

Liberty not Licence: The Hyde Park Riots of 1878

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The Hyde Park Riots of 1878 provide a case study of how the emerging Australian democracy sought to balance the right of free speech, which the colonists regarded as their birthright, and the right of sections of the community to be free from what we now call ‘hate speech’. Although the riots occurred almost 150 years ago, this episode has relevance today when Australian society is still struggling to get the balance right. The forcible expulsion of Pastor Daniel Allen from Hyde Park in March 1878 demonstrates that the current practice of ‘cancelling’ or ‘deplatforming’ discordant voices is not a new phenomenon.

This article describes two riots involving Pastor Allen that occurred in Hyde Park in March 1878 and reviews contemporary reaction to them in the press, in parliament and among sections of the public as well as in the court proceedings that followed in their wake. The article then recounts how the Sydney Domain replaced Hyde Park as the main venue for soapbox orators and open-air preachers before examining the measures governments have adopted since then to regulate the conduct of those speakers to avoid a repeat of the disturbances of March 1878 without undermining the right of free speech.

Pastor Daniel Allen

Walk through Sydney’s Hyde Park south on a Sunday afternoon and you will experience an oasis of peace and tranquillity in what is otherwise a busy metropolis. It was not always so. In fact, in the 1870s the southern end of the park was one of the liveliest parts of the city on Sunday afternoons. Thousands of people would gather there to promenade along the pathways, to play a variety of sports such as leapfrog and ball games, and to picnic on the grass. In addition, soap-box orators and open-air preachers would attract large crowds of onlookers. Some would listen attentively; others would heckle and shout abuse; a few would engage in anti-social behaviour.

The best-known of the preachers was Pastor Daniel Allen, a Baptist minister, whose fiery anti-Catholic rhetoric at his Sunday afternoon services ensured he had the largest and most rowdy meetings in the park. In March 1878 he would become

even more notorious following what became known as the Hyde Park Riots.

Born in Brundish, Suffolk, England in 1824, Allen was effectively orphaned as a young child after the death of his mother when he was two and the departure of his father for Tasmania when he was seven. Brought up in a Puritan household, he migrated to Sydney in 1845 and then went to Launceston, where he was baptised by Reverend Henry Dowling. In 1848 Allen moved to Melbourne where he began preaching. In 1871 he was appointed pastor of the Particular Baptist church in Castlereagh Street, Sydney, a position he held until his death in 1891.¹

Allen published many books and tracts that refuted what he considered were the heresies of the Catholic church and of Protestant denominations that were not of his hyper-Calvinist persuasion. Allen was also an Orangeman, having been appointed Grand Chaplain of the Loyal Orange Institution of New South Wales and Chaplain of No 4 Loyal Orange Lodge.²

Frederick Beedel, an early biographer who succeeded Allen in his pastorate in Sydney after his death, wrote in 1901 of Allen's preaching in Hyde Park:

For some considerable time our brother had held open air services in Hyde Park on Lord's Day afternoons, within view of St Mary's [RC] Cathedral, which were very numerously attended. [These] called forth much opposition from the Roman Catholics, as he in his preaching brought forth their idols, the Pope's supremacy and infallibility, the immaculate conception, the worship of the Blessed Virgin, prayers for the dead, the celebration of the mass, image worship, purgatory, penance, auricular confession, absolution, monasteries and nunneries, transubstantiation, half communion, the wafer God, works of supererogation, and the ten thousand heresies wrapt up in the papacy. One by one he would bring them forth and demolish them before their eyes.³

The first riot: 10 March 1878

According to a report in the *Sydney Morning Herald*, Pastor Allen began his service on 10 March 1878 by taking his usual place on a small wooden platform about 60 centimetres high. Many of his congregation were seated on benches. After leading singing and prayer he began his sermon. Having hardly started, two men approached him and demanded he yield to them the spot of ground on which he was standing. Pushing and shoving ensued as the two men were well supported. Despite the presence of eight policemen the situation rapidly got out of hand with the supporters of the interlopers surging through Allen's congregation. Surrounded by his followers, the pastor managed to push his way through the crowd and out of the park to his house in Castlereagh Street.

Such were the bare facts as related by the *Herald's* rather anodyne account of what was a severe disturbance of the peace involving a hostile mob of several hundred forcing their way through the crowd the newspaper estimated to be about

5000. The reporter for the *Herald*, a newspaper not generally favourable to Catholics, added the following comment:⁴

From information that has been gathered, it appears that for some time past Mr Allen has been in the habit of using somewhat violent language when referring to the Roman Catholic religion, and such as to deeply wound the susceptibilities of those professing that faith; indeed it is stated that his sermons in the park are generally calculated to arouse bitter feelings in those differing from him in religious belief, as they are especially directed against the doctrines of the Romish church. This animosity in fact culminated yesterday ... These gatherings are becoming a great nuisance, and it is thought that steps will shortly have to be taken to prevent meetings for any purpose whatever in the Park. It is also feared that if Mr Allen continues to preach there, using immoderate language, other and perhaps more serious demonstrations will be made.

Allen wrote to the *Herald* complaining of its report of the riot.⁵ He said that for the past three or four years he had been conducting religious services in Hyde Park on Sunday afternoons. This, he wrote, was at the request of 'about one thousand respectable ladies and gentlemen' and of a recently formed Protestant society in London. The society, he noted, had sent him a large case of literature to circulate in the colony 'for the purpose of counteracting Romanism, Ritualism, and Rationalism'. He denied using immoderate language and claimed he had received 'well authenticated' information that he was to be killed in the park by being pushed from his stand and trampled. Furthermore, he had received an anonymous letter threatening to murder him.

Despite these threats, he told the *Herald*, 'I felt bound to fulfil my promise to my outdoor congregation, whatever the consequences might be.' Allen also disputed the *Herald's* account of how the riot began, saying that a 'determined mob' of his antagonists pushed through the worshipers and 'completely encircled me, tearing my umbrella and books to pieces, dragged me down, and tried to tread upon me'. He said he recovered his position but was dragged down again. He was then rescued by two policemen and a great number of friends and escorted to his home next to the Particular Baptist Church in Castlereagh Street (opposite where the Downing Centre court complex is now located), all the while being followed by hundreds of rioters who made several attempts to snatch him from his protectors. The editor of the *Herald* added a comment at the foot of the letter stating that the newspaper stood by its report.

Reaction of the press, the parliament, and the Protestant Hall

The *Evening News* reproduced Allen's letter but, like the *Herald*, showed little sympathy with its author, observing, 'He is absolutely longing for martyrdom, and it is grievous to his soul to be denied even the credit of enduring a few blows for the good cause. Twice was he "torn down", and worse still, his valuable umbrella was destroyed in the melee.' The *News* counselled Catholics to ignore Allen but added:



Pastor Daniel Allen's fiery anti-Catholic rhetoric at his Sunday afternoon services in Hyde Park ensured he had the largest and most rowdy meetings. (Source: 'My Baptist Forebears', Rollicker Chandler, 1994, courtesy of www.companyofangels.net.)

At the same time we would suggest to that zealous thousand, that religious courtesy is the crown of religious liberty, and that they will do well to air their sectarian animosities in their own churches, where the most extreme controversial statements cannot justly offend the susceptibilities of their fellow citizens.⁶

The following Wednesday the riot was mentioned in parliament during the adjournment debate in the Legislative Council. John Campbell, a Sydney-born Anglican, told the chamber he strongly objected to allowing preachers to deliver discourses in Hyde Park, which he described as 'little less than a desecration of the Sabbath'. Echoing the *Evening News*, he observed, 'If preachers wished to attack the

doctrines of other sects they should do so in their own churches.’ He warned that if the government did not intervene, ‘there would be some serious riots’.

Thomas Holt, an English-born Congregationalist, disagreed, saying that ‘people had a perfect right to preach in the open-air if they chose’, adding that ‘open-air preaching was common with Wesley and other great clergymen of the Church of England’. Bourn Russell, also an English-born Congregationalist, agreed with Holt, arguing, ‘No one was bound to listen to these discourses; people could walk on if they pleased and not listen to a word.’ Irish-born Frederick Darley (later Chief Justice of New South Wales), who was not a Catholic, sided with Campbell, saying he objected to attacks on creeds by open-air preachers, adding, ‘They could lead to nothing but ill-feeling and might lead to bloodshed.’

In response, the government representative in the council, John Marks, a Presbyterian from County Tyrone, said that the government was aware of the proceedings in the park and that ‘steps would be taken which would prevent the recurrence of such scenes, and would tend to the preservation of public tranquillity’.⁷

The *Protestant Standard*, an organ of the Loyal Orange Institution, took the opposite tack to the secular press, asking rhetorically, ‘Are a few rowdies, with violence, to interfere with the rights of others in the free exercise of their religious freedom?’ Continuing, the editor made a concession, ‘Let it be that Mr Allen is not the most judicious of men, let it be that he is not very choice in his language and illustrations, the question still remains, are a few violent men to determine what a preacher is to say or not to say?’ A correspondent to the *Standard* who supported Pastor Allen’s right to preach in public also conceded that his discourses were ‘somewhat fiery and irritable’ and that he gave his sermons in ‘hot and fiery language’.⁸

Even so, it is surprising that the secular press adopted an attitude suggesting that Allen deserved what he got and that he had brought the wrath of the mob down on himself. *Sydney Punch* was quite explicit in that regard. After disclaiming sympathy with the ‘dastardly roughs’ who hustled Pastor Allen, the editor continued:

If [Allen] insists upon going to a place of public resort for the purpose of anathematising and insulting a sect who are known to be perhaps the most blindly devoted, fanatical, and enthusiastic religionists in the world ... he must not be surprised if he chances to receive rough handling from some of the more ignorant and bigoted of those whom his fiery eloquence exasperates and does not convince.⁹

Others disagreed. More than 1000 Protestants crowded into the Protestant Hall, Castlereagh Street on the Friday evening to express sympathy with Pastor Allen for the treatment he had received at Hyde Park.¹⁰ Under the chairmanship of John Roseby MLA, an English-born Methodist and leading Orangeman, the meeting resolved:

That this meeting regards the violent interruption of the public religious service on Hyde Park on Sunday afternoon last by certain votaries of the Roman Catholic



A MURDEROUS ATTEMPT.—(SCENE, HYDE PARK.)

Mr. J. Davies: "HERE COME T H ENEMY, PASTOR ALLEN. BUT, NEVER MIND, YOU GO ON; I'LL PROTECT YOU WITH MY UMBRELLA."
Pastor Allen: "ALL RIGHT, FRIEND DAVIES. I'VE SET MY HUGGINS AN ORDER, AND I AM PREPARED TO DIE."—(But he didn't.—Printer's Death.)

'Sydney Punch' had little sympathy for the 'fiery eloquence' of Pastor Allen.
(*'Sydney Punch'* [NSW: 1864-1888], 23 March 1878, p 5; retrieved September 25, 2024,
from <http://nla.gov.au/nla.news-page28013685>.)

Church as a gross infringement of the liberties of every British subject, and the principles of civil and religious liberty.

The motion was proposed by Dr John McGibbon, a Scottish-born Presbyterian minister and Orangeman who edited the *Protestant Standard*, and John Davies MLA, a Sydney-born Presbyterian who, having been baptised a Catholic, became an Orangeman and militant Protestant. A second resolution expressed sympathy with Pastor Allen and assured him his friends were determined to protect him from harm and support him in preaching the gospel. A third resolution invited Allen to continue conducting his services as before. Pastor Allen thanked the audience for their support and vowed to be on the ground in Hyde Park the following Sunday even 'if beforehand he knew he would be shot'.

It is interesting that the commentary in the secular press and by some members of parliament was critical of Allen and open-air preachers in general without a word of criticism of those who had allegedly assaulted Allen in their efforts to prevent him speaking. However, experience had taught that fiery religious rhetoric could incite violence; thus, it seemed to be accepted that primary responsibility for avoiding a breach of the peace lay with the speaker.¹¹ It was left to the police and the courts to deal with the rioters.

Police Court proceedings¹²

On the Friday morning following the riot, eight men came before the City Police Court charged with riot. Of the hundreds who had pushed and shoved Allen's congregation and chased him out of the park, only eight people had been summoned to appear, none having been arrested on the spot. The eight were William Stritch, Phillip Stapleton, John Foley, Michael Fogarty, Alexander Murphy, William Hall, Patrick Griffin and Henry Sheridan.

The bench comprised three justices of the peace: A. G. Neale (chairman), E. Ridge, and G. R. Maclean. The informant, Sub-Inspector Robert Anderson, was represented by John Henry ('Jack') Want, barrister, instructed by John Williams, Crown Solicitor. The defendants were initially represented by solicitors. Later, they would engage a barrister, Walter Hampson Cooper, to act for them.

Australian-born Cooper was a colourful Sydney identity who was a journalist, playwright, and politician before being called to the bar in 1875. He began his career as a journalist, working for the Queensland *Guardian* and later for the *Sydney Morning Herald* and the Melbourne *Argus*. He enjoyed a reasonable reputation as playwright and several of his plays were performed in Sydney and Melbourne. In 1873, he was elected to the Legislative Assembly for East Macquarie but was defeated in 1874. As a playwright, he travelled to America in 1874 but failed to have his plays produced there.

In 1879 Cooper was convicted and fined for assaulting John Heaton of the *Evening News*, whom Cooper accused of being responsible for articles critical of him. The articles contained scandalous details about his domestic situation which had led to an altercation between Cooper and his brother-in-law in which Cooper's mistress was accidentally shot. He died in 1880 aged 38.¹³

According to the prosecutor in the Hyde Park riot case, the ringleaders of the mob who broke up Allen's meeting were Stritch and Stapleton. Little is known of them. Several of the witnesses testified that Stritch was a regular speaker in Hyde Park on Sunday afternoons with a reputation for trouble. In January 1876 he had been fined 40 shillings for using language calculated to provoke a breach of the peace during a 'theological dispute' with a Jew, Jacob Audet, and a non-believer, John Wellman Ward. Audet was also fined 40 shillings and Ward 20 shillings.¹⁴

The police evidence was that Stritch and Stapleton had forced their way through Allen's congregation, with Stritch calling out, 'Let us hunt the heretics off.' When they reached the preacher they pushed him to the ground and raised a cry, 'Run old Allen off the park', which was taken up by their supporters. Benches, recently occupied by women and children, were knocked over and tree branches broken as a crowd of about 3000 to 4000, including Stritch and Stapleton, followed Allen and his protectors out of the park, yelling and hooting all the way. According to Constable William Tindall, 'Stritch was very much excited, behaving more like a lunatic than anything else, taking off his hat and waving it first in one hand and then another.'

The defence case was that Allen's supporters had come to the park ready for a fight and that Stritch and Stapleton had merely engaged in debate surrounded by their own audience located near Allen's congregation. The disturbance occurred when the crowd around Stritch and Stapleton expanded into Allen's congregation. Some Allen supporters aggressively pushed back and with pushing and shoving the crowds became intermingled. Allen had been knocked off his platform by the swirling crowd and he then left the park followed by a larrikin mob. Stritch and Stapleton, it was claimed, did not follow but remained in the park before heading to a pub in Elizabeth Street.

By majority, the bench found a *prima facie* case against seven defendants, committing them for trial at the Central Criminal Court. The eighth defendant, Michael Fogarty, was discharged.

Central Criminal Court proceedings¹⁵

The trial began on Monday 27 May 1878 before Justice John Fletcher Hargrave sitting with a jury. English-born Hargrave was the father of Lawrence Hargrave, the inventor of the box kite and an aeronautical pioneer. He was also a controversial judge, accused by Chief Justice Stephen of 'judicial delinquency' and 'mental derangement'.¹⁶ The Crown was represented by Attorney General William John

Foster, an Irish-born Protestant, who appeared with Jack Want. Walter Cooper appeared for Stritch, Foley, Griffin and Hall, while Tipperary-born Catholic John Gabriel O’Ryan, barrister, appeared for Sheridan, Stapleton, and Murphy.

The Crown’s witnesses gave similar evidence to that which they had given in the Police Court. At the start of the second day Hargrave told Foster the evidence so far given could not sustain the charge of riot, saying mere pushing and shoving, or one or two men fighting, or a person yelling out were not enough. Although the rest of the Crown case followed along similar lines, Hargrave refused to dismiss the charges at the close of the Crown case.

The defence then called its witnesses, who also gave similar evidence to that which they had given in the Police Court. After the barristers addressed and the judge summed up, the jury retired for 50 minutes, returning with a guilty verdict against Stritch and Stapleton and not guilty for the others. They recommended mercy for Stritch and Stapleton on account of the provocation they had received by the distribution of anti-Catholic pamphlets on the day. The Attorney General agreed, submitting that ‘he would best discharge his duty by not praying judgment but by simply requiring Stritch and Stapleton to enter into their own recognisance to appear for judgment when called on’. Hargrave accepted the recommendation and so ordered. After 11 days in the police court and three days of trial, no one involved in the riot was punished.

The second riot: 17 March 1878¹⁷

The Police Court hearing had commenced on the Friday following the 10 March riot and, as noted, Allen’s supporters had gathered at the Protestant Hall that Friday night to urge him to continue his preaching in Hyde Park, an exhortation he said he would accept even if it meant his own death. True to his word, Allen mounted his platform at 3 o’clock on the Sunday afternoon and began to preach. Anticipating trouble, 150 constables took up prominent positions on the Elizabeth Street side close to Allen’s congregation. On the other side, 100 soldiers from Victoria Barracks, in uniform and armed, stood ready to intervene.

Every vantage point had been secured well before Allen appeared. Men and boys climbed into the trees and strung themselves along branches. All seats and rails near Allen’s platform were crowded with eager sightseers. Spectators gathered at the windows of houses overlooking the park. The *Evening News* reported that, although it was St Patrick’s Day, there was among the huge crowd, estimated at between 15,000 and 20,000, but a slight display of green, far less than would normally appear on this day.

For the sightseers who had turned out to watch the rematch of the battle between Allen and his detractors, what happened next must have been a disappointment. Without interruption, Allen delivered his sermon, based on the text ‘Where the Spirit

of the Lord is, there is Liberty'. His remarks about freedom of speech were greeted with applause. It was only towards the end of Allen's preaching that slight hooting and jeering erupted from the crowd with small groups of larrikins pushing on the outer fringes of the audience.

When he finished, John Dowie, a Scottish-born independent evangelical preacher, mounted the platform to speak. He had hardly started when he was interrupted by discordant noises made by individuals in several small groups, heaping ridicule on the preacher. Finding himself unable to be heard, Dowie abandoned his address and the service concluded with the national anthem. Allen's party then moved towards the park's south-west exit and walked along Liverpool Street to Castlereagh Street. When it seemed the afternoon's proceedings would pass without undue incident, pandemonium broke out. As the *Evening News* reported:

A great number of Mr Allen's friends ... escorted him to his residence, Castlereagh street, followed by most of the crowd. On arriving at his house, he entered safely but no sooner had he done so than unmistakable signs of a tumult were visible. First, the mass grew clamorous then demonstrative. Some persons began scaling the walls and roofs to get a better view of the scene. At this stage, two or three men, whose boldness overcame their prudence, appeared in the thick of the mob with orange neckties, and no sooner were they seen by the wearers of the green, than execrations loud and long were given vent to, followed by two or three brickbats, so that the men with the orange colours found speedy egress necessary, and so fortunately escaped bodily injury. Castlereagh Street for nearly a quarter of a mile was thronged by one dense multitude and Liverpool Street much the same. Every housetop was literally roofed with people, the major part being youths. Balconies were crowded with intruders.

The *Herald's* reporter observed: 'All the houses near the scene presented a very animated appearance, nearly every window being full of onlookers.'

It was only when the police arrested one of the brickbat throwers and began dragging him away that the scene turned nasty as the mob turned on the police, throwing missiles at them, one of which struck a constable on the head. The police drew their batons and charged the crowd, forcing the rioters to retreat. Nevertheless, the mob refused to disperse until the mounted constabulary arrived armed with sabres. At 10pm a large and excited crowd remained, with the police keeping a close eye on them.

Unlike the 10 March rioters, the 17 March rioters were dealt with summarily. There were only three: Francis Hunt, aged 15, was fined 5 shillings for behaving in a riotous manner in Castlereagh Street; Michael O'Brien was fined 20 shillings for the same offence; and Thomas Binks was fined 20 shillings for throwing stones.¹⁸

Although the 17 March riot had occurred outside Pastor Allen's house following his preaching in the park, it is unlikely he was the sole or principal cause of the anger directed towards the police. The *Herald* noted, 'The "larrikins" were in great force, and there were also many rough-looking men about, who seemed ready for any



Particular Baptist Church and Manse
Castlereagh Street

Liverpool Street

Pastor Daniel Allen's Particular Baptist Church and adjoining manse in Castlereagh Street, Sydney, near the corner of Liverpool St, circa 1912. (Source: City of Sydney Archives, Prints 01/01/1912-31/12/1912, [A-00040991, A-00040978].)

business that might present itself – whether it took the shape of a free fight or single combat.’ Yet when the matter was raised in parliament several members attributed blame to the open-air preachers, who excited resentment and antagonism by their fiery rhetoric aimed at people of other creeds. Pastor Allen was singled out and described as a ‘firebrand’ who used language likely to lead to a riot. Sir John Robertson contended:

The conduct of Pastor Allen was licentious in the highest degree and to stop him would not be taking from him the liberty of speech. What was liberty? Liberty was to do what they liked without interfering with others. Licence was entering some ground to do something injurious to the liberty of some other man. Could Pastor Allen and his friends not see that he and his friends were invading the rights of other people?

Robertson concluded by saying he thought steps ought to be taken ‘to prevent this kind of discussion on Hyde Park, that was likely to bring about ill-feeling or it might be bloodshed’. The minister assured Robertson the matter was in hand.¹⁹ But resolving the problem would prove more difficult than the minister’s remarks suggested.

The storm gradually became a calm

Pastor Allen returned to Hyde Park the following Sunday to preach. Although the number in the park was less than the previous Sunday, still an estimated 10,000 to 12,000 visitors were present, as was a large contingent of police, though not as many as before. Allen preached without interruption to a reasonably large assembly, but the vast majority of visitors found their entertainment elsewhere among the political and theological disputants. The *Herald* remarked, ‘The storm gradually became a calm.’

Yet it might not have been, for when Allen finished his preaching and proceeded out of the park, he was once again followed by an immense mob. A crowd of between 2000 and 3000, what the press called ‘larrikins’, had assembled outside Allen’s house awaiting his arrival but they were to be disappointed. Instead of walking from the park to his house, Allen hopped into a carriage waiting for him in Liverpool Street and drove off in the direction of Waverley.²⁰

The following Sunday, 31 March, saw a further diminution in the number of visitors to the park, with the *Herald* estimating an attendance of between 8000 and 10,000. The reporter noted that the language Allen used in his sermon was ‘inoffensive from beginning to end’. This caused considerable disappointment to some of Allen’s supporters with one man interjecting, ‘I came here to hear the Roman Catholics walked into, but it’s nothing better than milk and water.’ A scene similar to the week before followed when Allen exited the park and drove off in a carriage leaving thousands of disappointed ‘larrikins’ crowding Liverpool Street until cleared by the police.²¹

Even the larrikins were losing interest so that on the following three Sundays not only did Allen preach without interruption he was able to leave the park at the conclusion of his services and walk to his house. On the third Sunday, 21 April, Allen made an announcement that came as a shock to many. He told his congregation he would be discontinuing his services on Sundays in Hyde Park and would hold them instead in the Protestant Hall. He said he had adopted this course 'not from any personal fear, but in consequence of the extra duty which had been imposed upon the police by being kept in readiness to preserve the peace'.²² But there was more to Allen's decision to abandon open-air preaching than he let on.

Prosecution of Pastor Allen

When the 10 March rioters were before the police court, Walter Cooper had submitted that Pastor Allen was the guilty party because his preaching in Hyde Park was in breach of the law. The justices rightly dismissed that submission as irrelevant to the charge of riot they were hearing. Even if Allen had broken the law, it did not exculpate the defendants. Cooper's contention, however, would soon become relevant in another proceeding.

On 1 April 1878 John Ferguson laid an information against Daniel Allen for a breach of the *Public Parks Act 1854* alleging 'that he had on Sunday 31st March 1878 at Hyde Park, by disorderly conduct, caused annoyance and inconvenience to persons frequenting the said park'. When on 8 April the information came before William Crane (Acting Police Magistrate) and Messrs Alexander and Bull, Walter Cooper appeared for the informant. Neither Ferguson nor Cooper was a Catholic. Ferguson was a Scottish-born Presbyterian, who was a bookseller and owner of the *Cumberland Times* newspaper. Cooper was a Protestant-born non-believer, though the *Protestant Standard* seemed to regard him as a crypto-Catholic, once opining: 'His Protestantism merged into Popery.' The two men were in fact drinking mates who shared a mutual antagonism of ultra-Protestant Orangemen such as Pastor Allen.

The *Standard* characterised the prosecution as 'a small and contemptible piece of persecution'. It accused Cooper of being the 'secret spring and the fountain of law and malice' who instigated the litigation, using Ferguson as his 'cats-paw with which to draw out the chestnuts' because of his hatred of Pastor Allen and 'anyone who is guilty of unmasking Popery'. To the *Standard*, his motivation was to canvass Catholic votes to return him to parliament.²³

At the commencement of the hearing, Allen's counsel, David Buchanan, barrister, took exception to the information. Like Cooper, Buchanan was a colourful character, a former member of parliament and a 'sensitive theatre critic'.²⁴ Buchanan told the justices that the proceeding was a vexatious prosecution, the result of spite and malignity. More significantly, he submitted that Hyde Park had never been dedicated for public recreation and therefore did not come under the *Parks Act*. In

making that assertion, Buchanan relied on recent statements in parliament and elsewhere by James Farnell MP, who was both Premier and Minister for Lands. Buchanan said that if the case proceeded he would call the Premier to give evidence to that effect.

When Acting Magistrate Crane said he agreed there was no offence, Cooper tried to widen the net by including a breach of the *Hyde Park Partial Enclosure Act 1851*. Crane, however, refused him leave to amend the information and the justices declined to allow the case to proceed.

A second information filed by Ferguson was also dismissed. It alleged that Allen had breached the *Places of Religious Worship Act 1812* by permitting a congregation of more than 20 persons to assemble for the purposes of religious worship in a place not notified or registered for public worship. The statute, commonly known as the *Toleration Act*, was an act of the Westminster parliament. The justices held that it did not apply in New South Wales. Despite summarily dismissing Ferguson's informations, the justices declined to order him to pay Allen's costs.²⁵

Undeterred, Ferguson filed fresh informations against Pastor Allen. One was a revised form of the first information, alleging disorderly conduct on 31 March in breach of the *Enclosure Act* as well as the *Parks Act*. A second information was the same as the previous information alleging a breach of the *Toleration Act*. Ferguson also filed a third information which alleged an offence of riot against Allen and five of his supporters arising out of the events in Hyde Park on 10 March.²⁶

When on 18 April the informations came before the Police Court, comprising Messrs Oatley, Bird and Davies, Walter Cooper once more appeared for the informant, while Charles Edward Pilcher MP, barrister, appeared for the defendants. Like Buchanan, Pilcher took a preliminary objection to the charge under the *Toleration Act* and, as before, the justices held that it did not apply in New South Wales and dismissed the information. The other informations were adjourned to the following Wednesday.²⁷

That weekend, as we have seen, Pastor Allen announced he would no longer conduct open-air services in Hyde Park. When the adjourned court proceedings resumed on the Wednesday, Mr Gannon, appearing for Ferguson, sought and obtained leave from the justices to withdraw the remaining informations. Gannon explained to the bench that Ferguson's only purpose for prosecuting Allen was to abate a public nuisance. When he read in the paper that Allen was discontinuing his preaching in Hyde Park, he determined to withdraw the informations.

On the face of it, Allen's announcement was the cause of Ferguson's decision to discontinue the proceedings. However, the prosecution case was not strong and Ferguson was approaching insolvency due to business difficulties. Whatever the outcome of the case, each party would have to bear his own costs, which would be considerable if the hearing was to last as long as the proceedings against Stritch and

company. Both men, therefore, had an incentive to end the litigation. In addition, it was well-known that the government, under the influence of public opinion, was moving towards prohibiting public meetings in Hyde Park.

From Hyde Park to the Domain

Despite the government's announced intentions, almost a year passed before the prohibition took effect. The reason for the government's delay is not clear. Although Farnell had acknowledged the absence of a dedication of Hyde Park in the days following the 17 March riot, this information was not new. The *Sydney Mail* had reported the situation two years before, a fact of which the newspaper reminded the Premier.²⁸ Yet, 11 days elapsed after the second riot before the government took the first step in the dedication process.



Premier James Squire Farnell. (Source: 'The Australian portrait gallery and memoirs of representative colonial men', edited by Thomas Shine, Southern Cross Publishing Co, Sydney, 1885.)

On 28 March Farnell, pursuant to the *Crown Lands Alienation Act* 1861, laid on the table of the Legislative Assembly an abstract of Crown lands authorised to be dedicated to religious and public purposes, being Hyde Park and two adjacent parcels of land, Bell's Paddock and No Man's Land, which were to be renamed Cook Park and Phillip Park, respectively.²⁹ The city council commended the measure but urged the government to appoint as trustees members of the council for the ward in which the parks were situated.³⁰

Under the *Alienation Act*, one month had to pass before the dedications could take effect. Accordingly, it was not until 3 May 1878 that they were notified in the *Government Gazette*.³¹ But the process was not complete. The government announced it could not appoint trustees until the lands had been surveyed and the precise boundaries determined.³² There the matter rested until 8 October, when the approved boundaries were notified and the appointments made. The council's suggestion of appointing ward aldermen was not adopted, although James Merriman, the mayor, was among the five trustees, all distinguished locals including the director of the Botanic Gardens and the curator of the Museum.³³

The Catholic newspaper, the *Freeman's Journal*, welcomed the move, declaring, 'Now that Hyde Park is dedicated, we hope a stop will be put to desecration on Sunday, in the name of religion or otherwise.' A correspondent of the *Sydney Morning Herald* expressed the hope that the appointments would see 'the howling religious fanatic and mob orator alike excluded'.³⁴ Yet four months would elapse before the correspondent's hope would be realised.

It was only after anti-Chinese protest meetings in the park in early December 1878 degenerated into attacks on Chinese people and property in Sydney's Chinatown that the next step was taken.³⁵ On 30 December 1878 the Governor and Executive Council approved rules and regulations for the management of Hyde Park, Cook Park, and Phillip Park as framed by the trustees. Even so, it was not until 5 February 1879 that those rules and regulations were notified in the *Government Gazette*. The gazette bore a note of the December approval but provided no explanation for the six-week delay in their notification.³⁶

Reaction to the regulations was swift. The provisions which attracted most attention were clauses 6 and 7:

6. No public meeting of any kind, or assemblage of persons together to the number of twelve or more, for any purpose, in any of the Parks shall be allowed; and every person in any such meeting or assemblage, who being desired by any trustee of the park or constable or park-keeper to depart, shall refuse or wilfully neglect to do so, shall be liable to a fine of forty shillings or not less than twenty shillings, and may be forthwith removed from the Park.

7. Provided always that the last preceding rule shall not extend to any meeting or assemblage notified by authority, fertile election of a member or members to Parliament, or which shall be holden for any purpose by the written permission of the Trustees.

John Davies, the baptised Catholic who had become a militant Protestant and a supporter of Pastor Allen, led the attack in parliament, declaring that clause 6 'interfered improperly with the liberty of the subject'. He said, 'There should not be power given to trustees to prohibit the people from giving utterance to their feelings at any public assemblage ... on any public park.' Orangeman John Roseby said he 'thought the character of the regulations very arbitrary', adding that objectionable behaviour could be supervised by the police. An opponent of Pastor Allen, John Hurley, who was an Irish-born Catholic transported in 1824 for insurrection, hoped the regulations would be carried out in their entirety but expressed concern that all great public meetings might be excluded.

Sir Henry Parkes, who had succeeded Farnell as Premier when Farnell's government fell in December 1878, professed not to be acquainted with the regulations and promised to look them over carefully. In a later debate, Baptist turned free thinker James Greenwood complained that the regulations carried the power of government too far and interfered with the liberty of the subject.³⁷

In the meantime, the regulations were put to the test the following Sunday. According to the *Sydney Morning Herald*:

Considerable excitement occurred yesterday amongst those in the habit of thumping the 'drum ecclesiastic' in Hyde Park on Sunday afternoons, as well as amongst those who listened to them ... Yesterday groups of several hundreds of persons each assembled to hear the deliverances of itinerant preachers, and for some time it looked as if the old style of things was going to be continued ... However, and luckily, at a few words from [a courteous sub inspector of police and some constables] the speakers generally had the good taste to desist from their harangues.

Only one speaker threatened to protest against the new regulation, expressing 'his resolve to become a martyr if occasion required'.³⁸

The *Herald* was generally supportive of the regulations while the *Evening News* opposed them, arguing that, if people were offended by the language employed by speakers, 'it is a very good reason for enforcing the laws which deal with obscene or blasphemous language, but not for forbidding the use of the Park to those who hold forth in it temperately and inoffensively'. Reverend John Dowie wrote a lengthy letter to the *News*, declaiming the regulations in the strongest terms. As might be expected, the *Protestant Standard* also opposed the regulations.³⁹

A public meeting protesting the regulations was held in the Temperance Hall, chaired by John Davies MLA, at which Dowie spoke. The meeting elected a deputation to call on Parkes. The Premier proved unsympathetic, telling them that the trustees had acted within their powers, that the park was undoubtedly for the purpose of recreation, and that the rights of the people were not in any way interfered with. He added that if someone desired to hold a public meeting, they need only seek permission.⁴⁰

The chairman of trustees of the three parks also defended the prohibition on public meetings. He said Hyde Park was daily used by women and children as a place of exercise and recreation and that the congregating of large numbers of men and boys, often disorderly and using excited and inflammatory language, was a serious inconvenience. He noted that the prohibition was especially directed at Hyde Park and he suggested that permission would readily be granted for public meetings to be held in Cook Park or Phillip Park. He even held out the possibility that the restrictions on meetings in those parks might be lifted.⁴¹

Despite the chairman's assurances, it was not to Cook Park or Phillip Park that the preachers and orators resorted. Instead, they took their makeshift platforms a kilometre north to the Government Domain. Even Pastor Allen resumed his open-air services there.⁴² Soon the Domain became the place to hold large public meetings. On Sunday 8 June 1879 more than 20,000 people gathered there to demand the reprieve of three young men sentenced to death for rape. Two had their sentences commuted but the third, an Aborigine named Alfred, was hanged. The failure to reprieve Alfred angered many people, some of whom made their feelings known from their platforms in the Domain.⁴³

Although there was no repeat of the 1878 riots, complaints soon emerged of 'disgraceful scenes' due to provocative speakers and attempts by larrikins to break up their meetings. When the matter was raised in parliament in October 1883, James Farnell, who had returned as Minister for Lands, told MPs he proposed to appoint trustees under administrative arrangements similar to those for Hyde Park.⁴⁴ Fearing such trustees would introduce a ban on public assemblies, several prominent citizens, including Sydney's mayor, convened protest meetings which sent a deputation to the minister.⁴⁵

Although Farnell dropped the proposal to appoint trustees, the government in 1885 made regulations for the management of the Domain under powers conferred by the newly enacted *Crown Lands Act 1884*. Unlike the Hyde Park regulations, those for the Domain did not ban public meetings. Instead, they prohibited 'violent or unseemly language, calculated to inflame the minds of the hearers or cause a breach of the peace'.⁴⁶

In 1894 the government once more floated the idea of appointing trustees to manage the Domain. Again, there were protests and once more the government dropped the plan, choosing instead to update the regulations, but leaving in place the rule prohibiting 'violent or unseemly language' at public meetings.⁴⁷

At about this time questions were raised as to the legal status of the Domain and the powers of the government to manage it. Searches of records back to Governor Phillip failed to find any document evidencing the dedication of the Domain as a reserve for public purposes. Debate regarding the Domain's status continued for several years, finally being resolved in 1916 when the government used the provisions of

the recently enacted *Crown Lands Consolidation Act 1913* to dedicate the Domain for public purposes and to appoint trustees – this time without protest.⁴⁸ Nevertheless, it was not until 1927 that the trustees exercised their power under the *Public Parks Act 1912* to make by-laws for the Domain, having until then left in place regulations that had been made in 1914 in substitution for the 1894 regulations.

While the 1914 regulations had adopted the 1894 prohibition on ‘violent or unseemly language’, the 1927 by-law was less restrictive, simply stating: ‘No person shall address any public meeting or assemblage of persons in language likely to cause a breach of the peace.’⁴⁹ This might have been an oversight, for in 1929 the prohibition on ‘violent or unseemly language’ was reinstated. From 1930, amendments to the regulations dealing with public meetings in the Domain related mainly to the times during which meetings could be held, initially limiting them to afternoons from 2pm until early evening but in 2002 the period permitted for public meetings was extended to between sunrise and sunset.⁵⁰ The prohibition on ‘violent or unseemly language’ continued to apply but in 2020 it was reformulated to provide that a person must not use ‘indecent, obscene, insulting or threatening language’ or ‘cause serious alarm or affront to a person by disorderly or unsafe conduct’.⁵¹

Conclusion

The 1879 prohibition of public meetings in Hyde Park without permission did not deny the soap-box orators and open-air preachers the right of free speech, as they simply moved to a new location. Since then, the Domain has continued to be Sydney’s premier venue for their activities, its popularity waxing and waning due to public taste rather than government dictation.⁵² While the approach applied since 1885 of proscribing ‘hate speech’ is not perfect, it means that anti-social behaviour is deterred by prosecuting individual cases on their merits rather than by an across-the-board ban on public meetings, thus safeguarding, in Sir John Robertson’s formulation, liberty not licence.

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Notes

1 Particular Baptists adhere to the doctrine of a particular atonement – that Christ died only for an elect – while General Baptists hold to the doctrine of a general atonement – that Christ died for all people and not only for an elect.

2 Michael Chavura, ‘Daniel Allen (1824-1891)’, *Australian Dictionary of Evangelical Biography*, 2020, <https://sites.google.com/view/australian-dictionary-of-evang/a/allen-daniel-1824-1891>, accessed 22 February 2024. Allen’s writings included: *Roman Catholicism refuted by the word of God* (1861), *The Pope v. The Queen* (1875), *The Total Depravity of Man* (187-?), *Oliver Cromwell and his Slanders* (1877), *History of the Convents* (1878).

3 J. Roe (ed), *Daniel Allen: Pastor and Pioneer*, CBO Publications, 1998, p 62.

- 4 *Sydney Morning Herald* (hereafter *SMH*), 11 March 1878, p 4. For a discussion of the *Herald's* attitude to Catholicism at this time see R. B. Walker, *The Newspaper Press in New South Wales, 1803-1920*, Sydney University Press, 1976, pp 81-82.
- 5 *SMH*, 12 March 1878, p 5.
- 6 *Evening News* (hereafter *EN*), 12 March 1878, p 2.
- 7 *SMH*, 14 March 1878, p 2.
- 8 *Protestant Standard* (hereafter *PS*), 16 March 1878, pp 4, 6.
- 9 *Sydney Punch* 16 March 1878, p 333.
- 10 *SMH*, 16 March 1878, p 5; *EN*, 16 March 1878, p 5.
- 11 Sectarian rioting had occurred in Maitland, New South Wales, in 1860 and Ipswich, Queensland, in 1874 in response to what was perceived as anti-Catholic rhetoric (*Empire*, 31 March 1860, p 5; *Telegraph*, 7 November 1874, p 3). Commenting on an earlier disturbance in Hyde Park, the *Evening News* observed, 'If the peace of the Sabbath, the day of peace, cannot be preserved against those pothouse polemicals, except by the presence of a large body of police ... that is surely reason enough in itself for the summary suppression of so dangerous a nuisance.' (*EN*, 4 October 1875, p 2).
- 12 The Police Court proceedings extended over 11 sitting days between 15 March and 4 April 1878: *EN*, 15 March 1878, p 3; 20 March 1878, p 3; 21 March 1878, p 3; 26 March 1878, p 3; 27 March 1878, p 2; 28 March 1878, p 3; 29 March 1878, p 3; 30 March 1878, p 5; 2 April 1878, p 2; 3 April 1878, p 2; 4 April 1878, p 2; 4 April 1878, p 2; *SMH*, 16 March 1878, p 4; 21 March 1878, p 7; 22 March 1878, p 3; 27 March 1878, p 4; 29 March 1878, p 7; 30 March 1878, p 8; 3 April 1878, p 7; 4 April 1878, p 4; 5 April 1878, p 6.
- 13 Bede Nairn, 'Cooper, Walter Hampson (1842-1880)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, <https://adb.anu.edu.au/biography/cooper-walter-hampson-3255/text4927>, published first in hardcopy 1969, accessed online 22 February 2024; *EN*, 12 February 1879, p 3; 18 February 1879, p 2; 27 February 1879, p 2; *SMH*, 5 March 1879, p 7.
- 14 *EN*, 6 January 1876, p 2.
- 15 *EN*, 27 May 1878, p 3; 28 May 1878, p 3; 29 May 1878, p 3; 30 May 1878, p 3.
- 16 Rosalind Croucher, 'Probate and Lunatics: A Curious Cameo of Supreme Court History', in J. M. Bennett, and John K. McLaughlin (eds), *Cases for Opinion: A Bicentennial Miscellany*, Australian Scholarly Publishing, 2023, p 86.
- 17 The description of the second riot is taken from the reports in *EN*, 18 March 1878, p 3 and *SMH*, 18 March 1878, p 5.
- 18 *EN*, 18 March 1878, p 3.
- 19 *EN*, 20 March 1878, p 2; *SMH*, 20 March 1878, p 3.
- 20 *EN*, 25 March 1878, p 2.
- 21 *SMH*, 1 April 1878, p 4.
- 22 *EN*, 8 April 1878, p 2; *Sydney Mail*, 13 April 1878, p 482; 20 April 1878, p 522; *SMH*, 22 April 1878, p 4.
- 23 *PS*, 25 November 1876, p 9; 3 November 1877, p 3; 13 April 1878, p 4; *Cumberland Argus*, 6 May 1911, p 6.
- 24 C. N. Connolly, *Biographical Register of the New South Wales Parliament 1856-1901*, ANU Press, 1983, p 36.
- 25 *EN*, 8 April 1878, p 3; *SMH*, 19 March 1878, p 5; 20 March 1878, p 3; 9 April 1878, p 7.
- 26 *Sydney Mail* (hereafter *SM*), 20 April 1878, p 523.
- 27 *EN*, 18 April 1878, p 2; *SMH*, 19 April 1878, p 3.

- 28 *SM*, 4 March 1876, p 305; 23 March 1878, p 371.
- 29 *SMH*, 29 March 1878, pp 2, 5.
- 30 *SMH*, 2 April 1878, p 5.
- 31 *New South Wales Government Gazette* (hereafter *NSWGG*), 3 May 1878, p 1780.
- 32 *SMH*, 10 May 1878, p 4.
- 33 *NSWGG*, 8 October 1878, pp 4037, 4069.
- 34 *Freeman's Journal* (hereafter *FJ*), 12 October 1878, p 9; *SMH*, 1 November 1878, p 3.
- 35 *SMH*, 5 December 1878, p 6; 30 December 1878, p 3.
- 36 *NSWGG*, 5 February 1879, p 517.
- 37 *SMH*, 8 February 1879, p 3; 12 February 1879, p 3.
- 38 *SMH*, 10 February 1879, p 5.
- 39 *EN*, 11 February 1879, p 2; 15 February 1879, p 5; *PS*, 15 February 1879, p 5.
- 40 *SMH*, 15 February 1879, p 3; 22 February 1879, p 3; *EN*, 17 February 1879, p 3; 21 February 1879, p 2.
- 41 *SMH*, 11 March 1879, p 5.
- 42 Roe (ed), *Daniel Allen*, pp 65-66.
- 43 *EN*, 9 June 1879, p 3; *EN*, 10 June 1879, p 3; *EN*, 14 June 1879, p 4; *PS*, 21 June 1879, p 6.
- 44 *New South Wales Parliamentary Debates* (hereafter *NSWPD*), 26 October 1883, pp 220-224; 30 October 1883, p 240.
- 45 *Sydney Daily Telegraph*, 2 November 1883, p 2; *SMH*, 5 November 1883, p 5; 8 November 1883, p 6; 12 November 1883, p 3; 17 November 1883, p 9.
- 46 *NSWGG*, 23 October 1885, p 6947.
- 47 *EN*, 19 February 1894, pp 2, 4; *Australian Star*, 20 February 1894, p 5; *Daily Telegraph*, Sydney (hereafter *DT*), 20 February 1894, p 5.
- 48 *DT*, 3 February 1896, p 6; *SMH*, 4 February 1896, p 6; 5 February 1896, p 6; 5 June 1902, p 9; *FJ*, 23 January 1897, p 20; *SM*, 22 September 1900, p 717; *NSWGG*, 22 December 1916, pp 7726, 7713.
- 49 *NSWGG*, 7 October 1927, p 4834; 9 December 1914, p 7285.
- 50 *NSWGG*, 8 August 1930, p 3137; 28 November 1930, p 4744; 14 October 1932, p 3785; 12 April 1940, p 1728; 13 June 1941, p 2189; 28 October 1955, pp 3220-21; 1 May 1959, p 1337; 19 April 1973, p 1381; *Royal Botanic Gardens and Domain Trust Regulation 2002*, clause 20(1)(b).
- 51 *NSWGG*, 23 August 1929, p 3509; *Royal Botanic Gardens and Domain Trust Regulation 2020*, clause 28.
- 52 'Speakers' Corner, Sydney', <https://soapboxspeakers.wordpress.com>, accessed 22 February 2024.