5. The Brookong Shearers incident is cited by Walker as one of the few significant disturbances in New South Wales in 1888. - R.B. Walker, 'Violence in Industrial Conflicts in New South Wales in the Late Nineteenth Century', \textit{Historical Studies}, Vol. 22, No. 86, April 1986, p. 60. Windeyer was perhaps a Judge in an extraordinarily difficult case rather than an extraordinarily difficult judge.
legislature. Davidson says 'the open presumption of the judiciary that it was not subordinate to the legislature' ended in the 1860s, but Windeyer's career suggests a continuance of this presumption, at least on his part, well into the 1890s.\textsuperscript{119} He believed that Judges should be immune from Parliamentary inquiry into their conduct so as to preserve their objectivity and independence. This belief led to clashes: in 1883 with the Minister of Justice over the confidentiality of Judges' notes; in 1888 with the Department of Justice over their access to judges' notes; and in 1889 with the Minister for Justice over antagonistic remarks made by a defeated suitor.\textsuperscript{120}

In frequent Parliamentary debates on Windeyer's conduct, his severity invoked both praise and blame. David Buchanan, the outspoken Member for Mudgee, described him as 'one criminal Judge whom they could respect' and argued that if the other judges acted as he did, 'crime would scarcely be perceptible'. On the other side, Daniel O'Connor, the Member for Western Sydney, although a supporter of Parkes, was 'not prepared to believe that they had sunk so low as to believe Mr Justice Windeyer ... was the shining light of the Supreme Court.'\textsuperscript{121}


\textsuperscript{120} Windeyer to Cohen, 7 April 1883, 13 August 1883, 5 December 1883, and Cohen to Windeyer, 23 May 1883, Windeyer Family Papers, M.L., MSS 186/12, item 8; Clarke to Windeyer, 6 September 1888 and Windeyer to Minister of Justice, 8 September 1888, Windeyer Family Papers, M.L., MSS., 186/9; Correspondence placed before Legislative Council, W.F.R.P., M.L., *D 159.

\textsuperscript{121} Debate on the Criminal Law Amendment Bill, \textit{S.M.H.}, 21 September 1882.
During 1888 and 1889 a group of anti-Windeyer politicians attacked him on every possible occasion. He was criticised for insulting the Deniliquin jury, for gaoling the Brookong shearers and for his conduct of the Mount Rennie trial. The antagonists were protectionists who had opposed Parkes in the divisive 1887 election and were using Windeyer to attack the Parkes Government. They included Sir Joseph Abbott, who led the protectionist opposition; Henry Cohen, who had been Minister for Justice in the 1883-5 Stuart Government; James Garvan, who had served as Minister for Justice in the 1886-7 Jennings Government; and Thomas Walker, who had led the Parliamentary agitation against the hanging of Frank Johns. The radical protectionist and opponent of Parkes, Edward O'Sullivan, described Windeyer as 'an incompetent judge, a blunderer, a brutal and rash man, who ought not to sit on the bench'. Windeyer responded in a number of more or less aggrieved letters to Parkes. Windeyer's defenders included Parkes, Albert Gould as Minister for Justice, Sir Alfred Stephen and The Sydney Morning Herald which attacked the process of 'Judge-baiting' as 'a disregard ... of justice itself'. It suggested that Windeyer regard the attacks on himself 'as testimonials to his efficiency in the administration of justice and the suppression of crime'.

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Windeyer attributed much of the problem to the management of Gould, but it began while William Clarke was the Minister. In 1888 there was a public dispute between Windeyer and Clarke over consideration of fresh evidence in the Mount Rennie case. The issue was of public importance because it might have involved the unnecessary continued imprisonment of three innocent men, although in the event Windeyer did not change his mind about the guilt of the Mount Rennie prisoners. In 1887 the Minister expressed some doubt about the guilt of three of the convicted but delayed giving a full report to the house until receiving a report from Windeyer, who was out of the country. On Windeyer's return, Clarke's office failed to supply him with the written material. After many months delay, Clarke implied in answer to a question in the Legislative Assembly that he had been waiting for Windeyer's reply. Windeyer responded with immediate outrage. He was then exonerated from causing the delay in a published letter from Clarke, which nevertheless castigated Windeyer for hasty action in making the defence of his honour a public issue.\textsuperscript{124}

Windeyer's greatest difficulty with parliament came after the trial of George Dean for attempted murder in 1895. In this case, Dean, a popular and heroic Captain of one of the Sydney Harbour ferries, was charged with attempting to poison his wife. After Windeyer summed up strongly against him Dean was convicted, but the death sentence was commuted to penal servitude for life. As in the Wantabadgery and Mount Rennie trials, Windeyer's

\textsuperscript{124} \textit{S.M.H.}, 24-26 July 1888.
conduct was publicly attacked for being too idiosyncratic and autocratic. The title of 'hanging judge' was reinvoked by *The Bulletin* in coverage that repeatedly referred to Mt Rennie. Very long sittings and pressure to finish before a Sunday provided clear parallels, which *The Bulletin* did not hesitate to point out. It described the Dean case as one which 'stands alone in Australian criminal annals'. This time it was not alone in attacking Windeyer.  

Windeyer's summing up was widely criticised for excesses of judicial passion. He compounded this when he sent for the jury after they had been out for eight hours and told them that 'as the issues were so clear in the case and as they had been so long out he thought he must have failed in some way to put the matter rightly and clearly to them'. Seven minutes after this, the jury returned with their verdict of 'Guilty with strong recommendation to mercy'. Windeyer's action and the immediacy of the verdict thereafter laid him open to serious criticism. It was exploited by his enemies and ultimately used for political purposes. It was suggested that he had threatened the jurors because he reminded them that unless they agreed upon their verdict they would have to stay locked up over the following day, which was Sunday. It was also implied that he pre-empted their verdict when he pointed out

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that, if they found Dean guilty, they could add a strong recommendation to mercy, which he would endorse. This was described by the *Daily Telegraph* as a ploy to obtain a guilty verdict by providing the jury 'with a moral basin in which to wash their hands of the accused man's blood'.

Windeyer gave his enemies more ammunition after the verdict when he stated to Dean that, 'he was as convinced as if he had seen it that Dean had attempted to poison his wife'. This was subsequently cited as evidence of a bias which could have influenced the whole trial, although jury members denied that any such bias had affected them. Through prejudicial and inaccurate press reports, it later became so widely believed that Windeyer had expressed his certainty of Dean's guilt in his hurry-up speech to the jury (rather than to the prisoner after his conviction) that, in September 1895, Windeyer felt it necessary to write to Albert Gould as Minister for Justice correcting this.

Windeyer's conduct of the Dean trial became a political issue when Paddy Crick, the defence lawyer's partner and an

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126 Editorial, *Daily Telegraph*, 10 April 1895. Windeyer felt he had good reason for recalling the jury and trying to hasten their deliberations because he was waiting until the conclusion of the trial to break the news to the jury foreman of the sudden death of his son, but this remained unknown to the public until the posthumous publication of Windeyer's own account. - *Daily Telegraph*, 21 October 1897; *Maitland Mercury*, 19 October 1897.

independent protectionist who was trying to build a reputation for himself as a pugnacious politician, used it to attack the Reid Government in the Legislative Assembly. He moved for a Royal Commission into the trial. He was supported by other opponents of the Reid Government, including George Black, the ambitious Labor member for West Sydney, who had been a sub-editor of The Bulletin; Richard Sleath, Labor member for Wilcannia; and Richard Price the protectionist member for Gloucester. These politicians exploited what was by then considerable public mistrust of Windeyer. Public agitation was easily aroused, urged on by Dean Defence Committees. Indignant meetings were held, culminating in a meeting of 12,000 people at Sydney Town Hall on 30 April, which demanded a Royal Commission. A friend, William Owen, wrote to Windeyer, 'The Community seems to have gone mad'.

As a result of the political and public pressure, a Royal Commission was granted although it was legally unnecessary and unwarranted. The Premier, George Reid, almost acknowledged this when he tried to place the focus on forensic rather than legal issues by appointing to the Commission two doctors and one lawyer. The Commission nevertheless became a de facto review of the trial. Evidence about the character of Mary Dean and her mother, which was not material to the facts of the case, led it to 'put aside' their evidence. After two months, 39 sittings and 113 witnesses, it recommended, by a majority of two doctors against one lawyer,

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128 Owen to Windeyer, 5 May 1895, Windeyer Family Papers, M.L., MSS 186/11. See N.S.W.P.D., 1895, 1st series, Vol. 76, 17 April, pp 5351-8; S.M.H., 22 - 30 April 1895.
that Dean should be released. On 29 June he was granted a Royal Pardon.\footnote{Report of Royal Commission Appointed to inquire into the case of George Dean, N.S.W.V.P.L.A., 1894-5, Vol. III, pp 708-10. The Royal Commission was unnecessary because the 1883 Criminal Law Amendment Act prescribed a procedure by which the evidence in a criminal trial might be reviewed by a nominee of the Governor and reported on for the Governor's discretionary action. See Innes to Windeyer, 14 October 1895, Windeyer Family Papers, M.L., MSS 186/11; Sir Carleton Allen, Aspects of Justice, Stevens and Sons, London, 1958, pp 249-50.}

Thus in an extraordinary process, which exploited Windeyer's reputation as an idiosyncratic judge, a judicial verdict and sentence were overturned as an outcome of public outcry and Parliamentary action. When Dean was pardoned there was a further round of press comment. The Daily Telegraph was satisfied that the whole agitation was thus 'vindicated'. Other papers were, however, concerned that the Royal Commission set a dangerous precedent of Government nominees overriding the outcome of trial by jury. The Bulletin continued to attack Windeyer as 'a danger to the community' and demanded his resignation. It published a prominent cartoon showing Windeyer as a prisoner convicted of assaulting Justice with Justice advised to get a divorce from him.\footnote{Editorial, Daily Telegraph, 29 June 1895; The Bulletin, 6 July 1895, p. 5, 13 July 1895, p. 7. See also: editorial, North Shore and Manly Times, 6 July 1895; Sydney Mail, 6 July 1895, p. 20.}

The Parliamentary attacks on Windeyer also continued with renewed force. Early in September in the continuing fall-out from the Dean case, Richard Price gave notice of a motion to dismiss
Windeyer from the Bench. It was not brought on for debate because the Premier, George Reid, thought it unlikely a Judge could be removed by such a motion. It was, however, raised in repeated questions.131 At the same time, there were rumours about Dean's possible confession of guilt. Dean attempted to clear his reputation by petitioning parliament for particulars of the rumour. This was a strategic mistake. On 26 September the Attorney-General tabled Sir Julian Salomons' written statement that the defence lawyer, Richard Meagher, knew of Dean's guilt. After initial denials, both Dean and Meagher publicly confessed.132

Dean's confession did not alter The Bulletin's position that the conduct of the trial was improper and that Windeyer should resign from the Bench. The Australian Star also continued the attack. Other papers, after the affair was over, seemed to have an each-way bet. They depicted Windeyer as a victim of political machinations and public hysteria, but one who was partly responsible for his own fate. Some sided with Windeyer, taking the high moral ground for themselves as well as for the judge. The

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Australasian apologised to Windeyer and added, 'Even in connection with this trial we ever kept his strong qualities before the reader'. The Sydney Morning Herald justifiably claimed, 'We were at no time in sympathy with the cry raised against him, not only by unthinking members of the public, but by responsible organs of opinion'. Both the Tamworth Observer and the North Shore and Manly Times claimed that they had 'stood alone' in affirming Dean's guilt after the trial.\(^{133}\)

The uproar over the Dean case showed how far Windeyer had come from the image of the people's friend that he projected at the beginning of his public career. Throughout the months of what legal commentator, Blackwell, has aptly described as 'popular execration unparalleled in Australian history', Windeyer believed his position demanded that he keep aloof. He did not attempt to defend himself but trusted to events for his vindication. Mary also thought that he should say nothing. She put on a brave face although she felt very emotional and avoided people as she had 'a horror of being made to cry'. Windeyer also felt great strain. After Dean's confession, Windeyer's emotional condition became public knowledge at a luncheon party of Methodist clergymen in Adelaide when, exhausted from his journey, he completely broke down. He feared the incident would become 'the grounds of much ridicule in the inferior papers' and publicity inevitably followed, although not all

\(^{133}\) The Bulletin, 5 October 1895, pp 6-7, 19 October 1895, Special Supplement, 1 November 1895, p. 6; editorial The Australian Star, 9 October 1895; The Australasian, 12 October 1895; editorial, S.M.H., 10 October 1895; editorial, The Tamworth Observer, 12 October 1895; editorial, North Shore and Manly Times, 12 October 1895.
was unkind. The Bulletin predictably commented that it was 'pathetic', that tears could mean 'gratified vanity, male hysteria, and other causes' and published a whole page of cartoons ridiculing him. In contrast, the Adelaide Advertiser decided he was 'after all shown to be a man of deep and tender feelings and as grateful for the approval of his fellows as others'. In the end, 'feeling that he had been grievously misunderstood', he left his own version of events which was published in a number of papers after his death. He remained unforgiving towards the public.¹³⁴

The Dean case marked the height of parliamentary and press attacks on Windeyer. The successful motion for a Royal Commission and the failure of that Commission to validate Windeyer's verdict demonstrated that with parliamentary support, crowd and media pressure could pervert legitimate legal procedures. The case haunted Windeyer beyond the grave. Its proximity to his retirement and death meant that references to his difficulties marred most tributes and obituaries. It was described in the Sydney Morning Herald's obituary as 'a quagmire of perjury and infamy'.¹³⁵ In the worst case, Mary Windeyer found herself


¹³⁵ Obituary of Sir William Windeyer, S.M.H., 15 September 1897. See also: editorial, Daily Telegraph, 1 January 1896; editorial, S.M.H., 2 January 1896; Grenfell Record, 11 January 1896; The Australasian, 11 January 1896; editorial, Evening News, 1 September 1896, 14 September 1897; Maitland Daily Mercury.
forced to defend her late husband when the English *Daily Chronicle* posthumously attacked him in an article, possibly written by Louis Becke, previously an employee of *The Bulletin*. The editor published Mary's letter of defence, but with alterations and a footnote suggesting that the inaccurate reporting she attacked appeared 'to be innocent and to be substantially correct'.

Windeyer's reputation for severity, authoritarianism and conservatism seems incongruous in the context of his reputation in other spheres as a forward looking reformer. It is not, however, incongruous with his desire to achieve a society of ethical citizens. Throughout his controversial judicial career, Windeyer expected all rational people to share his outlook, a view which no doubt contributed to the hostility of those who did not share it. He believed his values, regarded as common social objectives, would ultimately contribute to the well-being of the whole and that his role as a leading citizen was to guide individuals towards the achievement of common good. He saw conflict as a transient phenomenon, usually attributable to deviants and troublemakers, and removable through appropriate executive action. He used his position on the Bench to make an example of those whom he felt threatened his social model. He was also trapped in the inherent conflict between reforming criminals and using exemplary

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2 September 1896, 14 September 1897; *Sydney Mail*, 18 September 1897, p. 587.

punishment as a deterrence. For him, as we shall see in the next chapter, criminal justice involved discriminating between salvageable and unsalvageable prisoners, seeking to reform the former and punish and deter the latter. It also involved identifying those crimes which were such a threat to society that deterrence must take precedence over any possibility of individual reform.

Conclusion

Windeyer's political and legal activities can be understood in terms of his early desire to be a leader in a virtuous and civilised state. These high expectations were doomed to disappointment. His public career was marked by tensions; his romantic 'great man' ideal of public figures as leaders of the people (reinforced by his strong sense of personal entitlement and his authoritarian nature) conflicted with his radical-democratic ideal of public figures as servants of the people. His parliamentary experience did not live up to his expectations, hampered as it was by factionalism, which confronted him with a choice between independence and power with the result that he never resolved the two desires and never lived up to his political potential either as a statesman or as a politician.

Windeyer's growing disillusionment with human nature may well explain why the 'radical liberal' ended his life as the 'hanging judge'. He began his public life as a champion of parliament and ended as its enemy. By the time he became a Judge he was inclined to emphasise the need for individual leadership and control to keep society on the right path. Both positions were consistent with his radicalism as he only believed in empowering the lower
classes if and when they behaved like ethical citizens in pursuit of moral and social improvement.

In Windeyer's judicial career his paternalistic approach gave him a reputation for severity and rigidity, but also one for firmness of character and useful service. Convinced of the rightness of his views, perhaps his real flaw was his passion. His hatred of some criminals for their threat to civilised society, led to injudicious actions and words that damaged his reputation. He had the misfortune to be connected with controversial criminal cases, where, according to his enemies, he allowed himself to indulge in 'imagination and conjecture' or, according to his friends, was a victim of 'the earnestness and thoroughness' with which he did his duty. The *Grenfell Record*, in quoting Horace suggested that in the end Windeyer lived up to his classical ideals as one who, 'just and firm of purpose, fears not the clamours of a mob or the power of a tyrant'.

In a troubled career that fell far short of Windeyer's ambitions, his most unqualified success was probably his appointment as President of the 1873-4 Royal Commission into Public Charities. Following on this, perhaps reflecting his frustration with political ineffectiveness, Windeyer made a significant contribution to society through the administration of charities. He also used his judicial role to combat what he saw as social ills. The following chapter explores how both William and Mary attempted to improve society by reforming and correcting the lowest classes.

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Chapter 4

Philanthropy and Criminal Justice

... the highest culture and the most philosophic power of thought, so far from rending [sic] their fortunate possessor incapable of sympathising with the masses, ought to stimulate a sense of the responsibility laid upon him to help his fellow-man in all efforts for self-improvement and the social amelioration of his condition.¹

This sense of obligation to those less fortunate than themselves was intrinsic to the realisation of the Windeyers' ideal of a homogeneous society of ethical citizens working for the common good. Poverty and crime threatened this ideal. The Windeyers felt responsible for ameliorating these threats. They supported philanthropic schemes of aid and reform for those who could achieve ethical citizenship. They also believed that sanctions should be used to persuade those who were capable of reform to take that path and to remove from social circulation those who were irredeemable.

In their philanthropic interests the Windeyers worked within and built on existing practices. Colonial charities were funded in a number of different ways. Some were private and voluntary. A few were totally government funded. Many received partial government funding; they were initiated through the formation of voluntary societies and retained voluntary management, but were subsidised by government grants, usually on a pound for pound basis to ensure that continuing voluntary funding accompanied government involvement. Once an organisation was subsidised by the Government it had to submit to some inspection and control, have a subscription list open to the general public and a board of management elected by the subscribers. The State had no direct voice in the expenditure of the money it contributed, but it had indirect control; it could cut funds and could recommend cases for assistance.²

By the time the Windeyers took up charitable work the mixed model was well established. The Windeyers saw merit in this colonial compromise because it met the need for financial assistance without compromising the principles of voluntarism. This was important because they believed that there was a danger that if the State took over full responsibility, 'our feelings become blunted, and we were content that the Government should, in a

perfunctory manner, perform the duties which could be better discharged by ourselves.³

In this system, any private and voluntary individual or group of individuals who saw a need simply appealed to the public. The most significant charity was the Benevolent Society which had been established in 1813 as the New South Wales Society for Promoting Christian Knowledge. Following the economic and demographic expansion of the 1850s gold rush, the Benevolent Society extended its operations and other charities were established, but in a disorganised way, often over-lapping in function. The same people supported many of these charities; in 1870 the Sydney Morning Herald proclaimed, 'The same names appear and reappear throughout all these charities.' In the following decades the Windeyers joined this list of recurring names as rapid economic growth produced the paradox of expansion accompanied by deteriorating conditions for many citizens.⁴

Apart from mandatory reports by the Inspector of Public Charities on institutions supported by government subsidies after 1866, there was no attempt at Government co-ordination or control. Both Windeyers promoted increased state intervention. In this they were products of their time, but they tackled the problems more methodically than many of their peers. William attacked the existing situation as President of the 1873-4 Royal Commission

³ Windeyer speaking to meeting of Night Refuge and Soup Kitchen, S.M.H., 7 July 1869.

⁴ Editorial, S.M.H., 28 July 1870. This paradox is well explored in S. Fitzgerald, Rising Damp, Oxford University Press, Melbourne, 1987.
into Public Charities and recommended that a Comptroller of Private Charities be appointed. He believed that centralised administration would be more efficient and would maximise the opportunities of finding employment and apprenticeships for the destitute. This recommendation was ignored because it was too regulatory to appeal to many politicians, but it was repeatedly referred to by those who wanted similar action over the next few decades.⁵

Mary shared William's concern about the need to bring charities under central control, taking up the issue in the 1890s. She was President of the Committee to organise the N.S.W. delegates for the Second Australian Conference on Charity, held under the auspices of the Charity Organisation Society of Melbourne in November 1891, and represented the Sydney organising committee at that conference. One of the prime objects of the Conference was 'to secure uniformity of administration in connection with the charities of Australasia, by means of intercolonial legislation' and Mary wrote a short paper for it on centralization, which was read by Reverend H.L. Jackson. In it she declared that 'The right administration of charity is one of the largest questions of the day'. Problems in the existing charitable structures were identified as 'Circumlocution, red-tape, weakness,

bad management, and fraud'. Mary pointed out that collectors at that time took five to fifteen percent commission and recommended institutions combining to reduce the cost of collection. Her stance combined compassion with the principles of political economy. She argued that centralised collection of funds allowed benevolent care for the poor while saving 'the time and trouble of repeated application to the cheque-book.'  

Dickey recognised the duality of Windeyer's approach when he described him as 'advanced for his time', but then added the qualification that his ideas were 'nonetheless suffused with mid-Victorian assumptions of the permanent existence of the poor and of the duty of the more well-to-do to help them'. The 'mid-Victorian' model was one of personal involvement between helper and helped in an organic community, based on moral and religious duty. It reflected the philanthropic and controlling functions of church and squire in the villages of rural England. The Windeyers implemented this in re-creating their ideal organic society bonded by 'common sympathy' and 'human brotherhood' on their estate at Tomago. There William sought to be 'a friend and father to his people' and the tenants responded with 'affectionate esteem' and 'a

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sense of gratitude' for 'numerous and continued kindnesses'. In its purest form, however, this model required stable small scale societies where obligation and deference prevailed among people who knew each other personally. The problem for the Windeyers and others was how to recreate and perpetuate its essence in the large scale capitalist world beyond their estates. This involved the governing classes fulfilling unseen obligations to an anonymous poor in whom they could not monitor the outcomes of their aid and by whom they were not personally appreciated.

The Windeyers were among those who held that this problem was exacerbated in New South Wales because new and easy wealth had given position and power to many people with no ethic of noblesse oblige. They believed that lack of sympathy and neglect of social duties on the part of the wealthy amounted to an abuse of power which would lead to 'fatal estrangement between rich and poor' and would increase the need for police and gaols to control society. The first requirement, then, was to make the new middle classes aware of their obligations, as expressed in the lines of the Windeyers' favourite poet, Tennyson:

You that wanton in affluence,
Spare not now to be bountiful.

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8 Address by tenants of Tomago to Judge and Mrs Windeyer and reply to tenants of Tomago by Judge and Mrs Windeyer, S.M.H., 22 December 1886.


In spite of their subscription to the responsibilities of privilege, the Windeyers' model of charity was not the same as that of medieval England, where largesse dispensed via the Church had the simple purpose of salving consciences and preventing unrest by alleviating misery. To meet these goals required neither moral judgement on the part of the giver, nor individual improvement on the part of the recipient. By contrast, in the Windeyers' nineteenth century liberal view of charity the goal was to improve people and society. This was based on belief in the power of reason to solve problems and improve the world. It also assumed individual free-will and therefore held individuals responsible for their own fate. This modified the obligation of the privileged into a duty to improve rather than merely sustain the lower classes; created a dynamic rather than static model for charity; and produced tension between the notion that charity was the social responsibility of the wealthy and the idea that self-help was the personal responsibility of the poor.\footnote{11}

This tension was reinforced by the widely held belief, which originated in the writings of Thomas Malthus and was developed by such economists as Adam Smith and David Ricardo, that indiscriminate charity would damage the economy by encouraging a whole class of unproductive dependants. This view, to which the Windeyers subscribed, affected most nineteenth century charity. In New South Wales the Benevolent Society and other similar charities tried to guard against imposition by offering goods rather than money and then only offering a minimal level of sustenance.

\footnote{11}{For general outline of how charity metamorphosed into reform see S. Garton, \textit{Out of Luck}, Allen & Unwin, Sydney, 1990, pp 4-5.}
In England fear of pauperism underpinned the 1834 Poor Law, which made relief of the able bodied poor contingent upon them entering a strict and unpleasant workhouse. This was such a fearsome piece of legislation that part of the colonial rationale for avoiding pauperism was to avoid the necessity for a similar law.\textsuperscript{12}

This belief created a dilemma between encouraging charity in the giver and discouraging its acceptance by the receiver. The Windyers encompassed this dilemma by adopting both positions without acknowledging their potential incompatibility. For William, the obligations of his class became to combat in the privileged 'the selfish indifference which corrupts' and in the lower classes 'the pauperism which enfeebles'. Mary expressed a similar need to balance apparently opposing views when she said, 'The obligation is laid on us to ... promote in ourselves and others not only the influence of kindness and charity but the exercise of thrift and practical union in good work.'\textsuperscript{13}

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\textsuperscript{12} New South Wales did pass a Workhouse Act under Martin in 1866 but it was repealed by Cowper in 1868 without ever being implemented, see 30\textsuperscript{a} Vict., No. 6 and 32\textsuperscript{a} Vict., No. 10. Kennedy says incorrectly that the legislation was passed in 1868 and that the N.S.W. Workhouse Act was never proclaimed - R. Kennedy, Charity Warfare, Hyland House, Melbourne, 1985, p. 27.
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As indiscriminate charity came to be seen as counter-productive prevention of dependence was added to the obligations of the privileged classes. This led Windeyer to suggest 'the chief business of the wise seemed to consist in endeavouring to counteract the efforts of the good'. The Sydney Morning Herald reflected a similar position when it explained 'It is a duty in all spheres of life for the strong to help the weak, but it is an equal if not a higher duty in any nation to discourage imposture and indolence.'

Fear of the poor taking advantage of the charity of the rich, becoming accustomed to a dependent way of life and a drain on national resources, led to 'pauperism' becoming a derogatory label for long term dependency. Both the Windeyers feared the destructive effects of pauperism. In 1873, based on his belief that four percent of the population was receiving relief in the various charitable institutions of the colony, William commented that pauperism 'destroyed the well-being of society by sapping into the honest, independent spirit of self-help, without which a young community like ours could not get on.' This assumption coloured his interpretations as President of the 1873-4 Royal Commission into Public Charities, which was established partly in response to fears about 'the misdirection of charity'. His report reflected the general feeling that asylums should be carefully managed and that any system of charity should be closely monitored so that assistance was only given in response to absolute necessity. It particularly suggested that Government relief should be confined to

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14 Windeyer, speaking to the fifth annual meeting of the Sydney Night Refuge and Soup Kitchen, S.M.H., 31 July 1873; editorial, S.M.H., 10 March 1875.
those who were unable to earn their own living and that family members should be compelled to support each other. The lack of control in the Benevolent Asylum’s system of outdoor relief and the outpatient and dispensary systems of the Sydney Infirmary was criticised. Windeyer found it necessary ‘to provide some means of detecting imposition, and deciding as to real causes of distress’ and recommended the appointment at the Infirmary of ‘an officer charged with the special duty of inquiring into the social position of applicants for relief’. He concluded that ‘none can render greater service than by laying the foundation of institutions by which the growth of pauperism in this young country may be averted’.\(^1\)\(^5\) Mary told the Australian Conference on Charity in 1891 that, ‘the temporary aid which in some cases would re-establish an active useful member of society may, otherwise bestowed, encourage pauperism and tend to sap the inherent vigour of men and women still capable of good work.’\(^1\)\(^6\)

It was thus necessary for the Windeyers, as for many of their peers, to exercise careful discrimination among the objects of charitable relief in order to prevent pauperism while at the same time fulfilling their philanthropic obligations as members of the privileged classes. Not all potential recipients of charity could or would attain self-sufficiency. Of those who were incapable of


salvage, some were in this state through no fault of their own, while others were seen to be so through their own moral failure. The temporarily disadvantaged, such as the curable sick, deserved short-term treatment and support. Other victims of circumstances, such as the incurably sick, were 'deserving', but unsalvageable because they could never achieve self-sufficiency; they merited only minimal support. Those who were chronically disadvantaged through poverty or moral failing, but who could be salvaged by temporary assistance if they would make a personal effort, were given conditional support. Finally, incurable moral failures were doomed as neither deserving nor salvageable. The application of this discrimination contributed to William's mixed reputation as a judge; he took different stances depending on whether he viewed the criminal before him as a salvageable victim of circumstances or as a reprobate. In the former case he sought a path to individual reform, but in the latter his priorities were retribution and deterrence in order to protect society.

In their charity work the Windeyers focused their own benevolence on purposeful projects. They attempted to differentiate the 'deserving' from the 'undeserving' poor, to protect the charitable from those who would take advantage of their charity, and to raise the lowest classes to a minimal level, above which they would have the opportunity to achieve by their own efforts the place their merit deserved.

The Curable Sick
Caring for the sick was seen to be essentially woman's work so it is not surprising that this area proved to be of more concern to Mary than to William. Infirmaries for the sick were a very old form of
charity, based on offering temporary support and treatment to those who could be made fit to return to active work. In New South Wales the most notable such institution was the Sydney Infirmary, built between 1811 and 1817 as a convict hospital and taken over in 1848 by a voluntary body as the Sydney Infirmary and Dispensary. There were also a number of voluntary institutions of differing size and significance which provided care for the victims of disease. Mary made a notable contribution to one of these, the Thirlmere Home for Consumptives.

This home was typical of those institutions for the sick that were modelled on old style Christian charity. It was supported by private subscriptions and donations from the wealthy, based on the principle of 'their duty to see that the poor, the weak, the distressed, the infirm and the destitute were succoured as they should be in accordance with the preachings of the Saviour'. Many of the patients were sent there from metropolitan hospitals. It was, however, also a work with social benefit in as much as most patients recovered and returned to productive lives.17

Mary has been described by Brian Dickey as an 'influential figure' in this charity. She attended meetings in Sydney and travelled to Mittagong to visit the home. When she resigned from the Board, the President recorded the 'great loss sustained by the Home' and described her as 'one of Thirlmere's best and warmest friends'. She became involved in 1893 when it changed from being owned and maintained by one individual, Mr Goodlet, to being run under a public lease, which necessitated raising funds for its

17 Thirlmere Mayor's speech at Public Meeting, S.M.H., 15 September 1893.
continuance. She joined the management committee and became Vice-President, stating that she was convinced of the great amount of good it was doing and its great value to the community. She supported it both with her own donation of one guinea per year and by raising funds. In 1895 she collected a total of £13.1.0 from various sources. Her work with the home finished at the end of 1896 with her departure for England.18

A second venture of Mary's into the field of health care was her support for the establishment of a Women's Hospital in Crown Street. This was motivated by a mixture of traditional assumptions of responsibility, personal compassion and advanced thinking in looking at its value to the society of the future through its potential to reduce infant mortality. It was said by the Raymond Terrace Examiner to be 'a charity that she especially loved and nurtured', and she was closely involved with it from its beginning.19

The Crown Street Hospital began as an out-patients hospital and dispensary in four rooms and an attic. It was initiated by Dr James Graham after fatal epidemics of puerperal fever at the Benevolent Society's old Asylum, where he was the honorary medical adviser, were ascribed to the insanitary state of the 


At the end of 1896 the home ran into trouble when the lease expired. The Government purchased it and ran it on a pound for pound basis with subscribers. In 1898 it merged with the Victoria Homes movement for consumptives.

19 Raymond Terrace Examiner, 6 December 1912.
buildings. The medical staff and nurses gave their services gratuitously and the institution was maintained by private subscriptions and fees from nurses' classes. Its objectives were: to provide medical and surgical aid 'to poor and necessitous women', to aid 'poor married women' in their own homes during childbirth and to train obstetric nurses. In 1895 a management committee was formed to appeal for public support and Mary Windeyer was active in the collection of donations, raising a total of £35.16.0.. She was particularly attracted by its long-term aim, which was to provide a hospital for in-patients. In 1896 she suggested that an appropriate commemoration of the sixtieth year of Queen Victoria's reign would be to establish a 'Queen's Record Hospital', hoping 'that the public will no longer allow Sydney to bear the reproach of having no proper maternity hospital such as most great cities possess.' She became the first President of the Board of Directors, a post to which she was unanimously re-elected in September 1896.20

The Women's Hospital was 'well supported by the public' but, because a large capital amount for a hospital building was needed, Government support was sought. The committee argued that it would serve the interests of the state because it would 'tend to reduce the average length of illness in the case of a poor lying-in woman, and that means untold benefit to her children and to the household'. The Government granted a subsidy on the common condition that the Committee match it on a pound for pound basis,

20 S.M.H., 17 October 1893, 7 May 1895, 1 September 1896; Letter from Mary E. Windeyer, S.M.H., 22 December 1896; Women's Hospital, Annual Report, 30 June 1896.
but it also provided a £500 special grant for furniture and surgical instruments. The Committee then rented and furnished a home in Elizabeth Street as 'a Maternity Home for poor and helpless women' to justify an appeal to the public to complete the work. The first patient was admitted in October 1896. In June 1897, the hospital moved to new premises at the corner of Crown and Albion Streets.21

Mary's contributions to both the Thirlmere Home and the Women's Hospital illustrate her generous commitment to causes which she believed would restore to health those who would go on to contribute to the community. They were both institutions in which charity could be freely dispensed because the recipients could be regarded as deserving, their need could be regarded as temporary, and they would return to a useful place in society.

The Salvageable Poor

The salvageable poor were the focus of most of the Windeyers' charitable efforts because saving the redeemable was seen to contribute to the future well-being of society as a whole. Pauperism could be prevented by raising people to a level, a 'threshold of respectability', above which the individualistic creed of people rising or falling by their own efforts could be applied. The redeemable poor included: destitute children, who could be saved through support and education; wives who had been widowed or

deserted, but could be made self-sufficient through temporary financial aid; and male victims of circumstance who were able and willing to work but needed support through temporary difficulty and help in finding a job. In providing for these people noblesse oblige came into operation, but in a form in which simple Christian charity was overlaid with the assumption that it was possible and desirable to rescue those Windeyer described as 'legitimately struggling to improve the conditions of their existence'.

Children were the most attractive candidates for this kind of intervention. They were regarded as less responsible for their own circumstances, and more amenable to correction and improvement, than were adults. The chronically disadvantaged could be rescued by intervention which imbued them with an ethic of work, thrift, sobriety, respectability and, above all, self-help and raised them to a level from which they could help themselves.

Philanthropists and the state had long taken an interest in those classes of children who lived in unacceptable situations or were abandoned by their families. The practice had been to place these children in institutions. The Windeyers were prominent among a significant group of people who came to believe that this was counter-productive. They were convinced that institutions would not develop self-reliant, industrious and virtuous individuals, because they actively encouraged a dependency that would lead to pauperism. This was reflected in the report of the 1873-4 Royal Commission into Public Charities, in which William was particularly critical of Biloela Industrial School for girls, run by the State on

22 Address as Chancellor of the University of Sydney, 20 April 1895, typescript, M.L., AW 77/2, pp 6-7.
Cockatoo Island in Sydney Harbour, and Randwick Asylum for destitute children, privately administered by the New South Wales Society for the Relief of Destitute Children. In his report he recommended an alternative to institutional care - a scheme for fostering destitute children, known as boarding-out.

Similar programs were already operating in Britain, Victoria and South Australia. The Windeyes were strongly influenced by British philanthropists, Rosamond and Florence Davenport Hill, whom they befriended on the Hills' visit to Australia in 1873. Florence gave evidence to the New South Wales Royal Commission of the success of the system which had been implemented in England, Ireland and Scotland in the 1860s to overcome the failure of workhouse schools. Another friend, Caroline Emily Clark provided the Windeyes with knowledge of the South Australian system which had been inspired by these British schemes.23

Boarding-out involved taking children under the age of twelve years, who were in the care of the state, and placing them throughout the country with carefully chosen families, accessible to the visits of inspectors and close to churches and schools. Foster parents would receive a fixed weekly payment in return for treating the wards as their own children, including sending them to school and to church regularly. Ladies willing to act as guardians and protectors of the children would be appointed to observe and report

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on their treatment. It was seen by both William and Mary as a potent way of salvaging the children of the poor. They believed it 'best affords the protecting care and guiding influence which, in the divine economy of the world, are provided for the young through the agency of the family system.'

As in other arenas, the Windeyers worked on the assumption that the good of the society and the good of the individual were complementary. Boarding-out was seen to 'advantage' the children and the virtues it developed were equated with the children's 'happiness'. Mary expressed concern for the children as individuals as well as for the needs of society, about their emotional well-being as well as their moral training. After the development of boarding-out, as a lady visitor she looked for evidence of affection and strong attachments between the children and their foster parents. She saw adoption as the ultimate gesture of affection because it meant the substitute parent surrendered the government grant in order to have permanent care of the child. Apprenticing their own wards was regarded as another good sign. In 1897 she claimed, 'One of the most hopeful features of the boarding-out system in New South Wales was that the foster parents grew so fond of the boys and girls that they preferred to keep them and pay them a salary rather than let them go elsewhere to serve an apprenticeship.'


Central to the Windeyers' faith in boarding-out were romantic visions of children as innocents and home and family as places of protection and virtue. This ideal was apparently realised in their own family, described by those who visited it as happy and affectionate. William was often absent but his letters suggest he was a very doting, if somewhat moralising father. He taught his children to love nature, to be patient, careful and quiet, to get on with their lessons and to be kind to their brothers and sisters. He emphasised obligation and duty. Mary's ideal was that children should be brought up with 'truthfulness, purity, gentleness'.26 In spite of William's exposure to harsh realities through some of the cases he heard in court, he remained a romantic idealist about families. In one custody case towards the end of his career he concluded his judgement with a little homily, which assumed a girl would be happy 'in the comfortable home of a well-to-do blood relation', with 'all that wealth of love which human nature, as seen in every home, teaches us every grandmother is ready to lavish on her grandchild'.27

Boarding-out also appealed to the Windeyers' ideal of self-help because it was a process through which the lower classes would take responsibility for their own socialization to middle class values. Raising children within respectable families was seen as

26 Mary Windeyer addressing Mudgee W.C.T.U., The Western Post, 15 October 1895. Many family letters offer impressions of William as a father, either when he writes of his children to his mother, for example, William to Maria, 20 October 1859, M.L., AW 77/9; or letters from him to his children, for example, William to Willie, 9 April 1875 and 7 April 1881, in family papers held by Lacy Windeyer.

27 Ex Parte Elizabeth Rowlands, N.S.W.L.R., 16, 1895, (L), p. 260.
self-perpetuating because it would turn boys into good public citizens and girls into good mothers who would then create their own respectable families, in turn producing more good citizens. William believed boarding-out was particularly important for girls because mothers shaped future generations. He expected the softening influences of a home would develop their 'purest and noblest of womanly feelings'. A home environment was also needed for the adequate acquisition of domestic skills. Windeyer pointed out that these were inadequately developed in institutions, particularly Randwick Asylum where the mechanised kitchen was useless for training girls in home duties. Generally, William expected boarding-out to prevent dependency and pauperism by rearing the young of the lowest classes 'as helpful men and women, with individuality of character, and imbued with home feelings and independence of spirit'. This supports Garton's view that the enthusiasm for boarding-out was not the product of a sudden decline in asylum standards but of 'a new consciousness that made asylum conditions a more urgent focus of concern'.

The aim was to raise children to the threshold of respectability. There was no intention to elevate them beyond this point. It was a key principle that children be boarded-out in ordinary working class homes to train them to cope with working class life. From there they were expected to succeed as far as they could by their own ability. When recommending this Windeyer explained:

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the furnishings and accommodation of a bush home amongst the farming class, may indeed seem scant; but when sufficient for the honest, industrious, and independent poor, there is no reason why destitute children thrown upon the public bounty, should be maintained in a style far superior to that of others in their own rank...²⁹

The compatibility of the ideals of training children in working-class homes and of making them respectable depended on many of the working classes sharing the ideology and values of the governing classes. Opponents of boarding-out in New South Wales, such as Sir John Robertson, had serious doubts about whether this was so, but supporters like the Windeyers believed that there were many working class families above the respectability threshold. The 'conversion' of Robertson in 1879, when he was stung by a suggestion that the settlers of New South Wales were of a lower calibre than those in other colonies, was a significant step in gaining government support for boarding-out.³⁰

There was also debate about the motives of those of the working classes who would choose to participate in this scheme. Windeyer argued that through their involvement in boarding-out foster parents demonstrated 'that manly spirit of independence


³⁰Editorials, S.M.H., 9 June 1874, 13 June 1874, 26 April 1879, 20 February 1884; 'Sigma', 'Pauper Children in N.S.W.', in S.M.H., 20 February 1880.
which, itself refusing to accept charity, is ever ready to bestow it upon the wretched and the afflicted'. Not all agreed. Some opponents of boarding-out, ranging from Michael Fitzpatrick, a Catholic and a leading opponent of Parkes, to William Davies, a Wesleyan and a supporter of Parkes, argued that the children would be exploited, or taken in for the small financial reward involved.31

The development of boarding-out in New South Wales owed much to both William and Mary. On the surface, he formalised and legitimised the idea, particularly through his Report as President of the 1873-4 Royal Commission into Public Charities, and she contributed to putting it into practice and then persuading politicians to pass necessary legislation. It is evident, however, that she had some input to the Royal Commission report and that she encouraged her work towards the eventual realisation of boarding-out in practice.

Mary's first attempt to implement boarding-out was through the Ashfield Infants Home, after she joined its committee. She wanted to use it as a 'receiving house' from which to board-out the many children who were never claimed, or re-claimed, by their parents. This initiative failed because the committee of the home, particularly the influential Minnie Smith, did not believe homes of sufficient standard could be found. Mary expressed her frustration

at being 'single handed in a committee which does not know anything of the subject'.

After being thwarted at Ashfield, Mary formed a Boarding-out Society in 1879 at a meeting with Mrs Garran, the wife of Andrew Garran, the editor of the *Sydney Morning Herald*, and Marion Jefferis, the wife of James Jefferis, a Congregational Clergyman from South Australia. Mary could be regarded as a prime mover as she had considered the idea for several years previously and had made previous unsuccessful attempts to form such a society. This Society worked as a voluntary agency, but it required government financial support. Mary's relationship with Henry Parkes seems to have contributed to its ability to gain this support. The Society was allowed to meet at the office of the Inspector of Public Charities, obtained permission for its prospectus to be printed through the Government Printing Office and gained free passes on railways for children placed out in country areas. The Society also required direct financial assistance and in November 1879 it received a small government grant of £200, largely at the instigation of Parkes and Robertson. The following year it received a further grant of £400.

32 Mary Windeyer to Henry Parkes, 24 April, 1879, P.C., Vol. 60, p. 241-3, M.L., A 930. Once boarding-out was established the Infants' Home adopted it for some children over the age of four.

33 See Emily Clark to Mary Windeyer, 31 December 1876, Caroline Emily Clark Letters, M.L., Ac 47/1; Mary Windeyer to Henry Parkes, 24 April, 1879, P.C., Vol. 60, pp 241-2, M.L., A 930; Inspector of Public Charities to Colonial Secretary, 4 June 1879, annotated by Henry Parkes 5 June 1879, C.S.I.L. 79/4248, A.A.N.S.W., 1/2444.
As the Society needed official permission to acquire children who could be boarded-out, Mary's relationship with Parkes again came in useful. After an inauspicious start illegally intercepting some children headed for the Benevolent Asylum, the Society was permitted by Parkes to place children who had been committed to the care of the state. He made it a condition that all children to be boarded-out should pass through the Benevolent Asylum 'in order to prevent the possibility of any irregularities arising ... in the absence of a proper central receiving depot'.³⁴ From then on, the Boarding-out Society took only state children because this meant that if the parents defaulted in their payments the children could be supported with Government funds and sent free to Government schools.

Experience led Mary and the other members of the Boarding-Out Society to desire more official support of their activities. They saw the work could be improved by the extension of regular official control in a number of areas, such as facilitating medical attendance and applications for adoption. They also felt that state support would legitimate boarding-out and allow the practice to expand. Their work gained the necessary political and public support to achieve the 1881 State Children Relief Act which brought boarding-out formally under the auspices of the Government. The success of the initial experiment was cited by the politicians who supported the legislation, such as Parkes and Arthur Renwick, and gave the Sydney Morning Herald evidence with which to support boarding-out according to a range of

³⁴ Note by Henry Parkes, 24 March 1880, C.S.I.L., 80/1932, A.A.N.S.W., 1/2477.
pragmatic criteria. Boarding-out was shown to have economic advantages, being cheaper than maintaining children in asylums, and plenty of suitable homes seemed to be available.  

Mary helped Parkes to draft the legislation. The State Children's Relief Board was comprised of volunteers and was virtually a continuation of the Boarding-out Society, but with official sanction. While in the public sphere, it also remained within the woman's sphere, being concerned with children. It had six women among its nine members, including Mary Windeyer. Its regulations were almost identical to those previously adopted by the Boarding-out Society and, although it appointed a paid inspector, it also continued the previous system of using lady volunteers to monitor the children.  

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36 Parkes to Mary Windeyer, 2 March 1881, *Windeyer Family Papers*, M.L., MSS 186/13; Parkes, Legislative Assembly, *S.M.H.*, 18 March 1881. Some historians, including Garton and Dickey, have emphasised that the Act broke new ground in the area of state intervention by creating a State Children's Relief Department, but the transfer to state control took place without significant alteration to the basic system as established by Mary Windeyer and her associates - B. Dickey, *No Charity There*, Allen and Unwin, Sydney, 1987, p. 61; S. Garton, 'Sir Charles MacKellar: Psychiatry, Eugenics and Child Welfare in New South Wales, 1900-1914', *Historical Studies*, Vol. 22, No. 86, April 1986, p. 29.

Ramsland attributes to Parkes the ideas of Government subsidy, lady visitors and reports from the local school masters, but these suggestions were in Windeyer's report long before they were suggested by Parkes. - J. Ramsland, 'The Development of Boarding-Out systems in Australia: A Series of Welfare Experiments in Child Care 1860-1910', *J.R.A.H.S.*, Vol. 60, No. 3, September 1974, p. 195; 'Royal Commission into the Working and Management of Public
Boarding-out might be regarded as one of the Windeyers' greatest successes. Primarily as a result of their work, the boarding-out system in New South Wales, while following the development of boarding-out schemes elsewhere, became something of a prototype. The scheme that developed was more extensive than previous systems, with both neglected and delinquent children being eligible. It was particularly admired in England, where Florence Hill enlisted the Windeyers' support for the British boarding-out movement and their work was recognised by the State Children's Aid Association of London and the British Boarding Out and Cottage Training Homes Association.\textsuperscript{37} It has been regarded by many historians as a major contribution to the social history of New South Wales and Mary's practical contribution to its establishment was acknowledged both by co-workers and public recognition.\textsuperscript{38} It has not, however, been without its critics.


\textsuperscript{38} There were many contemporary tributes to the Windeyers' contribution to boarding-out. Private acknowledgments included: Rosamond Hill to Mary Windeyer, 2 September 1874, Windeyer Family Papers, M.L., MSS, 186/13; Florence Davenport Hill to Windeyer, 25 December 1888, Windeyer Family Papers, M.L., MSS 186/9; Florence Davenport Hill to Mary Windeyer, 3 July
While boarding-out has been portrayed by such welfare historians as Dickey and Ramsland as a radical reform, it has been seen by Godden as resorting to an old solution, the 'practice of raising needy children in families other than their own immediate one'. The intent of strengthening the patriarchal family has also left boarding-out open to criticism from those such as Mason and Horsburgh who disapprove of this conservatism.39

Radi has condemned the State Children's Relief Board for 'appalling logic' because they would not consider boarding a child in its own home. This issue was not, however, as simple as this comment would suggest. Mary Windeyer, herself, believed in the importance of 'the connection between mother and child' and the Board did consider the possibility of boarding-out children with their own mothers as early as June 1882 when it acknowledged that


there might be some respectable, hard working but 'necessitous' widows who could have their own children placed with them. Mary supported this and expressed concern that many who were forced to give up their children by poverty would have preferred to keep them if enabled by limited state support to do so. The Attorney-General ruled, however, that children could not be placed out with their own mothers under the existing legislation. The only concession that could be made was that 'respectable' mothers were allowed to take their children to their new homes. This was commended as saving the Department money for an attendant on the journey and because 'the mothers were comforted with the assurance from their own observations of the excellence of the homes selected for their children'.

In 1896 the law was changed when Mary Windeyer helped to draft the State Children Relief Act Amendment Act containing a provision giving the Board the power to place children with their own widowed or deserted mothers. Godden suggests this was a response to a growing idea that babies needed their mothers, but Garton attributes it to a shortage of suitable boarding-out facilities. Both explanations were probably valid and each of the reasons would have appealed to Mary Windeyer. She believed that the home of a mother in 'an abject state of destitution' would never be a suitable environment so the provision of state support was crucial in allowing children to be left with their own mothers. Mary was,

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however, concerned at the threat to the social fabric if parents were encouraged to become dependent on the state to support their children. This fear led to safeguards in the Act. To discourage biological mothers from becoming dependent on the state, they were paid only half the amount that was paid to foster mothers. There was also a move to remove deserted wives from this provision as it was felt that the clause would encourage husbands to desert. Eventually it was agreed that deserted wives could be assisted but only on the unanimous recommendation of the Board.41

Another focus for modern critics of boarding-out is the forcible removal of Aboriginal children. Mary's attitude to the boarding-out of Aboriginal children was common at the time and consistent with her strong commitment to social homogeneity. Aboriginal people were the only group to have their children forcibly removed from them in order for them to be boarded-out. In all other cases, either the parents had to demonstrate their lack of suitability by surrendering their children through the state, or a court had already removed the children for being neglected or delinquent. The state was prepared to be more interventionist with Aboriginal children because they were seen to be in need of 'civilising' at the most fundamental level. Aboriginal people were perceived as a threat to white respectable society because of their wandering habits, their apparent 'idleness', their 'pagan' customs, particularly failure to enter into Christian marriages before bearing

41 60° Vic. No. 9; J.J. Godden, 'Philanthropy and the Woman's Sphere, Sydney, 1870-circa 1900', p. 266; S. Garton, Out of Luck, p. 92; Mary Windeyer to S.M.H., draft of letter, 5 May 1896, M.L., 77/15 (either not sent or not printed).
children, their failure to 'discipline' their children and their failure to observe white standards of cleanliness and sanitation.

In 1885 the Aborigines Board drew the attention of the State Children's Relief Board to the possibility of boarding-out the 400 half-caste children who attended public schools but still lived in the Aboriginal people's camps. Arthur Renwick, the President of the State Children's Relief Board, saw 'separating them from their parents, and making State children of them', as merely a legal difficulty which should be overcome. The main problem was that 'the contamination of camp life', might have corrupted them and 'there would be a danger of them corrupting other children'. Mary Windeyer suggested that these children be given some sort of preliminary training and discipline on industrial farms before boarding them out or sending them into families for service. It was then resolved 'that the board should heartily co-operate with the Aborigines protectorate in any plan for the advantage of those children'. 42 The fact that the 'advantage' of the children was claimed to be the goal suggests that single minded commitment to the advantages of a homogeneous society based on the Board's cultural model was the motivating force. They rejected Aboriginal culture but saw themselves as improving the opportunities of Aboriginal individuals within colonial society.

Mary remained a conscientious member of the State Children's Relief Board until 1897, only resigning because of plans to travel overseas. By then all serious opposition had died out and

42 Monthly meeting of S.C.R.B., S.M.H., 30 June 1885.
boarding-out was well on the way to becoming established as the major form of state care for children.43

While salvaging children was seen as the best way of averting pauperism, other charities supported by the Windeyers focussed on those destitute adults whose condition was not seen to be a fault of personal failing and who were therefore regarded as capable of restoration. In the case of adults this was often possible through temporary external support in a form that would allow them to re-gain self-sufficiency. The Temporary Aid Society was one such attempt. It aimed to assist those whose respectability made them clearly salvageable. Mary Windeyer helped to initiate this Society, which was specifically designed to aid respectable ladies in temporary difficulty. It met her desire to support needy women who had been deserted or widowed and thereby left to fight life's battle without a man's support. With Mrs Milbourne Marsh and Mrs Wise, Mary formed a committee in August 1884 to provide the capital to establish needy women in a business. They sought to


Anne O'Brien suggests an increase in the numbers of children in institutions between 1880 and 1910 represents 'an upsurge in institutional care', but in 1881, 87% of the children removed from their homes were placed in institutions, whereas by 1911 only 29% were placed in institutions. A. O'Brien, *Poverty's Prison*, Melbourne University Press, Carlton,1988, pp 169-70, 216-7.
set these women on the path to respectable independence through gifts or loans for such items as mangles or sewing-machines.\textsuperscript{44}

The aid was designed to save women who were close enough to the threshold of respectability to be easily lifted back over it. The emphasis on assisting women who would become able to help themselves meant that most of them were from the more respectable classes. This has led to debate among historians about whether the Temporary Aid Society was guilty of a bias towards the respectable classes. The type of women they helped certainly would have elicited a high level of sympathy among the organisers. In the case of Mary Windeyer, her direct knowledge of William's mother's difficulties after she was widowed must have contributed to her sympathy for this cause.\textsuperscript{45}

\textsuperscript{44} This small venture took on significance as the inspiration for the Queen Victoria Jubilee Fund, which aided women in the same way, but Mary Windeyer did not become significantly involved with the Queen's Fund. -S.M.H., 26 August 1884; editorial, S.M.H., 7 March 1888; 'Eminent Women in Australia', Town and Country Journal, 9 November 1908, p. 25; Mary Windeyer Obituary, Raymond Terrace Examiner, 6 December 1912.

\textsuperscript{45} Godden has criticised the Temporary Aid Society for its apparent class bias in favouring 'indigent ladies' but this misses the point that the criterion was salvageability as much as need. Godden has also suggested it excluded 'those who were most desperately in need'. This presumed link between class and desperation is not shared by Anne O'Brien, who comments more favourably on the class bias, saying, 'It recognized, even before the crisis of the 1890s, that poverty could overtake any women, not only working-class women.' Both Godden and O'Brien agree that the class of the candidates created unusual sympathy in the organisers. - J.J. Godden, 'Philanthropy and the Woman's Sphere, Sydney, 1870-circa 1900', pp 209-10; A. O'Brien, Poverty's Prison, p. 204.
William made a significant contribution to rescuing the temporarily destitute through the City Night Refuge and Soup Kitchen. It met Windeyer's need to help the poor while discouraging pauperism and encouraging self-help by imposing strict controls. He believed 'that the institution was founded upon proper principles, and aided people to help themselves' and pointed out that the aim was 'to foster, as far as it could, a spirit of self-reliance'. The Hill sisters on visiting the institution in November 1873 commented that it appeared 'admirably calculated to sift the idle from the industrious, and to afford opportunity to all who desire it to retrieve their characters and to rise to an independent position in life.'

It originated in an attempt to combat crime by offering temporary aid for unemployed men, beginning operations in 1868 in a rented house at 535 Kent Street with all the equipment and labour involved being donated. Although it functioned as a short-term refuge for the able-bodied unemployed, it also took in the sick until they either became well or entered hospital and the old and feeble until they could get into a Government asylum. It struck a reciprocal agreement with the Infirmary, sending them the sick and receiving the convalescent. It also received men just liberated from gaol. Windeyer's first recorded involvement was a speech at their first Annual General Meeting on 6 July 1869. He supported the

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institution as Vice-president from 1873 to 1894 and President from 1894 to his death in 1897. He also served as a Trustee.\textsuperscript{47}

His support was motivated by his feeling of obligation to 'those who were reduced to poverty by no fault of their own' combined with a desire to protect the public 'against begging impostors'. This protection was achieved by providing only as much support as was necessary to 'relieve temporary and pressing want' and by using a system common to many charities with subscribers receiving tickets to the institution which they handed out to the genuinely needy. This meant, according to Windeyer, 'the indigent could obtain food, shelter, and perhaps work' but 'the idle, the dissolute, and the genuine impostor could not abuse your bounty.' The ticket entitled the holders to the essential minimum of one meal (dinner) and shelter at night. The meals were basically tea and bread but other things such as cheese or fish were added if they had been received as donations. A bed meant a blanket on the floor but mattresses were sometimes provided for more respectable persons. From 1885 all residents were also given a warm breakfast of porridge.\textsuperscript{48}

For those who wanted more sustenance than the basic ticket would allow there was a 'work test' and breakfast and supper were supplied on condition that the recipient worked during the afternoon. All the labour of the institution was thus performed by

\textsuperscript{47} S.M.H., 7 July 1869; \textit{Fifty Years of the City Night Refuge and Soup Kitchen}, Sydney, 1917, pp 4, 7, 14.

\textsuperscript{48} Windeyer speaking to A.G.M. of Night Refuge and Soup Kitchen, S.M.H., 7 July 1869; \textit{City Night Refuge and Soup Kitchen, Eighteenth Annual Report}, 30 June 1885, p. 5.
the inmates and, if all the work was done, picking oakum was used as a 'labour test' for the rest. Windeyer saw the value of this work as primarily 'for the purposes of enforcing discipline'. This reflected his vision of the goal of the institution as salvage rather than mere support.

To contribute to the rescue of the inmates, 'strong moral discipline' was essential. The gates shut at 9:30 pm, which was bed time. The inmates rose at 5:30 am in summer and 6:30 am in winter. If they were not employed on the premises they had to absent themselves from 8:30 am until noon in search of work. They had to wash as required. There was to be no smoking indoors, no gambling and no swearing. Overt attempts were also made to induce moral reform. City Missionaries and other Christian friends gave 'suitable' religious teaching. Services were held every Wednesday night to which all were invited but at which attendance was optional. There was also a service 'in the neighbourhood' on Sundays. Because the drinking habits of the men were regarded as their 'great bane' they were also 'solicited to sign the temperance pledge'. By 1881 there were earnest Christian addresses three nights a week 'to raise them socially and morally'. In 1885 a harmonium was donated which enlivened the performance of religious services. Moral advice also accompanied the benevolence of a free Christmas dinner when partakers received a 'Christmas letter' on temperance or religious subjects.50

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49 Windeyer speaking to annual meeting, S.M.H., 20 July 1875.

50 City Night Refuge and Soup Kitchen, Annual Reports, 1872-1885.
In pursuit of its principles of self-help, the institution started a free registry office where applicants for relief were introduced to potential employers. A condition of being placed by this office was that anyone who refused a situation or abandoned one without a good reason was refused re-entry to the Refuge. This seems to have been a successful aspect of the Institution as many employers returned year after year. A newspaper was also provided every morning so that the men could 'see what situations are open'. Where getting work involved travel, even to places as far as Melbourne, travel assistance was provided with free rail passes. Some men were also helped to set up in business as hawkers, etc. By 1877 the refuge reported that, "Men going from the institution have been known to keep their situations for years."\(^51\)

Some of the customers were respectable and educated men who were catered for with books and papers being donated for their use. These professional men were the most difficult customers because it was easier to obtain work for those who could do hard manual labour, but some were able to be placed in appropriate jobs.\(^52\)

Women were also placed via the registry, which particularly catered for middle aged women without references, who had been forced by desertion or other family trouble into domestic service. There was no accommodation for women at Kent Street, but the committee found and funded lodgings nearby for the "few decent

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\(^52\) *City Night Refuge and Soup Kitchen, Annual Reports*, 1871-1885.
women who occasionally apply until a place was obtained for them. Windeyer reported, 'Women fit to take situations very seldom present themselves, those who do come for food are of the lowest class, or else are very old and in destitute circumstances. Women with children often need assistance and receive food and shelter, and efforts are made to find them employment and to provide for their little ones.\(^5\)

In keeping with Windeyer's belief in a mixture of voluntarism and state support, the Night Refuge and Soup Kitchen was operated from private subscriptions and donations in both cash and kind but it asked for a government contribution towards capital expenses. In 1875 the Legislative Assembly considered placing £1,000 on the Supplementary Estimates towards the erection of a building but this failed, although through absence of a quorum rather than through active opposition. The *Sydney Morning Herald* suggested that the institution was fortunate that the politicians had been kept from becoming involved but Windeyer believed 'they had good grounds for asking the Government for assistance towards a new building' and hoped that those who had initiated the debate would continue their efforts.\(^6\)

Windeyer's hopes came to fruition in 1878. In response to a deputation, the Colonial Secretary, Michael Fitzpatrick, promised to ask Parliament for a vote of £1000 for the purchase of a building or

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\(^6\) *S.M.H.*, 19-20 July 1875.
site 'on the usual conditions that it should supplement private subscriptions to a like amount'. The following year this condition was met and the first grant of £1000 was received in March. Windeyer was one of two trustees of the building fund account, the other being the Hon James Watson. The Committee aimed to found the charity on a permanent basis with its own freehold premises so a building in Kent Street was purchased in 1879. The mortgage was cleared in September 1883 by the combination of private donations and matching government grant. The institution then proposed to expand. Further government support was forthcoming on the same conditions as before and a new building was completed free of debt and opened by Lord Carrington on 3 October 1887.55

Both the Temporary Aid Fund and the Night Refuge and Soup Kitchen were pet charities of the Windeyers because they met their basic criteria. They provided temporary aid to support able-bodied and respectable adults in times of difficulty. The aid was provided in such a way that it would eliminate pretenders and restore the recipients to self-sufficiency as quickly as possible.

**Salvageable sinners**

There was another category of social dependents of concern to the Windeyers, those whose misfortune was seen to be due to redeemable character deficiency. They were regarded as salvageable through temporary support which included measures to rectify the moral failing that made them dependent. Those of

55 S.M.H., 5 October 1877, 17 February 1878, 12 April 1879, 23 July 1879, 4 August 1880, 11 June 1881, 7 July 1883, 27 August 1889.
this class who attracted the attention of the Windeyers included fallen women, victims of drink and repentant criminals. In each case the Windeyers supported efforts to create for the sinner a path to individual reform. In each case their remedy illustrated a mixture of forgiveness, charity and faith in the possibility of individual salvation.

Mary became involved with salvaging sinners through her concern for the plight of unmarried mothers and their unwanted babies. This led her to support the Ashfield Infants' Home, an 'innovative institution' which initially met with considerable hostility. It was seen by critics as an incentive to immorality. Despite its dubious reputation, William and Mary were active supporters and this tells us much about their reform priorities. The Home was established as the Sydney Foundling Hospital in 1874 in response to press and public concern about a growing number of reported cases of infanticide. It was seen as a women's concern because 'It is impossible that they can quietly stand by while an innocent life is left to perish.' In his first report on it in 1881 the Inspector of Public Charities commended 'the disinterested benevolence and the self-sacrificing character of the Society' in dealing with 'a mortality which is one of the darkest blots on our civilization'.

This charity appealed both to Mary's traditional Christian compassion and to her desire to improve the future by rescuing mothers and children. Her involvement reflected the strength of

her traditional Christian belief in repentance and forgiveness and a corresponding conviction that even fallen women were salvageable. She expressed her compassion for any girl 'who has hung the burden of her own sin and another’s sin around her neck' and her belief that 'decency and honesty are consistent with frailty and folly'. She believed there was no higher service to God than 'the rescue of our sisters from the Slough of Despond' and saw her role as 'bringing them out of the horrible pit and setting their feet upon a rock'.

At the same time, the way in which the home was run ensured that it encouraged self-help and did not pauperise those whom it supported. At first any child brought to the door was admitted but this was changed within the first year of operation to avoid abuse by married women and those who were able to support their offspring. Thereafter, each application for admission was decided on its own merits. The child had to be under three months old and either illegitimate or the offspring of a serviceman who had died in action. To avoid encouraging vice, the petitioner had to have previous good character and the father had to have deserted. In 1876 the charity was broadened and the rules amended to include destitute infants as well as foundlings. Following this, in August 1877, the name was changed from Sydney Foundling Hospital to Infants' Home. In order to deter any but the really needy the Home had a strict and well publicized rule

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57 Mary Windeyer to editor, S.M.H., undated, Julia R. Bensusan, Scrapbook, M.L., MSS 1698, p. 61; Notes in Mary Windeyer's handwriting for her speech on the opening of the Merewether House of Hope, 1906, Windeyer Family Correspondence, Newcastle Region Public Library, A 155.
that mothers had to stay with their infants at the time of their admission; if they went out thereafter they had to make weekly payments for the baby's upkeep. Parents who left babies in the home and then wanted to redeem them were expected to pay any arrears and the baby might not be returned until they did. Parents were even required to pay funeral expenses if their babies died in the home. Not surprisingly, in such instances letters of reminder were often called for.\(^{58}\)

As the aim of the home was salvation of both mother and child, the names of mothers at the Infants' Home were generally kept as confidential as possible so that their shame would remain unknown and they might gain self-respect. As part of her work Mary took an interest in individual cases and in support of restoring self-sufficiency helped applicants to write advertisements seeking situations.\(^{59}\)

Mary showed her early support with a donation of baby linen in July 1874. She was later invited to be Honorary Treasurer and held this position on the Board from July 1877 to June 1880, during which time she attended meetings regularly and quite often signed the minutes as 'Acting President'. When she resigned as Treasurer, she remained on the Committee and in 1884 she was invited to hold the position of Vice-President. She resigned from the Committee in May 1885. William supported her in this work


\(^{59}\) Letter from Minnie Smith, Hon. Secretary, to S.M.H., 22 August 1877.
and while she was active on the committee she and William both made regular donations of money and contributed goods, including trees and plants, jam, a fire guard, a cot, a pig, and clothing. In October 1877 Mary offered to organise a sale at her own home of items left over from a bazaar. She was described in her obituary as 'one of its guiding hands and upholders'.

Financing this unpopular charity posed a continuing problem for Mary as Treasurer. Government support was hard to obtain because the Home was seen as offering a 'premium upon bastardry' and 'an inducement for further crimes'. In its early years, even Henry Parkes spoke against the institution saying he was not satisfied that it was necessary and 'did not believe that foundling institutions tended to check infanticide'. It was also pointed out that the Benevolent Asylum already had a Foundling Hospital, which might suffice.

The first government support was a mixed blessing. It came when a grant of £1000 was passed in the Estimates for 1875, which was, unusually, unconditional. This grant, however, exposed the Infants' Home to public and political criticism. An application for another grant in aid of the Home led to a detailed report from the Inspector of Public Charities to the Colonial Secretary, John Robertson. As a result, aid was denied. The Inspector recommended against it because the House was 'unsuitable for the

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60 Obituary, Daily Telegraph, 5 December 1912. See Minute Book of Sydney Foundling Institution for 1874, M.L., MSS 2983/1, 15 July 1874; Minute Books of Sydney Infants' Home for 1876-85, M.L., MSS 2983/3-5.

61 Legislative Assembly Debates, S.M.H., 15 April 1875; S.M.H., 4 July 1879.
purpose' and the accounts were 'not kept in a proper or regular manner'. He argued that if the institution was 'properly carried out' it would not require aid because 'if the Institution answers its purpose of reforming and enabling the mothers to earn their living and hide their shame surely all should pay for their own children and then the Institution would be nearly self-supporting.' The Committee then wrote to the Colonial Secretary asking not for an unconditional grant but for a sum to be placed on the Estimates to be equalled by the public contribution to the institution. In 1877 the Estimates proposed the amount of £1805 10s for the Foundling Hospital to match £1800 raised by the ladies themselves.

Both Parkes and William Windeyer had by this time become supporters. This was possibly partly due to Mary's lobbying, as she had just joined the committee, although Parkes claimed that he was not 'under the influence of the promoters of the institution' and offered as proof that he had twice previously opposed such a vote. He rationalised that as the institution had been in existence for five years it might have a valid claim. William, who was then a Member of the Legislative Assembly, said that he had been opposed to such institutions but on inquiry he 'had been led to conclude that the foundling hospital was calculated to have a very beneficent effect'. He believed the infant mortality there was less than in other institutions and that the management took care to prevent

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62 Inspector of Public Charities to Colonial Secretary, 11 November 1875, C.S.I.L. 75/8141, A.A.N.S.W., 1/2333.

63 Minute Book of Sydney Infants' Home for 1876-8, M.L., MSS 2983/3, 13 November 1876.
imposition by the unworthy. Other politicians remained sceptical. Alexander Stuart suggested the Benevolent Asylum already did an adequate job but Windeyer interjected that infants could only stay there for a few weeks. John McElhone, a supporter of Stuart, attacked Windeyer for his 'namby-pamby notions' and said that he did not support voting money 'for ladies to play the lady bountiful'.

The Legislative Assembly rejected the vote and the _Sydney Morning Herald_ commented that 'the voice of the majority of the Assembly in this instance represents that of a majority of the people outside'. Mary responded in a letter to the editor of the _Sydney Morning Herald_, admitting the danger of pauperism but pointing out that 'A Government which holds it to be sound policy to grant large sums for immigration ... should not neglect any means of preserving life'. She acknowledged the argument of 'survival of the fittest' but went on to remind the Government that it already supported lunatics, drunkards, imbeciles and idiots. She drew attention to the cost to the State of infanticide and reminded the Government that it had to pay full maintenance on children in the Benevolent Asylum, whereas at Ashfield the mothers contributed towards the keep of their babies.

It was at this time, when the institution was on the verge of being forced to close its doors to any more admissions, that Mary Windeyer accepted the position of Treasurer. She had all the resources and contacts that were useful at such a time of crisis.

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64 Legislative Assembly Debates, _S.M.H._, 19 July 1877.

She demonstrated skills in both public relations and political lobbying. When the Committee decided to promote itself by circulating its Annual Report, the extent of coverage in the Hunter region shows Mary's influence at work. The *Maitland Mercury* gave a lengthy report to the home. The *Newcastle Morning Herald* wrote supporting the home and attacking the Government for 'as miserable display of Pharisaism to refuse assistance in this direction, as was ever enacted by a professedly Christian Legislature'. It named Mary Windeyer as Honorary Treasurer and pointed out that 'Unless pecuniary aid is forwarded soon, the institution must collapse.' In conclusion, it quoted Mary, herself, saying, 'We ask the public to pay the debt, and discharge the duty which the State repudiates. I cannot think that those who have always answered with ready and open hand any cry of distress from other countries will let our own little waifs perish for want of timely succour.'

Her political lobbying also proved useful. By late 1878 the crisis was serious. The institution had to turn away cases for admission because it was full and purchases had to be confined to 'necessary food'. The Premier, James Farnell, had refused to place the Home on the Estimates on the grounds that the previous rejection forced him to the reluctant conclusion that it would be useless. In December 1878 he was defeated and Parkes returned to Government. When the Committee resolved to request an

allowance 'for the support of all children who had been abandoned in or near the grounds of the home', Mary Windeyer decided to use her long-standing connection with him. She wrote him a letter asking him to visit the home and promising to 'endavour by talking all the time [her emphasis] to get as much said as possible on some matters in which I want you to be interested'. She boldly concluded, 'should you think this is too free a disposal of the time of the Colonial Secretary or if you are alarmed at the prospect of the amount of talk I propose, you will kindly signify to me in polite language that you will see me farther first'. 67 Perhaps her tactic was successful. In 1879 a Government grant of £1,000 was made on condition that the sum was matched by the institution.

The Home remained dependent on private support through subscriptions, donations, and philanthropic activities such as concerts, plays, bazaars, and balls. To raise the necessary matching private money, a number of public appeals were launched and a series of special financial meetings were held, some at Mary Windeyer's home. In July 1879 a £2000 donation from Mrs Thomas Walker enabled the committee to form the nucleus of a Perpetual Subscribers Fund. 68

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68 S.M.H., 4 July 1879. Thomas Walker was a major benefactor of the institution. He owned the building in which it operated and in 1886 the property was conveyed by him on his death to trustees appointed by the committee. Minute Book of Ashfield Infants' Home for 1885-7, M.L., MSS 2983/6, 27 April 1886.
During 1879 a move was made towards making the Home generally more self-sufficient by establishing a commercial steam laundry employing the inmates. This was consistent with the ideal of self-help and parliament supported it with a grant of £500. The laundry was opened in June 1880. In 1882 it was decided that it should continue, that a windmill pump should be purchased and 'a competent head Laundress' engaged. By the end of that year, however, the Committee reconsidered the laundry's future, 'as the expense is great and the return small', and in January 1883 the laundry was discontinued 'on condition that this Home employ its own labour' and take in needlework if sufficient employment was not available.69

In 1882 the Home again received a government grant of £1000 on the usual conditions that they matched it; by March they were in a position to apply for some of it. Contributions, however, remained so small, that they were not able to claim the full amount. Another problem associated with Government grants was that the Home became obliged to receive children from the state. In August 1883, Mary Windeyer went to see the Colonial Secretary about proper support for these children, but little was achieved and the problem outlasted her commitment to the home.70

In 1885 Mary resigned from the Committee. On her resignation, she was noted 'for the warm interest and unfailing energy' she had always shown in the work of the institution and 'for

69 S.M.H., 23 January 1879, 4 July 1879; Minute Book of Ashfield Infants' Home for 1881-5, M.L., MSS 2983/5.

70 Minute Books of Sydney Infants' Home for 1878-85, M.L., MSS 2983/4-5.
much kindly sympathy bestowed upon its inmates', but after she resigned she seemed to completely sever her connection with the Home, not even being listed among donors or subscribers. It seems probable that she had a falling out with the Committee but there are few clues, although she did tell Mrs Docker that 'it would be a great relief to her to give up her work at Ashfield'. At the meeting after she resigned there was an outcry about members not attending meetings and the work having to be done by so few, but there is no evidence of a direct relationship between this and her resignation. The only other clue to a possible difference was in July 1884 when she had protested 'against business of an important nature being transacted at special meetings' because 'she thought it did not give sufficient notice for all to be present who might wish to take interest in matters discussed'. She was absent from meetings from 2 December 1884 to 17 February 1885, but that could have merely been caused by spending the summer at Tomago.71

William Windeyer, who had given occasional legal advice regarding inmates and applicants, continued his connection with the Home as a Trustee from 1886-97. In 1893 this involved him in the continuing difficulties of the Home. The Home lost heavily in the crash of the New Oriental Bank in 1892 and by March 1893 only £25 was available to the treasurer. She asked for a £200 overdraft, which required the Trustees to sign a guarantee. A

meeting of Trustees was, however, delayed because William was away at Broken Hill. It was then decided that as there was to be a cake fair they would not yet ask the trustees to sign the guarantee. The proceedings of the cake fair came to £149.16.6 and the crisis was averted.72

The Windeyers' involvement with the Ashfield Home reflected their belief that some sinners could be salvaged, their sense of obligation to participate in that salvation and their conviction that the salvation of individual sinners would also contribute to the benefit of society as a whole. The same beliefs attracted them to the temperance movement. Drinking, because it deprived a man of autonomy, was a useful explanation for liberals when their model of rational behaviour failed. It was often used to account for a fall below the threshold of respectability and for people's inability to help themselves. The social and individual evils of drinking were recognised by the leaders of New South Wales society of both sexes. Intervention was seen as justified to protect individuals from themselves and as necessary to protect innocent victims, particularly the wives and children of drunken husbands.73 The Windeyers' temperance work was thus directed towards both salvageable sinners and their innocent victims.

The temperance crusade has been criticised by Windschuttle for imposing middle class values 'without seeking to


understand the culture of the lower classes, or why they drank'. This is quite consistent with the Windeyers' desire to create a society in which all shared the same values. They did not wish to understand the culture of the working classes. Temperance was espoused as part of the Windeyers' desire to counteract the masculine irresponsibility and violence that they perceived as dominating working class culture. In keeping with widely held nineteenth century views, they saw male drinking causing families to live in poverty, denying wives a rewarding home life and producing domestic violence. They promoted abstinence to give workers and their families a better life as well as improving their ability to contribute to the overall good of society. These beliefs were shared by many of the 'respectable' working class, making them allies of the middle classes.\(^74\)

Mary Windeyer was convinced that drink was a 'terrible curse' which led to 'desires for evil and impurity of all kinds' and she believed the fight against it was a 'noble' cause. In August 1892 she joined the Sydney Branch of the Women's Christian Temperance Union (W.C.T.U.). She saw the Union as an agent of elevation, which 'fought by earnest prayer, gentleness, faith, and love to induce others to live nobler, better, and truer lives'. She believed that 'Christianity ought to enter into all its branches of working, and be the mainspring of all its actions.'\(^75\) Its motto was

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\(^75\) Mary Windeyer addressing the Mudgee branch of the W.C.T.U., *The Western Post*, 15 October 1895; Mary Windeyer, *S.M.H.*, 31 August 1895. By the time
'For God and Home and Humanity'. Under its constitution it was organised into a number of different departments dealing with such diverse areas as 'Mother's Meetings' and 'Peace and Arbitration'. As an organisation it was in keeping with Mary's own mixture of conservative and radical views. It promoted domestic virtues and social purity and involved women in traditional women's sphere issues.; at the same time it radically challenged the prevailing masculinism of society, ultimately politicising women. Extensive petitioning urged legislation on behalf of women and womanhood suffrage became W.C.T.U. policy in 1889.

Mary's first major role was as Superintendent for Drawing-room Meetings from 1893-5. These meetings opened 'with prayer and praise' and her aim was that 'the influence and the spirit of those attending' would be 'productive of exalted impulse, of harmonious agreement, of affectionate sisterly regard'. They were used to make the organisation's aims 'better understood by many good women who had as yet held back from joining to unite with a body with whom, at heart, they thoroughly sympathise'. They also had a practical function that was important to Mary, to educate women and develop their public skills. Although Mary's public life virtually ended with her retirement from Sydney in 1897, she continued her membership of the W.C.T.U. until her death and

Mary Windeyer joined the W.C.T.U. in 1892 there were over 35 Unions and over 1300 members in Australia. It had originally been formed in the United States in 1874 out of an organisation for the wounded during the American Civil War. The first Australian branch was formed at the Temperance Hall in Sydney in August 1882.
always wore the little white bow which was the badge of the Union.  

William took a more ambivalent position on the temperance question. As a young man, he largely attributed drunkenness to environment and concluded that intemperance 'was not an inherent vice in the people, but in many cases was the effect of suffering.' He also saw drinking as essentially a private matter and believed that 'despotic legislation' should not be used to control drinking 'simply because teetotallers thought it was wrong'. He criticised:

> a certain class of reformers and self-congratulating thinkers who, whilst they were quietly sipping their sparkling moseile in the comfort and luxury of their own private parlours, might think a public house a very vulgar kind of thing, that they might regard a number of men in mole-skin trousers and fustian jackets talking, perhaps, Radical politics in a place of this kind, as really low, while Conservative politics might be talked in comfortable rooms with perfect propriety.

He went on to acknowledge that 'that there was a large class of persons in respectable walks of life to whom a respectable public-

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house, orderly conducted, was in their society and amongst themselves what the private club was to the man of larger means.\textsuperscript{78}

While this shows some consideration for the different culture of the lower classes, Windeyer's emphasis on order and respectability in this speech clearly reflected his belief that the working classes could and should change their drinking habits to emulate the domestic moderation of his class. He blamed the drinking habits of the lower classes for 'crime and misery' and wanted 'the promotion of education and religion' to bring about self-regulation. He generally opposed public houses, especially those which provided music and dancing, because they initiated the young 'into a course of vice and infamy'. He even opposed raising revenue by licensing public houses because it was 'an immoral means of assisting the Treasury'; he was in favour of the 1861 Sale of Liquors General Licensing Bill because he believed publicans would have more integrity if the Bench were able to refuse a license where they felt the person to be untrustworthy.\textsuperscript{79}

He favoured the middle class habit of people drinking in their own homes over the working class tendency to drink in public houses because he thought 'that men as a rule did not become drunkards in their own homes'. He therefore favoured the extensive licensing of retail outlets for alcohol because this would facilitate the purchase of alcohol for domestic consumption thereby

\textsuperscript{78} Windeyer, Legislative Assembly, S.M.H., 10 October 1870.

\textsuperscript{79} Windeyer, Legislative Assembly, S.M.H., 20 September 1861, 17 October 1861, 10 October 1870.
removing drinkers from pubs. In taking this position he ignored the fact that many working class homes were so uncomfortable and overcrowded that they were unsatisfactory recreational venues for their occupants. He also attacked the working class drinking culture of consuming large quantities of spirits. Wines were more acceptable to him and he believed that the consumption of wine was less likely to lead to drunkenness.\textsuperscript{80}

Later in life, as a judge, Windeyer saw in practice the damage done by alcohol to people's lives and became more moralistic and more definite in his support of temperance. He came to believe drunkenness was a vice which 'works its own punishment' and that poverty did not cause drunkenness but 'follows upon drunkenness, and the loss of all self-respect.' He often used the divorce bench as a pulpit on the subject of drink. In criminal trials, he did not accept being drunk as an excuse although he would accept it in mitigation of punishment. When one jury wanted to return a verdict of 'guilty unintentionally' because the prisoner had been too drunk, Windeyer refused.\textsuperscript{81}

Windeyer's changing attitude towards alcohol was part of a more general change in his thinking about 'immoral' behaviour. As he grew older and as his perspective changed from that of advocate to that of judge, he became cynical about the possibilities

\textsuperscript{80} Windeyer, Legislative Assembly, S.M.H., 20 September 1861, 6 September 1862, 17 October 1861, 10 October 1870, 5 October 1878.

\textsuperscript{81} Rice v. Rice, N.S.W.L.R., 15, 1894, (D), p. 22. For examples of homilies on drink see, Fowler v. Fowler, S.M.H., 22 November 1890; Bradley v. Bradley, S.M.H., 4 March 1892. For examples of criminal cases, see Law Reports, S.M.H., 29 May 1885, 21 February 1891.
of reform. This affected his attitude towards criminals. As a young lawyer, he assumed that reform of criminals was possible if the right appeal was made to their mind and spirit and that, ideally, punishment was not for retribution but for reformation. He clarified these views when he spoke strongly in favour of a Bill for the Abolition of Capital Punishment in 1861. He argued, "the great end of punishment was the prevention of crime and the reformation of the criminal" and believed then "in many cases the faults of the criminals arose from the state of society in which he lived, and for which society was to a very great extent answerable, by failing to educate its people". Thus he argued that reformation of the criminal should take priority. In his youthful opposition to capital punishment he was in keeping with the spirit of the moral enlightenment of the age and possibly strongly influenced by Henry Parkes, who had moved the motion. The motion was lost 25 to 16. Hanging remained in the New South Wales legal system and the way was left open for two capital cases, the Mount Rennie rape and the Dean attempted murder, which, as has been seen, brought enormous public opprobrium on the head of Windeyer. As a judge he came to value capital punishment for what he saw as its exemplary value.  

Windeyer's belief that the reform of some criminals was possible and desirable led him to found the Discharged Prisoners' Aid Society in 1874 and to take an active role as the President. It was not the first such society in New South Wales, but a previous effort by the NSW Society for the Promotion of Morality met with

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82 Windeyer, Legislative Assembly, S.M.H., 26 January 1861, 3 January 1862.
little success. Windeyer became aware of the need for such a society when he was Chairman of the Royal Commission into Public Charities. He was possibly influenced in this by Rosamond and Florence Hill who expressed regret on their visit to Australia in 1873 that there was no Discharged Prisoners' Aid Society in New South Wales.83

Salvation was clearly the goal. In 1879 William cited his creation of the Discharged Prisoners' Aid Society as evidence of his belief 'that persons should be allowed an opportunity of taking an honest course of life'.84 It mixed traditional Christian belief in repentance and forgiveness with advanced ideas that many criminals were victims of circumstances and that, with the right encouragement and practical help, they could remove themselves from temptation and the influence of bad company. At Windeyer's suggestion it took as its motto the lines from Browning:

It was a thief spake the last and worst to Christ

Christ took the kindness and forgave the sin.85

Success was measured in terms of men retrieving their character, obtaining work and demonstrating regained self-respect by

83 S.M.H., 4 August 1874, 18 August 1874; Letter from John C. Nield, S.M.H., 5 January 1874; Letter from Benj. Cocks, S.M.H., 10 August 1874; R. and F. Davenport Hill, What We Saw in Australia, p. 277.

84 Windeyer, Legislative Assembly, S.M.H., 10 July 1879.

85 Mary Windeyer to her children, 28 May [1887], Windeyer Family Papers, M.L., MSS 186/13.
expressing gratitude and treating the money given to them as loans, ceasing to be regarded as paupers when they repaid it. 86

Windeyer's work with ex-prisoners reflected his belief that social circumstances could play a major role in shaping people's lives and his feeling of obligation to right social wrongs. The Prisoners' Aid Society recognised 'the responsibility of society itself for much of the misery and crime existing in the world' and saw itself as 'an organization endeavouring in the slightest degree to mitigate the wrongs for which the imperfect conditions of human society must be to some extent accountable'. 87

The main goal was nevertheless shaped by belief that individuals had within themselves the power to achieve their own salvation. The aim was to facilitate self-help by finding the ex-prisoners employment, mainly involving physical labour, which was believed to have particular reformatory power. Windeyer believed this was most likely to be achieved by sending them to the country, where there were employment opportunities in the construction of public works and where questions would not be asked about their previous character. The Society therefore provided clothes, tools, and free travel passes. To encourage clients to leave Sydney as soon as possible after their release and to ensure that the clothing and tools would not be exchanged for money which could be used for illegitimate purposes, the tools were withheld until the ex-

86 Committee meeting, Discharged Prisoners' Aid Society, S.M.H., 20 June 1878; Discharged Prisoners' Aid Society, Annual Report, S.M.H., 15 August 1881.

87 Discharged Prisoners' Aid Society, Annual Report, S.M.H., 9 August 1880.
prisoners reached their destination. The Prisoners' Aid Society had some success with men used to labouring employment but more difficulty in finding suitable jobs for ex-prisoners unused to manual work.\footnote{Discharged Prisoners' Aid Society, Second Annual Report, Robert Bone, 'Phoenix' office, 1877, p. 5; Discharged Prisoners' Aid Society, Annual Reports, S.M.H., 9 August 1880, 15 August 1881.}

As the aim was to restore ex-criminals to an honest way of life, the Society concentrated on men with whom it was likely to succeed and was very selective in accepting only worthy applicants. The committee, for example, refused to deal with police office cases because it thought that they were generally 'incorrigible drunkards' who would not benefit from aid. In its first year of operation it helped 30 applicants. Many of these men were not seen as hardened criminals but were 'bushmen who coming to town, and having fallen under the influence of drink and loose companions have been made the tools of clever and habitual offenders'. In these cases, particularly, the committee thought it important to counteract 'the sense of that absence of human sympathy which makes the offender look upon society as with every hand against him'.\footnote{Discharged Prisoners' Aid Society, Annual Reports, S.M.H., 29 September 1875, 6 April 1878.}

In subsequent years the number of applicants increased but the proportion who received aid remained fairly constantly around 80 per cent. By 1877 the marked increase in applications was seen as evidence that discharged prisoners and their families were becoming aware of the opportunities offered by the Society.
was a drop in numbers in 1880-1 which the Society attributed to the fact that the Committee, on the basis of past experience, refused to assist 'those whose drunken habits and previous career' showed that any help would be futile and that 'this class have come to understand that any application made by them will be futile'.

The Prisoners' Aid Society was a voluntary body and wished to remain so, believing that the vitality of private charity was required to win the confidence of the class which it meant to help. It did receive a small Government grant, but on the usual condition that an equal amount be raised by subscribers. It was not, however, popular as a cause and was at times seriously restricted by lack of funds. By 1885 the Society lamented that its work was increasing while general support was decreasing. The Prisoners' Aid Society ceased to operate in 1895 and its funds were distributed to other charities, most going to the perpetual fund of the City Night Refuge and Soup Kitchen.

Wineyey continued his strong support for the Prisoners' Aid Society throughout most of his judicial career, although by the time he became a judge his faith in the possibility of reforming criminals had been significantly undermined by his years of legal practice. He still believed that prisoners should be encouraged to reform, but he suggested that the possibility of reform was limited, that the responsibility for reform lay firmly with the individual prisoner and

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90 Discharged Prisoners' Aid Society, Annual Report, S.M.H., 26 August 1882.

91 S.M.H, 29 September 1875, 26 May 1876, 30 September 1876; City Night Refuge and Soup Kitchen, Twenty-eighth Annual Report, 30 June 1895, pp 4, 7-8.
that 'there was a limit to the patience of society'. He used his role as a judge to promote the reform of prisoners, but only when he thought it was a possible outcome. On occasion he concerned himself with the condition of criminals in gaol and, to improve their chances of reform, he sometimes sent city criminals to country prisons. He also used permission to petition for early release as an incentive to reform while in prison. In his judgements he made it clear that he believed that in some cases severity would aid reform but on other occasions, particularly early in his judicial career, he believed a short sentence would work as a warning to a prisoner of previous good character.\textsuperscript{92}

In attempting to discriminate between those who could be salvaged through their experience of the criminal justice system and those who were beyond redemption, Windeyer applied a number of criteria. Respectability of appearance and position impressed him and he was particularly favourably disposed when the prisoner also displayed regret by pleading guilty. Implication of fellow criminals was further proof of repentance. Windeyer welcomed such confessions because he believed it 'a safeguard to society' that criminals acting together 'should feel that they are at the mercy of their fellow conspirators'.\textsuperscript{93}

The perceived innocence of children was also a factor. It made Windeyer 'very adverse' to sending them to gaol. Where


\textsuperscript{93} Law Reports, \textit{S.M.H.}, 13 August 1879, 14 February 1882, 11 May 1883, 18 February 1891.
possible he would bail a youth on a good behaviour bond and he was 'pleased' in 1895 when it became possible to release young men under the First Offenders Act. Prior to that he did once use a clause of the Criminal Law Consolidation Act which allowed him, if he favoured 'a nominal punishment', to dismiss the jury and acquit the prisoner. This was not born of a desire to be lenient; he claimed experience taught him that 'undue leniency' toward the young led neither to reform nor deterrence. It was to protect the young from becoming confirmed criminals by contamination in gaol.\textsuperscript{94}

Even before Windeyer became a Judge, his work as President of the Royal Commission into Public Charities convinced him of the dangers of moral contamination from associating youths with hardened offenders. He wrote, 'The moral, like the physical poison, must do harm to those around despite the best nursing in the world' and expressed dismay at the courts' lack of use of special institutions for neglected and criminal children. These institutions included a boys' industrial school that had been established on the Nautical School Ship, 'Vernon' and both an industrial school and a reformatory for girls. Windeyer believed that the justices either ignored or misunderstood the provisions of the 1866 legislation that had established them. He also commented on the absence of a boys' reformatory and recommended the establishment of farm schools based on the family system. This received the whole-hearted endorsement of the \textit{Sydney Morning Herald} which had been advocating them for

some time. No action was taken, however, and as a judge Windeyer repeatedly lamented the absence of a reformatory for boys in New South Wales. The public had some trouble discriminating between an industrial school and a reformatory which may have been one reason why once an industrial school for boys was established there was difficulty in getting a reformatory established as well.\(^95\)

Windeyer's interest in institutions designed to rescue children headed for a life of crime led him to an unfortunate connection with George Anderson's Artizans' Working College and Home for Orphan Boys. When Windeyer was invited to inspect this private industrial school after it was established in 1877, he found the boys well cared for. When Anderson was forced to appeal to the public for philanthropic support and suspicion arose that he was merely running the institution for personal profit, Windeyer agreed to become a Trustee along with Sir Alfred Stephen and M.H. Stephen. Sir Alfred Stephen later alleged that Windeyer had solicited his interest in Anderson. Windeyer, however, said that it was Sir Alfred who asked him to get involved and that while he had some doubts about Anderson's qualifications, he 'did not like to throw cold water on what appeared to be the efforts of a well-meaning enthusiast'. Windeyer drafted a set of regulations with a view of bringing the establishment under the provisions of the Act, but the application to do so was refused by the then Colonial Secretary, Michael Fitzpatrick. Windeyer also paid Anderson's fine

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when he was prosecuted for neglecting to instruct an apprentice, a
debt which Anderson subsequently worked out.96

Windeyer's faith proved badly misplaced. In 1881 the
institution moved to a new site overlooking Middle Harbour.
Windeyer found this position unsuitable for an industrial school as it
was too remote from the public eye, inaccessible from Sydney and
had no working land. Later that year as a result of judicial duties,
he found it impossible to exercise any personal supervision so he
withdrew his name from the committee. In spite of this, however,
Anderson used Windeyer's name in support of subsequent
attempts to raise subscriptions. Windeyer's withdrawal of
sponsorship was opportune. In October 1882 the Sydney Morning
Herald inspected the institution. The boys appeared malnourished
and all but one were covered with sores. Some clothing was very
poor; there was no sign of any instruction and flogging seemed 'to
be something with which the boys are very familiar'. Following this
report the institution was closed by the Government.97 This
unfortunate set of events represents Windeyer's only attempt to
come directly involved with an institution for the reform of
juveniles.

The Windeyers' involvement with institutions to rescue fallen
sinners and their promotion of measures to control the

96 Letter from W.C. Windeyer, S.M.H., 21 October 1882; Sir Alfred Stephen,
'The Anderson "Artisan and Agricultural Training School!", S.M.H., 1 November
1882, p. 7; Stephen addressing a meeting of subscribers, S.M.H., 5 December
1882, p. 5.

97 S.M.H., 27 April 1880,17 -18 October 1882, 1 November 1882, 5 December
1882; letter from W.C. Windeyer, S.M.H., 21 October 1882.
consumption of alcohol reflect their belief that many individual character flaws could be corrected with help and support and that it was in the general interest of society to rescue those individuals who could be rescued. Notwithstanding these optimistic beliefs, they also had to admit that there were some individuals who were so socially alienated or morally damaged that they were beyond the pale. For these classes attempts at rescue were seen as a waste of time and resources. Social exclusion and exemplary punishment seemed the only logical responses in order to save society from being damaged by their behaviour and to deter others from following the same downward path.

The unsalvageable

Although efforts for the unsalvageable were seen to be unproductive, Christian charity still demanded some support of those who were suffering through no fault of their own. As Winderley pointed out, while a 'good deal' of distress 'was no doubt the effects of improvidence and intemperance', 'it was also caused by misfortune and accident, which often overtook mankind, and which no amount of providence could guard against'. This support was, however, to be at minimal cost. Winderley told the 1871 Annual General Meeting of Subscribers to the Sydney Infirmary that 'the pauper patients, who had no future before them, who could not reasonably be expected to live other than a life of misery and suffering' should be removed to a cheaper institution so that
the infirmary could be used for 'the poor of a better class struck down by accident or disease'.

Many of the unsalvageable were regarded as responsible for their own incorrigible state and therefore not deserving of even minimal support. They were the idle, alcoholic or vicious who were labelled criminals or paupers. They, nevertheless, attracted the attention of the privileged classes because they were perceived as dangerous to society. This attention focused on retribution, control and restraint. While Windeyer expressed these views most strongly later in his life, there was evidence of subscription to them from the beginning of his public career. In 1860, consistent with these beliefs, he opposed the Deserted Wives and Children Act which allowed women to claim support for illegitimate children because it 'had a tendency to encourage vice and immorality rather than to repress it'.

The symptoms of being beyond help included continual excessive drinking and certain types of criminal behaviour. While there was some hope that controlling the consumption of alcohol could correct the social ravages wrought by drink, there was also a tendency on the part of the Windeyers to relegate those who persisted in drinking to the incorrigible classes. As has been seen, both the Prisoners' Aid Society and the Night Refuge and Soup Kitchen disqualified drunken applicants from help. The Prisoners'

98 Windeyer speaking to meeting of the Sydney Night Refuge and Soup Kitchen, S.M.H., 31 July 1873; Windeyer speaking to A.G.M. of Sydney Infirmary, S.M.H., 9 February 1871.

99 Windeyer, Legislative Assembly, S.M.H., 11 April 1860.
Aid Society found that many who had been reconvicted after receiving assistance were 'incorrigible drunkards', who 'generally prefer hanging about town to seeking a life of honest labour in the country', and that, therefore, 'trouble and sympathy are thrown away upon them'. It repeatedly blamed drink for most of the crimes that came to its notice, either because of the immediate effect or because drinking gradually destroyed moral character and self-respect.\footnote{100 Discharged Prisoners' Aid Society, Second Annual Report, Robert Bone, 'Phoenix' office, 1877, p. 6.}

The Night Refuge and Soup Kitchen similarly blamed drink for the downfall of 'respectable' men. Windeyer thought, 'misfortune, improvidence, extravagance, and intemperance, but chiefly the latter, have brought them to their present state' and added, 'No skilled mechanics or good farming men ever come to the institution unless reduced by drink'.\footnote{101 First Annual Report of the City Night Refuge and Soup Kitchen, S.M.H., 7 July 1869.} The refuge actively discouraged drinking in its clients. Providing food and shelter rather than money was intended to discourage spending on drink and the Annual Reports regularly included cautions against tales spun by those who really wanted drink. Intoxicated persons were barred from entry and the 9:30 pm bed time was specifically to keep men out of temptation, particularly drinking and fighting and, therefore, out of the police courts. This had a negative effect as it led to intoxicated persons who were refused admission congregating together near the institution. Windeyer suggested
that the police pay special attention to the locality 'so that respectable people should not be annoyed'.

Windeyer also came to believe that many criminals were beyond the pale of salvation. As a judge, he expressed the belief that there was a criminal class and was particularly harsh on any prisoner he identified as a member of it, sometimes using consecutive sentencing to make the penalty longer. In this he was pre-empting modern ideas of preventive detention, saying that 'sentences did not deter them from crime, and therefore the only thing to do was to award them such punishment as would keep them from committing any for a lengthy period'. If judges were to take previous criminal record into account, they had to find infallible ways of identifying prisoners. Windeyer rejected the existing system of using photographs and favoured a system of identification by recording the measurements of parts of the anatomy which did not increase or decrease in size with age, known as the Bertillon system.

The problem of habitual criminals was seen as being exacerbated by those who migrated from Victoria. Just before Windeyer became a judge concern about the activities within New South Wales of criminals from Victoria, particularly concern about the Kelly Gang, led to the passing of the Felons' Apprehension Act. It outlawed such criminals, providing a reward for their


103 R. v. Hamilton and Cosgrove, S.M.H., 20 February 1895; S.M.H., 12 December 1895.
apprehension and allowing them to be shot down without being called upon to surrender. Windeyer felt that 'New South Wales had become an asylum for criminals' and used severe sentencing 'to teach criminals from other colonies that it was no safer to commit crime here'.\(^{104}\)

For those who were beyond redemption, Windeyer operated on the simple principle that 'law should be a terror to evil-doers' and became infamous for his harshness. He believed generally in ordering 'punishment which is adequate to the wrong done to society' and saw severity as a way of protecting society by enforcing respect for the administration of justice. In keeping with these social motives, the main aim of many of Windeyer's sentences was deterrence, which he frequently indicated in his sentencing homilies. Reflecting this, the frequency of an offence occurring in society affected Windeyer's punishments. He was also particularly harsh on those criminals he thought ought to have known better. In passing sentence on the Brookong shearers, he differentiated between the 'educated' and 'intelligent' and the others, telling them, 'Those who are ignorant and of less ability are less guilty.' The motive of the criminal was also taken into account. He was hardest on those deemed to be 'heartless'. In crimes for gain he believed need was a better motive than greed or vanity.\(^{105}\)

\(^{104}\) Law Report, S.M.H., 20 February 1895.

His primary goal of protecting society led Windeyer to look at the social implications of a crime when passing sentence. Physical threat was severely punished to protect both society and individuals. General economic threat was also condemned. Business frauds met severity because 'any business man might be exposed to dangers of this kind if conspiracy were not visited with exemplary punishment when discovered.' He regarded frauds involving public bodies as 'of a peculiarly dangerous character to the community' and gave severe sentences to deter by example. At the fraud trial of the Chairman and the Manager of the Australian Banking Company, the Chairman's case pained Windeyer because it involved betrayal of a 'solemn duty' and he described the Manager as an 'evil genius'. Crimes that threatened society's institutions were also regarded by Windeyer as especially serious. These included bigamy which threatened the institution of marriage and perjury, which threatened the functioning of the courts. In awarding bail, Windeyer also put the social good ahead of the prisoner's welfare; the sole test applied was the probability of the prisoner breaking bail.106

Windeyer showed intense compassion for helpless victims. He was personally offended when children's innocence was violated by sexual assault and particularly incensed when they were hurt by those who should have protected them, such as parents or teachers. He was ahead of his time in that he generally took into account the long-term emotional damage that he believed

would result from such assaults as well as the immediate moral and physical injury.

Anger at cruelty against helpless victims ironically led Windeyer to support flogging because he believed the only way to deter 'ruffians of this kind was to make them feel bodily pain by means of the lash'. He expressed regret that he was unable to order flogging in cases of assault on an eleven year old girl and of a father who harmed his eight month old baby. Windeyer ordered the lash on four occasions, for the crimes of indecent assault, attempted rape and attempted carnal knowledge. The most controversial of these sentences was that of a cab driver, Charles Sweetman, whose abduction and indecent assault of Mary Jane Hicks was the precursor to her rape at Mount Rennie. In passing sentence Windeyer made it clear that he was holding Sweetman responsible for the outrage which followed. Subsequent letters to the press canvassed the logic of sentencing a man for the consequences which followed his act as well as re-opening the debate on flogging.107

Windeyer's harshness was at odds with his sympathy and charity and, as in many other areas, inconsistencies appear. He claimed in 1889 he found sentencing prisoners 'a painful duty' and he wrote in 1891 in a private letter to Sir Joseph Hector Carruthers that the infamy of his harshness made him feel misunderstood. He was affected by the plight of prisoner's families, of which he was well aware from their reactions in court and was also sometimes

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lenient where a prisoner was in poor health, although on other occasions he told sick prisoners that there was no reason for leniency. Old age was also occasionally accepted in mitigation.  

Conclusion

Philanthropy and criminal justice were both important adjuncts to the Windeyers' ideal of social reconstruction. Through these processes, they attempted to lift those who were capable over the threshold of respectability, while controlling and segregating those whose unsalvageable nature made them a social threat. In their approach to this work, conservative and radical views co-existed. They attempted to demonstrate virtue and nobility in the upper classes while contributing to the salvation of the lower; to promote social harmony while at the same time being major agents of social change; to foster individual improvement through self-help while at the same time contributing to the welfare of the whole community by discouraging pauperism; to combine government support with voluntarism and individual effort; and to combine a traditional judicial retributive role with a forward-looking ideal of facilitating individual reform where he believed it was possible. They drew on older traditions of noblesse oblige, but were also typical of their time in their efforts to couple philanthropy with provisions that would facilitate individual improvement and self-help; they were forward looking in their acknowledgment of the state's role in supporting and co-ordinating welfare provisions.

Gender spheres largely dictated the Windeyers' respective roles in philanthropy and criminal justice. The application of the law was solely William's concern. His philanthropic work was also masculine, focused on male oriented charities that were designed to promote self-help. Mary's charities all came within the woman's sphere of rescuing distressed women and caring for the young and the sick. Of all their philanthropy, Mary Windeyer's work for the sick was the most purely charitable, perhaps reflecting the belief that women were responsible for the welfare of individuals whereas men were accountable for the state of the nation. This assumption was challenged, however, although the notion of separate gender spheres was preserved, as the Windeyers pursued issues arising out of the 'woman question'.
Chapter 5

The Role and Status of Women

Have women a distinct place assigned them by nature? or, is the difference made between them and men in the ordering of life and apportionment of work one merely arbitrary and tyrannical?¹

In 1873 the *Sydney Morning Herald* set up the woman question in these terms. Its answer was that the division was indeed natural, a common belief. This was also the year in which William Windeyer used the Royal Commission into Public Charities to support the fledgling nursing profession and the year after Mary Windeyer gave birth to her eighth child. The question and answer in this feature article reflect the parameters within which the Windeyers worked to improve the position of women over the following two decades. They were prepared to question the place of women in the world, but their answers were circumscribed by their assumptions about the nature of women and their relationship to men. They were not alone in these assumptions. Exploring them in the context of the Windeyers’ work illuminates first wave feminism and the dilemmas of social reform in late nineteenth century Australia.

Women faced two forms of disadvantage in Victorian culture. They were regarded as lesser human beings and they

¹ 'The Natural Place and Work of Women', *S.M.H.*, 26 December 1873.
were confined to a lesser place through discriminatory laws and practices. Remedying this required women to become proud of, and recognised for, their womanhood as well as the removal of the barriers that perpetuated their oppression. The first line of attack required invoking their uniqueness as women; the second involved stressing their equality with men.

Both the Windeyers worked to change the position of women but their perspectives clearly differed. William's sympathy for women was built on an image of himself as their chivalrous protector. Macintyre suggests that many liberal males espoused equality for women but still saw themselves as 'the protectors, the reasoners, the wielders of authority'. This was true of Windeyer, who often appears paternalistic. Such paternalism was necessary when women lacked rights and avenues to fight for themselves. William saw women as pure and innocent and saw himself as a defender of the virtue 'which to a woman is often her only property of value'. This stance made him appear radical in that he saw virtue as an attribute of all women regardless of class. Indeed, he turned the usual class prejudices around and with typically chivalrous concern for the weak argued that special attention should be paid to the safety of women from the lower classes, because their position in life made them more exposed to attack. As a judge he often forgave fallen women, expressed sympathy for unmarried mothers and was compassionate towards women charged with infanticide. Such practices have been singled out by

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Allen as characterising a 'less masculinist' form of justice than that which developed in the late nineteenth century. 3

Although he saw women as vulnerable, William did not perceive them as intrinsically inferior. Golder has observed that his feminism 'was really fuelled by his observation of women victims'. This is too simplistic. William's position was shaped by his experience of two very strong women, his mother and his wife. Their examples gave him great respect for women's strengths and abilities. He believed 'Woman as a human being has the right to win any position in our social system to which her ability and energy entitle her to aspire'. 4

Windeyer became a champion of women's political rights quite late in his life. As a young man nurturing his own political aspirations, he told Mary that politics had 'nothing to do' with ladies. His early mentor, John Woolley, took the same position, saying woman's 'empire' was the home and parliament was for men. 5 Possibly through Mary's influence, he was converted. He became


exceptionally supportive of Mary's political work and attended early meetings of the Womanhood Suffrage League (W.S.L.), donating one guinea to the cause in July 1891 and another in June 1892. In 1869 a speech by Windeyer on 'the tendencies of the age' ignored women, but in 1895 when he re-used this speech he added a comment on 'the growing recognition that woman, in right of her womanhood and her subjection to the laws of her country, had a right to a voice in their making'.\textsuperscript{6} When William died, leading feminist, Rose Scott, wrote 'The Women who are oppressed had lost a friend. Sir William was ever on that side and there are many things that he bravely fought for and won for women.'\textsuperscript{7}

Mary had a strong feeling of connection with other women. She wanted to empower them and challenge those men who 'trembled at this thought'. She believed that there was no point in reproaching particular men for laws which they did not originate and that the 'strongest and most thoughtful men' would support changing those laws. She was also, however, convinced that women had a view that men could not share and that men, even with the best of intentions, made serious mistakes when legislating for women.\textsuperscript{8}

\textsuperscript{6} Minute Book of W.S.L., Rose Scott Papers, M.L., MSS 38/33, 7 July 1891, 7 June 1892, pp 12, 65; Sir William C. Windeyer, \textit{An Address delivered before the University Union}, S.T. Leigh & Co., Sydney, 1895, p. 10. Contrast with William Windeyer, lecture at the School of Arts, S.M.H., 16 July 1869.

\textsuperscript{7} Rose Scott to Mary Windeyer, 19 September 1897, Windeyer Family Papers, M.L., MSS 186/15.

\textsuperscript{8} Interview with Mary Windeyer, \textit{National Advocate}, 2 September 1896; Mary Windeyer speaking to a drawing room meeting, \textit{Daily Telegraph}, 30 July 1892; Mary Windeyer, \textit{The White Ribbon Signal}, Vol. 1, No. 9, 15 July 1893, p. 5.
Mary's gender disempowered her but her class empowered her. She used the status she derived from her husband's position and the male contacts she made through him. She was among a number of the 'women of the ruling elite' who were attracted to women's organisations. Many feminists were from families and married into families of the professional and the governing classes. Many initially gained access to the public sphere through philanthropy.

Mary's philanthropic work allowed her to become more than an adjunct to her husband. By the time she became the President of the W.S.L. she was acknowledged by the Sydney Mail as having already 'been associated with much that has been most interesting and beneficial to the community'. When Windeyer's knighthood meant that Mary became Lady Windeyer, H.E. Russell suggested that she deserved the title for her own public contributions. By 1895 she was, according to The Australasian, 'almost as prominent in Sydney as Sir William himself'.

Philanthropic work as an acceptable avenue to public service for women enabled Mary to prove that she was worthy of serious responsibility. Her first major involvement was as Honorary Treasurer on the Board of the Ashfield Infants' Home from 1877 to 1881. The Home provides an early example of all female governance. Its committee was congratulated by the Maitland Mercury 'upon having undertaken so fitting a public duty' better

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'than if, under the triumph of a women's rights movement, they had stormed an entry into the law courts or the Parliament'. As married women the members of the committee were ineligible in their own right to deal with matters concerning property. They managed by forming subordinate gentlemen's committees to deal with such matters as building and finance and having male trustees to allow them to own property. William Windeyer served as one of the trustees.\textsuperscript{10}

From her philanthropic work Mary became interested in politics, following a pattern common to many women of her class. They learned of the suffering of lower class women through their philanthropic work, sought state support to redress the wrongs of which they had become aware and came to see a need for their own direct input into this process. Mary was a founding member of the New South Wales W.S.L. and its inaugural President from June 1891 to September 1893. She continued her suffrage work through the Franchise Department of the Women's Christian Temperance Union (W.C.T.U.). In April 1894 she was elected Superintendent of its Franchise Department for Australasia and in 1895 she became head of the New South Wales Franchise Department.

Mary based her advocacy of the rights of women on rejecting what she referred to as 'the theoretical assumption that all women are mere annexes of men'. She was a devoted wife and

mother but was not passive in this role. William respected her intellect and their correspondence reveals that she gave him political advice and at times questioned and even opposed his views. He was apparently drawing on his own marriage when he wrote that in an ideal marriage, 'a natural and truly appreciative understanding of each other takes the place of much sickly sentimentalism'. Mary's privileged position within her marriage increased her sense of obligation to those less fortunate than herself. She said that women who 'were linked with men who were true and brave in every sense of the word' were 'those who should seek for justice for the down trodden and weak' and more specifically acknowledged 'If she had been able to accomplish any good, she owed it to the husband of her youth'.

Three critical premises underlay the Windeyers' work to improve the position of women: their assumption that there were innate qualities shared by all women; their model of the ideal relationship between men and women; and their belief that the oppression of women could be removed by legal and political means.

**Innate qualities**

Nancy Cott has argued that the crucial difference between widely held nineteenth century attitudes and the position of twentieth century feminists is that the former saw certain fundamental

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characteristics of femininity as innate whereas in the twentieth century they came to be seen as culturally engendered. This is true for the Windeyers, but only up to a point. Although Mary saw some feminine characteristics as innate, she believed others were cultural. Her differentiation probably related to her own experience. She was a wife and mother for over thirty years before she took up the cause of womanhood suffrage. Having invested so much of her life in the role, she would have needed to continue to validate it. Other characteristics commonly attributed to women such as inferiority, weakness, emotional instability and silliness were not, however, part of her make-up and she attributed these to training and environment. Mary argued that 'Women treated as unfit for responsible action will remain undeveloped creatures' and that 'if women were to become less womanly by meeting on the same platform as men, then men must have created womanliness by keeping women in subjection'.

Mary believed that women had abilities that went beyond being 'relegated to the task of cookery and making clothes' and that 'Women had equally with men an interest in politics and good government'. She wanted to see women take an active political role. She pointed out that they 'had given practical demonstration of their intelligence and capability for argument' and were 'imbued with the same enthusiasm and ennobling public spirit which were

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apparent in man'. She stated 'The soul is of no sex, the mind and intellect of no gender' and repeatedly used the image of the disfranchised 'half'. She pointed out that the already enfranchised males had not proved their fitness to vote but had merely received the vote as a right and argued that women should have the same right because they had to pay rates and taxes and keep to the laws. Matters of public policy which she believed concerned women included currency, post and railways, because women used these facilities just as much as men. She argued that women could and should become politicians, jurists, or judges. She even suggested women should be eligible to become members of the clergy.14

In taking this position she did not deny the domestic role of women but wanted to extend and build upon it. She saw feminine 'virtues' as having a place alongside masculine 'virtues' in the political arena. At the same time she believed that political activity would not interfere with the 'high and holy' domestic and nurturing role of women. She challenged, 'if by recording a vote a mechanic or professional man was any the less capable in his work. Then cannot a woman perform her household duties equally well if she has the same privilege?' She further pointed out that even if 'every member of both Houses was a woman', fewer than 200 would be absent from their homes, and that the duties of those elected 'would not take them from home very much more than the claims of

society do at present'. She even argued maternity was not a 'serious obstacle' to a political or judicial career, pointing out that it did 'not debar a woman from the stage or entering the ranks of literature and art'.

One of the major arguments used against giving women the vote was that the manners of politics were so poor. Opponents suggested that involvement would coarsen women, remove them from their pedestal and 'degrade them into noisy, brawling politicians'. Mary's faith in women's innate characteristics made her certain that political involvement would not significantly alter them. She said 'God made women, and men had not the power to rob them of womanliness.' Along with others, she turned the argument around and suggested that, because women were so pure and virtuous, enfranchising them would improve the political and social behaviour of men. She sought to make politics more polite, not to make women more aggressive. She recommended they move 'by quiet persistence, and not by noisy aggression' and believed 'There was much to be done by gentleness. No woman could afford to say goodbye to gentleness and purity'.


Mary's belief that 'the chief desire of women is to do good wherever and whenever they can' meant that she believed that, even after they were granted individual rights, they would voluntarily submerge their personal needs in their concern for the good of the whole. Thus, for Mary, individualist arguments based on democracy and justice complemented, rather than conflicted with, social arguments based on the contribution of female virtues to the national good. Pursuit of the franchise was enhanced by 'the Victorian adulation of female self-sacrifice'. In attempting to create new roles for women while establishing new respect for them in their accepted domestic sphere, Mary both resisted and accepted patriarchal structures. She did not seek to end 'woman' as a distinctive classification, but, by suggesting women should be given civic freedom and a political role, she attempted to raise women's self-esteem, elevate feminine values and challenge the dominant masculine ethos of the political world.\textsuperscript{17}

William had less to say on the innate characteristics of women, but his actions suggest he also assumed that women were naturally nurturing and long-suffering. As a divorce judge, he concluded that wives were always driven to petition the court 'either by a long course of cruelty and neglect or by contracting disease,

\textsuperscript{17} Interview with Mary Windeyer, \textit{The Australian Christian World}, 9 November 1894.

or by the desertion of the husband'. He was severe on wives who challenged his assumptions, who were not submissive and did not accommodate their husbands. He also displayed anger in the criminal court when women failed to live up to his ideals. On several occasions when he sat in judgement on women whose crimes breeched his image of the good wife and mother, women who harmed children or poisoned husbands, he explicitly meted out especially harsh treatment on account of their gender.¹⁸

The Windeyers' assumptions about the innate qualities of women were central to their position as reformers. Belief that the nurturing and domestic characteristics of women were innate meant that they did not see the positioning of women as wives and home-makers as contributing to their subjection. They believed that, given equality, women would still choose to remain at home and serve the needs of their children and husbands. This was consistent with the view of other feminist liberals. Even J.S. Mill assumed that when women had equality they would still elect marriage and domesticity as their 'career'. The fulfilment of a woman as an individual and the continuation of her domestic role could, therefore, be synonymous. Indeed, far from being a disadvantage, the devoted and dutiful nature of women was a reason for their emancipation. The virtues of women would be a political asset because emancipated women would direct their nurturing and moral qualities to the improvement of the state. This

¹⁸ Windeyer to Sir Alfred Stephen, 19 April 1886, S.M.H., 21 April 1886. Examples of harshness towards 'unnatural' women include R. v. Sarah Keep and Mary Burton, S.M.H., 27 April 1885; R. v. Mary Curran, S.M.H., 14 November 1889.
became a key argument of the suffrage movement and had an undoubted appeal to those who valued 'womanliness'. For the W.C.T.U. it provided the primary rationale for pursuing the vote and from its platforms Mary argued often that the woman's vote would promote 'the goodness, the purity and morality' of the state.\(^{19}\) The assumption that women were innately domestic and unselfish meant that the Windeyers could contemplate far-reaching legal changes without fearing that they would disturb the essentially complementary nature of the social roles of men and women.

**Men and women**

The ideal of partnership was the basis of all the Windeyers' efforts to improve the position of women in their society. In an interview for *The White Ribbon Signal* in 1893 Mary Windeyer spoke of 'the benefits to the race which will spring from the co-operation of men and women'.\(^{20}\) William suggested the lines from Tennyson, which the W.S.L. accepted as its motto:

> The woman's cause is Man's
>  They rise or sink together, dwarf'd or godlike,
>  bond or free.\(^{21}\)

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The motto is from *The Princess*, VII. 243-50. This poetry was popular among British feminists - B. Caine, *Victorian Feminists*, pp 28-30.
The Windeyers challenged the place of women in their world in a way that illustrated their preparedness to take society and social relations in new directions but their approach was based on an assumption of the predominance of the family. This poses a contrast with twentieth century feminism's emphasis on female individuality and independence. Their vision harked back to a pre-industrial golden age, espousing an ideal of family life based on the husband and wife working together, each in their own way complementing the family unit. This was summed up by the New South Wales suffrage movement under Mary's Presidency, when it conjured, 'the noble spectacle of men and women working together ... in the better management of the great 'national house-keeping', and in the wise and loving care of the vast human family.'22 This co-operative and complementary ideal of the relationship between men and women accommodated their model of women as essentially different from men, complementing male bread-winners by being uniquely nurturing and domestic, but it also justified the recognition of women as having a valuable place in society alongside men.

Idealised marriage was central to such a model. William defined marriage as 'a union, founded upon harmony in sexual feeling ... the most perfect type of purest love and unselfish devotion, consecrated in thought as the highest ideal of earthly happiness and delight, divinely transfigured ... by the spiritual union

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of soul with soul.¹ He found it particularly painful when a good marriage went bad or when a couple could not forgive each other. He even ruled in court that the degree of damage done by adultery was relative to the happiness of the marriage.²³

The Windeyers' own marital experience reflected and reinforced this ideal. Their union seems to have been strong, but their roles were clearly differentiated by gender. William was physically large and matched his imposing physical presence with a powerful character. He was reported to be impatient, passionate, and possessive, although there was an acknowledged difference between his daunting masculine public face and his reputedly kind and emotional private personality. Mary was small, pretty and youthful looking, and played a more accommodating female role. She was generally renowned for the feminine virtues of kindness, usefulness, goodness and practical philanthropy. William was a conscientious bread-winner who at times privately expressed conflict between the demands of politics and the need for a regular and substantial income with which to support his large family. Mary ruled in the domestic domain and had a large measure of independence there because legal and political commitments meant William was often away from home.²⁴

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²⁴ The nature of their relationship is revealed in correspondence between themselves and with others that covers the entire period of their lives together. See collections of Windeyer Family Papers, M.L., MSS 5221 X, MSS 1867, /8, /13, /15. Published depictions of their marriage are to be found in Mrs Charles Bright, 'Sir William Windeyer', *Cosmos Magazine*, Vol. 2, No. 5, 31 January
Chivalry was a critical adjunct to the ideal of men and women working together in perfect partnership. Men were undeniably physically stronger than women and it was necessary to counter-act this brute strength with honourable behaviour. William expected this of all men. In this he was out of step with his cultural context. In male-female relationships, colonial masculinism was the antithesis of chivalry. It was built on the autonomy and independence of the bushman and emerged as a culture based on drinking, smoking, gambling and presumed rights of access to women's bodies. It produced a society of which Lake has argued, wife beating was 'so routine ... as to be taken for granted'. William used the law and his position as a judge to protect women and to attack the social symptoms of masculinism. Offences against 'weak defenceless' women, children or animals particularly offended his idea of how civilised men should behave and he compared the perpetrators of such crimes with 'beasts' or said they were 'below humanity'.25

William's idealisation of marriage contributed to his support for divorce law reform. Divorce was designed to strengthen marriage by removing those marriages whose example degraded

1896, p. 183; William's Obituaries, National Advocate, 16 September 1897 and Maitland Mercury, 14 September 1897; Mary's Obituary, Raymond Terrace Examiner, 6 December 1912.

his ideal. His acceptance of the right to divorce was based on the
concept of marriage as a contract which could be terminated when
it had been broken by either party. This view of divorce meant that
he would only grant a divorce to a party who was both injured and
blameless. He would not grant divorce to a couple who simply
wanted one and he believed it was wrong to enable the 'reckless
and dissolute' to escape marriages too lightly entered into. Seeing
marriage as a contract led William to take the radical position that
the question of divorce should be debated 'on secular grounds
alone'. He also, however, acknowledged that this argument would
not appeal to many of his contemporaries when he justified his
stance theologically by suggesting, both in parliament and in the
law courts, that bad marriages were made in hell rather than
heaven.26

William's idealisation of women meant he often saw divorce
as a means of wives escaping from lives of misery. He intended
divorce law to protect 'victims of those unhappy marriages in which
experience teaches us the husband, and not the wife is, in the vast
majority of cases, the culprit'. Sometimes this seriously affected
his interpretation of evidence; if there was a conflict between the
evidence of the husband and that of the wife, he usually favoured
the wife. Where a marriage broke down because both partners
failed in their obligations, he placed the onus on the husband's

26 Windeyer, Legislative Assembly, S.M.H., 26 March 1870, 27 August 1870,
15 December 1876; Windeyer to Sir Alfred Stephen, 19 April 1886, S.M.H., 21
April 1886; Farrelly v. Farrelly, N.S.W.L.R., 5, 1884, (D), p. 10; Martin v. Martin,
Daily Telegraph, 23 February 1892; McPhail v. McPhail, N.S.W.L.R., 14, 1893,
(D), p. 11.
failure. Under Windeyer, husbands were twice as likely as wives to have their suits dismissed. Golder even suggests that Windeyer's administration of the divorce jurisdiction increased female resort to divorce, although this is, as she points out, hard to validate. There was an increase in wives petitioning for divorce, but this may have been accounted for by changes in legislation and practice which took place while Windeyer was the judge in divorce. These changes were, however, also partly attributable to Windeyer through his divorce rules under the Matrimonial Causes Act which established significantly simpler and cheaper procedures, thereby improving, and possibly encouraging, women's access to divorce.27

Windeyer never reconciled his idealistic view of marriage as a haven for women and his awareness of their harsh experiences within marriage. This is especially evident in his attitude to sex. His approach to 'the minefield of married sexual relations' has been described as 'radical' because of his sympathy for women, but he also held the masculinist beliefs that sex was something men did to women and that male animal instincts were overwhelmingly powerful. He even suggested that desertion, by depriving a man of a legitimate outlet for his passions, would inevitably lead to adultery. Windeyer saw sex as part of the marriage contract, something which 'a man has the right to look for' and 'of which a woman must be capable'. He agreed that insistence on marital rights might 'under certain circumstances' amount to cruelty, but he

believed that in consenting to marry women had 'pledged themselves to a general consent' and that 'with a certain class of strong natures amongst men there may be refusals which may almost amount to cruelty towards the husband'. This meant that 'trivial assaults' by the husband arising from refusal of conjugal rights were not sufficient grounds for divorce. In this way he reinforced the predominant masculinist notion of marriage as 'sexual labour'.

At the same time his chivalry influenced him to desire that women be protected from unwelcome advances. While still a politician speaking on divorce law reform, he made it clear that he believed, 'if there was any disgrace in the world it was this, that woman in this Christian country had not the right which was given to slaves of refusing the last familiarity, but might be compelled to submit to the performance of an animal function at the instance of a being unworthy the name of a man.' Later as a judge in Tate v. Tate he found that 'a brutal insistence on marital rights against her wishes' had injured Mrs Tate's health.

Windeyer seemed to resolve the apparent contradiction between assuming sexual access was a husband's right and


29 Windeyer, Legislative Assembly, S.M.H., 26 March 1870; Tate v. Tate, N.S.W.L.R., 14, 1893, (D), p. 6.
wanting to protect women from marital rape by believing 'sexual congress would be impossible' or, at least, 'degrading' for the male unless 'womanly tenderness and complaisance' created 'a bond of love'. On the basis of this he set the precedent that if a petitioner had sex with a respondent, knowing of the respondent's adultery, it reaffirmed their emotional bond and amounted to complete condonation of the adultery.30 Windeyer thus took refuge in idealism in order to retain traditional models without jeopardising his belief in women's rights.

Faith in the naturally co-operative relationship between men and women meant that the Windeyers saw the oppression of women as having legal and structural rather than social or relational roots. They therefore sought to tackle the oppression of women through changing institutional structures and reforming the law.

Challenges
The Windeyers' belief that the disadvantages of women were perpetuated by the operation of the institutions and laws of their society led them to assume that the emancipation of women could be achieved through the abolition of all institutional and legal forms of subjection. In taking this position they were heirs to an English view that resulted from the interpretation of English law in Sir William Blackstone's classic work, Commentaries on the Laws of

England (1765). Blackstone formed the basis of John Stuart Mill's argument in *The Subjection of Women* (1869), which based the improvement of the position of women on institutional and legal changes. These included equal access to education, recognition of women's value in the workforce, legislation to protect working women, equality in laws governing marriage and divorce and, ultimately, the vote, so that women could influence laws for women.31

As has been shown, education was central to the Windeyer's model of an improving society. The Windeyers' belief in the equality of men and women required women's education to be equal to that of men at a time when women's access to higher education was still limited and many thought it a waste of time and money. Both Windeyers therefore made significant contributions to extending women's opportunities for higher education and these were acknowledged by the University of Sydney Women's Society.32 Their commitment to women's higher education was also reflected in the fact that two of their daughters progressed to


post-secondary levels. Margaret was a graduate of the Dewey Library School in New York and Lucy of the Sydney Kindergarten Teachers' College.

The Windeyers combined the domestic model with their belief in women's right to realise their intellectual potential, believing that 'the ultimate perfection of the human race cannot be attained so long as the half with whom the responsibility of motherhood depends is in anyway prevented from developing its highest intellectual, social and political capacity.' They saw two areas of educational need for women. One was a path to the top for able women. William believed women 'should have some object in life and not look forward to marriage as their only career' and wanted therefore to open up opportunities in higher education, citing in support of this, 'the efforts of a Somerville, a Martineau, and a Nightingale'. The other was formal classes in schools in activities peculiar to home making, specifically needlework and cooking, to improve the domestic and maternal performance of ordinary women. This reinforced the domestic role of women, but also elevated its status by making its components worthy skills.33

William supported opportunities for women in all the educational areas with which he was associated. To his great

33 Sir William C. Windeyer, An Address delivered before the University Union, pp 10-11; Windeyer, Legislative Assembly, S.M.H., 4 December 1878; Sir William C. Windeyer, 'Technical Education in New South Wales', paper delivered to International Congress on Technical Education at the London School of Economics, 18 June 1897, Journal of the Society of Arts, August 27, 1897, p. 1038.

William's reference is to Mary Somerville who was a scientist, Harriet Martineau, a journalist, and Florence Nightingale, a nurse.
satisfaction, the School of Arts led the way in extending secondary education to women in 1871 when 'ladies' Latin and French classes' were introduced. Some of these women students were then successful in the University's public examinations which were opened to women in that year. In 1878 he demonstrated his desire to further extend secondary opportunities when he successfully asked the Legislative Assembly for 'an expression of opinion' that the Government should establish a high school for girls in Sydney. This opened the topic for public debate, and contributed to the subsequent provision in the 1880 Public Instruction Act for the establishment of high schools for girls, which, in turn contributed to the decision to admit women to The University of Sydney.34

The primary function of secondary education was to prepare students for tertiary education. This meant that it was of limited value to women while they were denied access to the University. William had personal knowledge of this as Mary's sister, Annie Bolton, after passing the Senior exam in New South Wales, had had to go to Canterbury University in Christchurch, New Zealand, in 1872 to gain her University education. In the University of Sydney Senate, William supported the first attempt to admit women in 1877 when Mary Kemmis of Bathurst sought the right to matriculate and attend classes. He moved successfully that she be allowed to matriculate but the Senate refused attendance at classes and, for reasons unknown, she did not persist. Eventually

34 S.M.H., 24 April 1871; Windeyer speaking to School of Arts Annual General Meeting, S.M.H., 6 February 1873; Windeyer, Legislative Assembly, S.M.H., 4 December 1878; U. Bygott and K.J. Cable, Pioneer Women Graduates of the University of Sydney, Sydney University Monographs, No.1, 1985, p. 6.
the admission of women was achieved in 1881, largely on the
initiative of Chancellor Manning, under the pressure of the Public
Instruction Act of 1880 and following a precedent set in other
Australian universities. A tutor to women students was first
appointed in 1891. When she resigned in 1892, Windeyer
demonstrated further support for female students by successfully
moving in the Senate to appoint a successor.\textsuperscript{35}

William's most significant contribution to women's access to
higher education was his support of the Women's College at The
University of Sydney at a time when it was the only women's
college in the British Empire to be fully affiliated with a university.
The Women's College was established by Act of Parliament in
1889. It differed from the men's colleges in being non-
denominational and it also received only half as much financial
support. William was responsible for the wording of the motion
which gained University Senate approval for the establishment of
the college, was subsequently nominated by the Senate as one of
two ex-officio members of the Council and at the first meeting was
elected Chairman.\textsuperscript{36}

Mary was also active in support of this venture, but while
William supported it in the public arena and in public office, Mary
supported it in ways suitable to the female sphere with fund-raising
and patronage. Symbolically, at the official opening of the College

\textsuperscript{35} Minutes of Senate Meetings, 4 April 1877, 6 April 1881, 4 May 1881, 18 July
University of Sydney}., p. 5.

\textsuperscript{36} Minutes of Senate Meetings 20 February 1888, 26 March 1888, 6 July 1891,
S.U.A..
by Lady Duff on 5 May 1894 William took a key role as Chairman of
the College's Council but Mary was merely 'among those
present'.\textsuperscript{37} Both William and Mary gave important moral support to
the College's first Principal, Louisa Macdonald, a thirty-two year old
graduate of Edinburgh and London. When she sailed into Albany
in Western Australia on the 'Arcadia' in March 1892 she was
greeted by 'kind' welcoming letters from both Sir William and Lady
Windeyer and on arrival in Sydney she stayed at their home. She
was eventually befriended by the whole Windeyer family.\textsuperscript{38}

In his official capacity as Chairman of the Council, William
also gave her strong support which she very much appreciated.
This included helping her to resolve a problem with the siting of the
College. When she arrived it was in temporary premises. The
permanent building was to be erected on a site within the
University provided by the Senate. Both William and Louisa were
cconcerned about the position of this site as it was in the middle of
the University grounds without immediate access from a public
street. William introduced a deputation to the Minister of Public
Instruction to see if they could swap with a site adjoining Blight
Street, that had been granted for a Teacher's Training College.
Subsequently he moved the motion in the Senate which led to the
Women's College being built on this site, which it occupies today.
Even the new site was surrounded by vacant land which Louisa

\textsuperscript{37} \textit{S.M.H.}, 7 May 1894. For personal account see Louisa MacDonald to 'Pixle'

\textsuperscript{38} Louisa MacDonald to Windeyer, 12 March 1892, Windeyer Family Papers,
M.L., MSS 186/10; \textit{Daily Telegraph}, 18 March 1892.
MacDonald judged a threat to personal safety. Sydney Council neglected the problem because the University paid neither rates nor taxes so Windeyer approached the head of police about increased patrols. Windeyer was also an active member of the College building committee, on which he again supported Louisa MacDonald and they were closely associated in planning the grounds of the College, including seeking advice from the curator of the Botanic Gardens, a custom that continued for many years.\footnote{Minutes of Senate Meeting, 18 July 1892, S.U.A.; S.M.H., 16 June 1892; Louisa MacDonald to ‘Pixie’ [Eleanor Grove], 4 March 1894, Letters by Louisa MacDonald, M.L., FM 4/ 3106; W.V. Hole and A.H. Treweeke, \textit{The History of the Women’s College within the University of Sydney}, Halstead Press, Sydney, 1953, p. 82.}

William’s role in the development of the Women’s College illustrates the duality that pervades his work with women. On the one hand he was committed to giving Australian women the opportunity ‘to keep on an intellectual level with the women of England and America’.\footnote{Chairman’s Address, Opening of The Women’s College, \textit{S.M.H.}, 7 May 1894.} On the other, he appears paternalistic, a protector and champion of the women in his position of ultimate power as Chair of Council.

Mary’s support of the Women’s College also illustrates a duality. Her support was based on assumptions of women’s equality but she was compelled to remain within the female sphere of supportive fund-raising. She joined the ladies’ fund raising committee in December 1889 and became Vice-President in May 1890. The Ladies’ Committee played an important role because the cost of maintaining the College was not met by the State, apart
from an initial grant of £5000 and an annual grant of £500 for the principal's salary. Even the initial grant was dependent on a similar amount being raised by public subscription. The Ladies' Committee raised most of this. As this was to be spent on the building only, with William's wholehearted support as Chair of Council, the Committee went on to raise further money towards the maintenance, furnishing and equipping of the college and to found scholarships and bursaries.41

Mary was not averse to taking a more public role as she also wanted to become involved with the governance of the College. She was among the twenty-six nominees for the twelve positions on the College Council, but was unsuccessful gaining fourteenth position with 219 votes, a mere five behind A.B. Weigall, the headmaster of Sydney Grammar School, who was the last to be elected. In spite of this rejection, she retained her voluntary interest and continued for six years to be Vice-President of the Ladies' Committee of the Women's College Fund.42

The discrimination between two classes of women - they might be categorised as the professional class and the working class - that was evident in the Windyers' ideas on education also appear in their attitudes to women who performed paid work. William concerned himself particularly with able women in the nursing profession. Mary tackled a wider spectrum of women's

41 S.M.H., 6 May 1890, 2 April 1892, 7 May 1894; Carruthers, Legislative Assembly, S.M.H., 21 June 1889, 24 July 1889; Chancellor's Address, University Commemoration, S.M.H., 15 April 1889; Manning to Carruthers, 26 March 1891, Papers of Sir Joseph Hector Carruthers, M.L., MSS 1638/20.

42 S.M.H., 4 May 1891, 1 June 1891.
work and showed active concern for the working conditions of women of the lower classes.

William's report as Chairman of the 1873-4 Royal Commission on Public Charities has been acknowledged by several historians as a turning point in the history of nursing in New South Wales. In it he supported the Nightingale system of nursing, which had been introduced when six nurses arrived in Australia from London in March 1868. He particularly defended the nurses' Lady Superintendent, Lucy Osburn. His position was radical in that the Nightingale system significantly empowered women. It was also conservative in that nursing pandered to the view of women as pure and nurturing. The Nightingale system was based on employing women of unblemished character, thus reinforcing the traditional female role of moral guardian. Lucy Osburn fitted this model as she was not only an experienced nurse but also a woman of culture and refinement and a High Church Anglican. Her character reinforced Windeyer's ideal that nursing would open up professional opportunities for upper class women, in what he described as 'high and noble work'.

By the time of Windeyer's Royal Commission, the Nightingale nurses in Sydney had come into direct conflict with the men who controlled the hospital. This conflict was exacerbated because the original decision to import the nurses had been made


44 Windeyer, Legislative Assembly, S.M.H., 8 November 1866.
by Henry Parkes without consulting the hospital's Board of Directors. As a result Lucy Osburn was undermined by the Board and had serious on-going problems with the male Infirmary Manager, appointed by the Board, whose authority overlapped and clashed with hers.45

It was partly to strengthen Osburn's position that Parkes appointed the 1873 Royal Commission into Public Charities. When Windeyer was made its President, Parkes knew he was likely to be sympathetic. Windeyer had supported the introduction of the Nightingale nurses when it was first proposed in 1866 and already had a history of supporting Osburn. At the 1871 Annual General Meeting of the Subscribers to the Sydney Infirmary he supported the adoption of an Annual Report which strongly supported her and he successfully opposed the re-election of Osburn's enemy, Alfred Roberts, as the honorary surgeon of the Infirmary. It has been suggested in a history of the Sydney Faculty of Medicine that Alfred Roberts was voted off the staff of the Sydney Infirmary in 1871 because of his 'reformist agitation' but it is unlikely that this was Windeyer's motive. His aim was more likely to have been to protect Lucy Osburn. Windeyer's public rationale was that the repeated re-election of Roberts would suggest 'that the Infirmary was in the hands of a clique.' The outcome suggested the Infirmary was, indeed, in the hands of a clique. Although Roberts

was defeated, a Special General Meeting of Governors and subscribers appointed him as the honorary consulting surgeon.\footnote{Windeyer speaking to A.G.M. of Sydney Infirmary, \textit{S.M.H.}, 9 February 1871; \textit{S.M.H.}, 1 March 1871, 21 March 1871; J. A. Young, A.J. Sefton, N. Webb, eds, \textit{Centenary Book of the University of Sydney Faculty of Medicine}, Sydney University Press, Sydney, 1984, p. 13.}

At the time of his appointment to the Public Charities Commission, Windeyer privately expressed his intent to vindicate both Osburn and the Nightingale training system. In his findings he ignored or discounted any evidence against her. He blamed the manager for disorder in the infirmary and suggested that the office of manager be abolished with his duties redistributed between Osburn and a paid secretary. He criticised both the doctors and the Board for their interference and found that although 'The training of nurses was laid down as an important part of her duty... the committee seem to have discouraged her efforts in that direction'.\footnote{William to Maria, 16 May 1873, Windeyer Family Papers, M.L., MSS 1867; 'Royal Commission into the Working and Management of Public Charities', first report, \textit{N.S.W.V.P.L.A.}, 1873-4, Vol. VI, abstract of evidence, pp 52-3 , report, pp 76-84.}

It is hard to evaluate to what extent Windeyer's report was prejudiced by his idealisation of Osburn and his desire to be her 'knight in shining armour' and to what extent it accurately reflected the situation. The most damning evidence against Osburn was an addendum submitted by Alfred Roberts which alleged that she was departing from Nightingale principles. This puzzled Windeyer as Roberts had twice previously given evidence that seemed very
favourable to the nurses. The explanation was that Roberts visited Florence Nightingale when he was in England in 1872 and found out that she believed the sisters should live on the wards. This did not happen in Sydney. The possibility of malice was implied when Nightingale later suggested that Roberts had misinterpreted their meeting. She said that she had told him she thought Osburn was succeeding very well in her training of Australian Ladies and that she had declined to express any opinion about the facts of Osburn's management.\textsuperscript{48}

In his history of the nurses, Brodsky concludes that 'Winderley delivered a judicial and personal judgement together'. Winderley's report was certainly not supported by all his fellow Commissioners. Both Winderley and the procedures that had been followed were attacked by one of them, Stephen Goodl, who alleged that Winderley's draft report did not represent the views of the whole Commission and that it was not fully supported by the evidence. He particularly objected to the conclusion that the 'system of nursing is the best that is known'. Winderley commented to his mother that the final report had been 'rather hacked about by my weaker brethren', but was still satisfied that it 'completely supports Miss Osburn who has been attacked in the most rascally manner by a lot of fellows who hate her as a lady'.\textsuperscript{49}

\textsuperscript{48} Nightingale to Winderley, 2 September 1873, Winderley Family Papers, M.L., MSS 186/8; Nightingale to Partes, 4 September 1873, in F. MacDonnell, Miss Nightingale's Young Ladies, p. 88.

The outcome of the Commission was to strengthen Osburn's position, especially after the office of Manager was abolished in 1875. Osburn remained for another ten years to consolidate her work, supported throughout this time by the continuing friendship of both William and Mary. She became a focus for hospital improvers and made a major contribution to the establishment of the Nightingale system of nursing in Australia.\(^{50}\)

Nursing was an area in which William could comfortably promote women's activity in the public arena without threatening their femininity. His Second Report also reflected his belief that nurturing was innate in females and that maximum use should be made of this for the general good. It promoted the extension of the woman's sphere from the home into public life via philanthropic work, particularly for children. He recommended the inclusion of ladies in the governance, of 'all establishments for the training of the young' because 'to women naturally belong the management of the household and the supervision of the nursery and the sick

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\(^{50}\) The continuing friendship between the Windeyes and Osburn is revealed through letters to be found in Windeyer Family Papers, M.L., MSS 186/13.


room' and it was wrong 'to deprive the public of the benefit of their counsel upon matters upon which they are more competent to decide than men'. While this did not result in much immediate change in practice, the Report did bestow dignity on women's charity work and ultimately facilitated the respectable entrance of women to areas of public life in New South Wales. Windeyer's Royal Commission Report led to his portrayal by Godden as a 'most influential exponent' of the belief that the women's sphere was based on differences but not inequality.51 Once again, playing a paternal role he nevertheless opened new doors for women.

Mary also worked to open new doors for women in the sphere of work, but she looked more broadly across the social spectrum and made some efforts to improve the conditions of working-class women. She saw these conditions as having deteriorated with the advent of factories, whose conditions contrasted with her image of 'the housewife spinning among her maidens' as 'a very pretty picture of long-ago domestic life'. Her ambition in improving the lives of working women was to elevate them to a level of basic respectability. She believed, 'that by broadening the scope of women's work and enlarging their opportunities the sympathies of women would become higher and nobler'.52


52 Mary Windeyer addressing a drawing room meeting, Daily Telegraph, 30 July 1892.
This issue became pressing during the 1880s when the number of paid female workers doubled. An early goal of the W.S.L. was a factory act. Mary Windeyer criticised the absence of proper factory legislation, saying in 1896 that she was 'struck by the difficulty there was in bringing commonsense to bear upon the subject'. The W.C.T.U. had similar concerns. It supported all legislative measures to improve the conditions of women workers and called for members to 'abstain from shopping after 6 pm.' in order to curtail the long hours of shop girls.53

Mary Windeyer saw female workers as having been abandoned by their male colleagues. She pointed out that existing working class demands were masculine demands, that 'There are some who agitate for eight hours labour for men, yet, at the same time, would decree that women should never stir from home, but should work, not only from sunrise to sunset, but during the evenings as well, and at night mind the baby.' In defence against this masculinism, she favoured the idea of Women's Trades' Unions and corresponded with Mary Lee about a Woman's Trades Union supported by the Women's Suffrage League in South Australia. This was seen more as a defensive female strategy than as an aggressive class strategy. She was, however, defeated by the puzzle of 'how to set about their organisation, maintain them, when once started, in a state of efficiency, and persuade women workers to join them'. Her practical contributions to improving women's work conditions and opportunities were her sponsorship

of a silk-growing co-operative, her role as Vice-President of the New South Wales Shorthand Writers' and Typists' Society until 1897 and a paper which she gave on equal pay for equal work. The records of her activities in all these areas remain sketchy, however, and it is impossible to know how much she achieved in them.54

Mary also promoted the recognition and extension of women's work through her involvement with women's industrial exhibitions. She was one of the organisers of the Women's Industrial Exhibition in 1888, which aimed to encourage women 'to give the best they can produce, to recognise the value of trained and skilled labour, and by all means in their power to raise the condition of women'. It reflected the priority of gender over class in that it was to cater to both 'those who are forced from their position in life to follow some industrial pursuit for the purpose of a living' and 'the elegant trifle the creation of which serves to beguile the idle half-hour of the woman of wealth'. This led to debate in the press between those who believed that 'the spirit of philanthropy and industrial development' had been sacrificed to class motives and others who felt that the motives were 'noble and honest ones'. There were no entrance fees or charges for space because the

organisers wanted to 'induce workers of all ranks and ages to place their work before the public'.

The exhibition was significant as the only portion of the Centennial year in which the women of the colony had any distinct recognition or could take any active part and it was the first Women's Exhibition held in the southern hemisphere. Described by 'Viator' in the *Sydney Morning Herald* as 'the triumph of woman's industry in the colony', it ran for four weeks. Mary Windeyer was in charge of the Fifth Department concerned with education. The work of this department reflected her mix of advanced ideas and conservative values. Looking to the future, the role of women in scientific progress was represented by 'the culture of silkworms, the preparation and classification of specimens of natural history, the modelling of objects used from scientific and botanical demonstration, experimental work in electricity, telegraphy and stenography', all regarded as 'different fields in which our girls and women find, or may find, honourable and lucrative employment'. A more traditional view was reflected in the English section in which there were prizes for English essays on 'Thrift', 'Woman's Work', 'Woman's Dress', and 'Historic influence of women as mothers of rulers, wives of rulers and as rulers'.

Mary's intellectual ambitions for women were not well supported. The entries in her section 'were not numerous' and 'did

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56 *S.M.H.*, 11 August 1888, 15 September 1888, 1 October 1888, 30 October 1888; Viator, 'Women's Industries', *S.M.H.*, 3 October 1888; Woman's Column, *S.M.H.*, 3 November 1888.
not comprise a very wide range'. The Sydney Mail nevertheless declared her successful in producing 'an attractive, interesting, and useful section' and the teachers who competed in the exhibition expressed their 'gratitude' for her interest 'in the cause of education'.

In 1893 Mary Windeyer again became involved in an exhibition when she was elected the President of a Committee of Ladies appointed by the New South Wales Commission for the 'World's Columbian Exposition' in Chicago to gather exhibits of woman's industry. The Chicago Exhibition was dear to Mary's ideals of gender co-operation as it was 'the first occasion on which women had been invited to associate themselves with men in a great national celebration' and she saw it as a golden opportunity for women to 'show what they could do - not to rival men, but to work with them'.

This work took all her energy and optimism. The colony was in the grip of a depression and from the outset she was told that they must recognise 'the necessity for exercising the utmost economy'. She also had trouble with the Commission's limited view of woman's work. This was demonstrated by difficulties over a bust of the Chief Justice that was commissioned from a woman artist. The Commission had made a decision that no busts would

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58 Mary Windeyer speaking to public meeting, S.M.H., 23 July 1892.

59 Meeting of the Chicago Exhibition Commission, S.M.H., 19 December 1891.
be sent but the ladies' committee was not told of this ruling. Mary Windeyer thought this was an under-estimation of the women; she replied when advised 'Your commission probably did not realise that a collection of woman's work might include something beyond the product of the needle.' The Commission patronisingly eventually allowed the bust to be exhibited because, if they did not, 'they would display a want of chivalry, and probably discourage the ladies from co-operating with them in regard to any future exhibition which might be held'.

According to Mary, the 'want of sympathy and co-operation of the women of the country' was also 'an obstacle'. The secretary of the women's committee was sent to address local meetings in places as far away as Goulburn and Bathurst and 3,000 copies of a circular letter were sent out to wives of police magistrates, lady visitors of boarded-out children, ladies who superintended university local examinations, and Mayoresses of all municipal towns. There was 'little response' to these initiatives.

Part of the problem was that many women had 'no prospect of seeing the great fair'. To try to encourage involvement, an exhibition of women's work was held in Sydney to select the

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61 Mary Windeyer speaking to public meeting, S.M.H., 23 July 1892; Report from Committee on Woman's Work to Chicago Exhibition Commission, S.M.H., 22 October 1892; Draft, Mary Windeyer to W. McMillan, 21 October 1892, Windeyer Family Papers, M.L., MSS 186/13.
exhibits to be sent to Chicago and by August 1892 Mary was able to report 'a gratifying increase in interest and activity'. Nearly 1000 exhibits were received, including 'beautiful specimens of needlework, dressmaking, embroideries, lace, painting, etc, specimens of skill in the domestic industries, in the mechanical arts, and in the fine arts generally'. There was even an exhibit made up of the work of a woman taxidermist. Mary was, however, still disappointed and in her remarks at the opening of the exhibition she said 'there was rather a marked difference between the exhibition as it was and what they had hoped it to be'. Nevertheless, at the Chicago Exhibition several hundred exhibits were submitted from over 100 exhibitors and the Department of Woman's Work won 96 awards. Lady Windeyer's committee congratulated themselves that 'the modest hope with which they began their work has been so far realised'.

In spite of the growing numbers of working women, by far the most common source of economic support for women was marriage. Married women were legally disadvantaged in terms of both property law and divorce law and these were two areas that attracted the attention of William Windeyer in his public capacities as politician and judge. William's recognition that for many women marriage was their only source of livelihood was reflected in a desire to reform the laws governing married women's property. He pointed out that his proposed legislation was designed to meet the

needs of 'the humbler classes', acknowledging that the rich could protect married women by complicated marriage settlements but that working class wives needed protection 'against a husband running his wife into debt'. It was consistent with his idea of marriage as contract because it recognised married women as civil individuals by giving them power to contract for themselves.

William's proposal for married women's property rights did not, however, give them full equality with husbands or with single women. When he introduced a Married Women's Property Bill in 1871, he made it clear that, although he supported the notion of legal rights for married women, he opposed independence. He argued that a married woman should not be placed in an identical position to a single one. He placed a £200 limit on the amount a married woman could inherit because he 'did not contemplate making such an alteration in the position of a man and wife that if she came into possession of a sum of say £20,000, she should have it entirely free from the control of her husband'. He intended 'that if a person chose to leave a large sum to a married woman, to her absolute control, she should have it', but he did not intend to 'put married women in the position of a femme sole'. He defended this as 'the practice of the Court of Chancery'. Windeyer's bill lapsed at the end of the session and political upheavals prevented him from taking similar action for seven years.

63 Windeyer, Legislative Assembly, S.M.H., 2 November 1878.

64 Windeyer, Legislative Assembly, S.M.H., 18 November 1871, 8 December 1871.
In September 1878 he again introduced a bill to amend the law relating to the rights and liabilities of married women. Basically this proposal was the same as his previous one. It stated that a married woman had the right to keep her wages and earnings; that stocks and shares, savings bank deposits and benefits from friendly societies were her separate property and could be in her name; and that she was entitled in her own right to inherit property, real estate or money up to £200. She was also entitled to take out life insurance on herself or her husband. Disputes were to be settled by a Judge of the Supreme Court. The final clauses dealt with legal action by or against married women and gave them a right to maintain actions for the recovery of their own moneys, although a wife still could not be sued except in conjunction with her husband. The bill received strong support in the Legislative Assembly and in the respectable press and became law in 1879.65 It has been described by Parsons as 'one of the great law reforms of the period' and by Mackinolty as having 'had the effect of remedying a serious injustice', but once it was in operation it was said by the Sydney Morning Herald to have 'touched but few of the abuses to be remedied, and these somewhat bunglingly'.66 The main significance of this legislation was that it recognised married women's need for property rights.

65 S.M.H., 20 September 1878, 2 October 1878; editorial, S.M.H., 8 November 1878.

William's position as a champion of the women of the lower classes also led him to support divorce law reform from 1870. He pointed out that the rich had had access to divorce for many years through the House of Lords and that the main intention of the proposed new law was to bring divorce within the reach of the poor. He supported the Matrimonial Causes Bill of 1870 which proposed that women be allowed to divorce for adultery on equal grounds with men, 'the distinctive feature' of the bill of which he most approved. He even used this opportunity to address the possibility of extending the grounds for divorce to include drunkenness, lunacy, and felony involving long sentences of imprisonment, but withdrew from this position in deference to public opinion. This Bill passed the Legislative Assembly but was postponed, in effect defeated, in the Legislative Council because it differed from English precedent by allowing wives to sue on grounds of simple adultery, which gave them equality with men under the law.67

When divorce legislation was finally assented to in March 1873, Windeyer was out of Parliament. This Act did not give women equality with men but followed English precedent in providing for husbands to sue for divorce on the ground of adultery, while requiring wives to prove that adultery had been aggravated by cruelty, desertion, bigamy or other offences. Windeyer made one contribution to the operation of this act while he was still a member of Parliament which demonstrated his special sympathy

67 Windeyer, Legislative Assembly, S.M.H., 26 March 1870; William to Maria, 26 March 1870, Windeyer Family Papers, M.L., MSS 186/7; S.M.H., 5 April 1870, 20 April 1870.
for poorer women. In September 1878 he successfully introduced a Bill to Amend the Law as to Costs in Matrimonial Causes. It improved the chances of poorer women obtaining their expenses as it repealed provisions in the Matrimonial Causes Act which prevented appeals on costs only and prescribed that when such appeals were made no security had to be given.68

The first Judge in divorce was Judge Hargrave, a reluctant incumbent, who had a distaste for divorce and public airing of marriage disputes and preferred private negotiation and reconciliation wherever possible. His leave of absence in 1879, just after Windeyer had become a judge, paved the way for Windeyer to become the Judge in the Divorce Jurisdiction and thus able to exercise his principles from quite a different perspective. Unhampered by other judges, and rarely by a jury, he was able to interpret divorce law as liberally as possible in accord with his own views. His significance in this area has been widely acknowledged. Chief Justice Darley said 'Sir William Windeyer formed the Divorce Court, and his decisions have placed the first authoritative interpretation upon its code of law' and when Lewis Whitfield published a definitive text on divorce law in 1893 he dedicated it to Windeyer.69

From his position on the Bench, Windeyer campaigned for divorce law reform as an issue of 'women's rights as human beings' because he believed women should be able to gain divorce on the

68 S.M.H., 13 September 1878, 9 November 1878.

69 Darley, Memorandum in the front of N.S.W.L.R., 17, 1896; L. Whitfield, The Practice in Divorce in New South Wales.
same basis as men. In the divorce court he repeatedly used his judgments to attack the existing unequal law that a husband's cruelty or drunkenness must be accompanied by adultery to justify divorce. He attempted to have an extension of the legal grounds for divorce included in the 1884 Matrimonial Causes Act Amendment Bill, but these provisions were withdrawn at Windeyer's own request because the bill contained urgently needed procedural reforms. He feared the whole bill being reserved for Royal Assent if it extended the causes for divorce beyond those established by English precedent.70

In September 1885 Alfred Stephen began work on a comprehensive Divorce Extension Bill, which met many of Windeyer's objectives by making desertion, drunkenness, assault and long-term imprisonment grounds for divorce. This bill took six years to pass into law because Royal Assent was repeatedly withheld on the familiar grounds that it allowed divorce for reasons that did not apply in Britain. Windeyer actively campaigned for the bill from his position on the Bench. On May 9 1892 it finally received Royal Assent after the British objections were overcome by a domicile clause which confined the legislation to couples from New South Wales. In Brook v. Brook this provision forced Windeyer to reluctantly reject a wife's petition because the husband

70 Windeyer to Parkes, 2 September 1890, P.C. Vol 43, pp 399-400, M.L., A 913; Windeyer to Sir Alfred Stephen, 19 April 1886, S.M.H., 21 April 1886.

Bennett claims the Matrimonial Causes Act Amendment Bill had been prepared by Mr Justice Hargrave - J.M. Bennett, 'The Establishment of Divorce Laws in N.S.W.', Sydney Law Review, Vol. 4, No. 2, March 1963, p 245 - but all the evidence points to Windeyer as the author, including the claims of Windeyer, himself - Windeyer to Sir Alfred Stephen, 19 April 1886 in S.M.H., 21 April 1886.
Some practical difficulties in administering the Act were rectified in the Matrimonial Causes Procedure Act of 1893 which was prepared by Windeyer.72

Subsequent cases allowed Windeyer to set liberal precedents in interpreting the 1892 Act. Tate v. Tate was the first case to come before Windeyer under the provision for divorce from a husband for habitual drunkenness and cruelty. Windeyer's judgement was commended by the *Sydney Morning Herald* as having 'much of shrewdness and commonsense'. It also attracted a congratulatory letter from Sir Alfred Stephen. In this judgement, Windeyer established that the court could take note of actions which took place before the Act was passed; ruled that a petitioner was not restricted to citing events in the three years immediately preceding the petition, that even if an erring partner had reformed for a time the injured spouse could use previous offences to obtain a divorce when a subsequent matrimonial offence occurred; and clarified that a respondent did not have to be constantly and helplessly drunk, but merely to habitually drink 'to such an excess as to make him incapable of controlling his language and action'. This last interpretation was based on Windeyer's concern for the wife's safety because he believed, 'It is not the man who is

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72 56º Vict., No. 36; *S.M.H.*, 8 October 1892.
helplessly drunk who is dangerous, but the man who is physically capable of acting, but over whom reason has lost control.\textsuperscript{73}

In other cases Windeyer extended the legal definition of cruelty to include mental cruelty when he acknowledged that men often abused their power by verbally insulting or emotionally assaulting their wives. He established that emotional torture, or even constantly harsh and irritating conduct such as would 'lacerate the feelings', without actual blows, constituted legal cruelty. He also used the law of desertion to validate a woman's right to leave an injurious husband when he established that desertion could take place 'where a wife has been driven from home by violence and cruelty, and her husband fails to support her after that'. He, nevertheless, differentiated between this and the 'most dangerous doctrine' that 'because a man and his wife had a tiff the woman could walk off'.\textsuperscript{74}

In order to sustain marriage as a situation of emotional and financial security for women, Windeyer differentiated between marriage as a legal status and as an actual state of being supported. This became clear in his attitude to desertion. He crusaded for desertion alone to become a ground for divorce and

\textsuperscript{73} Tate v. Tate, N.S.W.L.R., 14, 1893, (D), pp 1-8; editorial, S.M.H., 15 March 1893; Sir Alfred Stephen to Windeyer, 23 March 1893, Windeyer Family Papers, M.L., MSS 186/10; W.C. Windeyer, Judge's Notebooks, Divorce, A.A.N.S.W., 2/7453, p. 12; L. Whitfield, The Practice in Divorce in New South Wales, p. 66.

\textsuperscript{74} Hume v Hume, N.S.W.L.R., 11, 1890, (D), p. 5; Bradley v. Bradley, S.M.H., 4 March 1892; Charles v. Charles, S.M.H., 12 August 1892; Tate v. Tate, N.S.W.L.R., 14, 1893, (D), pp 1-8; R. v. Treanor, N.S.W.L.R., 12, 1891, (L), p. 88; Stow v. Stow, N.S.W.L.R., 13, 1892, (D), pp 3-9; L. Whitfield, The Practice in Divorce in New South Wales, pp 15, 125.
became something of a champion of deserted wives. In the case of Bolster v. Bolster he set the important precedent that if a wife applied for a judicial separation it did not mean consent to abandonment but was a protective measure. It did not, therefore, prevent a wife from subsequently suing for divorce for desertion. His concern for deserted wives was, however, modified by his primary concern of preserving marriages wherever possible. This is evident in his request to Alfred Stephen that, to prevent 'any accidental and involuntary absence being mistaken for desertion', a period of at least three years and evidence of 'an intention to abandon' be required.75

The most obvious form of protection for deserted wives was financial, but in being sympathetic to women on the issue of maintenance Windeyer was not motivated by compassion alone. He was very much aware of the cost to society when deserted families became a drain on charitable institutions. He therefore administered divorce law in a way that recognised women's rights but gave precedence to maintaining their position of marital dependence. The law was somewhat ineffective in this area. A deserting husband could be sued for maintenance and imprisoned indefinitely until he paid, but, as became apparent to Windeyer when he was Attorney-General, this was ineffective as the

75 Windeyer to Sir Alfred Stephen, 19 April 1886, S.M.H., 21 April 1886; Bolster v. Bolster, N.S.W.L.R., 15, 1894, (D), pp 8-12; Bolster v. Bolster, W.C. Windeyer, Judge's Notebooks, Divorce, A.A.N.S.W., 2/7460, p. 96.
deserting husband could do nothing towards supporting his family while he was in gaol.\textsuperscript{76}

Windeyer also evinced a belief that women should be dependent in his stance that divorced wives be supported. He provided in his 1883 divorce rules for a wife to file for alimony whether she were the petitioner or the respondent, providing only that if she were the petitioner, the husband had to enter an appearance before he could answer a petition for alimony. An 1884 Act facilitated the payment of maintenance to divorced wives by giving the judge the power to order a monthly or weekly payment. The 1886 Divorce Procedure Act added to this by allowing a defaulting husband to be declared bankrupt, provided he included his wife's claims in his schedule of debts. The limitations of this were demonstrated in the case of Thomas Dorn who refused to file his schedule. Windeyer left him in gaol saying he was there 'through his own obstinacy'.\textsuperscript{77}

Windeyer also saw the enforced payment of maintenance as a way of reinforcing marriage because he believed the threat of it would compel men who were motivated by neither love nor honour to stay married for financial reasons. This was important to him


because he believed that apart from those men who had to leave home simply to seek work there was another large class of men who wanted to be free of their responsibility for their wives and he was trying to counter the cultural current which endorsed this male rejection of domesticity.\textsuperscript{78}

As a divorce judge Windeyer repeatedly displayed the ambiguity that marked all his dealings with women. He viewed the marriage relationship in terms of contract rather than status, but his interpretation of this often reinforces Pateman's assertion that 'contract is the means through which modern patriarchy is constituted'.\textsuperscript{79} His view of women as equal but different meant he differentiated between the obligations of men and women within the marriage contract. He saw a husband's obligations as financial support and protection. To the advantage of wives, and in keeping with Windeyer's ideals of partnership and chivalry, money was not the only type of support that he expected a husband to provide. A husband who had left his wife could not protect himself from a charge of desertion by merely paying her some maintenance. Windeyer extended the obligation of a husband to include both physical and moral protection. This was the reversal of a common view that women were responsible for the morality of their husbands. If a husband who sued for divorce seemed to have contributed to his wife's transgressions, or had himself been guilty


\textsuperscript{79} C. Pateman, \textit{The Sexual Contract}, p. 2.
of adultery, Windeyer would refuse the husband's petition. In several cases Windeyer refused to grant divorce to a husband on the grounds of a wife's adultery because the husbands had contributed to the adultery by failing in their obligation to protect their wives. He would also refuse a dissolution where the husband's cruelty could be regarded as conducive to the wife's adultery.\textsuperscript{80} In one case, even though Windeyer thought it might be better for both parties if the marriage was dissolved, he refused the petitioner a divorce because 'he has, by his own neglect and misconduct, contributed to the fall of the woman whom he was bound to cherish and protect.' This was a difficult case because Windeyer understood that his ruling made it impossible for the wife to arrest her husband under a warrant for desertion. He sacrificed the wife's needs in this case to the establishment of legal precedent; he saw it as important to society to deter husbands from shirking their responsibilities to their wives and children.\textsuperscript{81}

To complement the husband's obligations, Windeyer saw a wife's duties as chastity, complaisance and fidelity. These attitudes were evident in his rulings. He established that accusations of cruelty had to be accompanied by evidence that it was actually dangerous for a wife to continue to live with her husband; that assault had to be 'unattended by any such provocation as would


make it excusable'; that when a husband moved 'it was the wife's duty to go and live with her husband and look after her children'; that a wife's adultery was not justified if a man 'did from time to time give way to habits of intemperance' but only 'if he did not supply his wife with the ordinary necessaries and comforts of life'; and that 'it was natural that a man shut up in a stuffy shop all day should go out in the evening'. He also found against a wife who had habitually neglected her domestic duties because of drink.\footnote{S.M.H., 1 November 1881, 17 November 1893; Saubier v. Saubier, S.M.H., 21 May 1885; McKechnie v. McKechnie, S.M.H., 14 November 1885; Griffin v. Griffin, S.M.H., 9 November 1886; Aiken v. Aiken, S.M.H., 8 March 1893; Findlay v. Findlay, N.S.W.L.R., 14, 1893, (D), pp 13-15; Hood v. Hood, S.M.H., 20 November 1894.}

Property and divorce laws were areas in which men legislated to change the status of women but the legislation still reflected a masculine perspective. In other areas, such as control of working conditions and promotion of temperance, the all male legislature was seen to fail women. The feeling grew among an increasing number of women that the only solution was to gain direct access to political power for themselves. The women's franchise was pursued both as a right in itself and as a means to the end of achieving a moral, compassionate and equitable society.

**Suffrage**

Mary Windeyer pursued the suffrage as a result of her belief in the equality of women and their value to the state. In different forums she combined or selected between the arguments that women deserved the vote as a right and that women deserved the vote because of the good they could do with it. She summed up her
entire argument in an early address to the W.S.L. when she coupled 'the justice of their cause' with 'the good that the public would receive by supporting that cause.'\textsuperscript{83}

As a well-educated woman with an influential husband, Mary had the skills and contacts needed for the pursuit of political goals. Upper class leadership brought a sense of superiority to this work, but it also brought a strong commitment and a sense of social obligation. Mary was an active President of the W.S.L. and attended the majority of the meetings of the Council which met twice a month, holding a total of twenty meetings in its first year.\textsuperscript{84}

For Mary, the campaign for womanhood suffrage met her dual obligations to morally elevate society and to improve the lives of women less fortunate than herself. When she fought for the franchise, she saw the vote as being more important to those who had less. She argued:

\begin{quote}
the necessity for woman suffrage might not be apparent to those women who were fortunate in having all they wanted in material, social or intellectual advantages. But the disabilities of political non-
\end{quote}

\textsuperscript{83} Mary Windeyer speaking to W.S.L. meeting. \textit{Daily Telegraph}, 12 November 1891.

\textsuperscript{84} Minute Books of W.S.L., Rose Scott Papers, M.L., MSS 38/33; Many of the women who joined the suffrage campaign were educated and influential, which led to accusations, particularly by male historians, of elitism and superiority. Examples include R. Evans, \textit{The Feminists 1840-1920}, Croom Helm, London, 1977, p. 36; R.G. Cooper, 'The Women's Suffrage Movement in New South Wales', M.A. thesis, Sydney University, 1970, p. 55.
enfranchisement, with all the hardships, limitations of privilege and curtailment of opportunities that followed necessarily in the case of any class 'without a vote' weighed very heavily on working women of the world. 85

Many members of the W.S.L. and W.C.T.U. saw it as their duty to bridge the gap between submissive lower class females and dominant governing class males, to speak for the conditions and needs of less privileged women. In taking this position they clearly identified 'women' as a unified category even while recognising differences of place and privilege within that category. The W.S.L. saw itself as a movement 'for the good of all women' and placed its subscription at one shilling per year, believing this was 'placed so low' that even the poorest could join them. 86

The women leading the cause found themselves confronted with an attitude of indifference from many women, an attitude by no means confined to the lower classes. The W.S.L. complained that 'those who have never been brought face to face with unjust laws and the misery which exists all around them can hardly as yet comprehend that the League seeks anything but a barren right'. Mary saw this indifference as 'the greatest obstacles to the

85 Mary Windeyer addressing a drawing room meeting, Daily Telegraph, 30 July 1892.

bestowal of the franchise' and campaigned to broaden the base of the movement. She believed it might have been caused by shyness and reticence rather than apathy and in July 1892, in an effort to reach those women who were not prepared to appear publicly sympathetic to the cause, Mary addressed a W.S.L. drawing room meeting to enable ladies to hear the arguments without having to attend a public meeting.87

Mary continued her recruiting work with the W.C.T.U. as their Superintendent for Drawing Room Meetings. She also gave an address on 'The Way to Win Members' at a church meeting in February 1894. By then efforts to raise awareness seemed to be producing results and the W.C.T.U. reported increasing requests for information. In 1896 Mary Windeyer reported to the W.C.T.U. convention that her suffrage work had 'like scattered seed been progressing by its own vitality'.88

Mary's role in promoting women's rights in New South Wales at a time when women en masse were not demanding them is consistent with the liberal view that we have also seen demonstrated in William's political career, that a wise elite had an obligation to lead others down the path towards enlightenment. The very oppression of women was seen as an explanation of their ignorance. It was, therefore, logical that they could not be

87 Annual Report of the Womanhood Suffrage League of N.S.W., 8 June 1892, Booth, Colley & Co., Sydney, p. 9; Mary Windeyer speaking to drawing room meeting, Daily Telegraph, 30 July 1892; Mary Windeyer speaking to W.S.L. meeting, S.M.H., 26 August 1892.

expected to become politically enlightened until that oppression began to lift. In answer to the point that women were not clamouring for their rights, William Windeyer said, 'No enslaved or oppressed class ever did come forward in the first instance to complain of the power or tyranny of their masters.'

As we have seen, the Windeyers believed a major obligation of enlightened leadership was to raise the level of the followers and to equip the most able of the followers to rise to leadership. Mary used drawing room meetings to develop women's political confidence and skills, giving them 'the power of speaking clearly and to the point'. She believed 'A sense of responsibility would arouse all the dormant energies of their nature and show them to be quite as competent to discharge the duties connected with the political, as with the domestic life'. She urged 'women to fit themselves', 'to set apart a little time during the day to do their thinking and thus qualify for the added duty which the franchise would give'. In raising the level of awareness of all women, it was important that the movement reached the lower classes. Mary told a drawing room meeting at Glebe that 'The encouragement of the promotion among the members of a social and friendly spirit, and joined with it prayer and praise, must have an influence for good among all women', even those 'compelled to toil for 16 hours out of 24'. Mary actually wanted to change the name from 'drawing room' meetings to 'home' meetings because some were only 'cottage meetings' and she wanted to acknowledge their value.

89 Windeyer, Legislative Assembly, S.M.H., 26 March 1870.

90 Report of Drawing Room Meetings Department, W.C.T.U., Report of Twelfth Annual Convention, Sydney, 1894, pp 53-4; Interview with Mary Windeyer, The
Mary's political career ultimately suffered from the same ambiguity as William's. She wanted to elevate the masses but she believed leadership must always come from a meritocratic elite, to whom she belonged. She said that, "She had been taught of justice to women, and as long as she could lift up her voice to prove to her sisters that they must lift themselves up, rise to their position, and go on in the progress of the world, she would do so." Her ideals of the shared needs and views of women came into direct conflict with her sense of personal entitlement and her elitist views in circumstances which led to her break with the Womanhood Suffrage League in 1893. It was, on the surface, over constitutional issues, but the strength of Mary Windeyer's reaction suggests that personalities were also involved.

Underlying the whole affair seems to have been a personal power struggle between Mary Windeyer and Rose Scott, who was then the secretary. Mary's power base was Sydney and she felt threatened by the growth of suburban branches containing many new members who did not accord her the esteem that she believed she deserved. This led her to oppose a suggestion from Rose Scott that branches be allowed to keep the funds they raised. Mary wanted all members to remain financially affiliated with the main body. Two arguments were used to justify her position: that


the development of too many branches would weaken the main body and that they should only alter rules at an annual general meeting. The difficulty seemed to Mary to be caused by the branches' jealousy of the central position of the Sydney League. It is possible that her position reflected a fear of losing some of her control as President. She believed she was not receiving enough respect from the organisation, particularly from the newer members, finding herself accused by some of being too conservative and attacked by others for deriving her status from her husband. She also thought she was being misrepresented by those trying to 'force' the constitution on the League 'falsely stating' that she was 'desirous of introducing new rules' and that she was 'in favour of transferring the management of the affairs of the League from the Council to a Committee'.

On July 1 the Council supported Mary's position when it agreed a new constitution could not at that time be considered. Following this, however, a meeting of supporters of the new constitution was held at Rose Scott's home, which led Mary Windeyer to suspect a plot, although Rose Scott tried to reassure her. The Executive precipitated a crisis when it supported Rose Scott's position at a meeting on 12 July 1893. Mary's worst fears were confirmed on 1 August when the Council changed its position.

92 Typescript of letter, Mary Windeyer to Miss Walsh, 22 September 1893 and Rose Scott to Mary Windeyer, 16 July 1893, Windeyer Family Papers, M.L., MSS 186/14; Minute Book of W.S.L., Rose Scott Papers, M.L., MSS 38/33, p. 131, 12 July 1893; Mary Windeyer to Parkes, 8 September [1893], P.C. Vol. 48, pp 97-8, M.L. A 918; Mary Lee (South Australian W.S.L.) to Mary Windeyer, 15 September 1893, Womanhood Suffrage League Correspondence, Rose Scott Papers, M.L., MSS 38/34.
and decided to hold a meeting on 9 August to consider altering the constitution. Mary chaired this meeting which deferred the matter to a sub-committee. This further dismayed her. She felt control of the affairs of the League were being transferred from the Council to the sub-committee and although this sub-committee included Mary it also included 'members outside the Council' and excluded anyone except herself who was opposed to the changes. She was placed in a quandary when she was unable to support the sub-committee's recommendations to lower the age of membership to eighteen and to allow branches to keep some of the subscriptions they collected. When a general meeting on the 13 September adopted the constitution to which she was so strongly opposed she resigned, giving as her reason for resigning that the new constitution altered the League's character beyond recognition. 93

Mary felt that the meeting had been stacked with new members, enrolled expressly to make the change. Many of her friends were absent at the Art Society's Conversazione which was held the same evening. She said in private letters that she did not feel that her resignation was a betrayal of the cause as she felt she had become an individual of 'small importance' within the organisation and that she would still be able to 'do a great deal'.

93 Minute Book of W.S.L., Rose Scott Papers, M.L., MSS 38/33, pp 130-3, 1 July 1893, 12 July 1893, 1 August 1893 and 9 August 1893; Rose Scott to Mary Windeyer, 3 August 1893, 15 August 1893 and 22 August 1893, Alfred Allen to Mary Windeyer, 7 August 1893, Mary Windeyer, draft letter of resignation and Typescript of letter, Mary Windeyer to Miss Walsh, 22 September 1893, Windeyer Family Papers, M.L., MSS 186/14; Mary Windeyer to Parkes, 8 September [1893], P.C. Vol. 48, pp 95-78, M.L., A 918; S.M.H., 10 August 1893.
outside it.\textsuperscript{94} This reflects both humility as a mere servant of the
cause and arrogance in feeling that her individual ability to
contribute was not confined to work within the W.S.L.

At the same time as the constitutional argument, another
disagreement between Mary Windeyer and Rose Scott occurred
over an invitation from Scott to the theosophist, Isabel Cooper
Oakley, to lecture to the League. On 27 July a special Council
meeting was held with regard to this lecture. At this meeting, Mary
overruled Scott and put the question of the lecture to the meeting,
which then, however, voted in favour of the lecture. When the
lecture took place in August, Mary was careful to explain before the
address that the League 'was in no way associated with the
philosophy that Mrs Cooper-Oakley primarily advocated'.\textsuperscript{95} This
disagreement related to another point in the new constitution to
which Mary had objected, a clause allowing 'the delivery of an
address upon any topic dealing with the woman and suffrage
cause generally'. The danger of allowing such addresses had
been powerfully demonstrated in November 1891. Eliza Ashton,
the wife of the artist, Julian Ashton, and a founder member and
councillor of the W.S.L., had presented a paper to a W.S.L.
meeting in which she argued that their first aim must be to change
the marriage laws or 'do away with them altogether'. This paper
split the women's movement and caused a serious deterioration in

\textsuperscript{94} Mary Windeyer to Parkes, 8 September [1893], P.C. Vol. 48, pp 95-78, M.L., A
918; Typescript of letter, Mary Windeyer to Miss Walsh, 22 September 1893,
Windeyer Family Papers, M.L., MSS 186/14.

\textsuperscript{95} Minute Book of W.S.L., Rose Scott Papers, M.L., MSS 38/33, p. 134, 26 July
1893; S.M.H., 4 August 1893.
relations between the W.C.T.U. and the W.S.L. The W.C.T.U. had 'no sympathy whatever with such views' and publicly criticised Mary Windeyer for allowing 'such utterances to go without contradiction'. Aware of the danger that contentious views would do to the cause, the Council of the W.S.L. disclaimed all responsibility for the views expressed in the paper. The following year, the W.S.L. reminded members that, 'though individual liberty of speech is allowed, the league itself can only be responsible for the object which alone unites its members and for which it was formed'.

Mary attempted to repair relations between the W.C.T.U. and the W.S.L. in July 1892 when a public meeting to advocate the extension of the franchise to women was held under the auspices of the W.C.T.U. with Sir Henry Parkes in the Chair and Mary, then still President of the W.S.L., among those present. After this, the W.C.T.U. and the W.S.L. gave each other more support. In August 1892 Mary Windeyer joined the Sydney Branch of the W.C.T.U. and, while still President of the W.S.L., also participated in the franchise work of the W.C.T.U. This paved the way for her to continue her work through the W.C.T.U. after she resigned from the W.S.L.


Although attempts to work through existing political structures were thwarted at every turn, Mary retained her faith in constitutional processes and actively played on liberal faith in existing structures. After the defeat in 1891 of a motion moved by Henry Parkes in favour of extending the franchise to women, Mary said, 'she could not think how an enlightened legislative body of which Sir Henry Parkes had so long been the head and front could have refused them their rights.' In October 1892 Mary participated in a deputation to the new Premier, Sir George Dibbs, to ask him to include the franchise for women in the electoral bill. The deputation, admittedly, was not optimistic, but wanted to show the country and the politicians that they were 'in earnest'. The outcome was much as expected. Sir George was 'courteous and kind' but had nothing to say except that his wife and daughters did not agree with women's suffrage. The press also disappointed the League as they concentrated on Sir George's opinions and ignored the arguments brought forward by the W.S.L.. Dibbs did promise to bring the matter before the Cabinet, but a letter in February 1893 asking if he had kept his promise received no reply. The women were left feeling that Ministers and Members were so busy 'attending to the wants and grievances of represented classes and


98 Mary Windeyer speaking to W.S.L. meeting, S.M.H., 31 October 1891.
their pressure, ... that the community who are unrepresented go to the wall".

In May 1894 Mary told a meeting that the franchise was coming, but that for the present they had to do something to persuade those who had the vote to use it in the proper direction. In September 1894 there was another vote in the Assembly. The proposed motion was that 'The time has arrived when the franchise should be extended to women' but an amendment was carried to omit the words 'the time has arrived when'. This motion, described by the *Sydney Morning Herald* as 'sterile' and 'innocuous', was then carried by a large majority. The most interesting contribution to the debate was probably the confession of Sir George Dibbs, by then in opposition, that he had been converted to the cause of women's suffrage. Mary, as either an opportunist or an optimist, used the motion in a speech to a woman's franchise meeting the following October, when she moved 'That as the Legislative Assembly had declared by a large majority in favour of the extension of the franchise to women, there is no need for any delay in its being extended.' The franchise was not ultimately bestowed by the all male legislature until 1902, by which time Mary Windeyer had retired from public life, although she was present at the subsequent public meeting celebrating enfranchisement.

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Mary's role in political life oddly mirrored that of her husband. She did not live up to early promise. In the early 1890s she was of equal prominence to Rose Scott in the suffrage movement but her disagreements with Scott, her departure from the W.S.L. and her withdrawal from public life after 1897 left her out of later glory. This should not, however, detract from her role in the initial stages of the movement. Her energy was a driving force in the first years of the suffrage movement. Her contacts and her personality won it many friends in high places. It is also possible, but incalculable, that, although Rose Scott became the most remembered suffragist in New South Wales, Scott learned, and gained significant political experience, from her early years of working closely with Mary Windeyer.

Conclusion
The Windeyers believed that a recognition of the equal but complementary nature of the relationship between men and women was essential to recreate their organic ideal. This led to a campaign for women's equality based on assumptions about partnership and marriage. They did not see any conflict between notions of equality of legal status and innate gender differences; between political emancipation and woman's domestic role; between individualism and service. Increasing the rights and opportunities of women was seen as neither incompatible with, nor threatening to, their traditional domestic function. For the Windeyers, as for many first wave feminists, belief in woman's uniqueness contributed to the argument that it was necessary and just to give women a share in government.
The Windeyers saw the causes of the disadvantages of women in institutional terms so their advocacy of the rights of women concentrated on formal equality within existing political and social structures. Their work contributed to opening up opportunities in higher education and in the nursing profession, to improving the legal rights of married women, including their access to divorce, and laid some of the foundations of the movement for womanhood suffrage. Thus on the woman question, as on all the significant issues that attracted their attention, they combined a backward looking ideal with forward looking changes designed to make the world a better place.
Conclusion

Were the Windeyers 'conservative' because they were meritocratic, governing class, moralistic, racist and believed in separate gender spheres? Were they 'liberal' on account of their individualism, legalism, and reformism? Were they 'reactionary' in their anti-materialist, pro-British position, their belief in the family and in seeing society as an organic whole in which all members shared a common interest? Were they 'reformers' because they favoured secularism, educational equality, women's causes and state involvement in social solutions? Were they 'radical' because of their identification with the concerns of the working classes? The answer is that each of these labels fits to a degree but none does justice to the complexity of the Windeyers' outlook.

The Windeyers were ambivalent about their own age; they were delighted by its potential for change and progress, but appalled by many of the directions it was taking. Their ethos of duty, respectability, national pride and noblesse oblige, inherited from pre-industrial England, made them uncomfortable with emerging social structures, values and philosophies. Their model of society required class differences to be over-ridden by the re-establishment of traditional relationships of mutual obligation based on 'The dignity of all labour, freedom in differences of opinion, the sympathy which should exist between employer and employed'. They opposed militant trade unionism for being socially divisive and representing class alienation. They also rejected the narrow class interests of the wealthy, believing 'that all property was held as a trust for the benefit of mankind and not
for the indulgence of idle and selfish gratification'. They fitted Nadel's model of those who wanted to 'cast the colonial mind into the mould of the old world', but 'divorced from the classes with which it was associated at home'.

The outcome of the Windeyers' ambivalence was an outlook which contained apparently incongruous mixtures: nostalgia and reforming agency; meritocratic elitism and democratic principles; personal arrogance and commitment to public service; noblesse oblige and judgemental moralism; the idealisation of women alongside fights for their legal and political equality. These incongruities can only be explained by viewing the Windeyers as the simultaneous bearers of the traditions of pre-industrial gentry and of post-Enlightenment liberal reformers, with each tradition modifying the other. Much of their 'conservatism' was based on a desire for a future that was better than the present, but much of their 'reform' was essentially a search for the security of an idealised world of mutual obligation, with people knowing their places, supporting existing institutions and sharing the values of the governing class.

Understanding this pattern requires abandoning the model of progress as linear. This model is evident in much of the existing historiography of nineteenth century colonial politics and

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culture. The decline of the gentry is depicted as being followed by a new faith based on 'bourgeois-conceived ideals'; ideological transition from the Whig tradition to liberalism is portrayed as a linear development; Nadel suggests that 'the attempt to establish social harmony by the diffusion of culture' peaked between 1830 and 1860 and was disappearing by 1890. Reject the linear model and it becomes possible to see 'improvement' resulting from reaching back and borrowing from the past as well as thinking forward into the future. 'Reactionary' and 'reformer' cease to be incompatible ideas. The Windeyes appeared to create new structures, but they were built on the old and based on pre-existing ideals. They found answers to future problems in lessons of the past. They united a reactionary desire to turn back to 'traditional' structures and values with a reformist awareness that these structures and values could best be perpetuated through changes to existing processes, including some significantly new directions.

Reflecting a general trend within colonial liberalism, they modified laissez-faire individualism by emphasising the mutual obligations of the individual and the institutions of the state. This

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modification can be seen as 'new' in that it parallels the philosophy of the New Liberals. It was also, however, old, being consistent with the traditional ideal of the good of the whole as the ultimate goal.

Because the Windeyers wanted to maintain what they valued in their inheritance from the past while they explored new possibilities, they were ambivalent on the subject of reform. In 1870 William decried the possibility of conservative domination, saying 'Heaven forbid that the time should come when this class of mind would be predominant! because then they would have no more reform - no more progress; - they would never then have the courage to leave the old for the new', but in 1876 he stated that he did not want to institute continual reform. Even in 1870 he asserted that there was value in conservatives forcing reformers to modify their reforms. He believed that all reforms were accompanied with 'dangers and drawbacks' and that education of the public was a necessary accompaniment to 'the introduction of any novelty in the scheme of national life'. Mary also emphasised the need to move cautiously. She said, 'Nothing is ever attained by one jump. Changes came about by degrees and during the transition, things will [sic] gradually right themselves.'

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3 Windeyer speaking on the third reading of the fifth Matrimonial Causes Bill, S.M.H., 26 March 1870; Windeyer, nomination speech, S.M.H., 8 September 1876.

4 Interview with Mary Windeyer in The Australian Christian World, 9 November 1894.
Reform, then, was to be based on the evolution of existing institutions and ancient traditions to accommodate social and economic change while maintaining classic virtues and established social ethics. The Windeyers were thus agents of continuity as well as change. Mary was described in a journal article as 'typical of the women who form the link between the passing out of old conditions for the sex, and the ushering in of new ones'. William's moderate and cautious approach to reform was praised in the *Sydney Morning Herald* because he would 'know how to conduct progress along the line of evolution from the present and the past'.

The Windeyers felt compelled as well as empowered to leave the world better than they found it. Family expectation, guilt, arrogance, evangelical religion, rationalism and romanticism made them place themselves among the merited who both deserved, and were obliged, to lead. This sense of entitlement led to unresolved conflict in their own lives. William's career was marred by tension between his desire to serve and his need for public acknowledgment. He initially saw himself simultaneously as noble hero and as a man of the people, but as his career progressed colonial circumstances and the pragmatism of colonial politics made these roles incompatible. His quest for power came into regular conflict with his desire to be moral. His quest for public

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5 'Eminent Women in Australia', *Town and Country Journal*, 9 November 1908, p. 25; Editorial on Windeyer being made Chancellor of Sydney University, *S.M.H.*, 12 March 1895.
appreciation was never as successful as he wished because his elitism and sense of personal entitlement clashed with colonial egalitarianism. To a lesser extent Mary's public work was also marked by tension between commitment to selfless service and a sometimes unsatisfied desire for general respect. As a woman she was obliged to emphasise the former but occasional power struggles in the organisations in which she was involved suggest the latter was also present in her character.

Paradoxically, the Windeyers' arrogance was a necessary accompaniment for their ideals. Their ability to embrace individualism in the context of belief in a homogeneous society depended on their certainty that their values would naturally and inevitably be shared by all properly educated individuals. Their arrogance was consistent with the liberal position that some must rule and some must follow. Their political careers illustrate the complications that arose when this was combined with a democratic stance. As Loveday and Martin said of liberals in general, 'The phrase 'the people' was often on their lips, but never with the assumption that the people would act spontaneously.'

As elitism was increasingly challenged by evolving notions of democracy, liberals like the Windeyers attempted to redefine democracy so that it would be consistent with meritocracy. This is reflected in Woolley's definition of democracy as 'a government in which all artificial barriers are removed from the path of merit'.

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which allowed continuation of the belief that only the merited were 'able to fulfil the high functions of state'.7 In this context democracy and oligarchy were not, as Heater suggests, 'irreconcilable'. They were reconciled by the assumption that the populace would desire a meritocracy so that a democratic process could be trusted to produce an oligarchic government. This article of faith was necessary to allow liberals to become democratic. The democracy of Windeyer's liberalism was not therefore synonymous with the democracy of egalitarianism. It was a doctrine espoused by privileged moral minorities and it supported the survival of their approved structures. As Docker points out, 'there was no question who, morally, was to lead and who to follow - who were to create the values that would be shared.'8

The Windeyers were thus among those who have been accused by some historians, including Rowse and Kennedy, of being governing class people providing solutions which suited them. This is understandable. Their privilege and power depended on existing social, economic and political conditions. It was inevitable that any changes they proposed would be designed to strengthen the structures and values in which they believed and

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7 J. Woolley, 'Schools of Art and Colonial Nationality', A Lecture Delivered at the Inauguration of the Wollongong School of Arts, 28 May 1861, Reading and Wellbank, Sydney, 1861, p. 8.

which supported them. As Godden illustrates, even 'philanthropic altruism was generally constrained by the philanthropists' class interests and ideology.' Because their main desire was to preserve and stabilise, the effects of their changes were often conservative and never revolutionary.⁹

The Windeyers' position was, nevertheless, radical in that their imagined oligarchy of merit was not a closed oligarchy. They rejected the notion of an aristocracy defined by birth or wealth. Deference was to be based on voluntary respect of an elite, neither privileged nor exclusive, whose wise administration and sustained example of moral excellence promoted the welfare of the whole community. This elite must be created by offering higher liberal education to all who merited it, including the most able of the poor who could be given access by means of scholarships and endowments. This would provide leaders who transcended the evils of love of power with a morally and intellectually elevating liberal mental cultivation. Attainment within a universal education system thus became the basis of the Windeyers' meritocracy.

This study of the Windeyers challenges dominant conceptions of nineteenth century culture. The process of change was more convoluted than is suggested by linear views of colonial

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development; the nature of colonial culture was more complicated than is pictured in analyses based on discrete political groupings, large blocks of belief and clear-cut categories.

In all the areas of the Windeyers' lives the co-existence of two traditions within the same people challenges the polarising positions taken and many of the categories used in major discourses on colonial society and politics. Models which polarise conservatism and liberal reform leave the Windeyers stranded. In Hirst's terms, they were 'conservatives' in believing 'that the colony would not distinguish itself until its young men had assimilated all that was best in European thought', but they also belonged to his opposing group who 'looked to a popular political triumph to invigorate and distinguish New South Wales and were proud of their own achievements'.

The division of the governing classes into opposing categories of mercantile bourgeois liberals and squatters is similarly problematic in terms of the Windeyers. The attribution by Loveday and Martin, as well as Connell, of the dominance of liberalism in colonial politics to 'bourgeois ascendancy' is very limited. It ignores the continuing political role of other professions and leaves Windeyer without a place.


The Windeyers' position on women similarly defies the analysis of historians who oppose 'feminism' with 'conservatism'. The Windeyers' position was ambitious in an age when women were excluded from legal rights and processes, but it was also influenced by visions from the past, being rooted in the tradition of co-operative relationships based on the different roles of men and women. Their arguments for equality appeared progressive in a society in which women were expected to be subjugated to men, but their belief in the importance of female domesticity drew on traditional models.\textsuperscript{12}

Some historians do offer descriptions that suit the Windeyers by defying polarization. These include Dyster's 'moral liberalism' and 'progressive conservatism'; Williams' 'retrospective radicalism'; and Atkinson's 'old radicalism' and 'romantic radicalism'.\textsuperscript{13} Each of these apparent contradictions synthesises the duality of drawing from the past to improve the future. The aptness of these descriptions for the Windeyers presents another problem, however, in that they are sited by their authors in the


early and mid-nineteenth century. Similarly, historians who see a period of transition in which backward and forward-looking philosophies co-existed all place it in the mid-nineteenth century. The continuation of these philosophical combinations in the Windeyers' lives until the 1890s challenges this periodisation.14

Problems of periodisation tie in with problems of identifying nationalism. The Windeyers grew to maturity in what Barcan has termed the 'Age of Anglo-Australia', but did not significantly change their views after 1880 as a radical Australian nationalism emerged. The Windeyers represent an influential group who combined Anglophile attitudes with colonial patriotism, suggesting that the two nationalisms were compatible and that their combination was an important phase in colonial cultural evolution. At the same time, the Windeyers' failure to achieve popular support might partly be attributed to the growth of an egalitarian, materialistic, independent and self-assertive native culture which was separate to and in competition with an attempt to artificially recreate English pre-industrial social patterns. Those who comfortably espoused two nationalisms, like the Windeyers, were of the established governing elite, whose 'model of society was

English. They were out of step with the materialism and self-interest which allegedly dominated in the post-gold rush period, but they reflect a set of intellectual and cultural values and beliefs which co-existed with those of mercantilism and materialism and, therefore, deserve more attention from historians of the later colonial period.

Studying the Windeyers demonstrates the inadequacy of simplistic attempts to periodise or categorise in polarised social or political terms. They created new institutions and organisations, but they were built on old structures, based on pre-existing ideals and the ultimate goal was stability as much as change. In many ways they can be seen as the Whig gentleman squire and his good lady, out of place and out of time, trying both to defend and to revitalise pre-industrial values. They favoured the mechanism of reform, but their goal was to counter-act those results of industrial growth, technological change, urban development and colonial expansion that seemed to be unbalancing their idealised world and undermining their values. They were circumscribed by their naive and idealistic belief in the absolute value of stability, cooperation, agricultural prosperity, classical education, charity for the deserving and retribution for the wicked, which were essentially pre-industrial. Women and children were idealised as representing natural innocence, which men must protect, support and oversee. Beauty and the wisdom of the ancients, epitomised

in the classical culture of Athens, were elevated to counter-act the ugliness of the age.

The lives of the Windeyers both challenge and support Calhoun's assertion that people 'cannot both save what they value and adjust to capitalist, colonial, or imperialist conditions'.\(^{16}\) They challenge because their lives represent an attempt to do what Calhoun says is impossible. They support in as much as the Windeyers ultimately failed to reconcile their values with their evolving social context. Perhaps they can be seen as 'radicals' in the 1850s who did not significantly move their position as the colony developed around them and were therefore 'conservatives' by the 1890s.\(^{17}\) Perhaps they changed as their naive expectations failed to be upheld by their experiences and their whole lives involved a process of disillusionment which made them increasingly backward looking. Either way, the existence of the Windeyers with the beliefs they held in the latter part of the nineteenth century challenges the periodisation that sites their ideology in the mid-nineteenth century. They continued ideas that have been supposed to disappear in the 1860s into the latter part of the century as they attempted to counter-act what they

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\(^{17}\) In this they would fit those 'mellowing radicals' of whom Connolly has said, 'By the late 1880s, the surviving liberals of the early 1860s had joined their former opponents as representatives of an old order.' - C.N. Connolly, 'The middling-class victory in New South Wales, 1853-62: a critique of the bourgeois-pastoralist dichotomy', *Historical Studies*, Vol. 19, No. 76, April 1981, p. 387
perceived as the mediocre, anti-intellectual and unethical culture of late Colonial New South Wales. They moved directly from pre-industrial romanticism towards New Liberalism in a way that was simultaneously forward looking and backward looking.
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