

University of Tasmania Open Access Repository Cover sheet

Title

Party, politics and penalism, 1836-1845 : an analysis of the role of John Montagu in the penal politics of Van Diemen's Land

Author

Joel, CR

Bibliographic citation

Joel, CR (2004). Party, politics and penalism, 1836-1845: an analysis of the role of John Montagu in the penal politics of Van Diemen's Land. University Of Tasmania. Thesis. https://doi.org/10.25959/23229464.v1

Is published in:

Copyright information

This version of work is made accessible in the repository with the permission of the copyright holder/s under the following,

Licence.

Rights statement: Copyright 2004 the Author - The University is continuing to endeavour to trace the copyright owner(s) and in the meantime this item has been reproduced here in good faith. We would be pleased to hear from the copyright owner(s). For consultation only. No loan or copying permitted until 11th May 2007. Thesis (M.A.)--University of Tasmania, 2005. Includes bibliographical references

If you believe that this work infringes copyright, please email details to: oa.repository@utas.edu.au

Downloaded from University of Tasmania Open Access Repository

Please do not remove this coversheet as it contains citation and copyright information.

University of Tasmania Open Access Repository

Library and Cultural Collections University of Tasmania Private Bag 3 Hobart, TAS 7005 Australia

E oa.repository@utas.edu.au

'An Act of Condescension'

While Montagu was in England, Van Diemen's Land experienced a brief economic boom which raised the demand for labour and injected much needed funds into the colonial treasury, which contained only £16,873 at the beginning of 1838. There was a rapid increase in primary production as drought ravaged parts of New South Wales, and in 1839 large shipments of grain were exported to the mainland, including Port Phillip and South Australia.1170 Notably, labour was also in demand in Van Diemen's Land in 1841, and during that year, nearly 900 settlers crossed back to the colony from Port Phillip. 1171 The labour demand in Van Diemen's Land occurred simultaneously with a brief depression at Port Phillip, caused in part by an influx of 11,000 emigrants from Britain, many of whom needed help from the government. 1172 Consequently, between 1841 - 1842, these new arrivals replaced 'people from Van Diemen's Land as the principal source of Port Phillip's population'. 1173 Consequently, the net revenue of Van Diemen's Land rose from £144,562 in 1838 to £242,432 in 1841, and increased the colonial treasury coffers to 76,407 at the beginning of 1842. This compared favourably with the net expenditure of the colony, which remained steady at £160,974 in 1841. The colonists borrowed freely to increase their holdings, and the land revenue amounted to £64,070 in 1841, whereas in 1838 it only reached £12,281.1174 Almost overnight, there appeared to be enough money to replace assignment labour with free labour, although few seemed aware that this might all disappear just as quickly, least of all Franklin and the Colonial Office. The increase in revenue also had the effect of making the police and gaol costs appear less burdensome on the colony, even though the colonists owed the banks £1,000,000 at the end of 1841. Since the abolition of transportation to New South

¹¹⁷⁰ Hartwell, Economic Development, p. 212.

AGL Shaw, A History of the Port Phillip District, (Melbourne University Press, Melbourne, 1996), p. 148

p. 148.

1172 Ibid., p. 147. Many of these arrivals from Britain were unemployed, poor, and not accustomed to 'bush life' (p. 150).

¹¹⁷³ Ibid., p. 148. Shaw states that the depression at Port Phillip lifted by 1844 (p. 149).

Hartwell, Economic Development, p. iv.

Wales there was a rapid drop in the number of convicts sent to the Van Diemen's Landin 1839, 1677 convicts disembarked; in 1840, that number fell further still to 1365¹¹⁷⁵, the lowest number since 1829.¹¹⁷⁶ Consequently, the expenditure for the police and gaols also dropped between 1838 and 1841¹¹⁷⁷ and for the first time since Franklin's arrival in the colony, there was a balanced labour supply, and more money was placed at the disposal of the local legislature for immigration.¹¹⁷⁸ In real terms however the police and gaol costs negated any real increase in revenue and were a burden on the colony. Convict numbers progressively increased again after 1841, including 5500 convict arrivals in 1842. In 1840 however it was not long before the labour supply failed to keep up with the demands of the settlers, and at the same time as Russell added the finishing touches to his probation system instructions¹¹⁷⁹, Franklin reported to the Legislative Council that

'I proceed to say a few words only on two subjects intimately connected with each other; namely transportation and immigration... The prisoners who have arrived since November 1839 have been placed on the public works in probationary gangs, there to remain for a minimum of one year, and a maximum of four years, before they pass into private service... The convicts therefore are to be no longer assigned in towns, or for the purposes of luxury, and are now to be distributed in a manner which will increase the supply of rural labourers only. But the immediate effects of the establishment of the probationary gangs, and the consequent non-assignment of the convicts on arrival, are already seriously felt, and the inconvenience and privation have been more apparent because the increased demand for labour... has been such, that even the ordinary supply of labourers on the scale of former years, would have been wholly inadequate to meet it. The call for labour has been an unprecedented one, it is no wonder therefore, that the supply which was never superabundant, should now have proved inadequate. It is on this

Forster reported that only 550 adult convicts arrived in the colony in the year 1840. See Minutes of the Executive Council, 29 March 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 42.

¹¹⁷⁶ Shaw, Convicts and the Colonies, p. 300.

¹¹⁷⁷ Statistics of Van Diemen's Land for 1838 - 1841, Ewing to Franklin, 31 May 1843, (Government Printer, 1843, Hobart), p. iv.

¹¹⁷⁸ Robson, *History*, p. 327.

Russell's despatch for the future disposal and treatments of convicts sent to Van Diemens Land is dated 10 September 1840. Russell to Franklin, 10 September 1840 as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 873.

ground, and because I earnestly trust that the impetus which has been given to the agricultural activity of the colony, may continue steadily progressive, that I deem that the time has arrived when our resources should, as far as possible, be made available for the purposes of immigration. In order to supply the special and individual wants of the settlers, and to secure the colony a remunerative term of service for the money expended, I have taken upon myself, without the sanction of the Secretary of State, to authorise an immediate immigration on the bounty system, upon conditions you are already acquainted'.1180

The bounty system proposed by Franklin differed slightly from the system in operation in New South Wales, in that applications for free labour were forwarded by the colonists to the Colonial Secretary for onward transmission to the Agent General for Immigration in London, who selected the most suitable emigrants from an applicant pool. In turn, the colonial government contributed to the cost of the emigrant's passage to Van Diemen's Land, drawing on funds accumulated from the sale of land. The bounty system did not achieve great success in Van Diemen's Land before the cessation of transportation in 1853, owing largely to a lack on funds in the treasury.¹¹⁸¹ Franklin's sentiments echoed those contained in a petition presented to the governor in April 1840. In a despatch to Russell in May, Franklin forwarded a copy of the petition for his perusal, and added his comments:

'The main object of the petitioners was to show the great want of labour in the colony; but another request was made, namely, that in consequence of the time that must necessarily elapse before the deficiency in this respect could be supplied by the means of free immigration, the probationary gangs might be broken up, and the convicts therein assigned... And looking upon this island as the future granary, in a great measure, of the Australian settlements - which in my despatch no. 76 of 14 May 1839, I stated it would undoubtedly become, provided it could obtain sufficient labour, it is - I conceive, of the

¹¹⁸⁰Legislative Council Minutes of VDL, 15 August 1840. As stated earlier in this chapter, many settlers from Port Phillip returned to Van Diemen's Land during this labour shortage. See Shaw, Port Phillip, p. 148).
1181 Shaw, Convicts and the Colonies, p. 336.

greatest moment that measures could at once be taken to encourage a prudent and economical emigration to the colony'. 1182

Russell was not particularly concerned about the labour shortage in the Van Diemen's Land, although he left no doubt as to the future of assignment in the colony:

'The question of resorting again to the system of assigning convicts to private service is one, which, under no circumstances, Her Majesty's Government can entertain'. 1183

Like Russell, whose new instructions could only have been shaped by opposition in England¹¹⁸⁴ or a misguided belief that the colony's sudden increase in revenue was sustainable, Franklin pushed ahead with his bounty system, and in November 1841 the Legislative Council voted £60,000 from the land fund to off-set the cost of free emigration to the colony, even though the first probationers seeking paid employment were due to emerge from the probation gangs in a matter of months. Some colonists warned Franklin against a 'large indiscriminate influx of labour', convict or free, but Franklin heeded only the advice of his newly established immigration committee and pushed ahead with the bounty scheme.¹¹⁸⁵ The following year, 1835 immigrants arrived in Van Diemen's Land, followed by 1666 in 1843. Having spent nearly £16,000 in 1842 on immigration however, Franklin cut funding by over half in 1843, and half again in 1844, which limited arrivals to 353 in 1845.¹¹⁸⁶ Franklin's misjudgement deprived the colony of a strong financial reserve, and the land fund was severely depleted by the new arrangements, and was made worse by a sudden drop in land sales and a massive influx of convicts in 1842.¹¹⁸⁷

Meanwhile, Russell forwarded his new probation instructions to Franklin on 10 September 1840. He explained that

¹¹⁸² Franklin to Russell, 22 May 1840, CO 280/140, p. 428.

¹¹⁸³ Russell to Franklin, 24 February 1841, CO 280/140, p. 432.

¹¹⁸⁴ Shaw, Convicts and the Colonies, p. 272.

¹¹⁸⁵ *Ibid.*, p. 279.

¹¹⁸⁶ Butlin, Forming a Colonial Economy, p. 22.

¹¹⁸⁷ Shaw, Convicts and the Colonies, p. 300.

'transportation to New South Wales is at an end, and Norfolk Island and Tasman's Peninsula are, together with Bermuda, the places abroad in which confinement is hereafter to take place. It will be necessary that you should take immediate measures for the reception of a greater number of convicts at Tasman's Peninsula'. 1188

Russell's instructions however were devoid of detail, and he simply told Franklin that 'omitting for the present all details, I transmit to you the accompanying copies of despatches which I have received from the Governor of New South Wales'. 1189 Consequently, the last convict transport arrived in New South Wales on 18 November 1840.¹¹⁹⁰ Having already abolished assignment, Franklin continued on as he had done before, organising the men into gangs on Tasman's Peninsula away from the settled districts, where they were put to work on the roads undertaking 'agricultural labour'1191 and clearing Crown land. Some of the newly arrived men were also worked on the main line of road between Launceston and Hobart while buildings were erected for the gangs on the Peninsula, though this was not sanctioned by the Colonial Office. 1192 Initially at least the colonists were not concerned by the changes, as the earlier arrivals of convicts were still under assignment, and only the new men were being sent to the gangs. 1193 Problems beset the new arrangements however, and Franklin tried using convict overseers to superintend the gangs in place of free men who were hard to recruit. It was the beginning of a common theme in Franklin's reports, and in almost every report that followed after this time he complained about a lack of competent overseers in the gangs. He was also concerned about the diminishing size of useful land on the Peninsula, and increased the number of convicts in the gangs to compensate.¹¹⁹⁴ He also failed to report clearly on the financial problems unfolding in the colony, and merely restricted his complaints to administrative concerns. In fact there was not enough money in the treasury to fund the gangs, but he continually skirted the issue.

¹¹⁸⁸ Russell to Franklin, 10 September 1840, as reported in the British Parliamentary Papers (Transportation), Sessions 1810 - 1841, vol 7, p. 873. 1189 *Ibid.*, p. 873.

Shaw, Convicts and the Colonies, p. 275.

¹¹⁹¹ Brand, Probation, p. 15.

¹¹⁹² *Ibid.*, p. 14.

¹¹⁹³ *Ibid.*, p. 16.

¹¹⁹⁴ *Ibid.*, p. 279.

Unknown to Franklin at the time, it was Montagu who had recommended to Russell that all convicts sent to Van Diemen's Land under the new system of discipline should spend the first or punishment period of their sentences at Tasman's Peninsula. The concept partly originated with Arthur, although he did not recommend that all convicts should be sent to Tasman's Peninsula. Writing to Stanley in April 1834, Arthur listed the obstacles that were impeding his success: 'He wanted criminals to know that they were certain to be transported if convicted. He wanted the dread of Tasman's Peninsula to be more associated with the sentence of transportation'. And finally, and perhaps pertinent to Franklin's argument, he wanted more 'better qualified and better paid overseers, more police, more magistrates, more clergy, and a better class of free settlers to act as the masters of assigned servants.

While still waiting for Russell's September despatch on Tasman's Peninsula, Franklin reported in January 1841¹¹⁹⁷ that he had chosen a new site at Salt Water River for the reception of the newly arrived convicts in accordance with Russell's June 1840 instructions¹¹⁹⁸, and reiterated his earlier warning that the full adoption of the 'separate system' of penitentiaries would involve an outlay which he could not contemplate Her Majesty's Government sanctioning.¹¹⁹⁹ Forster, in his capacity as Acting Colonial Secretary agreed: 'I am sure', he declared, 'that Lord John Russell was not aware of the very great expenditure of public money which will attend the plan he has decided on'.¹²⁰⁰ Franklin explained that he intended to send about 120 more convicts to Tasman's Peninsula, though he was unable to provide accommodation for any more. Montagu had subsequently detailed his recommendations in a confidential report to Forster, who for reasons not known forwarded them to Lady Franklin to read. In a letter to Mrs Simpkinson, she commented:

¹¹⁹⁵Montagu to Vernon Smith, 12 August 1840, Leamington, CO 280/129, p. 330.

¹¹⁹⁶ Shaw, Sir George Arthur, p. 67.

Franklin to Russell, 19 January 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1810 - 1841, vol 7, p. 881.

¹¹⁹⁸ See chapter 6.

¹¹⁹⁹*Ibid*, p. 882.

¹²⁰⁰Foster to Franklin, as quoted in Fitzpatrick, Franklin, p. 236.

'It probably would be cheaper to lodge and guard a great body of men in one spot than in many, but here is the only advantage; and it would be very easy to prove that even this is problematical. As to interest of the country or the colonists, one would think Mr Montagu was wholly regardless of it. He sent the report of his scheme to Mr Forster who gave it to me to read and I did not scruple to tell him that I thought Mr Montagu had an eye in it to only one thing - viz., the saving of Her Majesty's Treasury'. ¹²⁰¹

Forster's trust in Lady Franklin is both baffling and significant. It indicated a continuing friendliness, obscured in contemporary and modern accounts by the later breakdown in relations with Montagu, and this existence of an amicable relationship between the "faction" and the Franklins while its chief protagonist was far away in England is notable.

In any case, Franklin, now privy to the extent of Montagu's influence in the formation of the new system, questioned the merit of his recommendations:

'I was apprehensive that carrying the probation system into Tasman's Peninsula would cause much confusion and tend to alter the character of that place and lessen in the minds of the hardened convicts the proper feelings of degradation which being sent to Port Arthur ought to produce - while fixing on the probation men the term of reproach which has hitherto been applied to a Port Arthur man by the settlers would be unfair to them'. 1202

It was likely the debate had been brought to the attention of Arthur who was now in London. In May, Lady Franklin's father advised his daughter that he had lately received Sir George, to which she replied that Sir John too had received a kind and pleasant letter from the ex-governor.¹²⁰³

¹²⁰¹Lady Franklin to Mrs Simpkinson, 18 July 1841, as transcribed by G Mackaness, vol 2, p. 21. As early as the 22 March 1837, Lady Franklin had taken note of Montagu's 'economising'. In a journal entry of that date, Lady Franklin observed that Montagu, in a tour of the coal mines on Tasman's Peninsula, claimed that the establishment was saving the Government £3000 a year which had been the cost of fuel (Lady Franklin's Journal, 22 March 1837, MS 248/156).

¹²⁰² Franklin's Journal, as quoted in Fitzpatrick, *Franklin*, p. 235.

¹²⁰³ Lady Franklin to her father, 12 October 1841, MS 248/174/1-23.

Montagu returned to Van Diemen's Land in March 1841 aboard the prison ship *Lady Raffles*. In what was a sign of things to come, the *Lady Raffles* carried a cargo of 330 convicts, the third largest contingent of prisoners in over 53 convict transports sent to the colonies.¹²⁰⁴ The *Hobart Town Courier* welcomed his arrival:

'On Tuesday next it is proposed to give a public dinner to Captain Montagu on his return to this colony, as a mark of the private esteem entertained for his character, and in token of the services which he has rendered us in England by using his best endeavors towards relieving our reputation of the foul aspersions which ignorant or interested men busied themselves in heaping upon us... It is true that the system is modified, but in the present exigency of affairs, or indeed under any circumstances, the annual expenditure which large bodies of prisoners must bring to the colony, will prove of incalculable benefit in encouraging agriculture and sustaining the price of produce.'

The *Hobart Town Courier* praised Montagu for ensuring the continuation of transportation to Van Diemen's Land, declaring that it 'must greatly contribute to strengthening and augmenting our resources':

'We consider it then an auspicious event for the colony that Captain Montagu reached England at so crucial a time... And now we may say, that over the troubled waters Captain Montagu bears the olive branch of peace'. 1205

'Montagu', it concluded, 'appeared in excellent health, having about him all the characteristic coolness of conscious ability'. The Colonial Auditor, George Boyes, also commented in his journal that Montagu returned from England looking 'shorter and thinner and younger by ten years then when he left'. A dinner was held in the Long Room, Customs House, to celebrate his return, and mark a grateful acknowledgement on the part of the community for the 'zealous and efficient services rendered to the colony by

¹²⁰⁴ C Bateson, The Convict Ships, 1787-1868, (Brown and Son and Ferguson, Glasgow, 1959), p. 337.

¹²⁰⁵ Hobart Town Courier, 26 March 1841.

¹²⁰⁶ Ibid., 2 April 1841.

¹²⁰⁷ Chapman, Boyes Diary, p. 30.

his representations with the home government during his temporary absence'. A celebration was also held in Montagu's honour on 23 April at Government Cottage, Launceston.

It is probable that the *Hobart Town Courier's* concern for the continuation of transportation was generally felt. Writing to her sister in 1839, Lady Franklin also reflected that 'if transportation is abolished, the colony is utterly ruined, for there is no land revenue with which to procure emigrants, and if they came here, they would cross over to Port Phillip'. 1209

Forster too welcomed his return, and Montagu and his family went to reside with his brother in law at Newtown.¹²¹⁰ Forster was also publicly thanked by the governor after Montagu's return to the post of Colonial Secretary:

'The Lieutenant Governor avails himself of the return of Matthew Forster, Esquire, to his office of Chief Police Magistrate of the territory to record His Excellency's entire satisfaction at the zealous and able manner in which he filled the office of Colonial Secretary, and of the assistance His Excellency has at all times derived of his services as a Member of the Councils'. 1211

Montagu's return also brought about a reshuffle in the other convict departments; Josiah Spode returned to the office of Principal Superintendent of Convicts, and William Gunn to that of Superintendent of the Prisoners Barracks. Spode's services to the Council were also noted during Montagu's absence.

Celebrations aside, the new system pursued by Montagu in England was immediately felt in the colony. The *Hobart Town Courier* reported in April that the government had instructed the Commissariat to make provision for the maintenance and clothing of

¹²⁰⁸ Hobart Town Courier, 2 April 1841.

¹²⁰⁹ Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹²¹¹ Hobart Town Gazette, 19 March 1841.

between three and four thousand prisoners, which number was annually expected to arrive in the colony. It added that the cost of transportation 'will continue to be chargeable upon the Commissariat during the period of probation, which is as yet undefined.' 1212

In June, Franklin reported to the Legislative Council:

'Tasman's Peninsula and the unsettled districts will be the seat of the new form of convict discipline in its earlier stages; the men subjected to which, will however ultimately increase the general supply of labourers in the occupied portions of the colony. Whilst the punishment due to the commission of crime is never lost sight of, the great object, during the first stages of probation, will be to enforce a habit of obedience, to rouse the moral energies, and to bring the mind of each prisoner under the influence of right impressions - thus an agency will be organised having for its end reformation of the character... By this new arrangement the settlers will be precluded from deriving considerable immediate advantage from the labour of the prisoners... Great Britain has herself, in this matter, set us the example of self denial. That country, which did not hesitate to devote twenty million sterling to the liberation of the negro, is now, with a philanthropy equally generous, about to incur a large expenditure in the attempt to emancipate her erring children from the wretched, and infinitely more degrading, slavery of crime'. 1213

Franklin's adoption of this view of assignment was echoed 12 months later by the *Colonial Times*;

'Will any man take upon him to say that the improvement in a probation gang, and on a farming establishment, is to be compared? The idea of white slavery is a farce, and can have no existence but in the purlieus of Downing Street; there is no analogy whatever between black slavery and convict assignment; the former was private purchase, death

¹²¹² Hobart Town Courier, 20 April 1841.

¹²¹³ Legislative Council Minutes of VDL, 19 June 1841, p. 268.

alone terminating the contract; the latter is only a conditional transfer, subject to be cancelled by any well grounded complaint against either of the parties, and to release by indulgence according to the progress of reformation, in the representation of which the master was admitted a party, as an inducement to the convict to endeavour to please him'. 1214

Franklin's speech is significant and baffling at the same time, and morally at least, an affront to the doctrines of the reform movement to which he subscribed. Assignment however appealed to Franklin's humane side, and according to Shaw, assignment might have had some shortcomings, but it was by no means working badly on the 'eye of its abolition'. 1215 Generally, assignment had been abandoned because convicts were treated, in many instances at least, not according to their crimes but to their usefulness for private gain. It was argued by many that the regulations afforded the colonists a cheap labour supply at the expense of a uniform system of punishment. Van Diemen's Land in 1840. however was very different to New South Wales; transportation to New South Wales had been abolished and the arrival of a growing number of free migrant workers who resented the convict experience contributed to the liberalisation of that colony. In Van Diemen's Land however, a mass of unproductive convicts were only just beginning to pour into the colony and the free immigrants that did arrive found Port Phillip and New South Wales more attractive, if only because their labour was worth more there. A looming depression added a sense of urgency to the situation, and it is enough here to comment that Franklin was clearly in opposition to Downing Street's decision to abolish assignment, and unlike Montagu and the rest of the "faction", appeared much less inclined to embrace Russell's politically safe recommendations, and set him on a collision course with the proponents of the probation system.

Having finally received Russell's 10 September 1840¹²¹⁶ despatch in April 1841 for the future disposal and treatment of convicts sent to Van Diemen's Land, Franklin proceeded

¹²¹⁴ Colonial Times, 31 August 1841.

¹²¹⁵ Shaw, Convicts and the Colonies, p. 244.

¹²¹⁶ Franklin refers to the despatch in own dated 15 April 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 40.

Neck, or as it is now referred to as Forestier's Peninsula, as opposed to solely on Tasman's Peninsula. This was in opposition to Russell's instructions, but there were more men than he had expected, and he was confident that he could soon employ all the convicts for the benefit of the colony. Russell told Franklin that after the convicts had served their time in the gangs, they were to be employed on useful projects like road building and timber felling, before seeking private employment in hiring stations scattered across the colony. Under no circumstances however were they to be assigned to private settlers under the old regulations.

While Montagu had earlier spoken of the expected increase in religious and moral institutions that would accompany an increase in the number of convicts sent to Van Diemen's Land, Franklin again diverted attention to the great want of religious instruction for the large bodies of convicts now under the superintendence of the local government. This was in keeping with the Molesworth recommendations, which provided for a 'more ample' provision of religious and moral instruction.¹²¹⁹ He also referred to his previous despatch of November 1840 in which he requested a proper class of superintendents and overseers, and reaffirmed his request for an increase in their numbers.¹²²⁰ According to Shaw however, Franklin did not stress these objections, and confined his reports to hopeless accounts of privation, a lack of supervision and general overcrowding instead of a failing economy. Franklin did give consideration to the appointment of an officer to fulfil the office of the Director of the Probation System¹²²¹, and in May 1841, he offered Forster the management of the probationary men, which he duly accepted, in addition to his previous office of Chief Police Magistrate.¹²²² Forster expressed his readiness to

¹²¹⁷ Franklin to Russell, 15 April 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 40.

¹²¹⁸ Shaw, Convicts and the Colonies, p. 280.

¹²¹⁹ Brand, Probation, p. 11.

¹²²⁰ Franklin to Russell, 15 April 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 41. Forster re-affirmed this in June 1841. See below.

¹²²¹ Franklin to Russell, 9 July 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 48.

¹²²² Franklin was so impressed with Forster that in a memorandum to London dated June 1840, he recommended the Acting Colonial Secretary to assume control of that office if Montagu did not return to the colony (Memorandum, Franklin, June 1840, Montagu's Manuscript, p. 110). In April 1841, Franklin again remarked that he was pleased with Forster's performance as Acting Colonial Secretary (Memorandum, Franklin, Montagu Manuscript, p. 110). Indeed, Franklin considered Forster an ally against

undertake the duties of the office, but warned Franklin that if 'undue considerations of economy' were allowed to interfere, he was 'afraid he would not be able to do justice to the difficult task he had been offered'. 1223

The Executive Council of Van Diemen's Land discussed the new arrangements on 20 May 1841 and agreed to the creation of a new position with the title of Director of the Probation System.¹²²⁴ Forster was officially appointed the Director, and he advised that he expected to have the new system in full operation by 1 July 1841.¹²²⁵ The effects appeared at first encouraging, and Franklin's despatches gave promise of success. Initially at least, Franklin received the general approbation of several of the more influential colonists at Hobart Town, including Swanston, who predictably declared:

'There is no doubt that we have been saved in the last two trying years by the increasing government expenditure, for without it I feel satisfied there would have been very general distress. Should the probation system continue I have no great fears for the colony'. 1226

Later, on the verge of dismissal, Montagu wanted to assume credit for the new system¹²²⁷, declaring:

'It will be found by reference to Sir John Franklin's despatch to the Secr. of State in July 1841, that he deferred for several months until I returned to the colony, to act upon Lord John Russell's instructions of 1840 for establishing a new system of penal discipline in

the attacks on his government: 'You are well aware how much misrepresentation attends almost every measure of the government at the instance of parties who are unfavourable to me or Forster.' (Franklin to Montagu, 22 June 1840, Montagu Manuscript, p. 123).

Minutes of the Executive Council, 20 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 55. See also Minutes of the Executive Council, 21 June 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 57. In the Executive Council, 20 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 54 - 56. See also Franklin to Russell, 9 July 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 48. The Executive Council also outlined the costs associated with the new system on the 21 June 1841 (p. 48).

¹²²⁶ Swanston to Hamilton, 1842, as quoted in Fitzpatrick, Franklin, p. 329.

¹²²⁷ In March 1844, Montagu again stated in a letter to Arthur that he had recommended the new system of secondary punishment in the colony (Montagu to Arthur, 15 March 1844, Sir George Arthur Papers, 1821 - 1855, vol 15, A2176).

V.D Land when the assignment system was abolished in order that he might have the benefit of my assistance to enable him to do so efficiently, as that system termed the "Probation System" was a material experiment upon a large and expensive scale it became a matter of vast importance to administer it effectively. In compliance with Sir John Franklin's request I wrote his Council minutes, and despatches on the subject, and prepared all the instructions necessary upon it, and he afterwards required me to carry them out by detailed orders to the several departments of his government, and thus threw a large portion of his proper duties on me.'1228

Montagu was right in one respect; Franklin advised Russell in July 1841 that he had delayed establishing the new system of convict discipline until Montagu, who 'had been honoured with interviews by Your Lordship whilst lately in England', returned to the colony. And later, Sir John Pedder also indicated that Montagu's duties had increased since returning from England:

'I know that the facility with which the great variety and large amount of the public business which has passed through your hands has been transmitted, especially since your last return to England, has been the subject of very general admiration'. 1230

That Montagu impressed upon the Colonial Office and the Van Diemen's Land Government the supposed benefit of probation is evident in an extract from the minutes of the Executive Council convened on 29 March 1841. Montagu's letters to Vernon Smith dated 12 and 31 August 1840 were presented to the Council for examination, and were referred to 'as the system of convict discipline proposed to be adopted in Van Diemen's Land'. Forster concurred 'entirely with Mr Montagu in the principle he lay[ed] down', though he made a few observations on the expense which would be

¹²²⁸ Memorandum, Montagu, 24 January 1842, Montagu Manuscript, pp. 68-9.

¹²²⁹ Franklin to Russell, 9 July 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 48.

¹²³⁰ Pedder to Montagu, 5 February, 1842, Newlands, Montagu Manuscript, p. 18. See Appendix B.

¹²³¹ Minutes of the Executive Council, 29 March 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 42.

incurred in implementing the proposal.¹²³² Forster referred to several points which he 'saw no difficulty whatever in carrying out, so long as', he added, 'the necessary funds were first provided. Forster was concerned that the outlay required would become in a short period very large as the number of convicts sent to the colony increased. Forster calculated that for every 2000 ticket of leave convicts in the colony, the government would incur an expense of £50,000 per annum, which did not include the added expenses of 'visiting magistrates, medical officers, superintendents, school masters and catechists, store keepers, overseers' or those convicts in the actual probation gangs.¹²³³

Forster added:

'I may also express my fears that the large expenditure thus proposed to be made on the waste Crown lands will never be repaid by the sale of such lands'. 1234

Forster acknowledged that by withholding the pass holders from the settled districts after their initial probationary period on Tasman's Peninsula, 'it would be of no advantage to the settler to pay for their labour', and equally, it would be undesirable to 'retain those convicts in the sole employment of the Crown'. ¹²³⁵ Indeed, Forster did not say it but the government could not afford their services either! He complained that the settlers preferred land in a state of nature and unfenced at the back, in order to obtain extensive runs for their flocks and herds on the adjoining Crown lands. Moreover, he added, they had not the means to purchase improved lands in the unsettled districts¹²³⁶ where Russell proposed to send them after punishment in the gangs. Like Franklin, he concluded by drawing attention to the almost total want of religious and moral instructors in the convict department, and the wickedness that had resulted from placing one convict over another in the absence of free overseers and superintendents.

¹²³² *Ibid.*, p. 42.

¹²³³ *Ibid.*, p. 42.

¹²³⁴ *Ibid.*, p. 42.

¹²³⁵ *Ibid.*, p. 43.

¹²³⁶ *Ibid.*, p. 42.

It was becoming increasingly difficult to finance the unproductive gangs, and even the "faction" was beginning to shows signs of disunity. In reply to Forster's comments, Montagu declared that he thought the colony had 'sufficient authority to incur whatever expense considered requisite for carrying Lord John Russell's instructions into effect'. Montagu acknowledged Forster's estimates and admitted that Russell was not aware of the costs associated with working those convicts who must shortly be removed from the probation gangs in the unsettled districts. Montagu said that Russell did not intend that first class ticket of leave men should be worked in the unsettled districts, but upon Crown property in the settled districts. Montagu hastened to add however that while he was not 'insensible to the increased expense for carrying out the new instructions, he could not advise a 'departure from them', even though he was apprehensive for their success. 1238 The Archdeacon concurred with Montagu, while the Treasurer declared that he did not think that the large and unproductive expenditure estimated by Forster could ever be contemplated by Her Majesty's Government. 1239

There was no error however, despite Montagu's curious explanation; Russell resolved to send all convicts transported to Van Diemen's Land to Tasman's Peninsula in the first instance, there to undergo a period of probation before they were introduced into the unsettled parts of the colony. Issued with a ticket of leave, the convicts would then be employed on Crown land at 9d. per diem, to which was added 1s 4d. per diem for rations and stores. As the convicts passed through different grades of probation, they would be entitled to choose their own services, though Forster hoped that such gradations would be kept to a minimum. Thus they would gradually progress to full freedom.

Shaw, Convicts and the Colonies, p. 276.

¹²³⁷ *Ibid.*, p. 43.

¹²³⁸ *Ibid.*, p. 43.

¹²³⁹ *Ibid.*, p. 44.

¹²⁴⁰ *Ibid.*, p. 44.

¹²⁴¹ *Ibid.*, p. 42.

Minutes of the Executive Council, 20 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 43.

The editor of *Murray's Review*, Robert Lathrop Murray¹²⁴⁴, was critical of the control Russell appeared to be exercising over the colony. In June, Murray wrote:

'it is only just to the colonial government to add, that despotism is not colonial - it is much worse - because if it was, it would probably be exercised with some regard to the interests of the colonists. It is one, the seat of which is sixteen thousand miles distant, and is there exercised by the sovereign, the most arbitrary of any on the face of the earth - possessing more subjects, and more power over them, than even the autocrat of all the Russia's - the British Secretary for the Colonies in Britain'. 1245

Forster did not disappoint Franklin; in mid June¹²⁴⁶, he forwarded his proposed rules and regulations for the probation system to Montagu, which were duly transmitted to England in July. Forster was cautious in making his recommendations however, declaring that it was 'quite impractical' to

'establish at once a system of separation for all the convicts under probation, with the means of the disposal of the local government. I therefore propose dividing each gang into three classes, one of which being composed of those convicts bearing the worst character, will be treated under the separate system, whilst the others will be hutted in parties of 10 to 20 each; but the means of effecting complete separation shall be arranged as quickly as possible'.¹²⁴⁷

Forster added that

'I have taken care that the orders of Lord John Russell respecting the treatment and discipline of probationary convicts shall be carried out to the fullest extent which they

Murray, whose friendship with the Attorney General, Joseph Tice Gellibrand, had led to the latter's suspension, was an outspoken critic of Arthur's government during the press debate. As time passed however, he changed his views, and came out in support of Arthur, and later his closest officials, during Franklin's governorship. This obviously displeased Franklin, and contributed to a deterioration in his relationship with Montagu and Forster. See *ADB*, vol 2, p. 272.

¹²⁴⁵ True Colonist, 29 June 1841, as quoted in Fitzpatrick, Franklin, p. 98.

Forster to Franklin, 18 June 1841, as reported in the British Parliamentary Papers (Transportation),
 Sessions 1843 - 1847, vol 7, p. 60.
 Ibid., p. 60.

are, under existing circumstances, capable of... It only now remains for me to hope, that the Lieutenant Governor will consider the details now submitted to be well calculated to carry out the heads of the plan of convict discipline which Lord John Russell has desired may be observed; and that His Excellency will think that I have, as far as the resources of the colony will admit of, proposed the means of conducting the several course of restraint and obedience, which ought to be observed in convict gangs, in such a manner as to ensure punishment and discipline, and to afford a reasonable hope of reforming such convicts as have the germs of improvement yet in them'. 1248

Franklin was sufficiently impressed with Forster's efforts, and instructed his overseers to comply with the Director's instructions, dated 1 July 1841.¹²⁴⁹

Unfortunately for Franklin, the supply and demand for labour and exports in Van Diemen's Land varied quickly, and the government's fortunes took a different turn. ¹²⁵⁰ There was a general fall in wool prices in the colonies, complicated by a fall in sales in England, and exports of grain and livestock from Van Diemen's Land reduced considerably in light of strengthening markets on the mainland. ¹²⁵¹ High interest rates and inflated mortgages quickly eroded declining profits, and the balance of payments became acute by 1842. ¹²⁵² Consequently, holdings went uncultivated, and land sales plummeted to £21,986 the following year. ¹²⁵³ This equated to a fall in the sale of country allotments from 78,946 acres in 1841 to 25,729 acres in 1842. ¹²⁵⁴ Police costs also increased, reaching an all time high of 30,129 in 1844. In an effort to maintain the balanced labour market in the colony ¹²⁵⁵, Franklin objected to Sir George Gipps' proposal for sending a 'considerable number' of cattle stealers and other convicts from Norfolk Island to Van

¹²⁴⁸ *Ibid.*, p. 60.

They were termed the 'Regulations of the Probation System'. See Franklin to Russell, 9 July 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 49 - 50 West, *History*, p. 587, note 135.

¹²⁵¹ Fitzpatrick, Sir John Franklin, p. 312.

¹²⁵² *Ibid*., p. 312.

¹²⁵³ Statistics of Van Diemen's Land for 1841-1844, Ewing to Franklin, 31 May 1843, (Government Printer, 1843, Hobart), p. 1.

¹²⁵⁴ Statistics of Van Diemen's Land, 1842 - 1844, (Government Printer, Hobart Town, 1845), p. 8.

¹²⁵⁵ Montagu to Thomson, 24 March 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 45.

Diemen's Land¹²⁵⁶, and again in May, when Gipps suggested that 600 'old hands' could be transferred from Norfolk Island to Tasman Peninsula.¹²⁵⁷ Since February 1840, Norfolk Island had been set aside as a place of punishment for convicts transported directly from England, and Gipps had hoped to remove some of the 1200 'old hands' already under sentence on the Island.¹²⁵⁸ Maconochie had assumed superintendence of the Island to conduct his experiment, and Gipps thought that this class had to be removed so that Maconochie's 'training' could be given the best possible opportunity to succeed.¹²⁵⁹ Franklin argued that their removal to Van Diemen's Land would greatly increase the charge of the police and gaols in the colony, and undermine the measures that had been put in place on Tasman's Peninsula.¹²⁶⁰ Under these considerations, declared Franklin, 'a permanent injustice would be inflicted on the colony if it were made a receptacle for these doubly and trebly convicted offenders'.¹²⁶¹

In reply, Lord Stanley, who succeeded Russell as Secretary of State at the Colonial Office in September 1841, concurred with Franklin, and instructed that no more convicts were to be sent to Van Diemen's Land from Norfolk Island and New South Wales. ¹²⁶² But Stanley was also keen to stamp his own authority on the new system, and set about revising Russell's instructions, although he too showed a lack of attention to the failing economy. ¹²⁶³ In 1842, the revenue of Van Diemen's Land slumped to £220,119, and lower still in 1843. The expenditure showed no signs of slowing, and reached an all time high of £185,071 in 1842 and only slightly lower in 1843. The situation was so serious that at the start of 1844, the balance of the treasury only amounted to £2690. The boom times had done nothing to alleviate the economy's distress, and it was becoming

1263 Stanley later acknowledged this oversight. See chapter 13.

¹²⁵⁶ Franklin to Russell, 22 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 45.

Enclosure, New South Wales, Colonial Secretary's Office, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 46.

Gipps to Stanley, 13 October 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 23.

1259 Ibid., p. 24.

Montagu to Thomson, 12 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 47.

1261 Ibid., p. 47.

Stanley to Franklin, 30 November 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 47.

increasingly uncertain as to how the colony was going to support the probation system in its current form. And to add to Franklin's problems, Stanley's declaration of reducing the numbers of convicts sent to Van Diemen's Land from New South Wales was hollow; in 1842, 4189 arrived in Van Diemen's Land from England, followed by 3048 in 1843, and a further 3959 in 1844. This compared with 1376 in 1839 when the colony was in danger of economic breakdown!

Downing Streets complacency about the volatility of the colonial economy, and the usefulness of the convicts in the unsettled districts, was only eclipsed by Franklin himself, who only two months later changed his mind about the probation system, even though the depression continued to escalate. Writing to Russell, Franklin declared:

'It is my duty to state my opinion that no system of convict discipline which I have hitherto heard of is so likely to afford lasting benefit to the criminal, as well as to society, as that the details of which I now have the honor to forward, and that so far as I can be so, I am confident of the result'. 1264

Forster however was not so sure. Writing to Montagu in May, the Director reported that six more convicts had absconded from the Brown's River probation party, making 24 in all since its formation in February last.¹²⁶⁵ Forster continued that in his mind, the escapees were 'proof of defective management, while the amount of offences generally in the probation gangs was equally indicative of similar inefficiency'. He warned that until all 'these gangs were placed under one and the same undeviating plan of management, and until the severity of labour was judiciously blended with instruction, moral and religious, as well as with habits of order and reflection, little good could possibly be expected'. Forster added that Her Majesty's Government would have to increase its

¹²⁶⁶ *Ibid.*, p. 62.

¹²⁶⁴ Franklin to Russell, 9 July 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 48.

¹²⁶⁵ Franklin to Montagu, 3 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 62.

expenditure if the system was to 'afford a fair hope of rendering a majority of the convicts good members of society, and to serve as examples to deter others from crime'. 1267

If Forster was concerned about the success of the probation system however, he kept it hidden from Lady Franklin, who commented in August 1841 that

'Mr Forster seemed in high spirits about his gangs'. 1268

By May 1841 however, Montagu conceded that the probation system was financially unproductive and was a burden on the colony's treasury. The number of convict arrivals had more than doubled since 1840, and there were no signs of it slowing down. In reply to Forster's memorandum, Montagu thought it necessary to separate the probation parties from the men previously arrived; 'in fact', he continued, 'a change of system altogether is absolutely necessary'. 1269 The following day however, Montagu wrote to Franklin, this time suggesting that Forster had not gone far enough in his recommendations, and had not gone into enough detail. Montagu thought that some branches of Forster's department had fallen into arrears, only part of which he attributed to the great number of convicts under the control and supervision of the government. Montagu reminded Franklin that economy was of great importance in all these arrangements, despite his own admissions two months earlier that he was not aware of any fund from which the upkeep of the system could be paid. 1270 The Colonial Secretary added that there were currently 2122 convicts working in the probation gangs as of 12 May 1841. 1271

While Montagu was quick to blame Forster for the initial signs of distress in the new system, Franklin assured Russell that none were better qualified than the new Director of

¹²⁶⁷ Memorandum, Police Department, 3 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 62.

1268 Lady Franklin's Journal, 1 August 1841, MS 248/92.

¹²⁶⁹ Memorandum, Colonial Secretary, 3 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 63.

Montagu to Franklin, 5 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 63. And Minutes of the Executive Council, 29 March 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 43. ¹²⁷¹ *Ibid.*, p. 64.

the Probation System, who had 'studied the whole subject of penal discipline with much attention' 1272:

'I felt that there was no one who would bring more practical knowledge and zeal to the execution of the duties to be entrusted in him'. 1273

While considering the system, Franklin requested Forster to set down a series of recommendations with a view to a fixed system of management and separate treatment for the probationary gangs generally.¹²⁷⁴ He also increased the number of punishments that a convict could receive from one to three before he was removed from assigned service. This he hoped might enable more convicts to remain in private employment while there remained so many on the hands of the government.¹²⁷⁵

In July, Franklin again stressed that it was imperative that the spiritual wants of the convict population were attended to, owing to an influx of convicts from Ireland, and the consequent large increase in the Roman-Catholic population on Tasman's Peninsula. To make matters worse, Gipps again requested Franklin to consider an alternative settlement for the reception of convicts from Norfolk Island 1277, to which he replied in August. Franklin complained that he had found it necessary to consider another settlement himself in order to relieve the number of convicts already stationed at Port Arthur, and which would be compounded by the expected arrival of a large number of

¹²⁷⁵ Montagu to Cheyne, 28 June 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 65.

¹²⁷⁷ Enclosure 6, New South Wales, Colonial Secretary's Office, 28 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 66.

¹²⁷² Extract from the Minutes of the Executive Council, 20 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 55.

¹²⁷³ Ibid., p. 55.

¹²⁷⁴ Memorandum, Colonial Secretary, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 63. Forster replied on the 10 May 1841 (see p. 63).

¹²⁷⁶ Franklin to Russell, 10 July 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 66. This had been a point in Russell's 19 January 1839 despatch to Franklin. It is notable to that it appeared to be the policy of the home government not to send Irish convicts to the colony before 1840.

convicts in the near future.¹²⁷⁸ Unfortunately Franklin was right; the following year, the number of convicts arriving in the colony more than doubled!

Mindful of the emphasis he placed on the Peninsula in his report to Russell, Montagu disagreed with Franklin and argued that he could see no reason why some small station should not be established on Tasman's Peninsula for such a purpose. 'There were spots to be found there', he explained, 'where these desperate men may be subjected to any degree of coercive labour; where they may be entirely cut off from all communication with any other person than the officer under whom they are placed; and whence from escape would be impossible. I cannot see any necessity for incurring so heavy an expense as the formation of a new and distant station for their reception, as proposed by Your Excellency.' 1279

Consequently, Montagu made no attempt to rescind or overrule his recommendations, and persisted with his proposal to send all of the convicts to Tasman's Peninsula.

Forster concurred with Franklin in the necessity of relieving Port Arthur 'from many of the doubly capitally convicted offenders', while the Colonial Treasurer thought it essential that a 'distant place should be found, where an establishment may be formed involving a greater degree of punishment'. The Colonial Auditor, George Boyes, added that the Auckland Islands, as suggested by Franklin, would be worthy of further investigation.¹²⁸⁰

Predictably, Russell, just a month prior to his retirement from the office of Secretary of State, sided with Montagu and in August, directed that 'about 600 convicts' from Norfolk Island and neighbouring colonies would be sent to Van Diemen's Land, and that 'every

¹²⁷⁸ Franklin to Russell, 3 August 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 70.

Minutes of the Executive Council, 19 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 73.

1280 Ibid., p. 73. The Auckland Island is situated near New Zealand in south latitude about 50 degrees.

Franklin's good friend, Captain Ross, visited the Island, and reported that it had a spacious harbour and an abundant water supply. Ross added that its position seemed 'peculiarly to fit for the reception of the more turbulent felons'. See p. 71.

means should be made available for their reception'. 1281 Maconochie was failing to impress Downing Street as Superintendent on Norfolk Island, and Gipps was advised that the rest of the convicts on the Island would be gradually removed from under his control. Their destination: Tasman's Peninsula. Franklin could do nothing more than assure Russell that his orders would be attained 'without considerable exertion', though he added that there was a 'deficiency in the convict clothing and bedding in the possession of the ordnance officers attached to the government', and requested the necessity of sending out, 'with as little delay as possible, the convict stores for which requisitions have been transmitted to the Board of Ordnance'. 1283 He also remarked that the 'number and strength of the probation parties' was increasing, and that difficulties 'must necessarily increase in a proportionate degree. 1284 The Colonial Times was also anxious about the increase in the number of convicts arriving in the colony, and in September 1841, declared that Van Diemen's Land would soon be called the 'Botany Bay of the whole world'. 1285 Destined however for the unproductive labour gangs in the first stages of their punishment, the greater number of convict arrivals necessitated an increase in police and gaol expenses, as well as additional funds for the military, public buildings, bridges and wharfs to cater for the new arrivals. At the same time, the first immigrants started to arrive in the colony, and there were fewer employment opportunities for the first pass holders emerging from The cumulative effects of a depleted land fund and falling exports compounded the hardship experienced by the settlers, and despite the boom proceeding it, the colony was increasingly unable to finance the growing the number of convict arrivals after 1841. There were few disposable funds in the Colonial Treasury, and after that year, the government found it increasingly difficult to talk up the benefits to the colony of convict labour as the land revenue fell deeper still into arrears and holdings went uncultivated because of the high wages being paid to the convicts. For reasons known

¹²⁸¹ Russell to Franklin, 14 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 80.

¹²⁸² Russell to Gipps, 12 November 1840, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 81.

¹²⁸³ Franklin to Russell, 12 October 1841 (despatch no. 143), as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 75.

¹²⁸⁴ *Ibid.*, p. 74 (despatch no. 142).

¹²⁸⁵ Colonial Times, 14 September 1841.

¹²⁸⁶ See Butlin, *Colonial Economy*, p. 22, for an analysis of the number of immigrant arrivals.

¹²⁸⁷ Shaw, Convicts and the Colonies, p. 283.

only to him however, Franklin again refrained from an actual depiction of the growing crisis, and simply stated that he has been struck of late with the total absence of crime, and the generally orderly conducted exhibited by the parties. With no reason to do otherwise, Russell reiterated his instructions in a second despatch to Franklin in May. 1289

The *Colonial Times* however was damning of the new probation system, and observed that 'like all human regulations, assignment was imperfect, but we feel confident that many valuable improvements could, and if again adopted, may be easily introduced'.¹²⁹⁰ There was some support however for Franklin in New South Wales. In September, the Legislative Council there discussed the continuation of transportation to Van Diemen's Land, and was generally agreed that transportation to that colony 'should be greatly restricted':

'Their Honor's recommended that a [revised] Bill should be introduced as transportation to Van Diemen's Land had failed as a punishment, and that it merely moved the convict from one place to the next'. 1291

Moreover, they were right; the abolition of transportation to New South Wales and the settled districts of Van Diemen's Land amounted to little more than a smokescreen in England. In reality, just as many convicts were being sent to the colonies - only this time they were pouring into one colony rather than two! The *Colonial Times* continued to be critical of the new arrangements:

'Inundating this small island, not only with the worst of the English convicts, but the worst again of the very worse of them, the convicts from Sydney being all now sent here, will assuredly be the cause of [the destruction of the rising generation]'.¹²⁹²

¹²⁸⁸ Ibid., p. 76. Even Shaw is at a loss to explain why Franklin was silent on the issue (see Shaw, Convicts and the Colonies, p. 284).

Russell to Franklin, 14 May 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 80.

¹²⁹⁰ Colonial Times, 31 August 1841.

¹²⁹¹ Votes and Proceedings of the Legislative Council, New South Wales, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 79.

¹²⁹² Colonial Times, 14 September 1841.

Indeed, it seems at times that both Franklin and his wife longed for the more liberal society in New South Wales. Writing to her sister, Jane declared:

'I am much more disposed to strain every nerve that our colony may keep pace with [New South Wales] in its rapid march of improvement'. 1293

Similarly, Franklin applauded Bourke's earlier 'efforts to liberalize the institutions of New South Wales' and followed his lead in introducing a number of reforms. Like Bourke, Franklin campaigned strongly for a partly elective legislature and a civil jury system, and admired Bourke's efforts to establish a general system of public education. According to historian Hazel King, Bourke's legacy was to look to the 'ultimate ends rather than to immediate results' and this conviction was something Franklin hoped to bequeath to the colonists of Van Diemen's Land. According to Fitzpatrick however, 'it was Franklin's misfortune to have to witness and to assist Arthur's dream of Van Diemen's Land as a gaol to the Empire. His own dream of a free Tasmania... became only a memory'. 1298

So why then did Montagu pursue the economically unworkable instructions of Russell, having expressed the opinion in Van Diemen's Land that Russell had made an error in judgement, and that he had 'experienced a considerable difficulty' in advising Franklin as to the best course of action? Franklin suspected that 'Montagu's return to the subordinate office of Colonial Secretary was in his estimation an act of condescension, and that he had become more jealous of control, and that his determination was to carry his point at all hazards. Montagu's pretensions', continued Franklin, 'were not limited

¹²⁹³ Lady Franklin to Mrs Simpkinson, 20 June 1839, as transcribed by G Mackaness, vol 1, p. 93. See chapter 8.

¹²⁹⁴ King, Bourke, p. 242.

¹²⁹⁵ *Ibid.*, p. 243.

¹²⁹⁶ *Ibid.*, p. 243.

¹²⁹⁷ See chapter 8.

¹²⁹⁸ Fitzpatrick, Franklin, p. 18.

¹²⁹⁹ Minutes of the Executive Council, 29 March 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 42.

¹³⁰⁰ Franklin, *Narrative*, p. 13.

to the possession of my confidence: he aimed at that inversion of our relative positions'. 1301

Lady Franklin hinted that Montagu had marshalled the support of his closest officials before returning to Van Diemen's Land, observing that

'Mr Forster was when Colonial Secretary remarkably open and friendly and communicative, which diminished however towards the close of his career in that office, probably in consequence of the letters of Mr Montagu in England.' ¹³⁰²

Lady Franklin also professed that Montagu had returned to the colony with a strong political objective:

'Sir John has never liked him since his return from England; he has an overwhelming (arrogant, presumptuous, conceited) opinion of himself, a strange set of radical notions, but not one wit more of enlargement of mind or noble sentiment than when he left the colony'. 1303

Later, the governor's wife thought she was equally the object of his disaffection:

'Mr M. returned from England with a spirit of malice and vengeance against me and a determination to injure me - I was not able to conceive any possible reason for this.' 1304

Lady Franklin's sentiments were also echoed by the *Colonial Times*, which suggested that Montagu had returned to the colony with 'special directions from the Secretary of State, which no doubt have been the cause of, or at least greatly contributed to, the present rupture between himself and the governor'. ¹³⁰⁵

¹³⁰¹*Ibid.*, p. 13.

¹³⁰² Lady Franklin to Mrs Simpkinson, 10 January 1843, MS 248/174/1-23.

¹³⁰³ Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹³⁰⁴ Lady Franklin to Mrs Simpkinson, 10 September 1843, MS 248/174/1-23.

¹³⁰⁵ Colonial Times, 1 February 1842. The paper states that it first suggested this to its readers upon Montagu's return in 1841.

In retrospect, Montagu himself was under no illusions as to who really governed the colony:

'When Sir John Franklin arrived in V.D. Land in January 1837, I held the Office of Colonial Secretary there. It was soon apparent that he had undertaken an office for which his professional education and previous habits of life had in no way prepared him - his inaptitude for public business and his inexperience in the affairs and service of government could not be concealed... Under such circumstances he required all the aid I could possibly afford him without limitation, which I most cheerfully, and I hope efficiently, rendered. He consulted me on all subjects, and was generally guided by my opinions and advice.' 1306

And later:

'I saw but too plainly, that he had undertaken a duty, which was more arduous, more complicated, and far more irksome than he had contemplated, and there were many peculiar circumstances surrounding him which rendered his position especially critical.... I exerted all my energies, I devoted every hour of the day, and many of the night to his service'. ¹³⁰⁷

Franklin it seemed was as much to blame for the inevitable failure of the probation system in Van Diemen's Land as Montagu and the Colonial Office. While Montagu chastised Franklin and Forster for failing to implement Russell's new system, Franklin confined his objections to the colony while at the same time appearing London with glowing accounts of its apparent success. As early as March 1841, Forster advised the governor that

¹³⁰⁷*Ibid.*, p 30.

¹³⁰⁶ Montagu to Stanley, 24 June 1843, London, Montagu Manuscript, p. 5.

'I experience considerable difficulty in advising Your Excellency upon the most material point; viz as to the mode of employing the men who must shortly be removed from the probation gangs; because whilst on one hand I am not insensible to the increased expenditure for carrying out the new instructions, I cannot on the other hand advise a departure from them, although I am apprehensive they will not effect the object contemplated by Lord John Russell; for if I do so advise, it would be deemed presumptuous in me to attempt to uphold my own suggestions against His Lordships instructions'. 1308

For whatever reason, Franklin chose to ignore Forster's public warnings, albeit while he appeared positive as to its success in private, Montagu simply criticised them as misleading.¹³⁰⁹ There are parallels between Franklin's suppression of criticism of the probation system and that of his successor, Sir Eardley Eardley Wilmot, although most commentators have put it down to incompetence and a lack of experience.¹³¹⁰ Both were certainly inexperienced in penal matters, and their governorships were largely unsuccessful in terms of penal policy. Whatever the truth or accuracy of Forster's¹³¹¹ reports, one thing is certain that it was at this time that Franklin's initiatives as a civil reformer (as opposed to a penal administrator) began to impinge on the developing crisis over the future of the colony, and perhaps diverted his attention from the more pressing problems facing his government.

¹³⁰⁸ Minutes of the Executive Council, 29 March 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, pp. 41.

¹³⁰⁹ Shaw argues that it was Franklin who did not stress the warnings. See Shaw, Convicts and the Colonies, p. 279.

Shaw, Convicts and the Colonies, p. 308.

Montagu however was the only one who doubted the validity of Forster's reports, largely because they were critical of the probation system. At this time in the development of the new system, it is doubtful whether Forster was intentionally 'misleading' Franklin' into believing all was in order.

'Sly, Secret Opposition'

The implementation of civil reform in the convict colony engaged Franklin's attention from a very early period in his administration. Indeed, Franklin truly believed that the colony should become a very different place to the one Arthur had left behind. According to Fitzpatrick, Franklin 'thought of Van Diemen's Land as an infant nation', and believed that his appointment marked a new beginning in the history of the colony. In February 1839, Franklin explained to Glenelg that the 'abuses which the [Molesworth] Committee have observed exist, and perhaps even now exist, in various parts of the system [in New South Wales], do not present themselves in this colony', and that it was these misconceptions which were causing 'injury not less of Great Britain than of Van Diemen's Land'. Island.

From his first address to the Legislative Council in 1837, Franklin's zeal for education and religion challenged both the penal establishment, and the social fabric of the colony. According to Fitzpatrick, 'schools were few and poor', and only the wealthiest colonists were able to send their children home to be educated in England.¹³¹⁴ It was no easy road either in the years following Franklin's administration if Boyes is to be believed; in 1846, he wrote in his diary that

'the people of this colony very much resemble the Americans in their presumption, arrogance, imprudence and conceit. They believe they are the most remarkable men on the globe and that their little island "whips all creation". They are radicals of the worst kind and their children are brought up in the belief that all governments are bad, and they are deprived of their rights and that they are ground and oppressed by the mother country

¹³¹² Fitzpatrick, Franklin, p. 18.

¹³¹³ Franklin to Glenelg, 15 February 1839, as reported in the British Parliamentary Papers (Transportation), Sessions 1810 - 1841, vol 6, pp. 840.

¹³¹⁴ Fitzpatrick, Franklin, p. 52.

and mocked by the officers sent out from England to rule them. Their views are all of the narrowest and most selfish kind. They are incapable of any generous sentiments and ever ready to impute the basest motives to their fellow colonists. Lying, slandering, envy, hatred and malice are their daily ailment and the consumption is incredible'. 1315

Arguably, Franklin was years ahead of his time when it came to cultural and spiritual matters. He had been in England when the Reform Bill engaged the attention of Parliament, and when political redress and religious toleration were openly discussed. At the same time, Arthur struggled to come to terms with the popular aspirations sweeping England, and transportation, which he had once described as the 'best form of secondary punishment ever yet devised', was openly discredited and politically condemned. Back in Van Diemen's Land, there had also been interest in the Reform Bill; writing to a friend in England in 1831, the Reverend James Garrett explained that

'since I wrote to you last, many and various and ominous are the changes which have taken place in England and threaten to affect her furthest dominions. With these changes as they affect the mother country you must be acquainted, having as I suppose ready access to English papers'. 1317

Garrett also commented on party feeling in the colony:

'The political pulse here is at a stand. Every face around the colonial dynasty indicates the working of fear, apprehension, and alarm. The undefined anticipated disaster is deemed so near that the most thoughtful pass you without uttering a word. The talkers and the tongueless are alike - they know not what to say. A large number of packing boxes are ordered at HEAD [sic] quarters to be in readiness, and a change there at least is

¹³¹⁵ Boyes Diary, 11 June 1846, as quoted in Fitzpatrick, Franklin, p. 13.

¹³¹⁶ Reid, Lord John Russell, p. 106. Montagu and the rest of the faction had at least seen the principles of the Reform Bill. Daniel Sutton sent a copy to Arthur in April 1832. See Arthur to Sutton, 27 April 1832, CO 280/34, pp. 102.

ed. PL Brown, Clyde Company Papers, (Oxford University Press, Melbourne, 1956), p. 126. The quote is from a letter from the Reverend James Garrett to Mr Reid in London, dated 4 April 1831. It is noteworthy that Garrett tutored one of Arthur's nephews after arriving in the colony in 1828. Garrett was a prominent settler in the Bothwell District. See ADB, vol 1, p. 428.

expected by next arrival. Should it take place, the colony will suffer. Think of our good and beloved Governor hissed and insulted when passing the race course the other week on his way from N. Norfolk! It has been repeated since: both has given great offence'. ¹³¹⁸

Franklin's Personal Secretary, Alexander Maconochie, who had also experienced the changes in England, actually accused the Arthur party of being backward, while Franklin took great pride in throwing open the doors of the Legislative Council to the public¹³¹⁹, and expressed a conviction that the 'freedom of public discussion, founded on accurate knowledge, would confirm the measures, or correct the wanderings of the Legislature'.¹³²⁰ Franklin himself later commented:

'I had the opportunity of infusing into [the colony] a portion of the independent and liberal sentiments of the community'. 1321

Privately, Montagu, who at that time had not been in England for nearly eight years, and Forster, who had been in the colony since 1831, seem not to have been impressed by such sentiments, and thought that Franklin was not as attentive to the penal system as he should have been, and was easily distracted by matters which were not of primary interest to them. To make matters worse, he was popular, and he was active in promoting a new civil program of education and religion. In any case, Montagu and Forster had little interest in the arts, and according to historian RW Giblin, the 'government party taken as a whole was not of the order needed to initiate any movement of such a nature'. At the beginning of 1838, Franklin began to canvas the subjects of education and representative institutions, and in 1839, he established a non-denominational primary school system in the colony. Schools were to be built and teachers sent from England, and the schoolmaster's salary was to be paid by the government. Unlike Governor Bourke in New South Wales however, who had failed in his attempts to establish a general system

¹³¹⁸ *Ibid.*, p. 126.

¹³¹⁹ Franklin, Narrative, p. 9

¹³²⁰West, *History*, p. 149. See also chapter 4.

¹³²¹ Franklin, Narrative, p. 10.

¹³²² RW Giblin, History of Tasmania, as quoted in Fitzpatrick, Franklin, p. 53.

of public education, Franklin was able to partly overcome resistance to his scheme. In 1840, Franklin reported that the

'Day schools, which are carried on under the superintendence of a Board, are now in full operation, and I have every reason to believe they are of real advantage to the colony. They are open to all, and are conducted so as to avoid interference with any religious tenants. The number of children under instruction on 30 June 1839 was 415 boys and 376 girls; on 30 June last, the numbers had increased to 652 boys and 496 girls'. 1323

In contrast, the total increase in the number of primary school children attending school during the whole of Arthur's administration was only 388.¹³²⁴

Franklin also 'attempted to found'¹³²⁵ a higher education system in the colony, and in 1838, he wrote to the Secretary of State and to his good friend, Dr Arnold of Rugby, requesting him to 'select a person fitted for the important change contemplated, and of recommending such a person to the Secretary of State' for nomination as 'Superior'. ¹³²⁶ Franklin explained that he hoped to encourage students 'to pursue a course of liberal education beyond those mere years of childhood'¹³²⁷, and to develop a 'civic Tasmanianess' which had traditionally been suppressed by the convict system. Franklin added:

'something moreover which might tend to attach the resident to the soil, and make it really to him, what it professedly is in after-dinner speeches, his "adopted land". 1328

¹³²³ Minutes of the Legislative Council, 17 August, 1840, as reproduced in Fitzpatrick, *Franklin*, p. 179.

¹³²⁴ Fitzpatrick, Franklin, p. 180.

¹³²⁵ Franklin, Narrative, p. 74.

¹³²⁶Franklin, *Narrative*, p. 74-5. Franklin explained that were only a 'few private schools, for the higher or wealthier classes of society' (p. 74).

¹³²⁸ *Ibid.*, p. 75. For some discussion as to whether the 'College' was akin to a university, or simply a school for the upper class, see G Stephens, 'The Gell Job: Early Developments in Private and Tertiary Education in Tasmania', *Tasmanian Historical Research Association*, vol. 24, (1977), p. 108. Stephens even suggests that Franklin was unsure.

Having spoken with Dr Arnold, Lord Normanby, Secretary of State at the Colonial Office, agreed to the terms, and the Secretary of State offered his 'official approbation' of the proposal.¹³²⁹ In March 1839, the treasury sent its estimates to Downing Street:

'With reference to the despatch therein enclosed, from the Lieutenant Governor of Van Diemen's Land respecting the establishment of a superior school in that colony, I have it on command from the Lords Commission of Her Majesty's Treasury to request you will state to the Marquis of Normanby that my Lords do not see any reason to object to the proposition of Sir John Franklin respecting the establishment of the school in question.'

In turn, the Colonial Office reported to Franklin in March 1839 that

'You will perceive that you are authorised by H.M. Govt to proceed forthwith with the erection of a school and school master's house on such plans as may be adopted by the Legislative Council of your government'. 1331

In June 1839, the Legislative Council received Lord Normanby's despatch approving the whole scheme, and set aside £500 for the project.¹³³² At the centre of Franklin's plans was the establishment of a 'college' on a government allotment of farmland near New Norfolk, 'about twenty miles from Hobart Town, easy of access both by land and water, on the skirts of a rural township or village, which had been one of the most zealous and the most liberal in its pecuniary subscriptions'.¹³³³ Franklin added that it was 'secluded advantageously from the evils of the large towns'¹³³⁴, and that while

¹³²⁹ *Ibid.*, p. 75.

¹³³⁰Pennington to Stephen, 1 March 1839, CO 280/114, p. 235.

¹³³¹ Stephen to Franklin, 13 March 1839, CO 280/114, p. 237.

¹³³² Stephens, 'The Gell Job', p. 106.

¹³³³ Franklin, Narrative, p. 76-7.

¹³³⁴ *Ibid.*, p. 77.

'growing itself into a College, it will be essential to place it in the country, where the character and discipline and the personal influence of the teachers will be more efficiently kept up than can be the case in this town'. 1335

Several months later, Dr Arnold selected Mr JP Gell, of Trinity College, Cambridge, for the appointment, and on immigrating to Van Diemen's Land, Gell assumed the office of 'Superior of the newly instituted college' in April 1840.¹³³⁶ The Franklins were pleased with their new headmaster, and Lady Franklin remarked that he had 'pure and noble feelings'.¹³³⁷ In the following session of the Legislative Council¹³³⁸, Franklin reported that the proposal was carried with only two dissenting voices¹³³⁹, and money was voted for the erection of the college buildings upon a site near New Norfolk. Franklin and Gell agreed that the 'college should be built at some distance, but not a great one, from Hobart, near enough to make use of the amenities but far enough away to escape the corruption of life in the convict capital'.¹³⁴⁰ The first stone was laid on 6 November 1840, in the presence of the Legislative and Executive Councils, of the heads of various departments, of the clergy, and of the governor's friends.¹³⁴¹ Franklin also reported that his good friends, Captains Ross and Crozier, and the other officers of the *Erebus* and *Terror*, then about to sail for the Antarctic, were also present.¹³⁴²

There were also others matters at hand; while pursuing his educational interests in the colony, Franklin again introduced a new bill for the purpose of substituting trial by civil jury for the existing practice of trial by military jury in criminal cases.¹³⁴³ On this

1335 Stephens, 'The Gell Job', p. 109.

¹³³⁶Franklin, *Narrative*, p. 75. Arnold explained to Lord Stanley that Gell was 'eminently qualified to be Superior of the college' (p. 75). Normanby agreed. In a letter to Gell, Arnold wrote of Franklin: 'in Franklin you will have a fellow labourer, and a Governor with and under whom it would do one's heart good to work. He wants a Christian, a gentleman and a scholar, - a member of one of our universities'. See Stephens, 'The Gell Job', p. 107.

¹³³⁷ Robson, *History*, p. 339.

¹³³⁸ 15 August 1840. See Stephens, 'The Gell Job', p. 109.

¹³³⁹ Franklin, Narrative, p. 76.

¹³⁴⁰ Fitzpatrick, Franklin, p. 185.

¹³⁴¹ Franklin, Narrative, p. 77.

¹³⁴² *Ibid.*, p. 77.

¹³⁴³Fitzpatrick, *Franklin*, p. 220. The push for trial by jury in Van Diemen's Land was associated with the settler opposition demanding political reforms (*HRA*, III, VII, note 385, p. 807). Under the provisions of the 1823 Act, criminal cases were tried by judges and a jury of seven commissioned officers of His

occasion, the Council accepted the measure, prompting Franklin to report that 'such a concession I have long felt to be due to the general intelligence and correct feeling of the community. I regard it as likely to be advantageous by its tendency to foster a spirit of real independence, and a practical acquaintance with a part at least of the legal code.'1344

Franklin was clearly hinting at the main issue of granting representative government¹³⁴⁵, which he again explored in a despatch at the end of the year:

Majesty's sea or land forces, with the provision that where both plaintiff and defendant united in demanding a civil jury of twelve, issues of fact were to be tried by that jury under the direction of the Judge. Only those settlers who had a freehold estate of 50 acres or more of cleared land or a freehold dwelling house or tenement of £300 or upwards situated in the colony were eligible to serve as jurors (see Robson, History, p. 302). This had been a matter of grievance for the free colonists and had been included in the petition that had been presented to Arthur by a controversial deputation on the 19 March 1827. In the petition, the colonists, under the direction of Kemp, William Gellibrand and Samual Hood, represented themselves as 'British subjects accustomed to enjoy all the rights and privileges of the British Constitution... [and] cannot refrain from conveying their most ardent desire for the perfect introduction of trial by jury and a participation through their own representatives in making those laws and enactments which may be necessary for the future government of the colony... Your petitioners cannot consider themselves secure or happy under any institutions which may be offered as a substitute for them which are not only the pride and birth-right, but also the safe guard of every Briton - trial by jury and Legislation by representation (HRA, III, VII, note 338, pp. 794-5. See also Robson, History, p. 303). Earlier, Arthur had stated that 'I must unhesitatingly declare it to be my opinion that the colony is in no way prepared for the unlimited admission of trial by jury, and that it would be very injurious and dangerous to disturb the existing system' (HRA, III, VII, note 338, p. 795). Trial by true juries in civil cases was again provided for in the 1828 Act, the colonial Supreme Court being granted the authority to approve such a trial if approached by either the defendant or plaintiff. Arthur did not approve of the whole spirit of the Act because certain parts of it appeared to fall in largely with the opinions currently agitating New South Wales, which were directly injurious to a penal colony (Arthur to Huskisson, 5 July 1828, HRA, III, VII, pp. 434-438 and also Robson, History, p. 305). Huskisson's successor at the Colonial Office, Sir George Murray, concurred with Arthur and advised the lieutenant-governor that the introduction of such an extension of trial by jury might yet be premature: 'This is a subject of such extreme importance I have judged it prudent to pause' (Murray to Arthur, 31 July 1828, HRA, III, VII, pp. 450-462). In any case, trial by jury in civil cases was not introduced into Van Diemen's Land until April 1830, though even then Arthur hesitated in amending the legislation relating to juries until the jury bill was passed in November 1834 (Robson, History, pp. 306-7). Trial by a military jury in criminal cases meanwhile existed in its original form until Franklin's Bill was introduced in 1840. In the interim, the jury question continued to agitate public feeling in some quarters, and was the focus of a number of public meetings on the subject of free institutions (Robson, History, pp. 307-8).

¹³⁴⁴Franklin to Russell, 19th November 1840, as quoted in Fitzpatrick, *Franklin*, p. 221.

l³⁴⁵The 1823 Act provided that in the event of separation Van Diemen's Land should have the same form of government as New South Wales; consequently a nominee Legislative Council was established, the members being five in number, three of them the governor's own choice. The council was the instrument of the governor, a body for framing the laws necessary to the efficient administration of a government over which it had no control: it made the will of the governor enforceable in the courts (Forsyth, *Convict System*, pp. 20-21). So when a partly elective and partly appointed Legislative Council was foreshadowed in an Act to be passed in Britain in 1828, Arthur took a lively interest in it when a copy was leaked to the lieutenant governor (Arthur to Huskisson, 5 July 1828, *HRA*, III, VII, pp. 412-438. Also Robson, *History*, p. 305). The 1828 Act as it became known was passed in Parliament in England on 25 July 1828, though there was no introduction of an elected assembly in the Bill. However representation of the colonists in the

The tendency of opening the doors of such a Council to the public is to subject the unofficial members to the control of the people to an extent which perhaps could not exist were they really representative. The conviction that he is a nominee of the Crown, and therefore suspected to have a bias in favour of its views, may contribute to impair a members firmness, and make him aim almost unconsciously by an uncompromising opposition to give a striking and undeniable demonstration of his independence.¹¹³⁴⁶

But 'echoes of Arthur's regime continued to resound and bewilder the new Governor', and Gell was frustrated by pockets of indifference (if not hostility) to the establishment of the college. Notably, there was also concern in England, and the permanent Under Secretary of State, James Stephen, a friend of Arthur and Montagu, 'protested that expectations at once so large and vague should not be held out to anyone'. While waiting for construction of the new college to begin, Gell opened a new government school in Macquarie Street, Hobart, evoking an immediate outcry by the opposition press over which religion should be adopted there. Montagu took the earliest opportunity after returning to the colony in February 1841 to object to the college proposal at New Norfolk, or Christ's College as it became known, and attempted to persuade Franklin into changing the site of the building to an allotment in Newtown. Franklin explained that the college 'did not meet with Montagu's approbation', but he might have 'given way if he could have persuaded me to change the site of the building'. Montagu even went as far as to suggest its construction on a piece of land adjoining the property of Swanston

Government of Van Diemen's Land was significantly increased by the enlargement of the Legislative Council and the liberalisation of its procedures. Arthur did not approve of the whole spirit of the 1828 Act, because certain parts of it appeared to co-incide with the opinions currently agitating New South Wales, which were directly injurious to a penal colony. A representative assembly was later introduced in New South Wales in the 1842 Act when 24 members of the 36 member council were enabled to be elected, though this was not to be provided in Van Diemen's Land until the cessation of transportation to the colony (Stanley to Franklin, 6 July 1842).

¹³⁴⁶Franklin to Russell, 19 November 1840, as quoted in Fitzpatrick, Franklin, p. 221.

¹³⁴⁷Robson, *History*, p. 321.

¹³⁴⁸ Ibid., p. 339.

¹³⁴⁹ Ibid., p. 77. Franklin wrote that it was dedicated to Christ himself. Gell suggested the name.

1350 Franklin also reported that 'one part of the colony was bidding against another as to which should have

the college within its limits' (p. 76). Franklin explained that it would confer a 'great benefit' on the colonists (p. 76).

¹³⁵¹ *Ibid.*, p. 78.

in New Town, in return for a pledge of £5000 to the college.¹³⁵² Indeed, Swanston procured a large grant of land near Risdon Road in 1829 when he visited from India, and after 1834, subdivided the land into a number of blocks. Swanston built his own home at nearby New Town Park, and retained a strong interest in the development and disposal of land in this area.¹³⁵³

Montagu's parochialism for the location of the new college signalled the beginning of a rapid deterioration in relations with the Franklins, and especially Lady Franklin, and was an important precursor to Montagu's suspension in January 1841. Up until this point, Montagu had expressed his criticism of Sir John and Lady Franklin to members of the "faction" only while maintaining a collegial even friendly relationship with the governor and his family. Montagu was further antagonised by Gell and Archdeacon Hutchins, who strongly supported the college proposal at New Norfolk, and together with Franklin, gave the impression of opposing the "faction". Gell had great plans for his new antipodean outpost, and he argued that it was necessary to 'combat the evil influence of the convicts, and to give new vision to the free born'. 1354 Franklin had rarely, if ever, been hostile to any member of his administration, even after the Clapperton affair, but the education debate appeared to touch a delicate nerve in the enlightened and liberal governor, and he became less tolerant of Montagu. When Franklin declined Montagu's offer to move the college, Swanston allegedly told Gell that the governor must have been confused, and that when 'he had lived a little longer in the country, he would know better'. 1355 Franklin dismissed Montagu's presumption that the college should be moved at all, and saw in his subordinate a belief that in him alone 'resided all the energy and power of the government.'1356 Previously unchallenged by the governor, Montagu's hostility intensified

¹³⁵² Ibid., p. 78. Lady Franklin described it as a 'bribe'. See Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23. It is noteworthy that Arthur too recognised the importance of education in the colony, and made grants of land for the establishment of educational institutions. The Legislative Council unanimously agreed upon the principles, which guided the governor, although there were some even then who disputed what religion should be taught in the schools (Legislative Council Minutes of VDL, 28 August 1836). See also Korobacz, Legislative Council, p. 108, and Lady Franklin to Mrs Simpkinson, 10 January 1843, MS 248/174/1-23.

Wendover's History at http://members.iinet.net.au/-irevnold/history.html, 19/7/04.

¹³⁵⁴ Stephens, 'The Gell Job', p. 110.

¹³⁵⁵ O Heyward, 'A Stronghold of Learning and a School of Christian Gentlemen', *Tasmanian Historical Research Association*, vol 20, (1973), p. 43.

¹³⁵⁶ Franklin, *Narrative*, p. 14.

after Franklin's refusal, and according to Franklin, 'he opposed more than the 'vis inertiae' to the erection of the buildings'. Lady Franklin too remarked on Montagu's hostility towards the project:

'In all the College business, Mr Gell and Sir John, I am sorry to say, have met with a great deal of sly secret opposition from Mr Forster and Mr Montagu, who, while professing loudly their allegiance to the principle that whether they approve or not to the Governor's measures it is their business and duty to carry them out, yet in fact are faithless to this undoubted duty. They do not want the College, principally because a chartered college would create a corporation in the community itself, believing that the higher classes may send their sons to England and that the others would be sufficiently provided for by the common grammar schools in the colony...' 1358

And later:

'The sly, deep but undetected opposition they are making to Mr Gell's college, which I am sure will never be erected if they can help it... The College has not advanced one stone since the first was laid last November, there is always some check to hindrance or another, which all appear to proceed in a great measure from the Director of the Board of Works who from some private feeling cannot bear it to be at New Norfolk'. 1359

Clearly, Montagu believed that Lady Franklin was having an undue influence over the establishment of the college. In support of his assertion, Montagu referred to a letter written by Lady Franklin in early 1839 that identified the proposed site of the college at New Norfolk even before Franklin had decided upon it. Later, Franklin explained that 'I fixed upon a site, which proved to be the same as that which Lady Franklin a few

¹³⁵⁷ Ibid., p. 78.

¹³⁵⁸ Lady Franklin to Mrs Simpkinson, 6 February 1841, MS 248/174/1-23.

¹³⁵⁹Lady Franklin to Mrs Simpkinson, 12 October 1841, as transcribed by G Mackaness, vol 2, p. 39 (RS 16-18).

¹³⁶⁰ Franklin, Narrative, p. 76.

months before had suggested to Mr Montagu in a letter' and admitted that it provided Montagu with

'proof, brilliant and conclusive, that Lady Franklin's influence over me was irresistible, and that she had reckoned on it being beforehand'. 1362

Undoubtedly Lady Franklin was fond of the site; in a letter to her sister, Lady Franklin declared that the college was her 'hobby of hobbies'. She added:

'[the college is to be built on] the sweetest spot imaginable, forming a high peninsula on the Derwent which washes its cliffs and flat garden around on two sides, while the Lachlan, a tributary trout stream flows under it on another'. 1364

The *Cornwall Chronicle* also suggested that Montagu 'avowed openly that the sum expended on its support was a most extravagant waste of money', and that it was a 'pet puppet at Government House'. 1365

The division between Montagu and Lady Franklin however occupied both their thoughts. In December, Montagu told Arthur that

'As she saw I was not friendly to building the college at New Norfolk, she gave me up as impractical... I can never go into Government House again as Mr Montagu - nor can I allow my wife to enter the doors while she remains there. A more troublesome, interfering woman I never saw - puffed up with the love of fame and the desire of acquiring a name by doing what no one else does and she and Sir John are totally regardless of how much public money is spent'. 1366

¹³⁶¹ *Ibid.*, p. 76.

¹³⁶² Ibid., p. 76.

¹³⁶³Lady Franklin to Mrs Simpkinson, 7 September 1840, as transcribed by G Mackaness, vol 1, p. 102 (RS 16-18).

¹³⁶⁴ *Ibid.* Lady Franklin was also designing her new museum to be built at Lenah Valley, which still stands. The foundation stone was laid in March 1842.

¹³⁶⁵ Cornwall Chronicle, 14 January 1842.

¹³⁶⁶ Montagu to Arthur, 12 December 1841, as quoted in Fitzpatrick, Franklin, p. 261.

Even Franklin admitted that there were aspects of government in which Lady Franklin

'took an earnest and anxious interest; these were, education, and the reformation of the criminal, particularly of the female criminal. On the latter subject, Lady Franklin carried on a correspondence with Mrs [Elizabeth] Fry, at the particular request of the latter lady, who submitted portions of it to Lord Stanley, which were retained in the Colonial Office'. 1367

And later:

'Mr Montagu was so well aware that he thwarted my wishes and endeavours for the establishment of the College in Van Diemen's Land, and he has at the same time such indubitable proof that my wishes on this subject were warmly and anxiously participated in by Lady Franklin, that the conclusion seems from him highly plausible'. 1368

Franklin also admitted that Lady Franklin contributed 'to the endowment of the college', which gave her a 'personal concern in its success'. On 16 July 1841 Montagu again petitioned Franklin against the establishment of the college, claiming that New Norfolk was too remote. In a comical twist however, Montagu, supported by the senior Chaplain, William Bedford, and a committee of 22, suggested that the college should instead be relocated to the even more distant Campbell Town! 1370

Some members of the press agreed with Montagu but for different reasons. In July 1840, the *Colonial Times* declared that 'this is an excellent and a bold step towards the establishment, at one stroke, of a select colonial aristocracy'. 1371

¹³⁶⁷ Franklin, Narrative, p. 74.

¹³⁶⁸ Ibid., p. 78.

¹³⁶⁹ *Ibid.*, p. 78.

¹³⁷⁰ Stephens, 'The Gell Job', p. 116. Campbell Town is approximately half way between Hobart and Launceston in the Island's interior.

¹³⁷¹ Colonial Times, 14 July 1840.

There were others too who protested against the establishment of the college. Lady Franklin recorded that

'The Presbyterians have their jealousies and suspicions strongly excited about Mr Gell, because he is writing home for a charter and they think it may be managed as to give them into the hands of the Church of England. It is of no use telling them that the liberals, Arnold and Peacock, are to do it. They know little more of them than they are not Presbyterian. A Roman Catholic barrister on the other hand, lately arrived from England, Mr Chisholm Anstey, writes against any religion at all'. 1372

The True Colonist also wrote critically of a

'monastic system of education at public expense intended for the exclusion of all, except for those who intended to form an unproductive aristocracy, trained up not to add to the wealth of the colony, but to prey upon the fruits of industry, a sort of Tory state nursery for incipient placemen and public pensioners, under the sole control of a high Church dictator'.1373

Unfortunately for Franklin, the Chief Justice, John Lewes Pedder, who was a 'convinced Anglican' and 'dreaded any countenance being given to other sects'1374, also advised that he disapproved of the college proposal.¹³⁷⁵ Pedder was seen by many in opposition as being a member of the Arthur "faction" and were aggravated by his approval of the press licensing laws in 1827, his rejection of trial by jury in all but Supreme Court hearings¹³⁷⁷, and his involvement in the Bryan dispute, when he refused to allow the William Bryan case to be tried by a civilian jury. 1378 At the time, Pedder was a member of the Executive Council, and in 1835, Glenelg asked Arthur to remove him from the

¹³⁷² Fitzpatrick, Franklin, p. 186. Thomas Chisolm Anstey was the second son of Thomas Anstey. He was extremely restless and was dismissed from the government service for 'eccentric behaviour'. See ADB, vol

¹³⁷³ *Ibid.*, p. 186. ¹³⁷⁴ *ADB*, vol 2, p. 320.

¹³⁷⁵ Fitzpatrick, Franklin, p. 186.

 $^{^{1376}}$ ADB, vol 2, p. 319.

¹³⁷⁷ *Ibid.*, p. 319.

¹³⁷⁸ Shaw, Sir George Arthur, p. 163.

Council in order to preserve the independence of the judiciary.¹³⁷⁹ According to Shaw, this was a blow for Arthur, who had a high regard for the Chief Justice.¹³⁸⁰ Indeed, when Arthur took his leave from the colony in October 1836, it was reported in the press that he was supported on the arm of Pedder as he proceeded down Murray Street to the new wharf.¹³⁸¹

Pedder was probably rankled by the public school dispute, whereby a single denominational education system was overturned in favour of a strictly undenominational one. Franklin proposed to appoint Pedder to a Board promoting public education, which would have given the Anglicans in Van Diemen's Land a monopoly over the system in the colony, but having agreed to overrule the Anglican claims, the Board was never appointed. Though Franklin supported a single denominational education system in the colony, his decision to abandon it, which was popular with the colonists, undoubtedly annoyed Pedder, and surfaced in his public support for Montagu after he was suspended from office in 1842. 1383

Meanwhile though the Executive Council had approved construction of the College in March 1842, several tenders had been held over by Montagu until a report of the Finance Committee was finalised, and then after a long delay, Gell alleged that Montagu had influenced the Director of Public Work's decision to abandon construction of the College using convict labour.¹³⁸⁴

In any case, the idea of the college however bore late fruit with a number of institutions and schools established after Franklin left the colony.

Franklin also charged Montagu with instigating an attack on the 'Anniversary Hobart Regatta' in December 1838, and described Forster as being 'luke warm' to the proposal. Franklin claimed that many of the races in the Regatta carnival were sabotaged by Captain Moriarty, who caused the guns on the brig *Eliza*, which was anchored nearby as

¹³⁷⁹ *Ibid.*, p. 172.

¹³⁸⁰ *Ibid.*, p. 172.

¹³⁸¹ Robson, *History*, p. 313.

¹³⁸² Fitzpatrick, Franklin, p. 176.

¹³⁸³ See chapter 8.

¹³⁸⁴ R Andrews, Religion and Education in Van Diemen's Land, 1837 - 1843, Unpublished Honours Thesis, History and Classics, University of Tasmania, 1992.

the Regatta flagship, to misfire and thereby foil the start of the whale boat races. In any case, if such a story is to be believed, this opposition ultimately failed, and the Regatta is still very much a part of Hobart life today!¹³⁸⁵

Franklin also lent his patronage to a number of scientific societies in the colony, prompting Alfred Stephen to acknowledge on one occasion that

'His Excellency Sir John Franklin had by his patronage conferred the greatest benefit on the institution, by his favourable countenance of its objects and proceedings and that by his frequent presence and that of his family at lectures, he had given a stimulus and attraction to the lectures to which the institution was indebted for much of the success which had marked its progress during this season'. 1386

Among those societies to which Franklin lent his support were the Hobart town Horticultural Society, the Mechanics Institute of Hobart, the Tasmanian Natural History Society and the Royal Society of Tasmania. Other projects too gained his attention, including the Domain Botanical Gardens and the Domain Observatory, which was completed in just nine days. Captain James Ross even noted during his stay that the convicts assigned to the construction of the observatory 'were most disappointed at not being able to work past 10 on a Saturday night, despite having started at six in the morning'. 1387

Franklin and his wife also founded a museum at Lenah Valley, named Ancanthe, which still stands as a monument to the governor's modernist vision for Tasmania. Franklin's civic program however exasperated the dispute that was simmering with Montagu, and it was obvious that they had become less tolerant of each other during this period of cultural interlude in Van Diemen's Land. It was also clear that Montagu resented Lady Franklin's active interest, if not interference, in cultural innovation, and suspected she possessed an undue interest not only over the location of the college, but over Franklin's

¹³⁸⁵ Franklin to Ross, 31 March 1842, MS/316/6.

¹³⁸⁶ Fitzpatrick, Franklin, p. 193.

¹³⁸⁷ Fleming, Barrow's Boys, p. 340.

administration itself. Franklin's reforms ran counter to the "faction's" penal plans for the colony, and clearly antagonised Montagu, who was moved by different imperatives. After 1841 however, the tables were turned; Montagu embraced the new penal ideas sweeping England, and like Arthur, found it necessary to change his views. Conversely, Franklin who had been in Van Diemen's Land for over five years, was out of touch with the popularity of the new penal theories sweeping Downing Street. He supported assignment because it was popular and it worked, and that was important to Franklin. In contrast, Montagu saw himself as more enlightened then Franklin because he embraced the principles of the probation system. Inevitably, Franklin's cultural modernism made the final breakdown with the "faction" even more bitter.

'Shook Hands, Bowed, and Took His Leave'

Whilst the educational controversy rankled with Montagu, a case of misadventure finally divided Franklin's administration in August 1841. Matters rose to a head when Franklin removed from the post of Assistant District Surgeon at Richmond a 'young man who was represented to the governor as having carelessly and inhumanely neglected his duty in the treatment of a convict at Richmond' in early August. 1388 Coverdale was well respected in Richmond, even though he had only been an official in the convict department for one year. 1389 As a consequence of the convict's death, an Inquest presided over by the Coroner and Director of Roads, Captain Frederick Forth¹³⁹⁰, at the Tea Tree Inn on 20 August 1841, determined 'that [convict] Richard Higgins had come to his death accidentally by the wheel of a cart passing over his body" and the jury foreman, Francis Turnbull, was of the opinion that Doctor Coverdale, 'seemed to have been guilty of culpable negligence', but only recommended that the matter be referred to the Principal Medical Officer to determine a suitable punishment. 1392 According to Lady Franklin, Coverdale was primarily responsible for the health of the prisoner population in Richmond, and was called upon to 'attend a poor free 1393 man who was said to have been run over by a cart'. It was reported that the message was 'a vague one and justified him in his own eyes in waiting till something more definite followed'. There was also some suggestion that Coverdale's maid neglected to pass the message on, and Coverdale did not find out until the following day. The advice nevertheless arrived and Higgins, who was a convict and not a free man, died of his injuries a short time later,

¹³⁸⁸For a full description of incident, see Franklin, *Narrative*, pp. 14 - 19. Lady Franklin's account is recorded in a letter to Mrs Simpkinson on 6 November 1841, MS 248/174/1-23.

¹³⁸⁹ Coverdale and his family resided in Edward Street, Richmond, and his home can still be found there (now known as the Old Dispensary). It was also used as the local mortuary. A painting of Coverdale's wife hangs at the *Old Folk Museum* in Battery Point.

¹³⁹⁰ Lady Franklin described Forth as a 'pet' of the faction. See Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹³⁹¹ Montagu Manuscript, p. 35.

¹³⁹² Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹³⁹³ Lady Franklin's underline.

despite the attendance of another doctor.¹³⁹⁴ In lieu of a formal prosecution, the case was referred to the 'head of the government medical department', Dr Clark, who advised Montagu that Coverdale should be 'severely reprimanded'. In turn, Montagu added his own recommendation that Coverdale should be 'instantly dismissed', and forwarded it to Franklin for review. Franklin concurred with both officials, and dismissed Coverdale from the public service in late September.¹³⁹⁵ Franklin also 'wrote some severe animadversions of the surgeon's conduct, to the extent of intimating that had the patient been promptly looked after, his life might possibly have been saved'.¹³⁹⁶ Later, Montagu wrote that Franklin actually stated Coverdale's actions had 'probably led to the death of his patient', and even Lady Franklin explained that Franklin's observations amounted 'to something like a charge of manslaughter against poor Doctor Coverdale'.¹³⁹⁷ That Montagu was pushing for the resignation is clear; in a letter to Franklin, Montagu wrote:

'I submit Dr Coverdale's letter and a reply I have prepared to it for His Excellency's consideration'. 1398

The following day, Franklin returned the letter to Montagu marked 'approved'.

Almost immediately, Montagu appointed Doctor Kilgour¹³⁹⁹, who had been acting in the capacity of medical officer at the Rocky Hills probation station¹⁴⁰⁰, to the vacated position, neglecting it seems to notify the governor, who complained that the appointment was in opposition to his own recommendation.¹⁴⁰¹ On 14 October¹⁴⁰² however a 'respectful memorial was sent to Franklin, expressing the sense entertained by the neighbours and friends of Doctor Coverdale of his general humanity and skill', and their

¹³⁹⁴ *Ibid*.

¹³⁹⁵ Montagu Manuscript, p. 6.

¹³⁹⁶ Franklin, Narrative, p. 14.

¹³⁹⁷ Montagu Manuscript, p. 6.

¹³⁹⁸ Montagu to Franklin, 13 September 1841, Sir George Arthur Papers, 1821 - 1855, vol 16 A2176.

¹³⁹⁹ Montagu Manuscript, p. 9.

¹⁴⁰⁰ *Ibid.*, p. 64.

¹⁴⁰¹ Montagu to Stanley, 24 June 1842, 15 Hanover Square, RS 7/112. Later, Kilgour complained about his treatment and demanded reimbursement from the government.

¹⁴⁰² Franklin, Narrative, p. 138.

desire to retain his 'professional services.'¹⁴⁰³ The petition was signed by the Reverend William Aislabie, Chaplain of the Richmond District, and 25 'respectable inhabitants', including the foreman of the Inquest jury which presided over the death. Much to Montagu's dismay, Franklin assented to the petition and restored Coverdale to his previous post¹⁴⁰⁴, despite all the evidence pointing towards Coverdale's negligence.

Perceiving what appeared to be major blunder, Montagu and Forster advised Franklin that his earlier comments about Coverdale's conduct inadvertently amounted to a charge of manslaughter, and that it would be in the best interest of the governor and the government if he withdrew Coverdale's reinstatement immediately. Franklin however saw the reinstatement as the best opportunity to relieve himself of the mistake, and supported by his Private Secretary, Francis Henslowe, actually confirmed the reinstatement on 20 October. In protest, Montagu told Franklin that the Richmond township was noted for its anti-Arthurite sentiments and were making the whole Coverdale affair a 'party' question. Franklin was unmoved by Montagu's argument however, and to rub salt into Montagu's wounded pride, the governor asked the Colonial Secretary to send a letter to Aislabie on 22 October acknowledging the petition from Richmond and his decision to reinstate Doctor Coverdale. Franklin explained to Lady Franklin that Montagu had 'put a degree of intense feeling into the matter', in order that he should not reverse his decision, although Lady Franklin appeared pleased that Franklin exercised 'this act of justice or mercy'. Lady Franklin wrote with some satisfaction that Montagu went as 'white as a sheet' when he received Franklin's orders. 1409

¹⁴⁰³Franklin, *Narrative*, p. 15. Montagu wrote that the memorial was only signed by 26 persons. See Montagu Manuscript, p. 6. Ironically, Lady Franklin later wrote that the colonists of Van Diemen's Land 'will sign anything in general'. On that occasion however she was referring to Montagu's testimonial. See Lady Franklin to Mrs Simpkinson, 22 February 1842, MS 248/174/1-23.

Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴⁰⁵ Montagu Manuscript, p. 6.

Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴⁰⁷Fitzpatrick, Franklin, p. 263. The letter is reproduced in Franklin, Narrative, p. 138.

¹⁴⁰⁸ Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴⁰⁹ *Ibid.* Ironically, Coverdale served as Commandant of Port Arthur, the symbol of convictism in Van Diemen's Land, between 1874 until its closure in 1877.

Having forwarded the letter to Aislabie, Montagu dined with the Franklins on 25 October at Government House, although Lady Franklin recorded that Montagu gave her 'some very abstracted and very disagreeable looks'. She also added that Montagu was probably not in 'a fit state of mind' to attend the dinner, and hoped he might have excused himself 'when the day had come'. After dinner, Montagu spoke briefly with Lady Franklin, although she thought he had a 'very vindictive look on his face as I shook hands with him'.

The following day however Montagu met with Franklin to discuss the reinstatement. In his *Narrative* of the affair, Franklin dismissed Montagu's assertion that the petition was 'got up' by an old adversary of Arthur's government, Thomas George Gregson, or by anyone else for that matter. By this, Franklin was referring to Montagu's accusation that if it was not Gregson to blame, then it was most likely Lady Franklin herself who had successfully agitated the Richmond district in Doctor Coverdale's favour. As evidence, Montagu explained that Lady Franklin visited the Richmond District with her husband and several of his senior officials, including Forster, a short time after Coverdale's suspension, and during her stay¹⁴¹², she mentioned to Forster that Montagu and Captain Forth¹⁴¹³ had in some way been connected with the removal of Doctor Coverdale.¹⁴¹⁴

Franklin again dismissed Montagu's appeal, stating that it was a coincidence that he and Lady Franklin were in Richmond at the time specified, and further that Forster had mentioned nothing of the conversation to him either during their visit to Richmond or at any time since.¹⁴¹⁵ Franklin assured Montagu however that he would refer the matter to

¹⁴¹⁰ Ibid.

¹⁴¹¹Franklin Narrative, p. 15.

Lady Franklin recorded that she stayed at Mr Parsons' residence while visiting Richmond. See Lady Franklin to Mrs Simpkinson, 6 November 1842, MS 248/174/1-23.

¹⁴¹³ Franklin to Ross, 31 March 1842, MS 248/316/7.

¹⁴¹⁴Franklin, *Narrative.*, p. 26. Montagu wrote of the alleged conversation between she and Forster in a letter to Stanley on the 24 June 1842, Montagu Manuscript, pp. 8 - 10. See also Franklin to Ross, 31 March 1842, MS 248/316/7.

¹⁴¹⁵*Ibid.*, p. 26. Franklin, Forster and other government officials had travelled to Campbell Town a short time after their visit to Richmond and Jerusalem. At the latter place, Franklin and Forster inspected the coalmines. See Lady Franklin to Mrs Simpkinson, 6 November 1842, MS 248/174/1-23.

Lady Franklin, having never heard her mention his name in any way whatever connected with Doctor Coverdale. 1416

Three hours later, Franklin spoke with his wife about Montagu's accusations. Lady Franklin wrote:

'Sir John came into me afterwards much excited and disgusted with Mr Montagu, and asked me a question as to whether I had or had not said the particular thing attributed to me and which as far as he could discover was the sole cause of the suspicion against me, and of all the evil said to exist in consequence of Sir John's decision, but which evil had no existence but in Mr Montagu's brain, or heart, for the people of Richmond were made happy and grateful, and the community generally were in a state of happy indifference and ignorance about it'.¹⁴¹⁸

Nethertheless, Lady Franklin did admit that 'it seemed to me I must confess a palpable act of injustice, but I kept this to myself, tho' on arriving at Jerusalem not being able to speak to Sir John, I spoke to Mr Forster about it'. She also felt interested enough in Coverdale's dismissal to record that

'various letters of defence, in my eyes very reasonable ones, were of no avail to him'. 1420

After Franklin's meeting with Montagu, Lady Franklin feared that there could never be any 'domestic intercourse between them'. Lady Franklin told her husband that 'our private relations must cease', however she later decided it was a little 'hasty' for such action.¹⁴²¹

¹⁴¹⁶*Ibid.*, p. 26.

Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴¹⁸ Fitzpatrick, Franklin, p. 264.

Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴²⁰ *Ibid*.

¹⁴²¹ *Ibid*.

It was too late however; Montagu interpreted Franklin's about face as an indictment on his own character, and absented himself from his government office for several days before informing Franklin that his actions had degraded his reputation and that he 'must not expect the same assistance he had hitherto rendered to His Excellency'. Montagu at once assumed the attitude of the injured party, and informed Henslowe that Lady Franklin had promoted a rift between himself and the governor. Montagu later elaborated on her alleged role in a letter to Lord Stanley in 1843:

'I quitted the colony upon leave of absence and returned there to my duty in March 1841. From Sir John Franklin I had the most cordial reception. He requested me to conduct the public business precisely as before, and nothing could exceed his satisfaction and the mutual confidence and cooperation between us, until, in October last, I had the misfortune, under a sense of public duty, to mention the name of Lady Franklin in an official conversation with the Lieut. Govr. [1423] [upon the Coverdale subject].... Of his friendship I never entertained a doubt until after I had mentioned Lady Franklin's name to him in October last, when I regretted to perceive it terminated. Of his confidences I felt secure until he had actually suspended me from office. - I confess to you, candidly, My Lord, that his course of secret proceedings towards me during "the three months" quite deceived me. There is no enemy so dangerous as that which comes under the cloak of confidence. - against an open hostility it is easy to guard... I acted in good faith and with a sincere desire for the public good only. [1424]

It is evident that Montagu believed that Lady Franklin was the source of all the personal trouble at this late stage for Franklin. Montagu even claimed that he had seen a letter written in Lady Franklin's hand claiming responsibility for the petition to reinstate Coverdale, and interpreted this as a personal attack on the authority of the Colonial Secretary. Franklin's silence on this point is significant, and while he refers to it in his Narrative, he offers no comment on the validity of Montagu's claim. Despite Aislabie's

¹⁴²² Ibid.

¹⁴²³Montagu to Stanley, 24 June 1843, Montagu Manuscript, p 6.

¹⁴²⁴*Ibid.*, p. 28.

¹⁴²⁵ Franklin, *Narrative*, p. 29. Montagu also confirmed this in a letter to Aislabie on 8 February 1842. See Montagu Manuscript, p. 131.

remonstrations that he was the sole author of the petition, Lady Franklin wrote that 'Mr M's real errand was to strike a blow at me, a blow of revenge for the past, and one which should paralyse me for the future - all this he hoped to effect by insinuating suspicions into Sir John's mind about me, but he never intended Sir John to communicate them'. 1426

The breakdown in relations between Montagu and Lady Franklin directly impacted on the governor. Montagu expressed his fears that Franklin's 'labours would be greatly increased' and absented himself as much as possible from official business. Indeed, those who had business to transact at the Colonial Secretary's office reported that they had 'unusual difficulty in getting any business done at all'. Lady Franklin also observed that papers coming through the Colonial Secretary's office were 'without even a line'.

Montagu remarked that after mentioning Lady Franklin's name in conjunction with the affair, he and Franklin became 'alienated friends'. Indeed, Franklin found it 'impractical to go on', wrote Boyes, 'under the disadvantage of receiving no assistance from his permanent Colonial Secretary. Lady Franklin told a different story, and insisted that 'Sir John is remarkably well and in good spirits of all that has passed'. She also privately warned Montagu that

'he must not attempt to play a subtle game with the Lt. Govr. by separating him from the husband when the victim is to be the wife'. 1432

¹⁴²⁶ Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴²⁷ Montagu to Franklin, 25 October 1841, as quoted in J Eyre, The Franklin - Montague [sic] Dispute, unpublished MA Thesis, History and Classics, University of Tasmania, 1939.

¹⁴²⁸ *Ibid.*, p. 16. According to Franklin, Montagu stated that 'he would speedily bring [Franklin] to terms' (p. 16). Montagu however later disputed that there was any disruption to the public business:

It herefore concluded that although our official relations remained unchanged, we had been brought to the position of alienated friends... Although Sir J. continued to maintain a reserve towards me when we met, there was no alteration whatever in the conduct of the public business (Montagu to Stanley, 24 June 1843, Montagu Manuscript, pp. 9-10).

¹⁴²⁹ Montagu Manuscript, p. 9.

¹⁴³⁰ Boyes Manuscript, 19 January 1842.

Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴³² *Ibid*.

Just as he had done in the Clapperton case, Montagu 'took up the role of injured innocence'. Lady Franklin recorded that

'Mr M refused all reconciliation on that point unless I would consent to put my husband all in the wrong - and then assumed the tone of the injured person, he being in fact injured!'1434

When Lady Franklin later called upon Montagu to 'account for putting her on her defence', he in turn accused her of usurping her official position. Franklin also observed that 'Forster soon showed his real character and his determination to abide by Montagu right or wrong by writing to Lady Franklin a more offensive letter if possible than those of Montagu, resorting as his conviction that she did use Mr Montagu's name in connection with Forth's in her conversation with him at Jerusalem'. 1436

After 20 November¹⁴³⁷ Franklin finally acknowledged Montagu's contempt for his leadership. Up until this point the press were largely unaware of the Coverdale affair. Between the beginning of December 1841 to February 1842 however the *Van Diemen's Land Chronicle* began a series of 'personal and insulting diatribes' towards Franklin and his wife.¹⁴³⁸ Lady Franklin was particularly critical, and wrote that

'if I, whom Mr Montagu cannot injure, whose reputation he cannot blight, whose interests he cannot ruin, what must [those] other persons in the colony do - I wonder at the deadly hatred which in some bosoms he inspires!'1439

The *Van Diemen's Land Chronicle* was edited by Thomas MacDowell, with the assistance of his brother Edward, who happened to be Charles Swanston's son-in-law.¹⁴⁴⁰

¹⁴³³ See chapter 5.

¹⁴³⁴ Lady Franklin to Mrs Simpkinson, 7 February 1842 1842, MS 248/174/1-23.

¹⁴³⁵ Montagu Manuscript, p. 8.

¹⁴³⁶ Franklin to Ross, 31 March 1842, MS 248/316/7.

¹⁴³⁷ Franklin, Narrative, p. 28.

¹⁴³⁸*Ibid*., p. 28.

Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴⁴⁰*Ibid.*, p. 30.

The MacDowells were also personal friends of Montagu and Forster, and it was Montagu who encouraged Franklin to offer government support to the paper several years before. Against his own judgement, Franklin had agreed to the request and supposedly gave Montagu the responsibility for monitoring the level of support the paper gave to government measures. Initially at least, its subjects were reported as 'humorous and wholly unconnected with colonial politics', wrote Franklin, though it concerned the governor that 'whole despatches' were printed in full in the *Van Diemen's Land Chronicle*. Later, Montagu acknowledged that the entire contents of the official return for the import and export of meat was published in the *Van Diemen's Land Chronicle*, but he denied all charges that it was he who leaked the despatch. A cursory examination however of the local papers for this period does not show any evidence of whole or even partial printed despatches as would be sent from the colony to England or vice versa. In defence of himself, Montagu suggested that there was a leak at Government House itself:

'I happen to know however, that information and several articles were furnished that paper from Gt. House to a very late date, and that too while the editor was libelling me in the grossest manner'.¹⁴⁴⁴

As evidence, Montagu implied that Gregson was responsible for leaking the documents to the press, and indicated that he was a frequent visitor to Government House, and enjoyed 'long visits to Her Ladyship'. Montagu also reminded Stanley in defence of his independence that the editor of the *Van Diemen's Land Chronicle* was also 'libelling' him in the 'grossest manner' too. 1446

After the Van Diemen's Land Chronicle's allegations were made public, Montagu also fell into dispute with Henslowe, who maintained that it was his duty to defend the

¹⁴⁴¹Fitzpatrick, Sir John, p. 267. Franklin wrote that he assumed MacDowell would be under the control of Montagu. See Franklin, *Narrative*, p. 18.

¹⁴⁴²Franklin, Narrative, p. 19.

¹⁴⁴³ Montagu Manuscript, p. 12.

¹⁴⁴⁴Montagu to Stanley, 24 June 1843, Montagu Manuscript, p 12.

¹⁴⁴⁵ Fitzpatrick, Sir John Franklin, p. 355.

¹⁴⁴⁶ *Ibid.*, p. 12.

governor's reputation. Henslowe wrote to Montagu on a number of occasions about the affair, and the embarrassment it had caused Franklin, prompting Montagu to declare that

'when you have lived as long in this country as I have you will no longer feel yourself awkwardly situated when hearing hints and insinuations in reference to the conduct of public officials. So far as I may be the object of them, experience has taught me to look upon them as harmless'.¹⁴⁴⁷

Henslowe however was not satisfied with Montagu's reply, and wrote to him again later that afternoon. Montagu did not think much of Henslowe or his 'duty', and replied:

'I now intimate it to you, in plainer language, and I regret that you have at last obliged me to inform you that I feel you have taken a liberty with me, which our short acquaintance has not warranted'.¹⁴⁴⁸

Franklin demanded an 'explicit answer from Montagu' on the subject of the personal attacks in a letter dated 11 January 1842¹⁴⁴⁹, though the Colonial Secretary made no attempt to 'repudiate the insinuations' made by the *Van Diemen's Land Chronicle*, and resented Franklin's inference that it was he who was responsible for the 'scurrilous attacks' upon he and his family. Montagu went as far as to suggest he had no recollection whatsoever of recommending the paper to Franklin other than conveying a request from the editor to Franklin for access to Lady Franklin's English periodicals. 1451

¹⁴⁴⁷ Montagu to Henslowe, 4 January 1841. The letter formed part of a pamphlet published by the *Hobart Town Advertiser* in January 1842 titled 'Correspondence between the Late Colonial Secretary, Mr Montagu, and Mr Henslowe, Private Secretary to Sir John Franklin'. A copy of the pamphlet is to be found in the Tasmaniana Library, Hobart.

¹⁴⁴⁸ *Ibid.*, 6 January 1842.

¹⁴⁴⁹ Franklin, Narrative, p. 20, and Boyes Manuscript, 15 January 1842.

¹⁴⁵⁰Forster supported his brother in law: 'Should any man, women, or child assert that M. is connected with any newspaper writing, which are offensive or obnoxious to Sir John Franklin's Government, then I say he, she, or it lies... this I tell you as his friend and mine' (Forster to Ainsworth, 15 January 1842, Montagu Manuscript, pp. 39-40).

¹⁴⁵¹Franklin, *Narrative*, p. 20. Franklin addressed Montagu on the subject in a Memorandum dated 11 January 1842. See Fitzpatrick, *Franklin*, p. 272. Indeed, Montagu later added that where he did transact business with the editor, it was upon the instructions of Franklin himself: 'Sir John Franklin had always been in the habit of causing information which he desired to make public, to be sent sometimes to one, and sometimes to another of the newspapers - I had generally conveyed it for him, by sending for the editor to

Montagu concluded that he was powerless to 'withdraw assistance he had never given'. His about face did not surprise the rival *Courier*, who declared that Montagu was 'always in an invulnerable state of preparation for every possible and impossible contingency that could affect his own interest'. The *Colonial Times* also weighed in on the controversy, observing that the

'Governor kicked at last, having so long been in double harness, and others say that the Colonial Secretary kicked at finding a secret influence, we must not say which sort, which governed the Governor, but which never appeared but by its works'. 1454

Montagu was far too subtle to profess any association with the paper¹⁴⁵⁵, though by the tone of its attacks it was clearly a mouthpiece of the Arthur party:

'Ever since His Excellency's arrival in this colony, the government has been made to depend, not as governments are usually made to do - on fixed principles and laws, but upon, first, the desire to conciliate all elements; second, upon caprice and intrigue, and the undermining of every public officer who had not a taste for "carousals" of tea, muffins and lectures'. 1456

Indeed, Boyes recorded that the great question in the colony was whether 'Montagu continued his favour [of] protection to Thos. MacDowell since the appearance of those articles in the *Van Diemien's Land Chronicle* reflecting so strongly and libellously upon

my office. At my request I communicated to the editor of the *Van Diemen's Land Chronicle* the information for the two articles marked in the accompanying numbers of that paper, published in July, leaving it to the editor's discretion to use as much or as little of the information as he pleased' (Montagu to Stanley, 24 June 1843, Montagu Manuscript, p 11).

¹⁴⁵²Montagu replied to Franklin's imputations on 17 January 1842. Franklin again wrote to Montagu on 18 January instructing him not to use any of the conversation between them in a public sense. Franklin recorded that *Murray's Review* printed one such article, much to his distress. See Franklin, *Narrative*,

p. 21. ¹⁴⁵³ Hobart Town Courier, 18 February 1842.

¹⁴⁵⁴ Colonial Times, 11 January 1842.

¹⁴⁵⁵Montagu denied any association or influence whatever with the abusive papers or their authors. See Franklin, *Narrative*, p. 31.

¹⁴⁵⁶Van Diemen's Land Chronicle, 7 January 1842.

His Excellency's conduct and government'. Boyes concluded that the matter would 'prove decisive one way or the other'. 1458

Lady Franklin was grieved by the constant bombardment, and recorded that:

'what shocked me was not so much that such things should be written, but that such persons should write or countenance them. I can only account for this in its origin by supposing that Mr Montagu did really believe in the case of Dr Coverdale that I exerted an influence over Sir John contrary to his own influence. Sir John's determined resistance to his influence on this occasion convinced Mr Montagu that this unusual demonstration proceeded from me, and hence he determined to make Sir John repent of his obstinacy and feel mistrust of me as having caused him to do that which led to his repentance. The whole was a chimera of his own imagination, though had it been true that I had tried to save Sir John from persisting in an act which his own conscience told him was harsh if not unjust, I do not think I should have committed the blackest act which a wife, even a Governor's wife, ever was guilty of. 1459

Like Boyes, Lady Franklin expressed her opinion that 'this sort of thing cannot last long - it will either become worse, or things will become smooth again'. 1460

For Franklin, that moment had come. 'Having taken up this position', wrote Franklin, 'it must I think be necessary for me to prove that Mr Montagu [has] placed himself in a predicament from which I [can] neither rescue him, nor in which I [can] suffer him to remain'. Lady Franklin indicated it was not the first time Montagu had challenged the authority of the governor; 'Sir George [Arthur]', she recorded, 'knows the nature of Mr M and that he was himself repeatedly on the point of bucking with him'. 1462

¹⁴⁵⁷ Boyes Manuscript, 15 January 1842.

¹⁴³⁸ Ibid.

¹⁴⁵⁹Lady Franklin to Ross, 3 April 1842, as quoted in Fitzpatrick, Franklin, p. 271.

¹⁴⁶⁰ Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁴⁶¹Franklin, Narrative, p. 20.

¹⁴⁶² Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23. See chapter 3 for Arthur's rebuke on Montagu.

Forster, holidaying in the country, appeared not to take the pending crisis seriously, and wrote to a friend in Hobart:

'My dear Ainsworth. Here we are ruralising - the fish literally jumping into the frying pan to order. I am only sorry to find things are not so quiet at headquarters'. 1463

Forster did not really care much for politics anyhow while he was in the country, and was content with the 'good hunting' to be had. 1464 Unfortunately for Franklin however, he could ill afford such a luxury. The probation crisis had not subsided, and earlier, Forster warned Franklin that nearly 4000 probationary convicts had arrived in the colony, and that he could not be held 'responsible for the management of so large a number of convicts under a severe system of coercive labour, unless sufficient military protection was afforded'. 1465 Franklin acknowledged Forster's apprehension 1466, but indicated that he was prepared to receive from Norfolk Island any convicts who had more than three years time to serve, so long as they were accompanied by a sufficient military force, 'not in reference only to their being guarded on board ship, but to their proper protection in Van Diemen's Land when disembarked'. He also proposed that their sentences should be shortened in accordance with the time they had already spent aboard the convict transports, but this was not endorsed by the Colonial Office. 1468

In 1841, a total of 3462 convicts were sent to the colony - an increase of more than half for the previous year. This notwithstanding, a new Secretary of State for the Colonies, Lord Stanley, advised Franklin in November that this high intake would be expanded by a further 1000 convicts in the following year. This extraordinary decision reflected growing pressure in England to increase the number of convicts transported to Van

¹⁴⁶³ Forster to Ainsworth, 15 January 1842, Montagu Manuscript. Forster reported that he was travelling on to Entally on the 25 January.

⁴ Forster to John Clark, William and John Clark Papers, Miscellaneous, Undated, RS 8/B 20. 1465 Probation Department, 24 September 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 70.

¹⁴⁶⁶Montagu to Thomson, 28 September 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 83.

¹⁴⁶⁷ Colonial Secretary's Office, 27 September 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 82.

1468 Governor's Letterbooks, GO 137, 1 October 1841, p. 505.

Diemen's Land, and is demonstrated in the following confidential report to Stanley from the Home Office:

'Secretary Sir James Graham having had under consideration the subject of increased numbers of convicts confined aboard hulks in England and seeing the prospect of a still further increase to the present number, I am to desire that you will submit to Lord Stanley Sir James Graham's opinion that it would be expedient to extend transportation in the ensuing year by sending from this country at least 1000 more convicts than the number transported during the current year, and propose that the estimates for the home convict service should be taken for about 1000 fewer prisoners in the year ensuing. Should Lord Stanley see no objection to this measure, Sir James Graham would suggest that a communication should be made to the Lieutenant Governor of Van Diemen's Land apprising him of the intention of the government in order that he may be forewarned for the reception and disposal of about 3000 convicts whom it is proposed to send from England to that colony during the year, in pursuance of their sentence'. 1469

Having considered Graham's request, Stanley, who was anxious to impart his own mark on the colony, sort to clarify just how many convicts could be sent to Van Diemen's Land. Ironically, Montagu's October memorandum proposing that *any* number of convicts could be sent to the colony, had been mislaid momentarily, and Stephen was forced to seek advice from none other than Sir George Arthur:

'About a year ago, when Captain Montagu was in this country, he prepared a paper on the subject of transportation to Van Diemen's Land in which he stated the number who could be provided for at Tasman's Peninsula. That paper, together with a duplicate of it, was retained by Lord Russell and I have been unable in any way to recover a copy of it. I have, however, had the opportunity of speaking on the subject to Sir George Arthur who says that about 25,000 convicts might be provided for at Tasman's Peninsula, and besides that, Sir John Franklin has been instructed to employ all the convicts in the unlocated districts generally in Van Diemen's Land. There can be no doubt, that for a long time to

¹⁴⁶⁹ Sutton to Stephen, 16 October 1841, Whitehall, CO 280/139, p. 271.

come any number of convicts who might be sent out from this country could be received in that colony'. 1470

Contrary to later assessments which portray Arthur as indifferent to penal affairs in Van Diemen's Land after the breakup of the assignment system, Arthur's comments in fact supported Montagu's proposal and significantly enhanced his protégé's reputation at the Colonial Office as an informed penal commentator.

In retrospect, it is incomprehensible that it could ever have been thought that 25,000 convicts could be sent to Tasman's Peninsula; in 1837, there were only 1024 prisoners at Port Arthur¹⁴⁷¹, and even in 1845, only 1209 convicts were detained at the settlement, and only three quarters of that number were undergoing punishment in the probations stations scattered across the rest of the Peninsula.¹⁴⁷² Indeed, the total population of Van Diemen's Land in 1841 was only 51,499, of whom 16,391 were convicts. While Arthur had earlier recorded that there was upwards of 175,000 acres of land on the Peninsula which could be adopted for the employment of the convicts, a survey conducted by Franklin in November 1839 found only 13,000 acres of 'alluvial soil' worth cultivating.¹⁴⁷³

A copy of Montagu's October memorandum was subsequently located and attached to Stanley's letter for the attention of Graham.

Back in Van Diemen's Land, Montagu had reported in October 1841 that the present system of transportation to Van Diemen's Land had increased the demands on the convict stores of the colony to an extent that the supplies in charge of the ordnance officers were inadequate. Montagu inquired whether there were any surplus stores in New South

¹⁴⁷⁰ Stanley's Minute to Stephen, 31 October 1841, CO 280/139, p. 271. In 1834, Arthur thought 10,000 might be employed on the Peninsula. See chapter 10. Interestingly, Russell thought in 1839 that if a penitential system was to be established in Britain, it would hold between 25,000 to 30,000 convicts. See Phillipps to Grey, 8 January 1839, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 744.

¹⁴⁷¹ Brand, Penal Peninsula, p. 35.

¹⁴⁷² *Ibid.*, p. 75.

¹⁴⁷³ *Ibid.*, p. 64. See also chapter 10.

Wales which could be transferred to Van Diemen's Land.¹⁴⁷⁴ 'The Governor', he continued, 'had strongly impressed the necessity of having an additional military force in the colony in order to remove apprehensions in the minds of the inhabitants for the security and life of their property.'¹⁴⁷⁵

Montagu's dispute with Franklin occupied the closing months of 1841, and nothing was forwarded to London respecting the convict system until early 1842. This was unfortunate, as the state of the economy had reached a crisis point. Boyes recorded in his diary that relations were strained between Franklin and his officials, and during a conversation with the Governor about Montagu and Forster, he 'kept quite upon the reserve, saying as little as possible. It was a delicate if not a dangerous subject to venture upon', concluded Boyes!¹⁴⁷⁶

Montagu's dismissal when it came was a consequence of a clash of personality rather than politics. Personality had pervaded the tone of all communications between Franklin and Montagu after the Coverdale affair, and it is hardly surprising that Montagu was subsequently suspended from office on 25 January 1842 after implying that the governor 'could not always place implicit confidence upon his own [memory]' in a letter about the *Van Diemen's Land Chronicle* affair dated 17 January 1842.¹⁴⁷⁷ The dismissal created a sensation in the colony, and every newspaper in Van Diemen's Land aired their political allegiances. Montagu was equally surprised, and after his dismissal, informed the governor that he was 'quite unprepared to be charged'¹⁴⁷⁸:

 ¹⁴⁷⁴ Colonial Secretary's Office, 1 October 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 83.
 1475 Ibid, p. 81.

Boyes Manuscript, 7 December 1841.

¹⁴⁷⁷ Franklin, Narrative, p. 21. See also Fitzpatrick, Franklin, p. 272. Montagu was dismissed on 25 January 1842 (Montagu Manuscript, p. 15). According to Montagu, Franklin had questioned his memory on 15 January (Montagu Manuscript, p. 19). Lady Franklin also spoke of the memory incident. See Lady Franklin to Mrs Simpkinson, 22 February 1842, MS 248/174/1-23. Lady Franklin also indicated that she had obtained a copy of this letter.

¹⁴⁷⁸ Montagu Manuscript, p. 24 and p. 15. Montagu suggested that all was in order as late as 25 January 1842: 'Sir John summonsed me to attend the Executive Council, although there was no necessity for my presence as there was a quorum without me/ where I was engaged in advising him for nearly three hours on that day upon subjects of considerable information to his Govt. After these demonstrations of tranquillity, Your Lordship can imagine with what surprise I received a communication from him early on the following

'The charge upon which I was suspended was that the tone of my late correspondence, and the tenor of my conduct during the last three months had been so disrespectful as to render my continuance in office derogatory to the honour of the Crown, and detrimental to the public service'. 1479

In support of Montagu, several colonial officials attested to Franklin's fading memory, including the Assistant Colonial Secretary, William Henry Mitchell, who wrote:

'So notorious is the general feeling that his memory cannot be relied upon that it is a common expression to hear when Sir John Franklin has made promises, it is of no use unless you have it in writing. He is sure to forget it'. 1480

In a near comical feature of the dispute, Montagu recorded that Franklin requested his assistance with an administrative matter the day after his suspension, even though 'the suspension had been previously decided on'. Six days later however, Montagu allegedly apologised for the disrespect he had shown Franklin, and according to the governor, 'begged' him to withdraw the suspension. Franklin accepted his apology, but explained to Montagu that he could 'not reverse' his decision. Franklin wrote:

'Mr Montagu had at the 11th hour offered to apologise for that passage - and wished to withdraw it when he found that the bullying of his friends and their attempts at agitation would not move me - to have accepted his apology then and made the matter up when the day and even the hour had almost arrived for his successor taking office would under all

Mitchell to Montagu, 4 February 1842, Montagu Manuscript, p. 54. In his own defence, Montagu quoted several colonists who also suspected Franklin's memory was fading. See Reverend John Joseph Therry to Private Secretary, 29 November 1841 respecting Therry's allowances, Montagu Manuscript, p. 55, and Mitchell to Burnett 8 February 1842, respecting the Jericho Lagoon (p. 57). See also Lady Franklin to Mrs Simpkinson, 22 February 1842, MS 248/174/1-23.
 Montagu to Franklin, undated, Montagu Manuscript, p. 72.

morning / 25 January/ acquainting me that he had suspended me from office' (Montagu to Stanley, 24 June 1843, Montagu Manuscript, p 16).

¹⁴⁷⁹ *Ibid.*, p. 16.

Franklin, Narrative, p. 22. Franklin stated that he was 'deeply affected' by Montagu's letter dated 31 January 1842.

the circumstances have been destructive to my character and fatal to the welfare of the public interests'. 1483

Montagu was probably more surprised than anybody that Franklin suspended him, and probably even expected the governor to yield to his terms like he always did. Instead, Franklin offered Montagu a 'eulogium of his talents', dated 8 February 1842, which the governor later described as a 'political blunder', but one which at least tempered his conscience that he had done Montagu no 'more injury than the stern demands of duty forced upon' him.¹⁴⁸⁴ Having lived with Forster since returning to the colony in March 1841, Montagu now retired to Chief Justice Pedder's *Newlands* residence in Lenah Valley on 4 February 1842, where he resided with his wife and children until his departure several days later.¹⁴⁸⁵ Immediately he set about collecting evidence against Franklin, and called upon a number of colonial officials who willingly contradicted Franklin's charges, including Thomas McDowell, William Henry Mitchell and Adam Turnbull.¹⁴⁸⁶ On the day before he set sail for England, Montagu advised the Colonial Office that he was eager to defend himself against all of the governor's charges:

'It having pleased Sir John Franklin to remove me from office of Colonial Secretary - I beg Your Lordship will be pleased to suspend your judgement on such proceedings until I shall have an opportunity of presenting my explanation to Your Lordship, to enable me to do when I proceed to England in the *Calcutta* which sails tomorrow'. 1487

¹⁴⁸³ Franklin's Journal, 31 March 1842, MS 248/316/6.

¹⁴⁸⁴ Ibid.

¹⁴⁸⁵ Montagu Manuscript, p. 24. The government paid Pedder's rent at *Newlands*, although the Chief Justice in New South Wales had to pay his own way for his official residence. See *ADB*, vol 2, p. 320. The residence belonged to Charles McLachlan since 1835, who returned to London with Montagu and 'handed over' the house to Pedder one month earlier. Prior to this, Pedder had been living at *Secheron* in Battery Point. See Lady Franklin to Mrs Simpkinson, 9 February 1842, MS 248/174/1-23. Captain Cheyne lived nearby. See Lady Franklin's Journal, 26 September 1840, MS 248/89.

¹⁴⁸⁶ *Ibid.*, p. 64.

¹⁴⁸⁷ Montagu to Stanley, 7 February 1842, CO 280/151, p. 321. See also Montagu Manuscript, p. 1.

Franklin was probably fortunate that he did not agree to Montagu's protests; a short time after his suspension, Lady Franklin alleged that Montagu told Mr Nairn 'that it would have been fatal to Sir John had he restored him to office'. 1488

Montagu embarked for London with his wife and children.¹⁴⁸⁹ On the day of his departure, Forster wrote to Montagu and thanked him for his assistance in establishing the probation system:

'I cannot allow you to depart for England without thanking you for the ready assistance you have at all times given to me to remedy the difficulties which are inseparable from all the great changes and which I would have suffered great inconvenience from in establishing the probation system, but for the aid given me by you when I required it. Whilst the advantages and experience which I have from time to time received from you respecting the views entertained by Her Majesty's Government in reference to the all important question of transportation, and the treatment of convicts, have been of the greatest service in the establishment of a system of punishment and reform which bids fair to be of national benefit. I do so, believe me, under a strong feeling of the advantages I have survived from your kindness."

Montagu was presented with a testimonial from some of the most powerful and influential officials in the colony, including Forster, Charles McLachlan, Thomas Anstey, Thomas Archer, Charles Swanston, Michael Ashburner, Michael Fenton, John Kerr and a private letter from the Chief Justice, John Lewes Pedder. He was also presented with a plate, engraved with the Latin inscription:

¹⁴⁸⁸ Lady Franklin's Journal, 24 March 1843, MS 248/158.

¹⁴⁸⁹ Lady Franklin to Mrs Simpkinson, 9 February 1842, MS 248/174/1-23.

¹⁴⁹⁰ Forster to Montagu, 8 February 1842, Montagu Manuscript, p. 84.

The letter is reproduced at Appendix B. See also Montagu Manuscript, p. 97. Of Pedder, Montagu wrote: 'I also obtained from the Honourable Sir John Lewes Pedder the Chief Justice of the Supreme Court of Van Diemen's Land, a testimonial such as is seldom obtained by any public officer - from a man of such high honour and acute perception and whose scrupulously conscientious character procuring for his opinions, the very highest consideration. I feel proud to have received such a document - Sir John Pedder has been 18 years the Chief Justice of the Supreme Court of Van Diemen's Land, and during that time he has had abundant opportunity of satisfying his mind of my public, and private character'. See Montagu Manuscript, p. 99. See also chapter 8 - Franklin alleged that Pedder read over a litigious document circulated in the colony by Montagu.

'Magna Est Vis Veritatis, Van Diemen's Land, January 26 1842'. 1492

Lady Franklin recorded however that

'Mr Montagu has declined receiving his plate - various reasons are assigned - some say the inscription woefully failed, and so he won't have it and affects to give as a reason that he is sure to come back again'. 1493

What is also notable is Pedder's support, friendship and encouragement of Montagu at this time. It is highly significant that Pedder advised Montagu that he was at liberty to use his letter as he pleased, and yet he was at odds with the other senior members of the government by not signing the public address. As shown by the college debate however, Pedder did not think much of Franklin's liberal views, and in a letter to Arthur in 1838, argued that Franklin's push for trial by jury in the colony was 'premature'. Pedder added:

'Further demands for liberties would follow. So far from producing the general peace and quiet of the community it will probably have the effect of opening a still wider door to agitators and the evils which now divide society'.¹⁴⁹⁴

A religious man himself, Pedder was nethertheless critical of Franklin's attempts to have games prohibited from being played in Hobart on Sundays, and the matter was eventually defeated in the Executive Council. Like Montagu, Pedder also spoke of the 'scandalous degree to which Franklin looked to Gregson as his confidant', and added that

'This man has all along been one of the chief promoters of a newspaper set up avowedly for the purpose of injuring your government, and which for the accomplishment of that purpose, has not scrupled to charge you and Montagu and Forster of offences amounting

¹⁴⁹² Montagu Manuscript, p. 96. Latin for 'great is the force of truth'.

¹⁴⁹³ Lady Franklin to Mrs Simpkinson, 9 February 1842, MS 248/174/1-26.

¹⁴⁹⁴ Pedder to Arthur, 28 March 1838, Sir George Arthur Papers, 1821 - 1855, vol A - P, A 2170.

to felony, and yet this man is received at Government House by your successor and spoken of as one of the most intelligent and responsible of the colonists'. 1495

Pedder concluded his letter with the view that the

'Secretary of State might as well give up the government of the colony lest it at once in a junta be composed of Gregson, Stephen and co.'1496

Described by most modern accounts as quiet and procrastinating, his satirical comments are considerably significant coming from a man who was described by the *Hobart Town* Courier as having a 'tremulous subdued voice' in court who was 'scarcely audible'. 1497

While not publicly breaking political cover about Franklin, Pedder's letter was later read in the colony as part of a manuscript sent out to the colony by Montagu, and publicly acknowledged Montagu's contribution to the colony. Pedder had been a long acquaintance of the "faction" however, and as early as April 1837, he advised Arthur that Maconochie, who was at odds with Montagu, was 'a cool headed, shrewd, ambitious, meddling Scotsman'. 1498 He also added that

'I leave it to Mrs Pedder to tell Lady Arthur all about the parties at Government House and visiting elsewhere. We go nowhere, that is, we are asked nowhere but to the Forsters and Montagus'. 1499

Lady Franklin later confirmed Pedder's friendship with Montagu:

¹⁴⁹⁵ Ibid. ¹⁴⁹⁶ Ibid.

¹⁴⁹⁷ Similarly, in 1846, Pedder described Franklin's successor, Sir Eardley Eardley Wilmot, in the following terms: 'As a Governor I don't like him at all - nor do I like his character. He is tyrannical, intensely selfish and as'a necessary consequence heartless, and very capricious; in private life the meanest man of the world in all his feelings you can well conceive'. See Pedder to Arthur, 18 February 1846, Sir George Arthur Papers, 1821 - 1855, vol A - P, A 2170.

¹⁴⁹⁸ Pedder to Arthur, 12 April 1837, as quoted in Fitzpatrick, Franklin, p. 44. Pedder also wrote of Thomas Gregson: 'and yet this man is received at Government House by your successor and spoken of as one of the most intelligent and respectable colonists'. See Pedder to Arthur, 28 March 1838, Sir George Arthur Papers, 1821 - 1855, vol A - P, A 2170. ¹⁴⁹⁹Ibid.

'The Pedders may be of this number, for they live in a small and very narrow circle of which the Arthur family are almost the only elements'. 1500

Notably, Lady Franklin suggested that Pedder's wife, 'a sensible and benevolent woman who writes well', was known 'to write for her husband, and to have been the right hand of Col. Arthur'!¹⁵⁰¹

Pedder had been saddened by Arthur's recall, and a short time after the governor's departure, Pedder wrote of Arthur that

'[you are] one of the kindest and best friends I ever had in my life, and I am sad to say, my only friend here'. 1502

Earlier, Pedder and his wife had tried to intervene in the dispute between Montagu and Lady Franklin after the Coverdale affair, though Franklin reported that together with his own exertions, they had no effect. It was further evidence that Montagu saw Lady Franklin as the real problem, for there is nothing said about trying to mend relations between Montagu and Franklin. Intensely private, Pedder neither invested nor borrowed in the colony¹⁵⁰⁴, and was held in high regard by the Colonial Office and the English Law Officers. Pedder's private letter represented a manifestation of support for an officer who had yet to be cleared of misconduct, and was perhaps a telling, if silent rebuke, of the governor. Iso6

The dismissal could not have come at a worse time for Franklin. Lady Franklin indicated that Sir John had lost his most powerful friends at home in the recent elections,

¹⁵⁰⁰ Lady Franklin to Mrs Simpkinson, 19 January 1843, MS 248/174/1-23.

¹⁵⁰¹ Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

¹⁵⁰² Pedder to Arthur, 26 May 1836, Sir George Arthur Papers, 1821 - 1855, vol A - P, A 2170.

¹⁵⁰³ Franklin, *Narrative*, p. 22. Franklin also reported that the Treasurer, Dr Adam Turnbull, was also 'commissioned' to reconcile the two. See Franklin, Narrative, p. 32. Franklin referred to Pedder's efforts on 31 March 1842. See Sir John Franklin's Journal, MS 248/316/6.

¹⁵⁰⁴ *ADB*, vol 2, p. 320.

¹⁵⁰⁵ Shaw, Sir George Arthur, p. 172.

¹⁵⁰⁶ See Appendix B.

and on personal grounds had accepted the new Tory government in the name of self-interest. The 'great question' between Franklin and Montagu also engaged the attention of everyone in the colony who cared to take an interest, prompting Boyes to comment that during dinner with the Reverend Edward Bedford, he heard 'all that passed between the Pri. Secretary and Montagu and between Sir John and the latter respecting the points at issue between them'. And later, Boyes observed that the 'schism in the government and our speculations as to what Sir John would do next¹⁵⁰⁹, occupied the time'. Occupied the time'.

On the day of Montagu's dismissal, Franklin 'had great pleasure' in making Boyes an 'offer of the office' vacated by the Colonial Secretary, and congratulated the diarist on the 'exclusive fitness, high character and the personal regard' he displayed.¹⁵¹¹ Franklin confided to Boyes that he had 'reposed too much upon the zeal and fidelity of M. and F'. and now found that he had 'been altogether mistaken in them'.¹⁵¹² Boyes recorded that news of Montagu's dismissal had 'spread like wildfire', and that Montagu's old adversaries, Gregson and Synott, had cheerfully declared that 'all the settlers would rejoice at Montagu's dismissal and would consider that Sir John, by this vigorous step, had completely redeemed his character'.¹⁵¹³ Of Boyes' appointment, Lady Franklin remarked that

'Mr Forster, the late Col. Secy. was of course out of the question, being as bad as the other, and Dr Turnbull, amiable as he is, is only their creature'. 1514

Boyes accepted the new posting, news of which was published in the *Van Diemen's Land Chronicle* on 28 January 1842.¹⁵¹⁵ Meeting with Franklin several days after the

Lady Franklin to Mrs Simpkinson, 12 October 1841, MS 248/174/1-23. Lady Franklin indicated that one such friend was Lord Durham from Canada - she wrote - 'I should think the Ministry can never stand the return of Lord Durham'. See Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

Boyes Manuscript, 14 January 1842.

¹⁵⁰⁹ Boyes' underline.

¹⁵¹⁰ *Ibid.*, 18 January 1842.

¹⁵¹¹ *Ibid.*, 25 January 1842.

¹⁵¹² *Ibid.*, 24 January 1841.

¹⁵¹³ *Ibid.*, 25 January 1842.

¹⁵¹⁴ Lady Franklin to Mrs Simpkinson, 7 February 1842, MS 248/174/1-23.

dismissal, Boyes recorded that the governor had 'been petting and relying upon [Montagu] all through his administration', and that he now 'saw he had been investing him with power in the belief that it would be exercised only for the benefit and strengthening of his administration, and that it was now turned against himself.¹⁵¹⁶

Boyes continued however that he did not feel secure in giving Sir John advice and alluded to the governor's failings as an administrator:

'One can have no confidence in the apparent openness of heart and generosity of disposition evinced by him to those upon whom he is desirous of making a good impression. He might tell several of his acquaintances all that had passed between you and thus give sure publicity to opinions offered under a belief that they were strictly confidential, and therefore unreserved. Nay, he might have at a future time have an interview with M. himself and then in another fit of spurious open heartedness make atonement to him by divulging the nature of the advice and the name of the adviser upon which he acted... But worse than all he might and this is by no means unlikely, feel regret and compunction for the step he had taken and in a fit of repentant recrimination throw the whole blame upon your shoulders, leaving you among other more substantial marks of disfavour, to chew the cud of bitter self reproach that you had ever been induced to listen to the larmoyante histoire of so weak and uncertain a creature.

In any case, Boyes received his commission as Colonial Secretary on 2 February 1842, and was admitted to the Executive Council the same day. After being sworn in, Boyes returned to the Colonial Secretary's office where Montagu, who was in the process of finalising his papers and possessions, asked Boyes for evidence of his authority to take charge of the office. Boyes showed Montagu his commission, who upon 'reading it over, shook hands with Boyes, bowed and took his leave'.¹⁵¹⁸

¹⁵¹⁵ Ibid., 28 January 1842.

¹⁵¹⁶ *Ibid.*, 1 February 1842.

¹⁵¹⁷ *Ibid.*, 1 February 1842. Indeed, this is exactly what he did with Montagu after suspending him. See above.

¹⁵¹⁸ *Ibid.*, 2 February 1842. Montagu was not comfortable surrendering his office to Boyes. Montagu explained that 'legal doubts were entertained in the colony of the validity of the appointment of the

gentlemen now holding the office of Colonial Secretary in V.D Land, in consequence of Sir John Franklin having removed me from a patent office, without taking the advice of his Executive Council upon it, which doubts, if correctly informed, may occasion inconvenience to the government and the public. I was advised too, that my own position would be compromised and my removal be regarded - legally - as a voluntary surrender of my office, if that requirement of the Act of Parliament were not observed, but feeling that these considerations were not within my province, I communicated to Sir John Franklin my intention to waive them, upon receiving his sufficient authority to relinquish my office to Mr Boyes'. See Montagu Manuscript, p. 78. In any case, Montagu still enjoyed the support of his old colleagues. Lady Franklin wrote: 'Mr Mitchell, the Assistant Colonial Secretary, was also described as 'a creature of Mr M's and who does all Mr M's jobs and perhaps worse ones of his own - this man is still the chief person in the Col. Secry's office under Mr Boyes, and a worse man, more crafty, intriguing, presumptuous does not exist'. See Lady Franklin to Mrs Simpkinson, 22 February 1842, MS 248/174/1-23.

Montagu's Dismissal and the Consequences for Penal Policy

In February 1842, Franklin prepared himself for the inevitable challenge Montagu would pursue when he reached London. Franklin wrote:

'I had on my mind that Mr Montagu's intended policy in conducting his defence at the Colonial Office would be to show that the offence he had committed against Lady Franklin by denouncing her as an agitator and exciter of discontent, was the real cause of his suspension'. 1519

Lady Franklin also remarked that she expected Montagu to present himself at the Colonial Office, 'and to make out that a private quarrel is the cause of a public act - this will be assuredly his policy, but I think it will be assuredly his downfall also'. 1520

Franklin sent no less than nine despatches to the Colonial Office between January and March 1842, all of which referred to Montagu's suspension and his anticipated defence.¹⁵²¹ Franklin was right of course; almost as soon as he set foot on English soil, Montagu explained to Stanley

'that I knew he [Franklin] was incapable of writing the despatches he had signed, in the letters and memoranda which had passed between him and me, to which his name was affixed, that he was little removed from an imbecile and had not the ability for it... I stated that he was and had been under Lady Franklin's dominion, who made him sign or do anything she pleased... I informed him that he could not write the commonest instruction upon any official paper without having it dictated to him and I added that

¹⁵¹⁹Franklin, Narrative, pp. 35-6. See also p. 59.

¹⁵²⁰ Lady Franklin to Mrs Simpkinson, 9 February 1842, MS 248/174/1-26.

Franklin, Narrative, p. 1. Stanley listed them all in a despatch to Franklin dated 13 September 1842.

Lady Franklin was a dangerous woman who had never liked me because I would not aid her in procuring the public money to spend upon her fancies.'1522

To a degree, the Launceston Examiner was to later echo this but in a sardonic vein:

'Her delinquencies range from the establishment of a newspaper to which she contributes articles, to the suspension of Mr Montagu's supply of plums and cabbages from Government Garden!' 1523

Having notified the Colonial Office of his arrival in England in June 1842, Montagu informed the Secretary of State, that he was 'anxious' to explain 'the whole matter of charge', declaring that he could not conceal 'that great pain and mortification... and that deep humiliation that must attend the defence of character - hitherto irreproachable - after a zealous and honourable service of eighteen years under the government'. 1524 Montagu reflected that it was with 'great regret' that he was compelled 'to introduce the name of Lady Franklin' into the discussion, but that it was 'unavoidable' in the circumstances of the dispute between him and Sir John. 1525 Montagu added that it was Lady Franklin who had urged the Richmond settlers to petition the government for Doctor Coverdale's reappointment, and that the petition was signed by only twenty six people, one of whom was the foreman of the jury in the inquest which found in favour of his suspension. 1526 Elaborating on the Coverdale affair, Montagu told Stanley that the restoration was made to appear such that the dismissal had been an 'unauthorised act of mine', and that it was damaging for the government as a whole. Anticipating Franklin's defence, Montagu assured Stanley that his 'official relations' with the governor remained 'unchanged' after the Coverdale affair, though he admitted that they had been brought to the 'position of

¹⁵²²Montagu to Stanley, 28 August 1842, Cheltenham, CO 280/164, p. 523. Montagu reached England in June, and met Stanley for the first time on the 24 June 1842. See Montagu Manuscript, p. 91.

¹⁵²³ Launceston Examiner, 10 December 1845. The Launceston Examiner took an interest again in Franklin after his failure to overturn criticism of his administration at the Colonial Office. Also, Franklin refers to the plums and cabbages episode in his Narrative (p. 62). The press also referred to Franklin's Government as a 'petticoat government'. See Fitzpatrick, Franklin, p. 129.

¹⁵²⁴ Montagu to Stanley, 24 June 1842, 15 Hanover Street, RS 7/112, point 1. The letter is reproduced in the Montagu Manuscript. P. 3.

¹⁵²⁵ *Ibid.*, point 6.

¹⁵²⁶ *Ibid.*, point 9.

alienated friends'. As expected, he also produced letters from Forster, MacDowell, William Henry Mitchell, the Assistant Colonial Secretary, and Captain Ainsworth affirming that he had had no involvement in the Van Diemen's Land Chronicle dispute, and added that he was 'wounded' by Franklin's allegations of impropriety and misconduct. Presumably, he also handed Stanley a copy of Pedder's letter, which undoubtedly strengthened his case against Franklin. Montagu concluded that he was leaving the matter in Stanley's hands with the 'most perfect confidence - my character, my happiness, my fortune - the prospects, the welfare, and the advancement in the life of my children depend upon Your Lordships decision. But I rest satisfied', he added, 'that truth, innocence and honourable deportment will not be overlooked by Your Lordship, when reviewing the conduct of a gentlemen whose life of upwards of 28 years in the military and civil services of his Sovereign, has hitherto been, not only untarnished, but, the subject of the highest commendations from every public functionary under whom he has served'. 1527 Montagu offered his 'humble apology and regret for the trouble occasioned' by the affair, and indicated that a more detailed defence would be forthcoming.

The Coverdale affair, and Montagu's subsequent dismissal, evoked vivid memories for Franklin: 'I allud[e] to several cases of misunderstanding between public officers and the government, or one another, he reflected, which had, in more than one instance, obliged me to dispense with the services of individuals who perhaps under less adverse circumstances than those in which they were placed, might still have served the government with alacrity and zeal.'1528

Predictably, the avid press in Van Diemen's Land seized on the more sensational parts of the dismissal, announcing the event in the very same words used in Franklin's letter to Montagu, though the governor's draft of the letter remained locked away in his office. 1529 Montagu, he supposed, had given a copy of the letter to MacDowell, just as he had done in the past. By the same ship which took Montagu home, who wisely judged that to plead his own cause on the spot was the best policy, Franklin immediately sent two despatches

¹⁵²⁷ *Ibid.*, point 62.1528 Franklin, *Narrative*, p. 37.

¹⁵²⁹*Ibid.*, p. 23.

to the Secretary of State announcing his suspension of Montagu, and the reasons for it. There were others however who were deeply aggrieved by Montagu's suspension; the Reverend Henry Fry, Colonial Chaplain at Battery Point, declared:

'Mr Montagu has been obliged to go to England having been suspended by Sir John Franklin on the most trivial grounds. He has fallen a victim to a system of mean and deceitful intrigue, carried on by Lady Franklin and an unprincipled coterie of flatters'. 1531

Captain Forth, the Director of Roads, was equally supportive:

'I have just arrived here, when the news of your suspension from office (which had reached me at Perth) was confirmed by Forster - I need not tell you how much I feel the treatment you have experienced although there can be no doubt as to its ultimate result (with your reinstatement and compensation) still the great annoyance you will be subjected to, and the inconvenience attending your hasty departure, the shameful treatment you have received after so many years hard work, are sufficient in truth to make all your friends feel most indignant and most sincerely in your cause.' 1532

It was not just the influential who regretted his suspension; Montagu received a letter from Mrs Cole, the schoolmistress at Westbury, who stated that it was with 'great liberty' she addressed him on his departure.¹⁵³³ Letters also followed from James Gibson, Director of the Van Diemen's Land Company, Peter Roberts, Assistant Commissariat Officer, and Henry Jeanneret¹⁵³⁴, the Superintendent of Point Puer.

Lady Franklin recorded that Forster 'entirely disclaimed all [the] ideas of Mr Montagu', though afterwards, he joined in the 'ruse of Mr M of turning it all into a wil o' the

¹⁵³⁰Ibid., p. 23. The despatches were dated 18 February 1842.

¹⁵³¹ Fry to Montagu, undated, Montagu Manuscript, p. 270.

¹⁵³² Forth to Montagu, undated, Montagu Manuscript, p. 276.

¹⁵³³ Mrs Cole to Montagu, undated, Montagu Manuscript, p. 282.

¹⁵³⁴ Henry Jeanneret was later Superintendent of the aborigines on Flinders Island.

wisp.'¹⁵³⁵ Party animosity reached fever pitch following his suspension. Lady Franklin referred to the whole affair as the 'Montagu v Franklin case'¹⁵³⁶:

'I am ignorant, but one thing I would say, and it applies equally in dealing with subtle and designing men as it does with honest and simple minded ones, that openness and fearlessness are always the best armour you can put on by way of defence, or the best weapons with which to arm yourself if it is necessary to enter the enemy's quarters.' 1537

Like her husband, Lady Franklin believed Montagu was 'guilty of trying to be governor instead of Sir John' 1538, and fostered a strong party opposition in the colony:

'All the Arthur faction is awe struck and submissive, working hard in secret, a compact closely knit and still powerful body, filling almost all the offices of the government, but laboring well and waiting their time'.¹⁵³⁹

Lady Franklin also warned her sister about the ramifications from the dismissal:

'You must be prepared for all contingencies, even for Sir G. Arthur coming to you to say something, or even Mr Montagu - I do not think the latter likely but he is a desperate man and if he should ever make the attempt to bully, or to perplex and embarrass you be on your guard against his excessive subtlety, give him no information, tell him you are not accountable to him, or you know not by what right he asks you questions'. 1540

When Montagu reached England, he also spoke of the "faction", and informed Stanley that Franklin had suspended him in order to 'break up the party'. This, he continued, was Franklin's plan, and allowed him to 'carry out his own measures'. By 1843, Lady

¹⁵³⁵ Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁵³⁶ Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23.

¹⁵³⁷ Ibid.

¹⁵³⁸ Lady Franklin to Mrs Simpkinson, 7 February 1842, MS 248/174/1-23.

Ibid.

¹⁵⁴⁰ Lady Franklin to Mrs Simpkinson, 22 February 1842, MS 248/174/1-23.

¹⁵⁴¹ Montagu to Stanley, 1 July 1842, as reproduced in the Montagu Manuscript, p. 117.

Franklin had termed it the 'Montagu party', comprising 'Montagu as its chief, Forster, Swanston, MacDowell and Forth'. 1542

Referring to Montagu, Lady Franklin observed that the 'Arthur faction' still existed without its head, but 'looking for his return, a deep, compact, well-knit band breathed restitution, compensation and perhaps revenge':

There is Mr Forster with his immense patronage as Chief of the Police and Probation Departments and there is Mr Swanston with his immense monied interests in all their ramifications - these people have been here for years and they remain year after year the chief people in the colony which changes much less than any other colony as to its inhabitants - it is said Sir George Arthur is likely to come out to New South Wales as Governor - this would be a great triumph to the Arthurites here, particularly if he were to touch here on his way'. 1543

Lady Franklin also indicated that Forster had connections in Sydney, and some of the papers there were full of the episode.¹⁵⁴⁴ She may have been exaggerating somewhat in this assertion however; there is little in the *Australian*, and the *Sydney Gazette* only mentioned that the dismissal did not particularly 'interest its readers'.¹⁵⁴⁵

The notion of Montagu vying for Governorship was a reminder of Frederick Goulburn's clash with Governor Brisbane in New South Wales 20 years earlier. Like Montagu and Franklin, Goulburn, then Colonial Secretary of that colony, and Brisbane, a keen astronomer and amateur scientist, were embroiled in a bitter dispute after Brisbane accused Goulburn of 'officious behaviour' and 'delaying the conduct of government business'. Goulburn took offence to Brisbane's reprimand, and 'declared that he would retire into strictest limits of the duties of his commission' in protest. After a series of

¹⁵⁴² Lady Franklin to Mrs Simpkinson, 25 July 1843, MS 248/174/1-23. She also indicated that Mr Naim, the Clerk of Council, was Montagu's 'protégé'. See Lady Franklin to Mrs Simpkinson, 22 February 1842, MS 248/174/1-23.

¹⁵⁴³ Ibid.

¹⁵⁴⁴ Lady Franklin to Mrs Simpkinson, 9 February 1842, MS 248/174/1-26.

¹⁵⁴⁵ Sydney Gazette, 5 March 1842.

further quarrels, Brisbane complained to Bathurst, Secretary of State at the time, that Goulburn was stifling the whole business of the colony, though Bathurst had already sent of despatches recalling both men from office. Like Montagu, Goulburn emerged from the shackles of Governor Macquarie's tight rein and gradually clashed with Brisbane, who had succeeded Macquarie, over the extent of his duties and the interpretation of his commission. Goulburn however did not enjoy the support of his fellow public officers like Montagu, and bore most of the unpopularity arising out of changes to the convict system, the law courts and arrangements for land grants. 1546 While many years separate the two struggles, it is enough to demonstrate that penned up ambition were critical in the affairs of a new government, and were aggravated by a leader unaccustomed to governorship in a penal colony.

Having returned to England in March 1837¹⁵⁴⁷, Arthur had been appointed Lieutenant governor of Upper Canada in December 1838¹⁵⁴⁸, and after three years of meritorious service, returned to London in May 1841.¹⁵⁴⁹ Less than one year earlier, he told Montagu that he 'was not over anxious for any particular government' 1550, although he certainly did not persuade Downing Street either from considering him for the colonial service. In the summer of 1841, one commentator remarked that Arthur appeared to 'be very indefatigable in his applications' for employment, and he wrote to a number of his most influential patrons seeking a posting.¹⁵⁵² It was at this time that rumours of his appointment as governor of New South Wales reached Van Diemen's Land, and much to her regret, Lady Franklin feared they might in fact be true. Her fears were unfounded

¹⁵⁴⁶ ADB, vol 1, p. 463.

¹⁵⁴⁷ Shaw, Sir George Arthur, p. 177.

¹⁵⁴⁸ *Ibid.*, p. 180.

¹⁵⁴⁹ Ibid., p. 231. Arthur met with Lady Franklin's father a short time after arriving in England. She wrote: 'He has written a kind and pleasant letter to Sir John, in which, as is usual with him, he always puts something flattering or agreeable to myself - I am told he has won many hearts in this way, but I wait to see him before mine is bestowed, tho' I think it very probable I should be under the influence of the same fascination'. See Lady Franklin to her father, 12 October 1841, MS 248/170/4-6. The Hobart Town Courier also reported that the Queen offered her 'gracious approbation to Sir George Arthur of his services' (7 September 1841).

1550 Arthur to Montagu, 25 October 1840, as quoted in Shaw, Sir George Arthur, p. 232.

¹⁵⁵¹ Shaw, Sir George Arthur, p. 235.

¹⁵⁵² Ibid., p. 235. These included Lord Stanley, Lord Ripon, Lord Fitzgerald, Lord Ellenborough, and the Duke of Richmond.

however and in March 1842, Arthur was appointed to the Bombay Presidency.¹⁵⁵³ Lady Franklin later commented that Arthur's appointment was fortunate for Montagu:

'Sir G. Arthur's absence when Mr M. arrives in England I consider rather an unfavourable circumstance - I think Sir George would have endeavored to check his violence and that he would hardly have ventured to use much influence at the Col. Office in Mr M's favour, after having exerted it so recently for himself in his appointment to India'. 1554

In contrast, the *True Colonist* hoped that Arthur, 'whose influence must now be very great, would find no difficulty [in supporting Montagu] and sealing the doom of the wretched government with which this colony is afflicted'.¹⁵⁵⁵

Writing in March, Franklin recorded that Forster had also shown 'his true colours in such a way as to cause both Lady Franklin and himself to cease all intercourse or friendship' with him. 'The mask', he continued, 'has dropped in fact from the faces of the whole clique including Swanston, Edward MacDowell and his brother and their long disguised enmity to Lady Franklin and me has become apparent to every one and their determination to have everything their own way has been frustrated and exposed to the satisfaction of very many of the colonists'. 1556

Franklin himself was satisfied¹⁵⁵⁷ that he made the right decision in suspending Montagu from office. 'My government was not weakened', he wrote, 'but more firmly united and strengthened by the removal of Montagu.' 1558:

¹⁵⁵³ Ibid., p. 236.

¹⁵⁵⁴ Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23.

¹⁵⁵⁵ The True Colonist, 22 July 1842.

¹⁵⁵⁶ Franklin to Ross, 31 March 1842, MS 248/316/7.

¹⁵⁵⁷ Franklin, Narrative, p. 45. Franklin wrote that he was confident of the propriety of his decision.

¹⁵⁵⁸ Franklin, Narrative, p. 38.

'I look forward with confidence to the decision of the Secty. of State confirming mine but I shall be quite prepared for returning to England should Lord Stanley think as my period of service is up that the time has arrived for appointing my successor'.

Indeed neither Franklin nor Lady Franklin give any indication that he was desirous of a second term as governor in the colony, and it is likely that Franklin had every intention of returning to England after the expiration of his initial six year term. While his comments might well have symbolised a willingness to consolidate his personal victory over the "faction", Franklin later indicated that when he received his recall notice in August 1843, he had already planned to return home, although he indicated that he did not expect to leave until January 1844, which would make it a 7 year term. Franklin of course was referring to Downing Street's policy of restricting 'the Governor's of the colonies to a duration of six years service'1560, and at the time of writing the letter, he had already been governor for 6 years. Indeed, governors more capable and successful than Franklin were recalled after six years, including Darling and Bourke, and only Arthur stands out as the exception. 1561 On a personal note, Van Diemen's Land had also changed; Franklin's social reforms were put on hold as the colony was transformed into the 'principal penal colony of the empire'. 1562 The balance of population shifted, and a higher proportion than ever before were undergoing terms of imprisonment or had been freed after serving their sentences. Frustrated by politics and penology, it was highly unlikely that the Franklins had given any serious thought to extending their tenure in the colony.

There were others too who thought Franklin would triumph, so long as he did not 'forego all his advantages and make an inglorious peace with the offended power by admitting he was wrong and soliciting oblivion for the past' like he usually did. 1563 Writing just weeks before Montagu's suspension, Boyes, who regularly dined with the

¹⁵⁵⁹ Ibid., p. 50.

¹⁵⁶⁰ Arthur to Murray, 5 November 1828, HRA, III, VII, p. 637.

¹⁵⁶¹ See chapter 12 for an analysis of their recalls. Macquarie held office before the 6 year rule was introduced in 1828.

¹⁵⁶² Fitzpatrick, Sir John Franklin, p. 23.

Boyes Manuscript, 19 January 1842. He did - Franklin recommended Montagu for a posting in some other arena of the public service. The Secretary of State held this against him as evidence that Montagu had acted soundly. See Montagu Manuscript, p. 27.

Colonial Secretary, observed that 'Montagu appeared out of spirits - Sir John had a fine game in his hand if he knew how to play his cards'. Boyes however had a vested interest in the outcome of the dispute; writing in January, the Colonial Auditor recorded that Franklin's Private Secretary had asked him to 'look over the papers bearing reference to the misunderstanding', and in the event of Montagu's suspension, whether he would accept the office in his place. Boyes advised that he was willing to make himself 'useful in any way that my public service could be required.'

The effects of Montagu's removal were immediate, declared Franklin:

'The country soon settled down - the great Mr Montagu is no longer spoken of and I know that he is regretted by few beyond his clique and money-getting companions connected with the Derwent Bank - Forster goes on officially as usual but I have no doubt he has been and still is working all the mischief - though his fear of loosing his place will keep him from doing so openly - I know that the large portion of the colonists rejoice at the blow having been struck at the overpowering influence of that "faction" and interest which has been cherished throughout the agency of the police and the monied channels of the Derwent Bank through every ramification in the colony'. 1565

Lady Franklin concurred:

'There can be no doubt that in this dispute as well as in many others, the colony is better off now than it has been for a while - all things are in a more healthy state, now that they are in a great degree relieved from the tyranny of the Montagu, Forster and Swanston faction, more confidence is being placed in Sir John's good intentions and more respect is placed in his power - the same harm is still at work, but it is weaker in its power and does less mischief - the Swanston bank... still possesses a dangerous influence, but it is considerably weakened, now that one of its chief supports is gone - it shows the power of the faction'. 1566

¹⁵⁶⁴ Ibid.

¹⁵⁶⁵ Franklin to Ross, 31 March 1842, MS 248/316/7.

¹⁵⁶⁶ Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23.

Indeed, Lady Franklin felt she was seeing things much more clearly once Montagu had left the colony:

'The longer I live and the more cunning do I see people about me, the more necessary do I think it to put away mystery and disguise and timid policy, to fear nothing and to speak the truth... If you could see the great improvement in Sir John (and in things generally) since he has in a great degree got rid of both these designing men and crippled the poor of their faction, you wd. not doubt that he has done right'. 1567

Her own cunning too was beginning to show. Just after Montagu left the colony, she asked her sister to be riend Sir John Gardiner in England:

'He is a friend of Mr Montagu and will hear a great deal of matter from him which it will be necessary to counteract'. 1568

She also instructed Mary Simpkinson not to give Gardiner the impression they were concerned about Montagu's suspension, and that they were indifferent to staying in the colony or otherwise!¹⁵⁶⁹

As evidence of the change that had taken place, Franklin conducted a reshuffle of some of his closest officials in a bid to create a new, more supportive party. He recorded that on the resignation of the Assistant Colonial Secretary, William Henry Mitchell, a short time after Montagu left the colony, he replaced him with William Edward Nairn. Francis Henslowe, who had been Private Secretary and a close friend of Franklin, then assumed Nairn's post as Clerk of the Councils. 1570

¹⁵⁶⁷ Ibid. While it is clear one of these men is Montagu, I can only assume the second is Forster.

¹⁵⁶⁸ Lady Franklin to Mrs Simpkinson, 7 February 1842, MS 248/174/1-23. Lady Franklin also asked her sister to be friend the McLachlans, who were travelling home with the Montagu's.

¹⁵⁶⁹ Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

¹⁵⁷⁰ Franklin's Journal, 31 March 1842, MS 248/316/6.

Franklin consoled himself with old projects, explaining to an explorer friend in England that after experiencing all the opposition of Montagu, Forster and Swanston, he had decided on 'the design for the College to be built immediately at New Norfolk'. 1571 Franklin also spoke enthusiastically about the probation system, which like the economy, had floundered during the dispute with Montagu. 'I shall get forward with the bridge at Bridgewater', he declared, 'and other works of interest and it is also my intention to employ convicts in works of public benefit to the colony - I have now the most cordial cooperation from the Colonial Secretary', he added, 'and every other public officer - even Forster has the wisdom to appear to go with the rest'. 1572 Content and rejuvenated after a torrid 12 months, Franklin reworked Stanley's instructions with a sense of purpose and direction. He was critical of Montagu's adoption of Tasman's Peninsula as a receptacle for the men on probation, citing that Port Arthur had 'relinquished some of its terror, and that the labour of the convicts had not been so useful and profitable as it might have been in the more remote parts of the colony'. In its place, Franklin proposed to reward the colony with cheap and abundant labour instead of herding the convicts in unproductive labour gangs on Tasman's Peninsula. Franklin had no desire to re-establish the assignment system - he was inspired not rebellious - but he did remove the gang convicts from Tasman's Peninsula and placed them in the unsettled districts under the superintendence of a master or overseer in return for wages. Franklin again recommended the 'immediate emigration of active, zealous and intelligent individuals of unblemished character to perform the duties of superintendents and overseers to attend to the spiritual wants of some thousands of ignorant and depraved men.¹¹⁵⁷³ The lack of able penal officials was a key factor in the failure of many penal experiments undertaken in the colonies, and the probation system was no exception. Three years earlier, Charles O' Hara Booth, Commandant of Port Arthur, noted that it was a 'trying situation', and that he was obliged to punish the prisoners in lieu of effective superintendence. Booth wrote:

¹⁵⁷¹ Franklin to Ross, 31 March 1842, MS 248/316/7.

¹⁵⁷² Ibid.

¹⁵⁷³ Franklin to Stanley, 22 July 1842, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 84.

'Would that we had persons to work the system - with firmness but temper and patience to witness the results of perseverance - find myself breaking constitutionally rapidly - this is a trying situation - both for temper and situation - but great good may be effected by firmness tempered with kindness and unremitting perseverance'. 1574

In 1847, Charles Joseph Latrobe, acting governor of Van Diemen's Land after Eardley Eardley Wilmot was dismissed, also reported that there was a 'general lack of energy and ability amongst senior officials'1575, and more is said on this report on page 382. Franklin explained that he could not disguise from the Secretary of State that his measures would involve a considerable expense after Her Majesty's Government had determined to abolish the system of assignment.¹⁵⁷⁶ Franklin proposed to divide the period of probation into three stages comprising convicts undergoing gang punishment in the unsettled districts, then being offered for hire in gangs in the settled districts and finally, in comparative freedom in the form of a probation pass, whence they would receive wages. The major changes were that the convicts were removed from the 'sterile' Tasman's Peninsula and scattered across the unsettled parts of the colony in punishment gangs, before being offered for hire in gangs in the settled districts. The final stage permitted the convict to work for wages, and to choose his own master. In practice however, the first and second stages were merged to reduce costs and provide adequate supervision. Franklin's proposals were an improvement, but the absence of a definite distinction between the initial gang punishment and subsequent hire stages undermined the deterrence value of the system. Franklin expected 2000 more convicts would be sent to the colony in 1842 and that the 'unexpected intermixture of so large a proportion of men had the effect of hastening on the period when it would be necessary to make provision on an extensive scale for the new stages'. Forster, all but reverting to Glenelg's 1838 instructions, urged Franklin to consider permitting the convicts to enter into private service after passing through the first stage of probation, though Franklin did not feel

¹⁵⁷⁴ed. D Heard, *The Journal of Charles O'Hara Booth*, (Tasmanian Historical Research Association, Hobart, 1981), p. 22. The journal entry was dated 20 February 1838.

¹⁵⁷⁵ Brand, Probation System, p. 80.

¹⁵⁷⁶ *Ibid.*, p. 85.

¹⁵⁷⁷ Brand, Probation System, p. 85.

justified in adopting the measure following Russell's instructions of February 1839. In its place, Franklin recommended that all men passing through the first stage of gang labour would be worked in parties not only making roads, but in clearing lands, erecting buildings, making fences and improving Crown land for sale. 1579 Once again, Franklin suggested that any number of convicts might be usefully employed for some years to come in the second stage, where they would remain until hired by the settlers. 1580 In turn however, Franklin warned Stanley any 'sudden or considerable impetus to immigration in this quarter would not prove advantageous'. 1581

Before he had even had a chance to reflect on the changes however, six convict ships arrived in the colony between April and July 1842, flooding the first stage with hundreds of new prisoners.¹⁵⁸² In July, Franklin conceded that the number of convicts transported since the establishment of his April system greatly exceeded that which he was led to expect, though he could see no cause for discouragement provided the previously united offices of the Chief Police Magistrate and Director of the Probation Department were separated.¹⁵⁸³ In a postscript to this despatch, Franklin despaired that 'several other convict ships may be daily expected', and requested that no time be lost 'in submitting my ideas upon this important subject'. 1584 In response to the new arrivals, the True Colonist reported that the expenditure for the colony on the convicts in probation gangs was likely to exceed £100,000 by the end of the year, and that the men were 'uselessly employed' while the 'small settlers' were unable to 'get in their seed for want of labourers'. The True Colonist continued that the local government had not received any instructions as to how they were to 'dispose of the men in the penitentiaries', and that several hundred convicts with probation passes were 'prowling about Hobart Town, under every possible temptation to revert to their old habits'. 1585 Unfortunately few of these men secured paid

¹⁵⁷⁸ *Ibid.*, p. 85.

¹⁵⁷⁹ *Ibid.*, p. 86.

¹⁵⁸⁰ *Ibid.*, p. 86.

¹⁵⁸¹ *Ibid.*, p. 87.

¹⁵⁸² Franklin to Stanley, 22 July 1842, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 87. See also Franklin to Ross, 20 July 1843, MS 248/316/10.

¹⁵⁸³ Ibid., p. 88. Franklin believed that the greater number of convict arrivals could only be controlled by separate offices. 1584 *Ibid.*, p. 88.

¹⁵⁸⁵ True Colonist, 22 July 1842.

employment, and instead of returning to the hiring stations, remained at large committing more offences.¹⁵⁸⁶ The paper urged Franklin to lend a greater number of the probationers to the settlers at no cost, and thereby save the government the expense of maintaining them, and to dispense with Forster's services on the premise that it would allow the governor to

'commence in good earnest the formation of a "Franklin" family faction in place of the dispersed "Arthur Faction". 1587

Launching into a political attack on the old party, the *True Colonists* also declared that the Arthur "faction" was 'politically dead', although it qualified its attack on Forster as an 'impeachment' of his judgement, 'not his ability'. 1588 Franklin had already given consideration to the separation however, and the experience of the proceeding twelve months had convinced him of the 'necessity for a complete separation of the offices presently occupied by Forster' 589, so in August he informed the Director of the Probation Department that he intended to relieve him of that post so that he might direct all his energy into the office of the Chief Police Magistrate, and his role as Executive Councillor. Franklin was of the belief that the gangs dispersed all over the country were increasing with 'unusual rapidity', and required closer attention than it was possible for the Chief Police Magistrate to give alone.¹⁵⁹¹ In the organisation of the new Department, Franklin appointed a capable official of the Van Diemen's Land Company, Joseph Milligan, as Director of the Department of Convict Discipline, and dispensed with the old title. Franklin had always stipulated that the 'duration of the union [of the two offices in Forster] was uncertain', but had been bullied into prolonging Forster's condition

¹⁵⁸⁶ Brand, Probation, p. 17.

¹⁵⁸⁷True Colonist, 13 July 1842.

¹⁵⁸⁸ Ibid.

¹⁵⁸⁹ Franklin, Narrative, p. 42.

^{1590 17} August 1842. Franklin, *Narrative*, p. 42. Forster did not resign as Director until 27 September 1842. Lady Franklin observed that neither Forster nor Swanston came to visit Government House after Montagu's departure. See Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23. 1591 *Ibid.*. p. 42.

¹⁵⁹²Franklin stated that Milligan had considerable experience in the management of the convicts (Franklin, *Narrative*, p. 42).

by Montagu, who saw 'great advantages for the public service in the amalgamation'. ¹⁵⁹³ Franklin was painfully aware of the dangers of accumulating too much power in the hands of one official, and he was not going to make the same mistake with Forster as he had done with Montagu. ¹⁵⁹⁴ Franklin advised Forster of the changes on 17 August 1842, although he remained Director until 27 September 1842. Forster later sent a letter in reply to Franklin, which was transmitted by the governor to London on 17 November 1842. ¹⁵⁹⁵ To add fuel to the fire already simmering between Forster and Franklin, Stanley called on Forster to resign his seat in the Legislative Council after a review of the membership of the Council showed that Forster, as an official of the government, was in fact sitting as a non official member. ¹⁵⁹⁶ This unbalanced the process, wrote Stanley, citing Arthur as making the initial blunder in appointing Adolarius William Humphrey. ¹⁵⁹⁷ as a 'de-facto official member' instead of a non official member in 1825. Franklin merely carried on the tradition until Stanley rectified the error. As expected, Forster was most unhappy to resign, and allegedly spread a rumour that his resignation resulted from his refusal to comply with 'one' of Franklin's 'unspecified fruitless schemes'. ¹⁵⁹⁸

Lady Franklin was delighted with the removal of Forster from the Council, declaring:

'Mr Montagu will learn with bitter feelings of scorn and hatred that the place of his brother in law (Mr Forster) in the Legislative Council has been filled up with Mr Gregson, a man whom he detests and who would have been long ago in the Council but from deference to Mr Montagu's known feelings towards him'. 1599

¹⁵⁹³ *Ibid.*, p. 42. The matter had been put to the Executive Council on 20 May 1841 (see also p. 95).

¹⁵⁹⁴*Ibid.*, p. 95. See also Lady Jane to Mrs Simpkinson, 5 September 1842, transcribed by G Mackaness, vol 2, p. 52 for an account of the proceedings. In any case, Franklin later wrote that the system had not developed as it should have under Forster's supervision. See Franklin, *Narrative*, p. 91.

¹⁵⁹⁵ Ibid., pp. 42-44. Franklin indicated that the ship took some time to leave the harbour however.

Stanley to Franklin, 8 December 1841, as quoted in Korabacz, Legislative Council, p. 136.
 Humphrey was admitted to the Legislative Council in 1825, and was highly praised by Arthur. See ADB, vol 1, p. 566.

¹⁵⁹⁸ Korobacz, Legislative Council, pp. 134-36. See also Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23.

Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23.

In fairness to Franklin, Forster's apparent inability to satisfy the demands of office had also attracted the notice of Under Secretary Stephen at the Colonial Office. Referring to Forster's duties as Acting Colonial Secretary in 1842-3, Stephen wrote concerning a report of colonial expenditure:

'The form in which these returns have been made up could hardly have been an accident or an oversight. It would seem to be an endeavour to mystify this office'. 1600

Between Montagu's departure and the close of the year, Franklin remarked that his government experienced a period of 'tranquillity and peace'. ¹⁶⁰¹ He took no notice of the rumours that filtered back to the colony after Montagu's return to London - albeit true that Stanley had received Montagu with favour, and had 'consulted him in reference to convict discipline. ¹¹⁶⁰² There were even rumours circulating that Montagu would return to the colony as Franklin's successor, though nothing official had been sent to the colony. ¹⁶⁰³ As late as July 1842, Lady Franklin was informed by her sister in England that 'Montagu wrote in the highest spirits and with the most perfect confidence of his reinstatement'. ¹⁶⁰⁴ In the absence of any official communication from Stanley, Franklin sought solace in the letters he received from friends in England who congratulated him on his decision to suspend Montagu, and expressed their pleasure in Stanley's apparent support for his government. Bowing to internal pressure, Franklin also commenced an investigation into a new controversy surrounding the St George's Church. ¹⁶⁰⁵ This investigation was to establish how plans for a large tower atop the St George's Church in Battery Point had been substituted for a smaller one without Franklin's knowledge. After

¹⁶⁰⁰ Minute, Stephen, 13 January 1842, as quoted in AGL Shaw, 'Sir John Eardley - Wilmot and the Probation System', *Tasmanian Historical Research Association*, September 1963, vol 11, p. 7. ¹⁶⁰¹ Franklin, *Narrative*, p. 44.

¹⁶⁰²West, *History*, p. 173. Montagu later wrote: 'I received a very complimentary address from the Colonists of V.D. Land expressing their anxious desire for my speedy return to the Office of Col. Secretary which they stated "I had so long conducted with advantage to the colony and honour to myself" (Montagu Manuscript, 2 April 1841).

¹⁶⁰³ Franklin, Narrative, p. 39.

Lady Franklin to Mrs Simpkinson, 6 November 1842, MS 248/174/1-23. The Reverend Henry Fry also spoke of Montagu's probable re-instatement. See M Roe, 'Three Letters of HP Fry', *Tasmanian Historical Research Association*, vol 11, (1963 - 64).

¹⁶⁰⁵ See CO 280/177 for correspondence relating to the St George's Church affair.

the commencement of work on the new tower, Franklin dismissed Captain Cheyne, Director of Public Works, on the basis that he had authorised the very costly improvements to the Church tower. Notably, Cheyne's dismissal in September was timely, and coincided with Montagu's dispute with Franklin over the education debate and the Coverdale affair. A near comical feature of this affair is that Franklin was for so long unaware that the huge structure was rising steadily in Battery Point overlooking the whole of Hobart Town. 1606 The expense also highlighted the problems associated with charging the construction of the public works by the convicts on the local government. The cost of the alterations initially sanctioned by Franklin was estimated at £150; the final renovations cost in excess of £2000.1607 Writing to Stanley in February 1841, Franklin argued that he only issued one instruction for the construction of the spire in response to a request from the subscribers of the Church dated 24 February 1841. When presented with the plans by the Chaplain, Henry Fry, on 5 March 1841, Franklin discovered that they were not the plans he had earlier authorised. 1608 In the course of Franklin's deliberations, reference was necessarily made to Montagu, a patron of the Church¹⁶⁰⁹, as having stated that he was unable to find the plans of the expensive alterations undertaken, and that he had never seen the authority on which Captain Cheyne had commenced the work. Montagu denied all knowledge of the alterations: '[I] had never seen the authority upon which Captain Cheyne had undertaken these expensive alterations, nor could any documents be found in the Colonial Secretary's office, throwing any light on the subject.'1610

'The plans were again examined', wrote Franklin, 'and collateral evidence was produced in support of an assertion made by Captain Cheyne that he had acted upon these plans,

¹⁶⁰⁶ Records show that the tower was so large it was used by sailors to navigate along the Derwent River from distant Storm Bay at night.

¹⁶⁰⁷ Franklin, Narrative, p. 24

¹⁶⁰⁸ Franklin to Stanley, 26 February 1842, Montagu Manuscript, p. 129.

The Reverend Henry Fry spoke highly of Montagu. In a letter to a colleague dated 7 February 1842, Fry indicated that Montagu was a 'devout member of St George's', and had contributed £22 to the Church. Fry also indicated that the Church was 'greatly assisted by [Montagu's] influence', and his suspension was 'a sad loss'. See Fry to AM Campbell, 7 February 1842, reproduced in Roe, 'HP Fry', pp. 22-26. Montagu admitted to Stanley that he was a subscriber to the Church. See also Montagu Manuscript, p. 131, for Montagu's comments to Stanley.

¹⁶¹⁰ 24 February 1842, Montagu Manuscript, p. 144.

under instructions, both verbal and written, given him by Montagu.' The written evidence which Franklin refers to is a letter dated 31 May 1841 in which Cheyne had been directed to send the new plan to Montagu for authorisation and not Franklin.

Franklin alleged that Montagu forwarded the new plans to Fry on 25 June 1841 with instructions that 'The new plans are more expensive in labour but the cost to the subscribers will not be much more than was contemplated before the tower was taken down... If you approve the plans proposed I will instruct Captain Cheyne to proceed with the work as soon as you return the plans to me'. Cheyne intimated that he had received such instructions on 5 July 1841. Montagu defended himself in a letter to Stanley in July:

'I have admitted throughout that I gave Captain Cheyne instructions to draw the new plans. I have admitted I received them from him and forwarded them on the same day to the Churchwardens. He admits he received them from Mr Fry and Mr Ford proves that he received them from Capt Cheyne with orders to commence the new buildings. The enclosures to these despatches establish all these facts, but who gave Capt Cheyne authority to build the new tower, upon these plans, I knew not, nor do I yet know - all I know is, that Capt. Cheyne told me that he had received them back that they were approved of, but as the expense for cartage, lime etc, to be defrayed by the Churchwardens, would be greater than he had imagined when he delivered the plans to me, he wished me to remove all doubt as to the whole of the charge, being borne by the Churchwardens before he commenced the work; I told him I would write to the Churchwardens to confer with him, and instructed him not to commence the work until they had quite satisfied him upon that point... and my note, I was informed, was delivered by them to Capt. Cheyne with a verbal assurance to him, on their part, to supply the necessary funds... If that note had been produced the mystery Sir John Franklin has endeavoured to attach to Capt. Cheyne's expression in his letter of 5 July 1841 and 8 July 1842 in which he alludes to my "instructions returned to him" /Capt Cheyne/ by Mr Fry

¹⁶¹¹ Montagu Manuscript, p. 145.

¹⁶¹² *Ibid.*, p. 145.

would have vanished - and the insinuation that I had given instructions which he had never yet been able to find would have been spared'. 1613

Montagu had urged Franklin of the necessity of dismissing Cheyne, a decision the governor later regretted. Indeed, Cheyne had rightly protested against sending all the convicts to Tasman's Peninsula as a great check to the improvement of the colony, and to the reformation of the convicts. Lady Franklin was under no misunderstanding that Montagu had engineered the dismissal, citing Montagu's feelings about Cheyne as early as March 1837:

'Captn Cheyne's dismissal was the work of Mr Montagu's own will¹⁶¹⁵... Montagu said he left too much to his clerk and acknowledged... he was an zealous and good officer, and honourable man, but rather given to be captious and litigious'. ¹⁶¹⁶

This is not to say that Cheyne was not incompetent, and Lady Franklin thought it pertinent to comment that there were 'proofs of the greatest incompetence' as well as waste of public money in the works accomplished or intended by Cheyne, and agreed with one observer that he should have been removed from office quite independently of the grounds on which his actual dismissal was founded!¹⁶¹⁷

Franklin thought it incumbent upon him to send his findings home to the Secretary of State owing to the expenditure of a considerable sum of public money.¹⁶¹⁸ At the very least, he hoped to 'destroy the tyranny and mischievous influence throughout the colony of an individual and a party, who had shown themselves as capable when offended of

¹⁶¹³ Montagu to Stanley, Cheltenham, 16 July 1842, Montagu Manuscript, p. 171.

Lady Franklin to Mrs Simpkinson, 26 September 1840, MS 248/174/1-23.

¹⁶¹⁵ Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23.

¹⁶¹⁶ Lady Franklin's Journal, 24 March 1837, MS 248/156.

¹⁶¹⁷ Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23. After his dismissal, an inquiry into the affair by Francis Burgess (Forster's successor as Chief Police Magistrate) in 1844 exonerated Cheyne from blame. He was unable to secure permanent employment with the government however, holding only temporary posts as gaoler at Swansea, Hobart Town Surveyor, supervisor of the Launceston swamp draining project, and surveyor of the main road between Hobart and Launceston. See *ADB*, vol 1, p. 220.

¹⁶¹⁸Franklin later attributed his investigation into the St George's Church affair as doing him an immense amount of damage before Stanley. See Franklin, *Narrative*, p. 62.

virulent and vindictive opposition to the government, as under other circumstances they could be zealous in its support'. 1619 Despite Montagu's lengthy defence, the evidence is clear that he knowingly instructed Captain Cheyne to proceed with the new alterations, and Franklin was not informed.

Meanwhile, Franklin persisted with his revised system of punishment, and in November, he reported that in the absence of instructions from home, he had remodelled the whole system of convict discipline in the colony, and that the changes had been carried on with 'unexampled ease and harmony'. Having merged the first and second stages of his proposal after the influx of new convicts, Franklin recorded that he was able to speak with confidence about the early results, and it was accompanied by an overview of the whole system of convict management in operation, and a report from Forster on the Department from which he was relieved. Forster's regulations were also enclosed with the despatch; these had already been implemented, and Franklin explained that he had proportionally extended the duration of the amalgamated stage. He closed by observing that in his opinion the 'system laid down by the previous Secretary of State would have proved expensive beyond any estimate Your Lordship may have formed, and would have required very complicated and expensive machinery for supervision'. 1621

Franklin's revision of the probation regulations took on the characteristics of a "protoassignment" system, which provided short term labour and financial relief for the colonists. His instructions however challenged Stanley's view on the distribution of convict labour, although it would be some months before he received official censure for the changes. Lady Franklin also gave a short account of the new system:

'The present system is working admirably and gives universal satisfaction - the men for 2 or 3 yrs according to their sentences are worked in gangs on public works, particularly in making roads and then enter private service on low and fixed wages, with a certain

¹⁶¹⁹Franklin, *Narrative*, p. 45. ¹⁶²⁰*Ibid.*, p. 43.

¹⁶²¹Franklin to Stanley, 17 November 1842, as quoted in Brand, *Probation*, p. 23. Franklin refers to the despatch in his Narrative, p. 44.

extent of veto as to the services presented to them - both of these regulations are particularly satisfactory to the colonists and are proved to be conducive to the good of the prisoners that conduct themselves well and crime is much diminished - Port Arthur still remains as a last resort, a place of punishment for fresh offences committed in the colony or for the most heinous offenders arriving direct from England'. 1622

In general, the problems of punishment and economy had been rehearsed earlier. In June 1841, Councillor William Page Ashburner declared:

'The advantages derived from convict labour, with which we are at one time taunted in the mother country as being the means of reconciling us to an evil system, while at another they are ingeniously made to serve the basis for imposing upon us a great pecuniary burden, have been altogether taken away from the colonists. Assignment has been made to cease. Prisoners are now worked under probation at penal settlements, or in the unsettled districts. The force of the police to control these bodies of men must be augmented, and the charge is likely to be increased in proposition. The benefit therefore derived from convict labour is at an end. It is to be productive for the purposes of the home government alone, and not the use of the colonists. If then the home government so far recognise the advantages of convict labour as to found thereon an argument for charging the colony with police and gaol to control it, now that they have taken the advantages to themselves, they cannot object to pay their fair proportion of the charges incurred on this account'. 1623

Ashburner was right; the probation system was syphoning funds away from the schools and churches, and evoked further support for the abolition of probation and transportation to the colonies.

Unknown to Franklin, Stanley had only days afterwards forwarded instructions for his own probation system, which provided for the 'distribution of ten or twelve thousand men

¹⁶²² Lady Franklin to Mrs Simpkinson, 18 April 1843, MS 248/174/1-23.

Legislative Council Minutes of VDL, 28 June 1841, p. 282. Ashburner was supported by Kerr, Fenton, McLachlan and Fenton.

over a settled country, in parties of from two to three hundred.¹⁶²⁴ In a letter written by the Secretary of State at the Home Office, Sir James Graham, to the Committee of Visitors of Parkhurst Prison, Stanley's system was referred to as a new scheme of convict discipline 'intimately connected with the future management' of the convicts. Graham observed that the convicts undergoing the sentence of transportation would be divided into three classes:

- '1st. The probationary gangs, who will be subject to hard labour without wages, under strict coercion, and every penal privation consistent with health.
- 2nd. Those to whom probation passes will be granted, which will entitle them to work for hire; under certain restraints gradually diminishing, and for wages progressively increasing in proportion as their character for good conduct is established, and they recede from crime, and advance in habits of industry and virtue.
- 3d. Those who obtain tickets of leave, which, except the restraint of living within the penal colony, the constant survey of the Controller of Convicts, and the pain of forfeiture in case of misconduct, may be considered equivalent to a pardon, and to the restoration of liberty.¹¹⁶²⁵

The proposal did not differ greatly from Franklin's, and Stanley later admitted that we 'seem to have anticipated his proposals as he our instructions'. Stanley's instructions did differ however in that the first and second stages were clearly defined, and the length of time spent in the gangs was reduced, just as Franklin had wanted to do in 1838. The convicts in the first stage would be required to grow their own food and build their own lodgings, before working for hire in the second stage. Like the assignment system, classification was the cornerstone of the probation system, and it was imperative for its success that the convicts were not mixed together and would receive an adequate amount

¹⁶²⁴ West, *History*, p. 488. See Stanley to Franklin, 25 November 1842, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 107. The despatch however, though written in November 1842, was not actually sent to Gipps and Franklin until 26 January 1843. See Stanley to Gipps, 26 January 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 39.

¹⁶²⁵ James Graham to the Committee of Visitors of Parkhurst Prison, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 101.
¹⁶²⁶ Shaw, Convicts and the Colonies, p. 281.

of 'moral and religious instruction with a view to their reformation'. 1627 commanded a great expense however, and ultimately, the colony was unable to support it. Franklin was eventually obliged to implement the new changes, and was actually criticised by Stanley for withholding information about the changes he had made! The rebuke was unfair, given Franklin had written to the Colonial Office on several occasions asking for more direction, which had not been forthcoming since Russell's initial instructions. The reasons for Stanley's delay however in sending out the instructions may have been attributed to Montagu's availability in London for extensive consultation on the penal system in the colony. Evidence of this occurred in July 1842, when Montagu was asked to comment on John Harrison's Observations on Penal Discipline in Van Diemen's Land¹⁶²⁸, written in February 1842¹⁶²⁹, to which Montagu replied on 20 July. Harrison, Actuary of the Archdeacon of Van Diemen's Land, had prepared a lengthy memorandum on the assignment system, the Director of the Probation System, and the male and female penitentiaries established at Hobart Town. While little is known about Harrison, or the reasons for his interest in the system, the Colonial Office was sufficiently interested in his observations as to require Montagu to submit some remarks upon them. Harrison argued that the crime rate was exceedingly high, and that a greater vigilance was required to detect and punish the convicts wandering abroad. 1630 He directed attention to the 'crowded, filthy and damp cells' of the female and male penitentiaries in Hobart, and the perceived difficulties associated with investing both the roles of Chief Police Magistrate and Director of the Probation System in a single official. Harrison also observed that the prisoners working under the assignment system

'cost the mother country little if anything after their arrival, and upon average, the men were better provided for and looked after than in many similar establishments in England. But the new probation system', he continued, 'appears to have disorganised the whole system of prison discipline; the convicts are now under the probation system, and sent in large bodies of 200 or 300 men into the interior to work together on the roads at the

¹⁶²⁷ Brand, Probation, p. 97.

¹⁶²⁸ Montagu to Vernon Smith, 20 July 1842, CO 280/151, p. 322.

¹⁶²⁹ John Harrison, Observations on Penal Discipline in Van Diemen's Land, CO 280/151, 7 February 1842, p. 321. ¹⁶³⁰ *Ibid*, p. 334.

expense of the British nation - they however do very little work, and as no secure buildings have been erected for their reception and confinement during the night, old companions and former associates escape in large parties to plunder the shepherds huts. At the present time, when labour is scarce, a more judicious and much less expensive arrangement might be made by classing the men in England. The convicts [could then] be employed in clearing, fencing and cultivating the same, sowing, reaping and gathering the produce, erecting houses and farms and making public roads.' [1631]

While down-playing Harrison's comments about the penitentiaries and crime rate, Montagu was more guarded in his comments respecting assignment and probation:

'I do not offer any remarks upon Mr Harrison's observations on assignment of male convicts, as that system is at an end, and, with respect to the probation system, I can only remark that he is mis-informed respecting their conduct and treatment. His suggestion of the employment of the men is not new, and is, in a great degree, taken from the system now in operation. I conceive Lord Stanley is a better judge of the duties and functions of the Director General of the Probation Department. I will be silent on that subject. Mr Harrison's observations respecting the want of religious instruction for the convicts, generally, is true'. 1632

Having satisfied the Colonial Office that he was still capable of bureaucratic acuteness, Montagu was rewarded with a new posting as Colonial Secretary at the Cape of Good Hope - and yet, astonishingly, he had not yet been formally required to account for his estrangement with Franklin! As was the case in 1839 when Russell was procrastinating over a new system of punishment for the colony, Montagu's timing was impeccable, and he was asked to submit a detailed memorandum on the probation system in Van Diemen's Land for Stanley, and in addition, his thoughts on a revised system of discipline that should be implemented at Norfolk Island. It mattered not that the colony was already saturated with convicts undergoing punishment in the gangs, and that most colonists were

¹⁶³¹ *Ibid*, p. 334.

¹⁶³² *Ibid.*, p. 322.

¹⁶³³ Montagu to Stanley, 11 November 1842, CO 280/151, p. 377.

unable to afford their labour once they emerged from the gangs; Montagu urged Downing Street to send 'four thousand convicts annually from Great Britain to Van Diemen's Land', where they were to undergo 'the term of probation labour now assigned to convicts of their respective sentences at that penal settlement' 1634:

'In obeyance to Your Lordships instructions, I have prepared and have the honour to submit a memorandum of the observations which were made the day before at the Home Office in the presence of Your Lordship and Sir James Graham upon transportation and secondary punishment, and I trust you will find that it contains the substance of what occurred on that occasion... If any other manner my services can be made available I hope Your Lordship will honour me with your comments'.¹⁶³⁵

Simply titled 'Memorandum of Alterations Proposed in the Transportation of Offenders from England and in Conducting Secondary Punishment at Van Diemen's Land and Norfolk Island', Montagu again recommended that Van Diemen's Land should become the 'principal penal settlement for the reception of offenders transported from Great Britain. The convicts on arrival', he continued, 'either from England, Norfolk Island or elsewhere', were to be 'subjected to the discipline labour now in operation there under the regulations established for the probation system'. ¹⁶³⁶ In recommending that 4000 convicts be sent annually to Van Diemen's Land, Montagu seemed to be meeting the previous needs of the British Government, which, as previously stated, had not diminished since New South Wales was abandoned as a convict settlement in 1840. For example, in giving evidence before the Molesworth Committee in February 1838, John Ward, Inspector of Prisons in Britain, explained that of

'20,984 prisoners committed for trial in England and Wales in 1836, 4105 were sentenced to death and transportation... The object would therefore be how to dispose of

¹⁶³⁴ *Ibid.*, p. 379.

¹⁶³⁵ *Ibid.*, p. 377.

¹⁶³⁶ *Ibid.*, p. 377.

that class of prisoners now transported, and the average number so sentenced annually might be taken at about 4000'. 1637

And in a later answer, Ward stated:

'The numbers of prisoners transported annually has been for several years past above 4000'. 1638

In 1837, 4221 male convicts were sent to both New South Wales and Van Diemen's Land; in 1838, that number rose to 4523 then decreased to 3076 in 1840. In 1841, 3462 convicts were sent to Van Diemen's Land, followed by 5334 in 1842, 3677 in 1843, 5009¹⁶³⁹ in 1844 and 2628 in 1845.¹⁶⁴⁰ Similarly, 629 convicts were sent to Norfolk Island in 1844, 729 in 1845 and 593 in 1846.¹⁶⁴¹ This goes some way to explaining how Montagu might have actually decided on how many convicts should be transported to the colonies; theoretically, approximately 4000 convicts had been sent to the colonies each year since 1837, which, politically speaking, satisfied the British Government and a vocal electorate opposed to the overcrowded hulks on the Thames. Montagu knew this, and he knew how to please his masters.

And so it was that in keeping with his own proposals of October 1839, Montagu *again* recommended that the probation parties were to be employed 'as far as practicable, on Tasman's Peninsula, in the unsettled districts or secluded situations in making roads, breaking up land or any other description of hard labour'. Montagu thought that 'the total number of convicts in the probation gangs should not exceed 10,000 men', with each party consisting 300 men each, and that the 'whole number of parties should not exceed

¹⁶³⁷ Minutes of Evidence Taken before the Select Committee on Transportation, John Ward, Q 52, as reported in the British Parliamentary Papers (Transportation), Sessions 1837 - 1861, vol 3, p 5.

Minutes of Evidence Taken before the Select Committee on Transportation, John Ward, Q 53, as reported in the British Parliamentary Papers (Transportation), Sessions 1837 - 1861, vol 3, p 6.

¹⁶³⁹ Forster to Wilmot, 27 January 1845 as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 240.

¹⁶⁴⁰ Forster to Wilmot, 5 January 1846 as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 471.

¹⁶⁴¹ Shaw, Convicts and the Colonies, pp. 367-8.

¹⁶⁴² Montagu to Stanley, 11 November 1842, CO 280/151, p. 379.

40 in number'. 1643 Curiously, Governor Bourke wrote in 1837 that '10,000 convicts might be employed with great benefit to [New South Wales] upon the public works' 1644, though he warned Glenelg that it would incur a large expenditure and would be fundamentally unpopular with the colonists. Similarly, in June 1834, Arthur suggested that 10,000 convicts could be accommodated and employed under strict surveillance on Tasman's Peninsula. 1645

When the convicts had completed their 'probation labour', Montagu explained, they were to be discharged from the gangs and granted 'probation passes'. Having completed three 'equal time periods' as set down by Lord John Russell's instructions of 15 February 1839, the convicts were then eligible to receive a ticket of leave, and later, conditional pardons, which he recommended should entitle the holder to move freely about the Australian colonies. Montagu 'contemplated' that the number of convicts who would receive probation passes every year would be equal to the number transported annually from Great Britain, which he indicated as being 4000. 'This arrangement', he added, 'would cause emigration from this country [to] cease', and advised that the commissioners for conducting emigration 'should be instructed to regulate their arrangements accordingly'. Notably, Montagu's proposal contradicted Wakefield's great emigration plan for the colonies; Montagu's statement strikingly illustrates that he was totally committed to a continuing convict colony, and was not at all concerned (as Franklin was) with an evolution of a free colony.

The success of Montagu's pass theory however depended on the premise that there would be a demand for labour sufficient to employ all the convicts in possession of passes, and that the number of convicts sent to the colony would be equal to the number emerging from the gangs with passes. In reality, the influx of convicts far exceeded the number of convicts emerging with passes, and indeed the number agreed upon by the government, and the economy was unable to absorb the probation holders.

¹⁶⁴³ Ibid.

¹⁶⁴⁴ See chapter 4.

¹⁶⁴⁵ Arthur to Goderich, 12 June 1834, as quoted in Brand, *Penal Peninsula*, p. 11. Later, Arthur increased his estimation to the incredible figure of 25,000. See chapter 9. ¹⁶⁴⁶ Montagu to Stanley, 11 November 1842, CO 280/ 151, p. 379.

While Franklin had already dispensed with the services of Forster as Director of the Probation System, Montagu proposed that the Director of the Probation Department in Van Diemen's Land should continue 'in the hands of the Chief Police Magistrate of the colony with a salary of £500'. As soon as the 'system is in full operation', he continued, 'and the gangs have been completed to the full complement of 10,000 men which will be in about 2 years', Montagu recommended that the offices should be separated. In his place, a new Director would be appointed, preferably a member of the Executive Council, with a salary of £1200 a year. Montagu concluded that the Director should communicate directly with the lieutenant governor without being required to correspond with the Colonial Secretary, and that he was to be held responsible for the 'proper working of his Department upon the principles laid down by the Secretary of State'. He was 'never to sanction any deviation on the grounds of expediency, and was to be held responsible for rendering the labour of the gangs as profitable as possible'. All the proceeds of the convict's labour were to be paid into the commissariat chest and applied 'towards defraying the charge of the Department'. 1647

Contrary to his 1839 memorandum on the prospects of Norfolk Island, which he described as 'objectionable on many accounts', Montagu urged Stanley to consider enacting a new Act 'to declare that all offenders sentenced to be transported for life or greater than 15 years shall be detained for two years at Norfolk Island'. The Colonial Office had already determined that convicts would be punished at the Island settlement, and Montagu was quick to alter his opinions. There, he explained, they were 'to be kept at hard incessant labour' before being removed to Van Diemen's Land, whose jurisdiction he recommended should include Norfolk Island. To this, Montagu added that a 'good military superintendent' was required on Norfolk Island to replace Maconochie, whose marks system had come under criticism, and was shortly to come to an inglorious end after Governor George Gipps recommended that one 'system of management only should be adopted' there.¹⁶⁴⁸

¹⁶⁴⁷ *Ibid*.

¹⁶⁴⁸Gipps to Stanley, 1 April 1843, *HRA*, XXII, p. 637. It is possible Montagu contributed to its closure for further discussion see Appendix F. It is notable that Gipps actually recommended Maconochie be permitted to continue with his trial elsewhere.

Regardless of whether Montagu contributed to the 'available information' specified by Stanley, Maconochie's legacy haunted the "faction" and Van Diemen's Land for a few more years, and later, Forster was scathing in his assessment of the marks system on Norfolk Island after the convict department in Van Diemen's Land inherited the last of that settlement's remaining prisoners in 1845.1649

Returning to his own memorandum, Montagu also proposed that doubly convicted convicts from New South Wales and Van Diemen's Land who were sentenced to transportation to Norfolk Island were 'to be subjected to the most severe discipline and labour consistent with humanity'. Montagu suggested that the Island could accommodate 4000 convicts, in addition to 500 additional men each year from England. These new arrivals from England, added Montagu, were to be first 'landed in Van Diemen's Land' and removed to Norfolk Island by the local government.

While Montagu was not solely responsible for Maconochie's recall, there is no doubt that he once again highlighted what was already on the minds of his masters. His own thoughts on 'hard labour' and punishment were akin to those of the disciplinarian Stanley, who deplored the system of indulgence exercised by Maconochie on Norfolk Island. It was not in keeping with the 'measures which Her Majesty's Government have adopted with reference to the treatment of convicts at that settlement'1650, wrote Stanley, who had already prepared his instructions of rigorous punishment for Franklin.

In closing, Montagu also offered his opinion on the state of the military forces in the colonies, and recommendations as to how many rations and clothing should be issued to the convicts.

¹⁶⁴⁹ Refer chapter 13 for Forster's report and other independent comments on the failure of the marks system. 1650 *Ibid.*, p. 149.

As before, Montagu's recommendations were well received by the Colonial Office, and in particular by Stanley, who was still to consider the propriety of Montagu's suspension. Writing on 20 November, Stanley declared:

'Sir James Graham and I accept his plan'. 1651

Montagu was particularly pleased with himself, and in December, he told Arthur that Stanley had declared 'in my presence that I had enabled Her Majesty's Government to introduce an improved system of secondary punishment'. As earlier, he added that the Chancellor of the Exchequer was 'much pleased' with the economy of his proposal. 1652

Having reviewed each of Montagu's points, Stanley's minute was one of general satisfaction and concurrence with his proposals. Foremost, Stanley was determined to reduce British expenditure in the colonies, which would be achieved by shortening the time the men spent in the gangs, and having the men grow their own food and provide their own shelter and clothing. Stanley also welcomed Montagu's recommendations for working the incorrigible men on Norfolk Island or on Tasman's Peninsula, and that a good military superintendent was required on Norfolk Island to replace Maconochie. He agreed that Van Diemen's Land should be regarded as the 'principal penal colony', and generally in the 'supposition' that '10,000 convicts could be [accommodated] at one time, and that the number transported will be 4000'. Stanley questioned some of Montagu's proposals; he queried why convicts undergoing sentences of hard labour could not 'go directly from England to Norfolk Island', and why the period of detention there was a maximum of two years, which would incur a greater expense. Stanley suggested a minimum of one year and a maximum of two as being more appropriate, and that they could be dispersed in gangs across the colony and not just on Tasman's Peninsula. The Secretary of State also suggested that 'seven year' convicts from Pentonville Prison might be transported to Van Diemen's Land after 'undergoing a certain reformatory discipline' in England, then either straight into the probation gangs or as probation or ticket of leave

¹⁶⁵¹ Stanley to Stephen, 20 November 1842, CO 280/149, p. 330.

¹⁶⁵² Arthur to Montagu, 26 December 1842, as quoted in Shaw, *Convicts and the Colonies*, p. 281. Minute on Montagu's Memorandum, CO 280/151, p. 393.

pass holders in Van Diemen's Land. He argued that the governor should retain discretion over the length of time spent in each class, and finally, that the 'new system, though partly founded on the old, should be worked from the beginning by a new hand'. His Under Secretary, James Stephen, agreed on this last point, though Montagu was determined to secure Forster's re-appointment.¹⁶⁵⁴ All this had taken a lot of time however, and when Franklin finally received Stanley's recommendations, there was an expectation in London that a successor to the governorship should be appointed.

¹⁶⁵⁴ Ibid.

Implementation of the Policy of a Former Colonial Secretary

The impact of Montagu's views is evident from the following minute attached to Stanley's 20 November report:

'Recall Capt' Maconochie from Norfolk Island. Separate the twice convicted from the new convicts in Norfolk Island. Send to Van Diemen's Land all the convicts in Norfolk Island not twice convicted, and who were transported under sentence from New South Wales, or where a reasonable hope of reformation was to be entertained. The convicts who remain in Norfolk Island to be placed under strict coercive discipline and to be employed in providing accommodation for an increasing number of convicts, say 2000 in all. Norfolk Island to be detached from the immediate control of the governor of New South Wales and to be placed under the orders of the governor of Van Diemen's Land. Until the arrival of a governor in Norfolk Island from England, an officer in command to be nominated by Sir George Gipps. The system of indulgence can be abolished; a system of hard labour and coercive punishment to be adopted forthwith.¹⁶⁵⁵

It is noteworthy that this paragraph contains most of Montagu's resolutions. Another minute intended for Sir John Franklin's information read:

'Mr Montagu's resolutions respecting his penalties and ticket of leave and probation passes to be embodied in district instructions. A Comptroller General of Convicts to be appointed and to be sent out from home... The penal gangs to be divided into squads of 300 each, to which shall be attached one superintendent to every gang of 600, consisting of 2 squads and a religious instructor'. 1656

 $^{^{1655}}$ Stanley to Stephen, 20 November 1842, CO 280/149, p. 335. 1656 *Ibid*.

Not surprisingly, Stanley's November 1842 despatch echoed most of Montagu's proposals in full, and in particular, his proposals for the probation gangs, passes and treatment of the convicts on Norfolk Island. Stanley was most displeased to learn that his own scheme had been largely anticipated by Franklin's April 1842 despatch. He commented sharply:

'In Van Diemen's Land, the habit has been to arrange a plan involving large expense and give orders for its execution without even informing the home government till months after its adoption. In these very papers it appears that if Sir John Franklin instead of adopting a total alteration of the convict discipline, had written home to me to say what he contemplated, I might have received his opinions before my instructions were sent out'. 1657

Franklin had probably discussed these proposals with Montagu before their separation, though perceiving no urgency in their transmission, only sent them off after Montagu had left the colony. Unfortunately for Franklin, Montagu had reached England before Franklin's recommendations, and probably misrepresented the new scheme as being entirely his own. When Franklin's despatches finally reached Downing Street in August, it was too late; Montagu had already achieved status as an authority on penal matters.

Stanley explained to Franklin that the delay, which had occurred in settling the question, was inevitable on account of its 'arduous and important' nature.¹⁶⁵⁸ He said that he and his 'colleagues' had been aided 'by all the information from the report of the recent Committee of the House of Commons... and from other channels of intelligence which have been open to us'.¹⁶⁵⁹ The system, he continued, was broken into five stages¹⁶⁶⁰:

1. Detention at Norfolk Island

¹⁶⁵⁷ Shaw, Convicts and the Colonies, p. 281. Stanley's instructions were forwarded with the new governor, Eardley Wilmot, dated 25 November 1842.

Stanley to Franklin, 25 November 1842 (despatch no. 13), as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 107.

1659 Ibid., p. 107.

¹⁶⁶⁰ *Ibid.*, p. 108.

- 2. The Probation Gang
- 3. The Probation Pass
- 4. Tickets of Leave
- 5. Pardons

Montagu's recommendations pervaded the entire spirit of Stanley's directions; 'detention at Norfolk Island will be the invariable consequences of all sentences of transportation for life... and to the cases of convicts sentenced to any term not less than 15 years', declared the Secretary of State. 1661 In contrast with his original minute, Stanley reverted to Montagu's proposal that the convict in this stage would spend not less than 2 years on the Island. The convicts, he continued, 'will be employed at hard labour. No authority except that of the Queen herself will be competent to abridge the time of his detention there'. Writing before he received Gipps' final report, Stanley advised Franklin that Maconochie, who had 'engaged in a series of experiments suggested by himself¹⁶⁶², was to be relieved of his post and replaced by an officer 'to be called the Superintendent' of Norfolk Island. Just as Montagu had recommended, Stanley advised the governor that Norfolk Island would be 'detached from the government of New South Wales, and annexed by the Van Diemen's Land Government'. 1663 Those convicts already confined on Norfolk Island were to be moved immediately to Port Arthur in Van Diemen's Land. 1664 Just as Montagu had directed, Stanley explained that 1000 convicts would be sent annually to Norfolk Island, and that no more than 3000 would 'ever resident there at one time'. 1665 Clearly, the system of 'indulgence' pursued by Maconochie on Norfolk Island had been done away with on the advice of Montagu and Governor George Gipps, who were critical of the measure. Both Montagu and Gipps believed Norfolk Island should be a place of confinement and punishment, and were pleased with Stanley's new directions.

With respect to the probation gangs, Stanley wrote that punishment in this second stage would be restricted to convicts who had passed through a period of detention at Norfolk Island, and secondly of convicts sentenced to transportation for less than a life term. In

¹⁶⁶¹ Ibid., p. 108.

¹⁶⁶² *Ibid.*, p. 109.

¹⁶⁶³ Ibid., p. 109.

¹⁶⁶⁴ Ibid., p. 109.

¹⁶⁶⁵ *Ibid.*, p. 109.

what was now a familiar term, they were to be employed in 'hard labour' under the direction of the Comptroller of Convicts. They were, as Montagu had proposed, to be divided into gangs of 300 and were to be employed 'in the service of the government' in the settled districts. Having passed through the second stage of punishment into the third, the convict was entitled to a probation pass which was in turn divided into three classes just as Montagu had hoped. Similarly, those convicts unable to secure private service were returned to the government under the very conditions proposed by Montagu. The fourth stage saw the convict given a ticket of leave, and finally the fifth, where they were issued with a pardon. 1667

The punishment of female prisoners however continued to trouble the home authorities; a Home Office minute attached to Montagu's memorandum read:

'The whole question of the treatment of female convicts in Van Diemen's Land is left untouched by the proposed arrangements; but it will require individual and separate consideration. I will communicate with the Prison Inspectors on this difficult subject'. 1668

Stanley sent an additional despatch to Franklin respecting the female convicts, though in contrast with the nine pages of instructions respecting the men, only four were set aside for the women. Stanley ordered that no more female convicts were to be assigned, and that Franklin was to 'remodel' the previous system of penitentiaries and 'female factories'. Stanley concluded that he had 'not entered in this despatch into minute details', and left it to Franklin to develop that part of the system.¹⁶⁶⁹

¹⁶⁶⁶ *Ibid.*, p. 110.

¹⁶⁶⁷ *Ibid.*, p. 112.

¹⁶⁶⁸ Stanley to Stephen, 20 November 1842, CO 280/149, p. 338.

Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 114. According to historian Kay Daniels, the change in the convict system was less dramatic for the female convicts than it was for the men. Generally, after 1842, the women were withdrawn from society and subjected to a regime of silence and religious and moral instruction. Places of confinement were established at several convict probation stations or 'factories' around the colony, the largest being at the Cascade House of Correction in South Hobart, the Launceston Female Factory, and a smaller institution at Ross. Where possible, the women were confined separately, and after obtaining a probation pass, were permitted to work in the colony for wages, generally as servants (doing such chores as washing and needlework). The institutions however were nearly always crowded (over 500 women at Cascades in 1842), and it was unusual for the women to be separately confined as was first envisaged. The factories were seen as being more humane and less degrading than domestic service during the assignment period, largely because there were incentives to reform, wages to

Reference to the actual moral reformation of the convicts however was largely overlooked in Stanley's lengthy despatch.¹⁶⁷⁰ He confined his observations to the 'management of the convict population' and the structure of the probation gangs, and 'the official appointments and arrangements to be made before those general principles can be carried into effect'. Significantly, Stanley added:

'I should leave unnoticed the most important of all the general principles to which the Ministers of the Crown look, so far as respects the convict himself and the society in which he is to live, if I omitted to add that we anticipate from a systematic course of moral and religious instruction, which the congregation of the convicts in masses will afford, the means of applying such salutary influences as may best qualify them for entering on the temptations of an independent course of life, and may induce them to betake themselves to industrious and useful pursuits'.¹⁶⁷²

His scant details respecting the reformation of the convicts was an indication of the change in political climate at the Colonial Office, and while he professed reformation was the 'most important of the general principles', this certainly was not reflected in his despatch.

In December, Montagu was also asked by Stanley to prepare the annual estimates for the convict department in Van Diemen's Land for the year 1843 to 1844.¹⁶⁷³ In January 1843, Stanley forwarded his recommendations for the expenditure to be incurred for the maintenance and discipline of the convicts to the Lord Commissioners. Stanley acknowledged that he had enlisted the aid of Montagu in preparing the annual estimates

be paid, and a reward scheme to encourage the women to stay with one master. There was an oversupply of pass holders after 1842 however, and having emerged from the coercive labour of the factories, their services were not always in demand, and some returned to prostitution and crime. Lady Franklin was critical of the 'success' of the factories, and her story, and a more detailed examination of the probation system as it applied to women, is to be found in Kay Daniels' *Convict Women*, (Allen and Unwin, Sydney, 1998)

¹⁶⁷⁰ *Ibid.*, p. 107.

¹⁶⁷¹ *Ibid.*, p. 107.

¹⁶⁷² *Ibid.*, p. 108.

¹⁶⁷³ Montagu to Stanley, 12 December 1842, CO 280/149, p. 403.

for convict services in Van Diemen's Land, due largely to his 'most extensive local experience'. The Home Office added:

'It seems to me a very clear, able and useful explanation of the course proposed to be taken... I have noted two passages which I think require re-consideration but the draft need not be sent back to me'.¹⁶⁷⁵

Sir James Graham, Secretary of State at the Home Office between 1841 and 1846, thought however that the estimates might have to be 'proposed in a different form' before they were sent to the Treasury; while Montagu had based his estimates on the 'largest possible amount of convicts', the Secretary hinted that such an expense was 'alarming', and thought it wise to submit the estimates based on a smaller number of convicts: after all, he wrote, 'it will be some time before we have 8000 convicts in the probation gangs'. Clearly, the Home Office was fudging the figures to make it more appealing to the Treasury, having already settled on increasing the number of convicts sent to the colony to 4000 a year.

Stanley also had some reservations but was obliged to follow the lead of the Home Office; he indicated that he had found it impossible to reconcile the views of the local commissariat and those of the late Colonial Secretary, differing entirely as to the extent of the 'necessary establishments', the expense of rations and clothing for the convicts, the number of convicts for whom provision was to be made, and the nature and expense of the 'contingent services to be performed'. Predictably, Montagu's estimate was the lower of the two; while the Chief Commissariat Officer estimated the expense for Van Diemen's Land alone at £279,278, to which was to be added the whole expense of the establishments at Norfolk Island, Montagu calculated that the sum of £240,058 would

¹⁶⁷⁴ Stephen to Trevelyan, 28 February 1843, Convict Discipline and Estimates, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 128.

¹⁶⁷⁵Graham to Stanley, 26 December 1842, CO 280/149, p. 420.

Ibid.

¹⁶⁷⁷ Stephen to Trevelyan, 28 February 1843, Convict Discipline and Estimates, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 129.

cover the whole charge of the convict establishments at Van Diemen's Land and Norfolk Island for the year 1843-1844. Montagu added:

'But this result is arrived at under the assumption that the government will have to purchase all the food for their support - a result which might not occur under proper management... I would suggest that the Comptroller General of Convicts should annually call upon the heads of departments connected with convicts for detailed estimates of the expense proposed by them for their departments and that he should be held responsible that no unnecessary or unauthorised demand be made'. 1679

Despite Stanley's concerns, the Home Office at once recognised that Montagu's estimates would be much more attractive to the Treasury than those drawn up in the colony. Montagu, representing the colonial government in London even if he was suspended, had served their purpose, and his policy was to be eventually endorsed:

'I think a letter might be prepared for the Treasury, explaining the general plan... [based] on the *probable* number of convicts'. 1680

Even so, Montagu's estimates give an insight into the expense associated with the new system; while a convict assigned in Van Diemen's Land cost the local government only £4 per annum¹⁶⁸¹, Montagu recorded that the probationary convict cost the government £19 per annum. Indeed, whilst Montagu noted that in 1843, he anticipated that nearly 13,000 convicts would be either in waged private service, or the holders of conditional pardons or tickets of leave, all of which incurred a negligible cost for the government. In contrast, he expected 8000 men to be working in the probation gangs (at a cost of £20,695), 500 female convicts (£1125) and 3000 convicts at Norfolk Island (£6302). Rations and clothing in Van Diemen's Land (£106,416) and Norfolk Island (£36,499), in addition to medical (£9000), Royal Engineer Department (£10,000) and marine and land

¹⁶⁷⁸ *Ibid.*, p. 129.

¹⁶⁷⁹ Montagu to Stanley, 16 December 1842, CO 280/149, p. 407.

¹⁶⁸⁰ Graham to Stanley, 26 December 1842, CO 280/149, p. 420.

¹⁶⁸¹ Shaw, Convicts and the Colonies, p. 254.

transport (£15,000) all contributed to the enormous burden imposed upon the local and British governments.¹⁶⁸²

While Stanley admitted that it would be wiser to refer to the more exact sources of knowledge at the command of the officer in the colony, he expressed his displeasure at the waste of public money which had long since been going on in the penal settlements, from the 'total want of system in checking either the estimate for that expenditure or the actual outlay of the funds devoted to it'. Stanley was surprised at how large the outlay was contemplated for rations in a country where all the resources for raising the necessary provisions for the convicts existed. He particularly averted to the 'unlimited supply of manual labour available to the Crown, the fertile soil, a temperate climate and all the utensils of husbandry'. The convicts were never self sufficient however, due in the main to passive resistance, laziness and poor management, and were always a great drain on the colonial treasury.

Stanley again reiterated that the great ends of punishment should as far as possible be 'attained with the least possible charge to the revenues of England', but signalled that every local influence would invariably be employed to divert the convicts labour to works, such as roads, bridges, drainage and the like. Stanley's criticisms however extended beyond Franklin and Van Diemen's Land. 'Local management of an institution', he declared, 'maintained not for local, but for imperial purposes, is calculated to produce the precise evils which are usually ascribed to the undue intervention of the home government in matters affecting exclusively the welfare of the colonists themselves'. Stanley was equally critical of the home government for 'delegating to the Governors the unlimited authority for managing the convicts in the Australian colonies', drawing attention to the flawed system of administration that existed between the Secretary of State for the Home Department and the Secretary of State for the Colonies. 'For these

¹⁶⁸² Montagu to Stanley, 16 December 1842, CO 280/149, p. 407.

¹⁶⁸³ Stephen to Trevelyan, 28 February 1843, Convict Discipline and Estimates, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 128.

¹⁶⁸⁴ Ibid p. 130

¹⁶⁸⁵ Copy of a Letter from J. Stephen to SM Phillipps, 5 January 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 121. Stephen, Under Secretary of

reasons', he added, 'it appears inevitable that the real responsibility for superintending and enforcing the execution of the system now established, must be assumed by the Secretary of State for the Colonies'. In closing, Stanley indicated that he intended to break up entirely the establishment maintained at Norfolk Island under the superintendence of Maconochie, and transport the convicts already there to Van Diemen's Land, to pass through the probation system.

These radical changes were to be accompanied by a more dramatic decision: the appointment of a new governor to implement them. Stanley trusted that Franklin's successor, Sir Eardley Eardley Wilmot, who had already been named in England, would commence his administration of local affairs at the very time his new system of changes to the convict system were implemented. Earlier, Stanley had given consideration to Montagu's suspension, and set down his recommendations in a despatch dated 13 September 1842. Stanley had met with Montagu on several occasions to discuss the affair, and the ousted Colonial Secretary made a point of ensuring that their proceedings were recorded in full.

State at the Colonial Office, explained that he was writing on behalf of Stanley, and that the despatch reflected Stanley's directions: 'The question to which the Ministers of the Crown to which this province belongs having admitted of no perfect solution, the following compromise has practically been observed: the governors of New South Wales and Van Diemen's Land have reported to the Secretary of State having the Department to the colonies, every occurrence and every question on which they desired the instructions of Her Majesty's Government for their guidance, whether in respect to any particular convict, or respecting the management of the convicts generally. Every such report has been communicated to the Home Office, for the information, for the opinion, or for the decision of the head of that department. His answers to such references have been invariably assumed by the head of this office as the basis of instructions to the Governor on the subject in debate. Virtually, therefore, the result has been the superintendence of the convict establishments in the colonies has been conducted by the Secretary of State for the Home Department, but in the name and through the intervention, and on the apparent responsibility of the Secretary of State having the department of the colonies. On looking back to the consequences which have followed this system of administration, they appear to Lord Stanley not to be such as to recommend its continuance. The province thus divided between two Ministers of the Crown appears to have been regarded as not properly belonging to either of them. The Secretary of State for the Home Department declined to attempt control of the conduct of officers with whom he did not correspond, and were not subject to his authority. The Secretary of State for the Colonies in the same manner declined to direct or initiate measures on a subject affecting British rather than colonial interests, and therefore foreign to his pursuits as head of the Colonial Department. Hence it occurred that no such measures were originated in this country, and that no such control was effectively exercised here. For a long course of years the subject of convict discipline in New South Wales and Van Diemen's Land was left almost entirely to the discretion and management of the Governors of these settlements'.

¹⁶⁸⁶ Stephen to Trevelyan, 28 February 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, Convict Discipline and Estimates, p. 13.

Back in Van Diemen's Land, the 'notes of approaching triumph were sounded louder and louder by Montagu's adherents', though as late as 10 January 1843, Franklin had still received no reply from Lord Stanley as to the propriety of Montagu's suspension. He wrote to Lady Franklin:

'Nothing has reached me as to Montagu... It is reported however that the *Tasmanian* bought out to Forster from Montagu the copy of Lord Stanley's decision to him which I can scarcely believe... From the letter Forster has received it is said that Lord Stanley's decision was made known to Mr Montagu on 5 September, the very day on which two of my despatches were dated'.¹⁶⁸⁷

Others too were anxiously waiting the outcome of Lord Stanley's investigation. In January 1843, Gell told Lady Franklin that when he saw Swanston

'a short time ago, before the despatch arrived, he was in an uncontrollable rage because he saw no signs of Sir John's being likely to resign; "but he must resign, he said - he must". 1688

At last, on 18 January 1843¹⁶⁸⁹, Stanley's 13 September 1842 despatch arrived in the colony aboard the *Duchess of Northumberland*. Franklin was dismayed to learn that the Secretary of State had disapproved of Montagu's suspension, and that his salary was to be paid to him up to his departure for his new appointment as Colonial Secretary at the Cape of Good Hope. In spite of Stanley's public rebuke of Franklin however, the dismissal stood, and Montagu was not sent back to the colony to resume his old post. It was a significant if belated victory for Franklin, and was probably the reason why Franklin was not immediately recalled. In April, Franklin 'received from Lord Stanley a command to call upon the Legislative Council to vote this "penalty", as Franklin put it, 'upon the

¹⁶⁸⁷Sir John to Lady Franklin, 10 January 1843, as quoted in Fitzpatrick, *Franklin*, p. 335.

¹⁶⁸⁸ Lady Franklin to Mrs Simpkinson, 10 January 1843, MS 248/174/1-23.

¹⁶⁸⁹The despatch is dated Downing Street, 13 September 1842. A copy of the despatch is included in the frontispiece of Franklin's *Narrative*, p. 1. Franklin also stated that he had evidence that Stanley's despatch was known to be in the colony before he received it in January. See Franklin, *Narrative*, p. 46.

¹⁶⁹⁰Franklin, *Narrative*, p. 46. The Legislative Council was instructed to vote this penalty upon the colony in April 1843.

colony for his own misdeeds'. ¹⁶⁹¹ Montagu had indeed gone to great lengths to have this "penalty" imposed upon Franklin, which was to be credited for the period between 3 February 1842 and 28 September 1842, and had advised in details thus ¹⁶⁹²:

'Claim to receive certain fees as the Secretary to the government of Van Diemen's Land - Proof for My Lord's Commissioners of H.M Treasury to entitle me to the fees in certain cases - Sir George Arthur's despatch from Toronto dated 9 June 1839 records his opinion of the justice of my claim... His opinion of the propriety of my claim cannot I submit be doubted or he would not, in the despatch alluded to, have so graciously recorded his high opinion of my public character and conduct under his government in Van Diemen's Land in terms so commendatory. P.S. May I request you to communicate Lord Stanley's decision to my agent Mr Hamilton, 52 Regent Street.' 1693

Montagu held true to his words; prior to leaving the colony, he swore 'that he would not rest till Sir John was made to pay all his expenses home and back again', so confident was he of reinstatement in his old post.¹⁶⁹⁴

In a further embarrassment for the governor, Franklin learnt from a resident at Port Phillip that the despatch had already been 'publicly read at a dinner table in that colony' prior to its receipt in Van Diemen's Land. A copy was also sent to New South Wales, and was shown to Sir George Gipps 'and other official men'. There is no evidence however that Gipps saw the despatch, and if he did, he did not attempt to forward it to Franklin. In his rebuke of Franklin, Stanley declared:

'The result of my consideration of the whole subject is, as you will see, to relieve Mr Montagu from every censure which impugns the integrity or the propriety of his conduct, while I am compelled to admit that the circumstances of the case are such as to render his

¹⁶⁹¹ Ibid., p. 46.

¹⁶⁹² Montagu received notification of the payment from Stanley on the 17 October 1842 (Stanley to Montagu, CO 280/151, p. 321).

Montagu to Vernon Smith, 23 December 1842, Southampton, CO 280/151, p. 422.

¹⁶⁹⁴ Lady Franklin to Mrs Simpkinson, 27 January 1843, MS 248/174/1-23.

¹⁶⁹⁵ Franklin, Narrative, p. 46.

¹⁶⁹⁶ Franklin to Ross, 20 July 1843, MS 248/316/10.

restoration to his office in Van Diemen's Land highly inexpedient... It cannot be too distinctly understood, that Mr Montagu retires from the situation he has so long filled with his public and personal character unimpaired, and with his hold on the respect and confidence of Her Majesty's Government undiminished... But, reluctant as I am to employ a single expression which is likely to be unwelcome to you, I am compelled to add that your proceedings in this case of Mr Montagu do not appear to me to have been well judged, and that your suspension of him from office is not, in my opinion, sufficiently vindicated'.¹⁶⁹⁷

Nethertheless, Stanley did confirm what many colonists long suspected; in detailing the charges against Montagu, the Secretary of State actually admitted that

'Mr Montagu had acquired an influence and authority in the administration of the affairs of your government far exceeding that which properly belonged to his office; that this influence was maintained by means which, if not culpable, were at least objectionable, and was used in such a manner as to render his continued employment incompatible with the freedom and independence of action which the Lieutenant-Governor ought to maintain'. 1698

Lady Franklin also commented that

'The views of Lord Stanley in many respects seem to have been ingeniously influenced by Mr Montagu whom if he did not know he advised him only in subservience to his own selfish views of aggrandisement and revenge'. 1699

Franklin wrote almost immediately to Stanley, and offered his 'conditional resignation' - the condition being that Stanley either supported him or he did not. As already stated, Stanley did not dismiss Franklin or even acknowledge his ultimatum, and it was a further five months after vindicating Montagu that Stanley sent off his despatch

¹⁶⁹⁷Stanley to Franklin, 13 September 1842, as quoted in Franklin, Narrative, p. 1.

¹⁶⁹⁸ *Ibid.*, p. 2.

¹⁶⁹⁹ Lady Franklin to Mrs Simpkinson, 18 April 1843, MS 248/174/1-23.

¹⁷⁰⁰ Franklin, Narrative, p. 49.

in February 1842 advising Franklin of his recall.¹⁷⁰¹ The delay in recalling Franklin is peculiar, although Franklin indicated that it had been discussed in Downing Street as early as December 1842. It was possible that Stanley anticipated Franklin's recall might have been interpreted as a 'crowning triumph'¹⁷⁰² for the "faction" and its supporters, and this was not in keeping with the new beginning he envisaged for the probation system. Indeed, Stanley's despatch was dated only one month after Franklin celebrated his sixth, and traditionally a governor's final, anniversary as governor. There is evidence to support this proposition; in December 1842, Stanley also wrote to Sir Robert Peel, and explained:

'Sir John Franklin is not yet recalled and will not have served his term until February. No change of a system can take place till a Bill has been passed in Parliament, and when it is passed, I want a sensible man to work it'. 1703

There were also distant parallels with Arthur's earlier recall after the Bryan case, which prompted Arthur at the time to comment that it had the effect of 'lowering me before the community and given triumph to a faction'. Arthur even indicated that he doubted whether 'Lord Stanley or Mr Spring Rice would have treated' him thus, but would have protected the authority of the governor. Perhaps the Colonial Office thought that it would be easier and less embarrassing to allow his term of office to expire with the official term, and thereby facilitate his removal in time for the new probation system to be implemented. In any case, this would have the effect of denying Franklin grounds for dispute if he chose to pursue them, and might explain why Stanley took so long to recall Franklin.

'The despatch in question', wrote Franklin, later referring to Stanley's decision about Montagu, 'was made by His Lordship to answer a double purpose. It not only served for the expression of his judgement to myself, but was officially transmitted to the late Colonial Secretary of Van Diemen's Land as the official answer to that gentlemen's

¹⁷⁰¹ See Chapter 12. The despatch is dated 10 February 1843.

¹⁷⁰² *Ibid.*, p. 50.

Stanley to Peel, (undated) December 1842, as quoted in Brand, *Probation*, p. 24.

¹⁷⁰⁴ Shaw, Sir George Arthur, p. 174.

defence; and he received no other. Hence its circulation and publication in Van Diemen's Land whilst I was still administering the functions of government'. 1705

Franklin wrote to his explorer friend Captain James Ross that he considered himself 'subjected to the basest malignity of a foul conspiracy hatched by Mr Montagu and carried on through the Agency of Mr Forster and Capt Swanston, and you can, (as I am sure you will lose no time in the endeavour to do) disabuse the mind of Lord Stanley as to the wicked and false statements Mr Montagu has dared to make His Lordship respecting Lady Franklin and myself in his defence'. 1706

Lady Franklin could not believe that Stanley had taken so much interest in the affair, recording that

'I am sure Lord Stanley did not write it, nor Mr Stephen - they have perhaps something better to do, Lord Stanley in particular whom I cannot conceive with the cares of a colonial empire on his shoulders, condescending to interest himself in the squabbles as he may deem them between the Governor of a penal colony and one of his officers'. 1707

Franklin¹⁷⁰⁸ was appalled that the despatch containing these sentiments was placed in the hands of Montagu, who, with 'natural exultation', sent it to Forster¹⁷⁰⁹ and Swanston. Swanston had always been active in Van Diemen's Land politics, principally because of his banking interests, but after this time he assumed a more prominent role in the "faction". Having no particular political agenda or allegiance other than his personal and financial relationship with prominent "faction" members, Swanston was difficult to control, which did not help Franklin's cause when he formed a deep opposition to the governor.

¹⁷⁰⁵Franklin, *Narrative*, p. 5. The *Hobart Town Courier* published the despatch on 30 June 1843 (p. 48). A letter from Stephen to Montagu was also published on 7 July 1843.

¹⁷⁰⁶ Franklin to Ross, 20 July 1843, MS 248/316/10.

¹⁷⁰⁷ Lady Franklin to Mrs Simpkinson, 19 January 1843, MS 248/174/1-23. According to AGL Shaw, Stanley's despatch was written in the handwriting of James Stephen.

¹⁷⁰⁸ Franklin to Ross, 20 July 1843, MS 248/316/10.

¹⁷⁰⁹It is noteworthy that Forster made it publicly known that he would not read the memorandum sent to the colony by Montagu while Franklin remained in the colony. See Franklin, *Narrative*, p. 64.

Montagu had also retained the minutes of his interviews with Lord Stanley, and recorded his own 'severe reflections on the character of Lady Franklin.'¹⁷¹⁰ These memoranda¹⁷¹¹, bound together, were sent out to the colony by Montagu with the new Colonial Secretary, James Bicheno, and, although initially circulated only among his closest friends, became generally known among the colonists.¹⁷¹² Bicheno however was not privy to the contents of the package, and was only instructed to pass them onto Forster after his arrival in the colony. Franklin even indicated that it was perused 'by the two Judges, by the leading counsel and solicitors of Hobart Town, by several members of Council, by Clergymen, and by the settlers in the interior'.¹⁷¹³ Lady Franklin later observed that:

'Mr Price saw the despatch - thought it scarcely indignant enough. Forster had told him it was the most insulting thing he had ever written. - even Montagu's friends felt for Sir J. The book contained all the letters Sir John had ever written to Mr Montagu, from his arrival in the colony, and pretended the draft of Lord S' desp. was in his own hand - Mr F. has told Mr P more than once that Mr M deserved to be turned out'. 1714

Franklin scarcely believed that Stanley could have sent the despatch to Montagu with the intention of it being circulated in the colonies in the manner in which the ousted Secretary had done.¹⁷¹⁵ In May, Franklin called on Swanston, as a member of the Legislative Council¹⁷¹⁶, to surrender the memorandum, which he declined to do.¹⁷¹⁷ To

¹⁷¹⁰Franklin outlines Montagu's line of defence to Stanley. See Franklin, *Narrative*, p. 59.

¹⁷¹¹The memoranda was a bound folio book of 312 manuscript pages. It generally became known in the colony as 'the book', and was referred to as such by Franklin and others. See Franklin, *Narrative*, pp. 57-8. ¹⁷¹²Bicheno reached Hobart in April 1843. He was unaware what the contents of the package were, and had express instructions to deliver it to Forster, which he did. Franklin stated that the readers of the 'book' were forbidden to copy it, but they might speak freely of its contents. See Franklin, *Narrative*, p. 58. The document was also disseminated widely in London (p. 48).

¹⁷¹³ Franklin, Narrative, p. 58. In a letter to Ross, Franklin recorded that it had been seen by the judges, the Rev Mr Lillie, Mr John Kerr, Mr Pitcairn, Mr Thos Young, Mr Learmouth, the two MacDowells, Mr Rowlands and Mr Lathrop Murray. He added that it had also reached the 'ears of Henslowe and Dr Turnbull'. See Franklin to Ross, 20 July 1843, MS 248/316/10.

¹⁷¹⁴ Lady Franklin to Mrs Simpkinson, 24 March 1843, MS 248/174/1-23. Price was a friend of Forster's. See Lady Franklin's Journal, 24 March 1843, MS 248/158.

¹⁷¹⁵ Franklin to Ross, 20 July 1843, MS 248/316/10.

¹⁷¹⁶Franklin stated that Swanston had a responsibility to uphold the honour of the Sovereign, bound as he was by his oath as a member of the Legislative Council. See Franklin, *Narrative*, p. 58. See also Franklin

make matters worse, Franklin believed that the 'book' had been shown in clubs in London, and asked an old friend to inquire at the United Service and Athenaeum and ascertain if it were true. 1718 Again, Franklin was right: Montagu later explained to Stephen that 'I did not hesitate to distribute many copies in England', presumably to embarrass Franklin, although this is not entirely clear. 1719

Montagu was delighted with Stanley's report, and after it had been sent to the colony, Lady Franklin later observed that

'all Mr Montagu's friends chuckle over this conviction - in a few words the real state of the case is this - that Sir John has gained his point by removing Mr Montagu from the colony, and Mr Montagu in return has written the despatch'. 1720

Franklin later recorded that several pages were torn out of the book because of their 'offensiveness', and on the advice of 'a high legal functionary', whom he did not name. It is likely however that he was referring to Pedder, who was reported as having seen the book. 1721

Writing to his nephew in law in January 1844, Arthur disapproved of the attacks on Franklin in a 'book' circulating in Van Diemen's Land, and he hoped Montagu had nothing to do with it.¹⁷²² It was apparent too that Stephen had spoken with Arthur of the affair, soliciting from Montagu a hurried defence¹⁷²³:

to Swanston, 26 May 1843, CO 280/159, for Franklin's correspondence with Swanston respecting the 'book'. Swanston later writes to Stanley himself refuting Franklin's allegations.

¹⁷¹⁷Franklin, Narrative, p. 67. A copy of the 'book' was said to have been placed on Swanston's office table for inspection. See Franklin, Narrative, p. 46.

¹⁷¹⁸ Franklin to Ross, 20 July 1843, MS 248/316/10. Franklin also stated in his *Narrative* that it had been discussed 'at the naval and military clubs'. See Franklin, Narrative, p. 48.

¹⁷¹⁹ Montagu to Stephen, 16 January 1844, Montagu Manuscript. See chapter 12 for a discussion on this point. ¹⁷²⁰ Lady Franklin to Mrs Simpkinson, 27 January 1841, MS 248/174/1-23.

¹⁷²¹ Franklin, Narrative, p. 58.

¹⁷²² Shaw, Sir George Arthur, p. 273.

¹⁷²³ Montagu to Arthur, 14 May 1844, Sir George Arthur Papers, 1821 - 1855, vol 16, A2176.

'With regards to the book of correspondence to which you allude in your letter if I remember [of January last] I explained about it in my letters of March last - I expect an answer to my letter of explanation from Lord Stanley in about 6 weeks time and will inform you then. But I am under no apprehension respecting it, as I feel I have done nothing wrong, and which under the circumstances I am quite justified in doing... From all I have heard the malice of the Franklin party will be so exposed that it will be on their own heads and of service to me'.

Also, Arthur was critical of the probation system for dealing with the convicts, which had destroyed his own carefully built up arrangements, and asked for an explanation from Montagu, which was duly prepared.¹⁷²⁴ Montagu wrote:

'When you have read the papers which I lately sent out to you relative to the new system of convict discipline, I hope and expect your opinion will be changed respecting it'. 1725

Franklin's treatment came as little surprise to Lady Franklin however, who declared:

'A more nefarious and dastardly one never existed... Mr M has already declared in coarse language that I can venture to write that he will persecute Sir John to the end of his days'.¹⁷²⁶

And later, she wrote:

'Perhaps you think I speak harshly - Mr Montagu is not altogether without feeling and some occasional touches I believe of conscience, but he is devoid of principle, and where his own interests and vindictive passions are concerned, there is I believe no fraud, nor

¹⁷²⁴ As late as June 1841, Arthur was still asked to comment on land claims transmitted to the Colonial Office by the settlers of Van Diemen's Land (CO 280/141, p. 78).

¹⁷²⁵ Montagu to Arthur, 14 May 1844, Sir George Arthur Papers, 1821 - 1855, vol 16, A2176.

¹⁷²⁶ Lady Franklin to Mrs Simpkinson, 4 April 1842, MS 248/174/1-23.

falsehood short of direct perjury, which if he deemed it necessary and safe (tho' not graciously) he would not submit to'. 1727

Lady Franklin conceded however that it was a complex situation, and posed the question:

'Who can tell where the truth lies. The same rectitude of sentiment is professed of course by both'.¹⁷²⁸

It is hardly surprising that Franklin showed little enthusiasm in implementing Stanley's November 1842 instructions, which were also sent with Bicheno, and little was done to implement them before his departure in November 1843.¹⁷²⁹ Much to Franklin's exasperation, Bicheno brought no news about his future in the colony, although Lady Franklin recorded that Bicheno had told her in private that Lord Stanley had decided on 'removing Sir John'.¹⁷³⁰ Officially however Franklin later reported in his *Narrative* that Bicheno was the 'bearer of no communication, either official or confidential'.¹⁷³¹

Bicheno was to become friendly with the Franklins, and later described Montagu as 'a dirty fellow without principle'.¹⁷³² Bishop Nixon, who played an important role in the government of Franklin's successor, also pledged his allegiance to the governor, and described Montagu as

'a blacker hearted villain than he had imagined'. 1733

Writing to Montagu in February 1843, Swanston reaffirmed his support for the ousted Colonial Secretary:

¹⁷²⁷ Lady Franklin to Mrs Simpkinson, November 1842, MS 248/174/1-23.

¹⁷²⁸ Lady Franklin to Mrs Simpkinson, 19 January 1843, MS 248/174/1-23.

¹⁷²⁹ Franklin, Narrative, p. 52.

¹⁷³⁰ Lady Franklin to Mrs Simpkinson, 23 May 1843, transcribed by G Mackaness, vol 2, p. 65.

¹⁷³¹ *Ibid.*, p. 52.

¹⁷³² Franklin to Ross, 20 July 1843, MS 248/316/10.

¹⁷³³ Franklin to Ross, 20 July 1843, MS 248/316/10. See also chapter 13.

'My dear Montagu. Things have taken since your departure such a sad turn that I begin seriously to be afraid of a general bankruptcy.... We have thought it advisable for the present not to increase our capital or to borrow any more money, and to this effect I have written to Hamilton - and I will refuse to receive any further sums from private individuals for investment until affairs take a turn and until I can form an opinion as to the effect the Probation System may have upon the Colony... I need not say how we have rejoiced at the victory you have gained... Never perhaps was there ever a Governor of any colony who had so completely sunk in the estimation of the people as Sir John Franklin, and when Lord Stanley's despatch in your case became known he sunk into perfect contempt. How long does the home government intend keeping such a man here.'1734

Indeed, Swanston¹⁷³⁵ revelled in the continued influence of the party which was no longer centred on Montagu but himself:

'There is one thing that is kept up in the Government House, that is, spite and ill will towards your friends, and I am considered the head and front of the Arthur faction. They at first used every endeavour to get Mrs Swanston and myself to attend their parties, but finding they could not succeed their love was turned into hatred... With my kind regards to Mrs Montagu'.¹⁷³⁶

And later, Low, a 'commercial man', wrote to Franklin to express his disgust with Forster and Swanston, who stood in the doorway of the Derwent Bank, 'clad only in ordinary raiments', nonchalantly joking and gossiping, as the Governor and his entourage

¹⁷³⁴ Swanston to Montagu, 17 February 1843, Derwent Bank and Swanston Letter Book, Outward Letters, Foreign, 22 May 1838 - 22 August 1845, RS 9/3(2), p. 260. The contents of the letter-book relate chiefly to routine banking matters, overdrafts of customers, correspondence with the Cornwall Bank and the Tamar Bank in Launceston. Its main interest lies in its disclosure of the widespread nature of the bank's business and the extent of its financial influence throughout the island and overseas (WH Hudspeth, Swanston Lecture Notes, 5 October 1948, RS 9/3(2)). Names mentioned include Messrs. Scott Bell and Co. of London, Messrs Lyall Matheson and Co. of Calcutta and Canton, Messrs Lang and Barton of Mauritius, Mess Binney of Madras, Thomas Weeding of London, Dr A Henderson of Bombay and Mr Betts of Bengal. There are very few private letters of this nature contained within the books.

1735 Franklin also referred to the "Arthur faction" as the 'Derwent Bank clique'. See Franklin, Narrative, p.

^{85. 1736} Swanston Letter Book, p. 260. A lengthy second letter was included to Montagu on 17 February, its contents concerned with financial matters, and investment speculation at Port Phillip (p. 258).

passed by on their way to a public function. Their 'ungraciousness and gross lack of deference' was considered by Low as most unbecoming of members of the Legislative Council.¹⁷³⁷

In 1842, Swanston complained to Montagu that since his departure:

'every act of the government has been that of imbecility - fortunately for the colony their acts have been few. Latterly everything has come to a standstill and the wheels of the government are locked, Mr Boyes having turned out a complete failure'.¹⁷³⁸

Swanston intimated that Montagu's influence over the government was sorely missed, referring to the water works and bridge development near Hobart which he explained were 'as far advanced as when you left the colony'. Franklin had taken it upon himself to withdraw funding from the project in the absence of his Colonial Secretary¹⁷⁴⁰, and implied that Montagu had authorised the expenditure of large sums of public money with a 'studious intention of keeping [him] in the dark on the subject'.

These sentiments however appeared to evolve simultaneously with the economic depression that gripped Van Diemen's Land. It was convenient for the remaining members of the "faction" to paint a grim picture of Van Diemen's Land, and assign responsibility for its economic down-turn to Franklin and Montagu's suspension. Perhaps they were right, although looking at the figures, it is doubtful whether Franklin could have done much more to avert the crisis. He passed an Act making Spanish and American dollars illegal in the colony, thereby forcing the banks to release their reserve stocks of British currency, and once again encouraged free immigration to the colony, and deliberated with the

¹⁷³⁷ Low to Franklin, 12 June 1843 as quoted in Korobacz, Legislative Council, p. 160.

¹⁷³⁸Swanston to Montagu, 17 February 1843, Swanston Letter Book.

¹⁷³⁹There were others. For instance, in 1839 a Bill allowing a joint stock company to build a bridge across the Derwent at New Norfolk was passed at Swanston's request (*True Colonist*, 5 June 1839). It's notable that years earlier, the press reported how 'Captain Swanston, T Anstey, M Forster, Edward McDowell, J Montagu and J Kerr voted as one'. See *True Colonist*, 30 November 1838. The editor was referring to a measure carried by the Council which was intended to facilitate the Bank's trade (p. 161).

¹⁷⁴⁰ WD Hudspeth, Swanston Lecture Notes, 5 October 1948, p. 29.

'managers of the various banks at Hobart Town... to offer... a measure which, if successfully conducted, promised to the community results of a beneficial nature'.

Ironically, Robert Lathrop Murray wrote that

'the state of distress existing here is much less felt than it would be but for the large expenditure of public money which is circulating among the inhabitants, thanks to the probation system; it is of unspeakable benefit to the community generally'.

In reality, there was very little Franklin could do to stop the breakdown, which was not unique to Van Diemen's Land. Between 1842 and 1844, the net revenue of the colony fell from £220,119 per annum to £167,022 per annum, and inward shipping tonnage dropped from 82,983 per annum to 68,462 per annum in 1844. English investors were loath to send cargo to the colonies, and were equally hesitant to invest in exports. Subsequently, outward shipping tonnages from the colony also fell from 82,866 per annum in 1842 to 73,756 per annum in 1844.¹⁷⁴¹

According to Fitzpatrick, Franklin hoped 'that these dollar acts would help alleviate the prevailing distresses' 1742, but the weight of the probation system and the spiralling economy continued to work against him.

¹⁷⁴¹ Refer chapter 7 for a discussion about a similar down-turn in the New South Wales economy.

¹⁷⁴² Fitzpatrick, Franklin, p. 323.

The Recall of Governor Franklin

Franklin was convinced he would be recalled, and in early 1843, he was increasingly concerned that, politically, he was becoming seriously isolated. Casting about for allies¹⁷⁴³, Franklin was in a situation where he had to persuade the Colonial Office that he was the 'victim of vicious enemies'.¹⁷⁴⁴ Not giving in to the incessant attacks, Franklin nevertheless conceded that he 'could no longer doubt that the influence obtained by Montagu with Lord Stanley preceded the dictation of the whole episode'¹⁷⁴⁵. Writing again to his friend Captain Ross, he complained:

'I am aware that Mr Montagu has proven himself very useful to Lord Stanley and Sir James Graham by his assumed knowledge of the question of convict discipline (which by the way he understood very imperfectly) on which subject they were deeply engaged at the time of his being in England - and were seeking information upon from every quarter but these statesmen mistook the readiness of answer which Montagu possesses for knowledge - and shut their eyes and ears against the representations which had been made by me and others of his subtlety, his artful cunning and his invariable study to adopt every measure to his own self interest and that of his friends'. 1746

Boyes on the other hand was not so charitable when it came to describing Franklin's leadership qualities:

'I have taken no part in the business and do not intend to take any. If inclined to mix in the intrigues of a Government House, Sir John, with many good qualities, is about the last

¹⁷⁴³See West, *History*, p. 174. Gregson was promoted to the Legislative Council just before Franklin left the colony. See Franklin, *Narrative*, pp. 64 - 65.

¹⁷⁴⁴Like Montagu, Franklin asked Lord Stanley in July 1843 to withhold passing judgement upon any case connected with the colony and with his government, until he was in possession of the entire statements belonging to it. See Franklin, *Narrative*, p. 82.

¹⁷⁴⁵ Franklin, Narrative, p. 52.

¹⁷⁴⁶ Franklin to Ross, 13 September 1843, MS 248/316/11.

to trust oneself with. You could not calculate upon his coalescence for a week together, unless he could be kept in a constant state of excitement, and who the deuce would take the trouble to find ailment for his bad passions or to rescue his government from the ruin and contempt which it well deserves and into which at this time it is fast falling'.¹⁷⁴⁷

Undoubtedly, Montagu recommended himself to Stanley¹⁷⁴⁸, who later wrote to Franklin:

'With regard to convict discipline, you are aware that the subject being one of great interest and importance, and on which I had long been expecting a definite proposal from you, I availed myself of the presence in this country of Mr Montagu and Mr Plunkett, the Attorney General of New South Wales, and of Mr Bicheno's early departure, to mature, in concert with Sir James Graham, a scheme founded in great measure upon past experience'. 1749

It was a trying time for the Franklins, and Lady Franklin sourly recorded that

'Mr [Edward] MacDowell is foremost in the bullying - inviting even public officers and members of Council to bet upon the chances [of Montagu returning to the colony], and playing the buffoon with all'.¹⁷⁵⁰

The "faction" was still strong, and Lady Franklin also observed

¹⁷⁴⁷ Boyes Manuscript, 19 January 1842.

¹⁷⁴⁸ Franklin, Narrative, p. 52. Franklin stated that Stanley set aside all his statements and preferred those of Montagu. In December 1842, Montagu wrote that he had been delayed in England because he had been required by Stanley and Sir James Graham to advise them on transportation. They had five or six meetings, each of two to three hours, and according to Montagu, they 'accepted all my recommendations': 'Stanley told Graham in my presence', wrote Montagu, 'that I had enabled Her Majesty's Government to introduce into Parliament an improved system of secondary punishment' (Montagu to Arthur, 26 December 1842, quoted in Shaw, Origins of the Probation System, p. 27).

1749 Franklin Narrative, p. 118.

¹⁷⁵⁰ Lady Franklin to Mrs Simpkinson, 6 November 1842, MS 248/174/1-23. McDowell was still editor of the *Van Diemen's Land Chronicle* at this time.

'another glaring proof of the subserviency of the newspapers to Mr Montagu's party', and 'that they continue to govern them as he did with a rod of iron - Elliston, the *Courier Almanack* [sic] omits altogether in the list of public officers for 1843 the names of Mr Milligan, Inspector of Convict Discipline (because he has taken Forster's place) and of Mr Henslowe as Clerk of Council because he is Mr Montagu's enemy'.¹⁷⁵¹

Of Montagu, she commented:

'Mr Montagu's nature is made of iron as well as brass, he never stops at any justification of his will, except so far as it may be necessary to provide for his own safety. In the words of his eternal coadjutor (Mr Forster to me) he never draws his harpoon out of a man when he has once struck him, or in his own more disgusting language, but I will not repeat it - the words were applied to Sir John and they made me sick'.¹⁷⁵²

Franklin was becoming increasingly anxious, and in July 1843, he wrote to Stanley asking him to 'give him an assurance of support or relieve him from his office'. ¹⁷⁵³ Franklin's despatch was reminiscent of the parallel case of Richard Bourke, who when His Majesty's Government refused to support his dismissal of a dissident "faction" figure from the Executive Council, resigned as a point of honour. ¹⁷⁵⁴ While Glenelg regretted the dispute between the governor and his wayward councillor, Campbell Riddell, he indicated that Bourke did not have the authority to substitute another councillor in his place if he did not also dismiss him as Colonial Treasurer. ¹⁷⁵⁵ Unlike Franklin however, Bourke declared that it had become necessary to vindicate the character and authority of the government, and in order to overcome the resistance of a 'small active party', who he described as being in 'hostility to my administration', and with due regard to his own honour, he felt it was necessary to resign from office. ¹⁷⁵⁶ Glenelg urged him to reconsider the resignation, but Bourke, who was weary after several years of political opposition,

¹⁷⁵¹ Lady Franklin to Mrs Simpkinson, 19 January 1841, MS 248/174/1-23.

¹⁷⁵² Lady Franklin to Mrs Simpkinson, 27 January 1841, MS 248/174/1-23.

¹⁷⁵³ Franklin to Stanley, 19 July 1843, as quoted in Fitzpatrick, Franklin, p. 342.

Bourke to Glenelg, 2 December 1836, HRA, I, XVIII, p. 223.

¹⁷⁵⁵ Glenelg to Bourke, 11 August 1836, HRA, I, XVIII, p. 482.
1756 Bourke to Glenelg, 2 December 1836, HRA, I, XVIII, p. 223.

felt that to continue in office would have been 'difficult and disagreeable', and a triumph for the "faction" to which Riddell belonged.¹⁷⁵⁷ Bourke was astute enough to recognise that he had become embroiled in a potentially career damaging dispute, and that it wiser to take the initiative and resign from office on terms which elevated both his standing in Downing Street and in the colony. By his actions Bourke averted the excruciating spectacle that surrounded Franklin's recall, and in hindsight, had Franklin adopted a similar course of action, he might well have attracted some belated respect from the Colonial Office, and seriously challenged Montagu's defence by highlighting the virtues of the principles for which he stood.¹⁷⁵⁸

Having only threatened resignation however, Lady Franklin wrote that she and Sir John became more and more nervous with the arrival of every ship in the Derwent, and still no news was forwarded from London.¹⁷⁵⁹ She was also feeling isolated in Van Diemen's Land, writing that 'Mr Forster and Swanston have never asked after me, though constantly seeing Sir John on business'.¹⁷⁶⁰ Her comments are noteworthy, and suggest that Lady Franklin may have felt Forster and the remaining members of the "faction" were under her sway or charm now that Montagu had left the colony, and that their patronage was dependent on Franklin, who had not been recalled, as most had probably anticipated he would be after Stanley's rebuke.

Tensions were running high in the Franklin household, and in August, Lady Franklin's niece, Sophy Cracroft, 'wished Sir J. wd. go home by the Cape if it were only for the satisfaction of horse whipping Mr Montagu'. Unknown to Franklin however, his administration had become that of caretaker until the new governor arrived in the colony, as Wilmot had already been appointed as his successor in February 1843.

Finally, on the evening of 17 August 1843, Sir Eardley-Eardley Wilmot arrived in the colony aboard the prison ship *Cressy*, three days before Stanley's despatch reached Van

¹⁷⁵⁷ King, Richard Bourke, p. 240.

¹⁷⁵⁸ *Ibid.*, p. 240.

¹⁷⁵⁹ Fitzpatrick, Franklin, p. 360.

¹⁷⁶⁰ Lady Franklin to Mrs Simpkinson, 10 January 1843, MS 248/174/1-23.

¹⁷⁶¹ Lady Franklin's Journal, 4 August 1843, MS 248/158.

Diemen's Land announcing his appointment as Franklin successor!¹⁷⁶² Franklin wrote that Wilmot brought 'no communication from Lord Stanley as to his appointment, and no explanation of the anomaly'.¹⁷⁶³ Wilmot took the oaths of office three days later on the very day Franklin's notification of his recall reached the colony.¹⁷⁶⁴ His recall had been expected; indeed, Franklin himself had read about Eardley Wilmot's appointment in July 1843 after it was printed in the *English Times* dated 24 February 1843¹⁷⁶⁵, but dismissed it on the basis that he had not received official word of the decision from the Colonial Office, and he was determined to 'stand at his post' until he had received an official communication from his chief.¹⁷⁶⁶ Franklin had imagined that Stanley would ensure that a considerable interval preceded the arrival of his successor. When it finally arrived, Stanley's despatch, dated 10 February 1843, read:

'As your administration of the government of Van Diemen's Land will, at the time of your receipt of this despatch, have continued for more than 6 consecutive years, and as after the lapse of that period the general expectation of the public service will have probably induced you to anticipate the appointment of a successor, I trust that I shall not subject you to any serious inconvenience by the announcement that such a change may be shortly anticipated. I am not at present able to state with precision at what time your successor in the government of Van Diemen's Land will sail from this country to assume that office, but I think it most probable that his departure will not be delayed for more than 6 weeks or two months beyond the present time. The interval will I hope be sufficiently long to enable you to make with satisfaction to yourself and the domestic and official arrangements incident to the transfer into other hands of the office which you at present occupy'. 1767

1763 Franklin, Narrative, p. 87.

¹⁷⁶² The despatch was dated six months before. See Fitzpatrick, *Franklin*, p. 361.

¹⁷⁶⁴ Ibid., p. 87. A copy of the despatch from Stanley announcing Wilmot as Franklin's successor arrived on Sunday 20 August 1843. The original arrived the following day.

¹⁷⁶⁵ Franklin, *Narrative*, p. 84. It was also reported in the *Hobart Town Courier* on 1 March 1843 (see also CO 280/164, p. 104).

¹⁷⁶⁶Franklin believed Bicheno knew he was to be replaced as early as December 1842. See Franklin, *Narrative*, p. 52.

¹⁷⁶⁷ Stanley to Franklin, 10 February 1843, CO 408/21, p. 258.

Stanley's report is significant, not only because it signalled the end of Franklin's governorship, but also because it indicates that Franklin's recall was a result of the expiration of his six year term rather than the machinations of Montagu and the "faction". Franklin was not so sure, and indicated in his *Narrative* that Stanley had 'signified his pleasure on this subject" although the despatch itself gives no hint of this. Similarly, it is also useful to compare Franklin's recall notice with those of other colonial governor's who were all effectively dismissed from office. A hint that Franklin may have exaggerated the sinister motives behind his recall is evident in the wording of these contemporary notices.

Governor Thomas Brisbane arrived in New South Wales in November 1821, and was dismissed less than five years later after his public conflict with the Colonial Secretary, who was also dismissed. Brisbane was unceremoniously recalled to England and told that His Majesty was 'pleased to relieve' him from the 'exercise of the government of New South Wales'. So keen was the government to recall him that the Secretary of State also added that he need not bother waiting for the arrival of his successor, and that he was free to return on receipt of his 'intimation'. 1769

Governor Thomas Davey's recall was even more dismissive, and the notice was not even addressed to him! After three years as governor of Van Diemen's Land, the Governor-in-Chief, Lachlan Macquarie, advised Davey that his successor, William Sorell, had already been appointed and was expected to arrive in the colony 'in the course of a few weeks'. Macquarie was especially critical of Davey's 'lavish expenditure of the public money and your injurious and extravagant purchases and contracts made and entered into on behalf of the government', and concluded that if his dismissal should prove a 'disappointment', he only had himself 'and bad advisers to blame and not me'. 1771

Davey's successor, William Sorell, who himself was recalled in August 1823 after five years as governor, was dismissed after Bigge's damning reports into his private life were submitted to the Colonial Office. The Secretary of State advised Sorell that he was

¹⁷⁶⁸ Franklin, Narrative, p. 87.

¹⁷⁶⁹ Bathurst to Brisbane, 28 December 1824, HRA, I, XI, p. 429.

¹⁷⁷⁰ Macquarie to Davey, 28 December 1816, *HRA*, III, II, p. 165.

¹⁷⁷¹ *Ibid.*, p. 166.

'compelled' to issue his recall on account of his indiscretions in the colony, and that any delay would involve him 'in serious responsibility'.¹⁷⁷²

And finally, Franklin's successor, Sir Eardley Eardley Wilmot, was dismissed after only three years in the colony as a consequence of his failure to handle the probation experiment. In Wilmot's case, the Secretary of State declared:

'It has become my painful duty to apprize you that Her Majesty is pleased to dispense with your further services in the administration of the affairs of Van Diemen's Land, and that you may expect the early arrival of a successor to you in that charge... You are not recalled from the office which you hold on account of incompetency, either real or alleged, for the ordinary duties attending to the chief executive officers of the dependencies of the Crown, but from a regard to the special exigencies of that particular colony over which you have been appointed, and have undertaken to preside, and to the very defective manner in which, according to judgement of Her Majesty's Government, those exigencies have been met by you'. 1773

Franklin's notice contained no such criticism or condemnation, and while it was unlikely his term would have been extended in any case, his recall was in keeping with Downing Street's policy of only allowing its governor's to hold office for 6 years, and goes some way to dispel the more popular publicity which makes it appear a dismissal or recall under a cloud. Indeed, even Arthur, who was arguably one of the most successful colonial governors in Australia, was only given four months to organise his affairs, which Glenelg described as a 'considerable delay'.¹⁷⁷⁴

The despatches brought out by Wilmot's ship also brought more bad news. Despite Stanley's assurances that a new Comptroller-General would be sent out from England to administer changes to the convict system, Franklin received a despatch confirming Forster in his old appointment of Director of the Probation Department, even though

¹⁷⁷² Bathurst to Sorell, 26 August 1823, HRA, III, IV, p. 85.

¹⁷⁷³ As quoted in Brand, *Probation*, p. 40.

¹⁷⁷⁴ Glenelg to Arthur, 10 January 1836, CO 408/12, p. 65.

Franklin had dispensed with the title.¹⁷⁷⁵ The direction was not a surprise however, and Franklin later wrote that the newspapers reported the appointment as early as July.¹⁷⁷⁶ The same despatch also advised Franklin that Forster would 'enter upon his [old] duties merely as a preparation for those of [the new position of] Comptroller General [of convicts]'. At the time of sending the despatch, Stanley had not received official news of Franklin's changes, although it was unlikely he would have changed his mind.¹⁷⁷⁷ Disappointed by the Secretary's of State's decision, Franklin later alleged that Stanley was acting 'upon private, ex-parte and unauthorised information, a course which appeared to me incredible, unless His Lordship had yielded to the influence of such delusive misrepresentations as those which already prevailed in His Lordship's office'.¹⁷⁷⁸ Similarly, Lady Franklin was under no illusion as to the reasons for Forster's reappointment:

'This most important place Mr Montagu and his friends in England have been striving to get for Forster'.¹⁷⁷⁹

Privately, Franklin argued that the office should not have been bestowed on an individual already in long possession of official influence with 'an army of subordinates at his command'. Recalling his troubles with Montagu, Franklin then warned that such a concentration of personal influence and official power might have the tendency to create a 'species of imperium in imperio, which would be neither convenient or safe. 1781

¹⁷⁷⁵ *Ibid.*, p. 90. Lord Stanley asked Franklin to continue with Forster as Director of the Probation Department in a despatch dated 23 March 1843. West later reported that Forster obtained the appointment by the influence of Montagu (West, *History*, p. 498).

^{1&}lt;sup>776</sup>Franklin later alleged that Forster leaked the news after receiving a private letter from Downing Street. See Franklin, *Narrative*, p. 81 and p. 84. Lady Franklin also recorded that she heard Forster would be confirmed in his old appointment in July 1843. She also commented that 'Mr Bicheno seemed much vexed' by the appointment. See Lady Franklin's Journal, 25 July 1843, MS 248/158. Before receiving news of his extended appointment, Lady Franklin also recorded that Forster was also interested in a position on Norfolk Island.

¹⁷⁷⁷ Franklin, Narrative, p. 82.

¹⁷⁷⁸ Franklin, Narrative, p. 82.

¹⁷⁷⁹ Lady Franklin to Mrs Simpkinson, 18 April 1843, MS 248/174/1-23.

¹⁷⁸⁰ Franklin, Narrative, p. 55.

¹⁷⁸¹ *Ibid.*, p. 55.

Franklin could not have been more unfortunate: Colonel Wilbraham, Lord Stanley's Private Secretary, was a good friend of Montagu and Mr Forster's brother who was employed at the Colonial Office.¹⁷⁸²

Franklin concluded that the private influences that existed in His Lordships office were 'evil'.¹⁷⁸³ He suspected that several of his representations were either being withheld from Lord Stanley or laid before him in a 'garbled manner' by the subordinates of the Colonial Office who from whatever cause were friends of Montagu and his party.¹⁷⁸⁴

Lady Franklin added that ever since his return to England, 'Mr Montagu has been governing the colony¹⁷⁸⁵... The views of Lord Stanley in many respects seem to have been ingeniously influenced by Mr Montagu... in subservience to his own selfish views of aggrandisement and revenge'.¹⁷⁸⁶ Curiously, Lady Franklin admitted in another letter to her sister that she had in fact suggested to Montagu that there were 'advantages economically and otherwise of making this the only penal colony'.¹⁷⁸⁷

Franklin persisted in his campaign of 'justification and expressions of outrage at his treatment by London', but to no avail; even proof that Montagu had lied about the alterations to the St George's tower failed to move the Colonial Office'. ¹⁷⁸⁸ 'I feel

¹⁷⁸² Lady Franklin to Mrs Simpkinson, 10 January 1843, MS 248/174/1-23.

¹⁷⁸³Franklin, Narrative, p. 79.

¹⁷⁸⁴ Franklin to Ross, 13 September 1843, MS 248/316/11; 'I have said that my belief is several despatches of mine relating to Mr Montagu have never been brought under Lord Stanley consideration in their true form'.

¹⁷⁸⁵ Lady Franklin to Mrs Simpkinson, 18 April 1843, MS 248/174/1-23.

¹⁷⁸⁶ Lady Franklin's Journal, 18 April 1843, MS 248/174/23.

¹⁷⁸⁷ Lady Franklin to Mrs Simpkinson, 19 January 1843, as quoted in Fitzpatrick, *Franklin*, p. 131. ¹⁷⁸⁸ ADB, vol 2, p. 250. Franklin sent off his principal despatch on the affair on 19 July 1843. Evidence of the St George's tower affair accompanied this despatch. See Franklin, *Narrative*, p. 99. Indeed, Montagu

the St George's tower affair accompanied this despatch. See Franklin, *Narrative*, p. 99. Indeed, Montagu had again assumed the role of the injured party: 'I can assure His Lordship upon my honour, that the representations from Sir John Franklin which have occasioned it are as incorrect as every other he has made against me. But nothing from him can now surprise me. He and I alone know the truth upon that subject, and if upon perusing Lord Stanley's remark, his conscious does not bitterly reproach him, he is indeed deeply, to be pitied. Severely as I have suffered by discomfort, anxiety and pecuniary loss from the unjust and cruel treatment I have recently experienced from Sir John Franklin, I freely forgive and hope soon to forget it all - his mental sufferings however must far exceed anything I have endured, and while the small still voice of conscious will never cease to reprieve and sting him by the most painful retrospections, he will also be reminded that his proceedings have issued to my honour and advantage (Montagu to Stephen, 17 February 1842, Montagu Manuscript).

¹⁷⁸⁹ Franklin to Ross, 13 September 1843, MS 248/316/11.

convinced', despaired Franklin, 'that the practice must be fatal to the interests of the colony - and to the efficiency of the measures of the Governor if it be not immediately stopped'.¹⁷⁸⁹

One month before Eardley Wilmot's arrival in the colony, Franklin summarised how the "faction" had undermined him:

'I had to contend with the head and rallying point of a party at once corrupt, active, factious and powerful. I need not hesitate to state what is notorious throughout the colony, that the leaders of this party, supported by and working with English capital, had by their money lending operations aggrandised themselves, overawed and commanded a considerable portion of the press, and acquired an influence in the affairs of individuals so general and so irresistible, that no head of any merely local government whatever the amount of his energy and decision, who did not in some way participate with, belong to, and countenance their proceedings, could hope successfully to withstand'.¹⁷⁹⁰

In September 1843, Franklin conceded:

'It is by private influence Montagu has succeeded and unless the same be exerted on my side, I have but little hope that my claims for a complete reparation will be attended to - Montagu has powerful influence and Lord Stanley is surrounded by his friends, his Private Secretary Col Wilbraham, the brother I believe of Lady Stanley is an intimate correspondent of Forster's brother'. 1791

In desperation, Franklin requested his old friend, Captain James Ross, 'to go direct to Lord Stanley and inform him of Montagu's machinations and intrigue'. In the meantime, Franklin and his family moved out of Government House 10 days after Wilmot's arrival, retiring to New Norfolk and far enough away from the vindictive opposition press. Wilmot resided with the Colonial Secretary, and also stayed several

¹⁷⁹⁰ Franklin to Stanley, 19 July 1843, as quoted in Fitzpatrick, Franklin, p. 341.

¹⁷⁹¹ Franklin to Ross, 13 September 1843, MS 248/316/11.
¹⁷⁹² Franklin's Diary, 17 February 1842, MS 248/245/2.

days at the official government residence in Launceston.¹⁷⁹³ According to Fitzpatrick however, there was also a degree of 'respect and affection' shown towards Franklin, and as evidence, Lady Franklin observed that

'Sir John is the object of universal respect and a degree of outward consideration which even exceeds that which was shewn him when Governor. Major Cotton who is one of the most gentlemanly and excellent officers of the government said the other day that he had been witness to other Governors leaving their governments, but such a universal feeling of respect and attachment as is shewn to Sir John, he had never witnessed before'.¹⁷⁹⁴

According to West, 'the Legislative Council, then sitting, and the various churches and literary societies also expressed their admiration of his personal character, and, more sparingly, their approval of his administration'. ¹⁷⁹⁵

Not everyone was sad to see him go. The traditionally anti-Franklin *Murray's Review* declared:

'We rejoice to breathe freely under the relief which the change of government has afforded of having no longer to occupy weekly a great portion of our space with objections to the proceedings of the existing administration'.¹⁷⁹⁶

Franklin sailed for England on 3 November 1843 having finalised his affairs in the colony.¹⁷⁹⁷ While Lady Franklin said little of their actual departure from Hobart, Boyes recorded that Franklin and his family were seen off by two thousand people, making the 'welkin ring with their shouts'.¹⁷⁹⁸ He was presented with an address signed by 1500 settlers, and the less scurrilous newspapers professed their shame at how he had been

¹⁷⁹³ Franklin, Narrative, p. 87.

¹⁷⁹⁴ Lady Franklin to Mrs Simpkinson, 18 September 1843, transcribed by G Mackaness, vol 2, p. 68.

¹⁷⁹⁵ West, *History*, p. 174.

¹⁷⁹⁶ Murray's Review, 1 September 1843.

¹⁷⁹⁷ Franklin, Narrative, p. 96.

¹⁷⁹⁸ Fitzpatrick, Franklin, p. 362.

treated.¹⁷⁹⁹ Landing briefly in Launceston, Franklin was presented with an address signed by one thousand settlers, over 600 more than when he first visited the settlement in 1837.¹⁸⁰⁰ The address read:

'By your example you have checked vice and encouraged virtue; your personal excellence has been conspicuous in your public career; you have sought no private object in the execution of your important trust; you have had the welfare of the colony sincerely at heart; it has been your constant aim to promote the social, intellectual, moral and religious welfare of the people; and when our reputation was calumniated at home, you stood forward in our defence'. 1801

Upon his return to England, Franklin met with Stanley at the Colonial Office. Franklin indicated that Stanley 'said little, and listened patiently', and assured him that his recall 'was not connected with Mr Montagu's suspension, but had been delayed a few months in order to disconnect the two events'. Franklin was not satisfied with Lord Stanley's explanation however, and in a letter dated 30 August, regretted that their discussion was 'inadequate' and left and impression which can not 'counteract the evil that has been inflicted'. Later, commenting on Franklin's difficulties in London, the *Launceston Examiner* wrote:

'Sir John complains that Mr Montagu's interference was incompatible with the Governor's independence. Lord Stanley admits that this is probable, but suggests that it is to be attributed to his superior qualifications'. 1804

Tired of inaction, Franklin complained bitterly about his treatment at the hands of the Colonial Office:

¹⁷⁹⁹ M Clarke, 'The Case of Sir John and Lady Franklin', *Tasmanian Historical Research Association*, vol 20, (1973), p. 80.

Fitzpatrick, Franklin, p. 362. He also visited George Town, Circular Head and Port Phillip.

¹⁸⁰¹ *Ibid*., p. 362.

Franklin, Narrative, p. 103. Franklin and Stanley met on 12 June 1844.

 ¹⁸⁰³ Ibid., p. 121. Several letters were exchanged between Stanley and Franklin after their initial meeting.
 ¹⁸⁰⁴ Launceston Examiner, 29 November 1845.

'Your Lordship is surrounded by personal friends and coadjutors of Mr Montagu, by whose means I have the strongest reasons to believe that some circumstances affecting myself have been kept back, and others have received a colouring wholly inconsistent with truth. Under no supposition would it be possible to reconcile the facts of Mr Montagu's case with the foul wrong that has been done me'. 1805

He also told his friend Adam Turnbull, surgeon and public servant, who was still in Van Diemen's Land, that Montagu's

'talents and cunning may serve his purpose at the Cape for a time - but when the man becomes known he cannot be respected'. 1806

Franklin occupied his time in writing a *Narrative of Some Passages in the History of Van Diemen's Land*, and in preparing for his fatal voyage in search of the North West Passage.¹⁸⁰⁷ Exploration consumed Franklin's senses, and even when he was trying to vindicate his governorship at Downing Street, he confessed that

'the [Narrative] most reluctantly begun has occupied more time than I anticipated. It was very far from being finished when the preparations for the Artic expedition called off my thoughts and time to other duties more congenial to my habits, and still more imperative'. 1808

In a tantalising final page of his Narrative, Franklin concluded that

1808 Franklin, Narrative, 15 May 1845, p. iv.

¹⁸⁰⁵ Franklin to Stanley, 26 July 1843, as quoted in Fitzpatrick, Franklin, p. 358.

¹⁸⁰⁶ Franklin to Turnbull, 20 September 1844, 21 Bedford Street, Russell Square, R.S 3/7(9).

¹⁸⁰⁷ Franklin embarked on his fatal search for the North-West Passage in the unexplored region south west of Barrow Strait in May 1845. Sailing from London in command of the HMS *Erebus* and *Terror*, Franklin was last seen by two whalers heading for Lancaster Sound in June 1845. After a massive search, it was later established that both vessels were beset north of King William Island where they spent two winters between 1846 and 1848. Franklin died of ill health in 1847 and the rest of his crew (105) perished in 1848. Effectively, Franklin and his men found the Strait, although it was not navigated until Amundsen's voyage between 1903 - 1906. Most observers agree that the voyage was unrealistic in its assessment of the dangers, and that Franklin, at 60 years of age, was not fit for such a rigorous voyage. Public opinion demanded a hero however, and Franklin was still regarded as the great Arctic explorer. See http://www.archiveshub.ac.uk/news/0407sif.html, 19 July 2004.

'It was my intention to have made a few observations on the present state and the prospects of Van Diemen's Land under the operation of the existing system of unlimited and uncounteracted convict transportation, but this discussion, which involves many other auxiliary considerations, would lead me too far, and under the pressure of duties more imperative and now more immediately belonging to me, I have thrown aside my notes upon the subject'. 1809

Franklin was still tortured by his treatment in Van Diemen's Land, and confided in Turnbull that

'Lord Stanley cannot be ignorant that many men of sound judgement and high situation conceive and have said that I have been most unjustly and harshly treated'. 1810

He took some solace however in the troubles Wilmot was already facing, having tried to warn London years earlier of their origins:

'The state of Van Diemen's Land is well known in England and the causes of it - but I must not say more on that painful subject'. 1811

In his *Narrative*, Franklin, perhaps satisfied at least with the changes in education and culture he had brought to the colony, concluded that

'It is painful to me thus to speak of myself. But I will venture to say - I believe I have said before - that had not the colonists of Van Diemen's Land appreciated my endeavours for their good, and given me their esteem and confidence and support, it would not have been possible for me, abandoned as I was by the Minister, and sacrificed to the intrigues of a party which had access to his ear, to have carried on my government'.¹⁸¹²

¹⁸⁰⁹ *Ibid.*, p. 126.

¹⁸¹⁰ Sir John Franklin to Turnbull, 19 May 1845, *Erebus*, RS 3/7(9).

¹⁸¹¹ Ibid.

¹⁸¹² Franklin, Narrative, p. 90.

Though angry at the way in which her husband had been treated, Lady Franklin retained an interest in colonial affairs. Writing to Turnbull in 1845, she declared:

'What a cunning mass of mystification of Forster - I have heard that he has ruined himself at the Colonial Office by sending home reports, these totally different from the truthful accounts he sent to his privileged friends'.¹⁸¹³

It seemed however that Lady Franklin had some respect for Forster:

'He was not so devoid of feeling as Mr Montagu. He had occasionally good impulses, though they were forever yielding to his interests, and his necessities, and he was dragged down by Mr Montagu into a lower state than he might have been without those unfortunate connections'.¹⁸¹⁴

Lady Franklin was also curious as to of the progress of the convict system:

'I shall be very glad to hear from you how convict matters are now working in Van Diemen's Land'. 1815

And in 1847, she inquired from Turnbull:

'Do you ever hear from Sir George Arthur - I presume not since when we parted. It was already long since you had heard or I suppose he ranges himself on the same side as Mr Montagu, though I have no doubt he condemns his conduct'. 1816

While Franklin's defence floundered, Montagu settled into his new posting as Colonial Secretary at the Cape of Good Hope, where he had resided since early April.¹⁸¹⁷ His

¹⁸¹³ Lady Franklin to Turnbull, 17 February 1845, Hanover, RS 3/7(9).

⁸¹⁴ Ibid.

¹⁸¹⁵ Lady Franklin to Turnbull, 3 January 1847, RS 3/7(9).

¹⁸¹⁶ Lady Franklin to Turnbull, 31 March 1847, RS 3/7(9).

predecessor at the Cape, Lieutenant-Colonel Bell, had returned to England on leave in 1841, and upon receiving a military promotion there, elected not to return to the colony. The governor, Sir George Napier Napier, recommended the acting Colonial Secretary, John Moore Craig, a suitable replacement for Bell, though Stanley was not convinced and offered Montagu the post. Ironically, Stanley advised Napier that it was inappropriate for Craig, who was related to the governor by marriage, to take up the appointment because of their 'near connection'. 1820

Nethertheless tiny though his new convict cohort at the Cape was, it served to sustain him as an influential commenter on convict affairs in Van Diemen's Land for some time to come, as will emerge in the following chapter.

In January 1844, Montagu formally defended himself against Franklin's imputations and referred to his decision to send the bound memorandum to Van Diemen's Land¹⁸²¹:

'I sent to Van Diemen's Land two copies of Lord Stanley's despatches to Sir John Franklin which contained His Lordships decision upon my case. When I received your letter of 17 September 1842 transmitting to me a copy of that despatch, I felt I had a right to show it to whom I pleased. I sent two copies to Van Diemen's Land - one to Mr Forster and one to Captain Swanston'. 1822

In typical Montagu style, he continued:

¹⁸¹⁷ A government notice appeared in the *Graham's Town Journal* at the Cape on 28 September 1842 announcing his appointment. Writing to Arthur in May 1843, Montagu spoke of Stanley's support: 'After a tedious voyage of thirteen weeks we all arrived in good health on the 23 ultimo, quite tired of our ship and the sea - my reception by Sir George Napier was everything I could desire... Lord Stanley gave me a letter of introduction to him in which he speaks highly of my character - and I imagine he did to remove my public prejudice Franklin's treatment of me might have created.' (Montagu to Arthur, 3 May 1843, Sir George Arthur Papers, 1821 - 1855, vol 16, A2176). For Montagu's subsequent career see appendix d. ¹⁸¹⁸ Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 183.

¹⁸¹⁹ Ironically, Napier was chosen over George Arthur for the Governorship of the Cape in 1837. See Shaw, Sir George Arthur, p. 179.

¹⁸²⁰ *Ibid.*, p. 183.

¹⁸²¹Montagu to Stephen, 16 January 1844, Montagu Manuscript. See also Franklin, *Narrative*, p. 153. ¹⁸²² *Ibid*.

'I begged that it might not be used in triumph over Sir John Franklin. I can solemnly declare that in sending it out I had no wish, no intention of annoying or prejudicing Sir John Franklin or his government, in any way whatsoever'. 1823

Whether Montagu meant the manuscript to be circulated in the colony is unclear; while Montagu was bent on revenge, Franklin had only recently arrived in England, and Montagu could not have been sure as to the extent of patronage he may or may not have been able to muster. Politically it was a precarious time for Montagu, who could have been recalled if Franklin was able to overturn Stanley's decision. Certainly Swanston had shown himself more than willing to defy the governor, and acted in a manner that even Montagu might have refrained from. In contrast, Forster publicly distanced himself from the manuscript, and while he was aware of its contents, he had not become embroiled in the debate over its circulation as Swanston had done. And finally, the fact that it was kept from Franklin for so long might also suggest that Montagu had given specific instructions that it was only to be shown to his closest confidants, and that Swanston had taken it upon himself to embarrass the governor. Montagu should not have sent the manuscript - that much is true - but whether he would have been so foolish as to send off the manuscript with even the slightest chance that it might fall into Franklin's hands is even beyond Montagu's reckoning. The same however could not be said for Swanston, who revelled in the notoriety of Montagu's handy-work, and without the fear of official censure.

In any case, while waiting for a reply, Montagu was reassured by Napier that all was in hand in London:

'You may rely upon it that you are all right and square at the Colonial Office... this I had from Lord Stanley himself... I hear Sir John Franklin is not in the best of humour and talks loudly but is not attended to'.¹⁸²⁴

¹⁸²³ Ihid.

¹⁸²⁴ Napier to Montagu, 30 June 1844, Sir George Arthur Papers, 1821 - 1855, vol 16, A2176.

Meanwhile, his brother-in-law, Matthew Forster, was settling into his new appointment as Comptroller General of Convicts in Van Diemen's Land. The re-appointment of Forster bore the aspect of a mere gratuitous triumph Milligan, at a few hours, wrote Franklin, who added that that his own appointee, [Mr] Milligan, at a few hours notice, was dismissed from his office, like a discomfited usurper, and Mr Forster slid glibly and comfortably into it'. Franklin was perhaps exaggerating when he claimed that Forster found everything at his hand, the machinery in good order, the wheels well oiled, every officer at his post, understanding well his business'. While Montagu's new domain flourished however, the legacy of his convict management in Van Diemen's Land was looming ominously, and would prove disastrous for the incoming governor.

¹⁸²⁵ Forster was appointed Comptroller in September 1843.

¹⁸²⁶ Franklin, Narrative, p. 92.

¹⁸²⁷*Ibid.*, p. 94.

¹⁸²⁸*Ibid.*, p. 94.

The Nemesis of the Probation System

The economic background to the continuing probation system was not promising. In his first report to London, Forster, the new Comptroller General, explained that he could do no more than 'lay before the Secretary of State the actual state of the probation gangs, their stations and the nature of the employment of the gangs'. He said that Stanley's instructions had only been received in the colony 'five months' previous, and that much remained to be done in relation to their implementation.¹⁸²⁹ He stated that there were still some gangs situated in the settled as well as the unsettled districts, and he hoped that they might be engaged in either the service of the local government, making the main roads, or any other public works out of town, or in the service of the District Commissioners in making district roads. 'By this plan', he added, 'the outlay from convict funds would be reduced, whilst at the same time a great advantage would be offered to the colony, through the employment of gangs either in the construction of public works by the local government, or in the making and repairing of district roads, under the provisions of the Road Act'. 1830 He also advised that there were 6046 convicts in the probationary gangs, three times as many as reported by Montagu two years before. 1831 Forster concluded that the coal mines on Tasman's Peninsula were 'the real punishment station of the probation department, and were productive to the home government'. 1832 The earlier forecast of Sir James Graham that it would be some time before the number of convicts in the gangs reached 8000 would prove wide of the mark.

¹⁸²⁹ Eardley Wilmot to Stanley, 5 October 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 171.

1830 Forster to Wilmot, 28 September 1843, as reported in the British Parliamentary Papers

⁽Transportation), Sessions 1843 - 1847, vol 7, p 171.

1831 Ibid., p. 171. At the beginning of September, there were 5421 convicts in the gangs. See p. 190. ¹⁸³² *Ibid.*, p. 173.

The new governor added little to Forster's report and forwarded it to Stanley on 5 October 1843.¹⁸³³

The following month, Forster set down his regulations for the first stage of Stanley's convict probation in Van Diemen's Land, which the new governor, Eardley Wilmot, transmitted to Stanley on 31 October 1843.¹⁸³⁴ Once again, Wilmot neglected to attach any report or recommendations from himself until December, which drew a stern reply from Stanley in March 1844, having not as yet received the latter despatch:

'I presume that you have thought it advisable to postpone till a future opportunity when you shall have had more ample means of observation. But there is one point which I must not pass over namely the mode of employing the convicts hereafter. Mr Forster appears to contemplate their employment almost exclusively for the benefit of the colony, and with reference to that object alone. Such is not the view of His Majesty's Government. The primary object to be kept in sight in the employment of convicts is the raising by them of the produce necessary for their subsistence, and the consequent diminution of the expense entailed on the mother country. The benefit to accrue from their labour to Van Diemen's Land, important as I acknowledge it to be, is still but a secondary and subordinate consideration. You will not lose sight of this principle in deciding on any proposition for the employment of convicts which may be submitted to you by the Comptroller General'. 1835

Just as he had been in his despatch to Franklin in November 1842, Stanley seemed more interested in the diminution of expense rather than reform, although Wilmot considered it important enough to comment that

¹⁸³³ Wilmot to Forster, 5 October 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 171.

Wilmot to Stanley, 31 October 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 179. The regulations for the second stage followed on 1 December 1843 (p. 196).

¹⁸³⁵ Stanley to Wilmot, 26 March 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 187.

'I confidently anticipate a favourable result, and I have every hope and belief that the convicts will emerge from bondage and restraint more capable of appreciating, as well as of benefiting by their restoration to society'.¹⁸³⁶

Old habits did not die easily for Forster; it had always been a maxim of Arthur's administration to utilise the economic worth of the convict's labour for the benefit of the colony - indeed, the settlers demanded it. Things however had changed, though unlike Montagu, it seemed Forster had not. In his December despatch, Wilmot finally reported 'that under the pecuniary embarrassments of this colony, and in the reduced state of our finances, I am not so sanguine that the great object which Your Lordship has in view of convict labour paying its own expenses, will, at present at least, fulfil Your Lordship's expectations'. Wilmot continued that 'if colonial funds were to be charged for convict labour, or the public roads and works, on the same principle as private persons, the colony could not afford to employ the probationary convicts under the pecuniary distress and embarrassment which universally prevails here'. Wilmot was not exaggerating; in 1843, the net revenue of Van Diemen's Land fell from £220,119 in 1842 to £170,308, and further still to £167,022 in 1844. The expenditure also dropped but still remained high at £166,555 in 1843, and £160,629 in 1844. An increase in police expenditure from £27,969 in 1843 to £30,129 in 1844 contributed to the overall increase in expenditure, while Wilmot (and Franklin) slashed spending on public buildings, bridges and wharfs by over £5000 between 1842 and 1844. Those colonists who protested against the rising costs of the probation system and its decreasing returns were further angered by a decrease in spending on schools and churches - which represented a real and actual decline in services to the community at the expense of the penal juggernaut. 1840 With cheap convict labour removed from the settlers, production fell, the value of imports increased further still in 1843 to £705,260, while exports plummeted to £439,890 in 1843, and only £408,799 in 1844. The treasury was destitute of funds, and Wilmot

¹⁸³⁶ Wilmot to Stanley, 2 December 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 188.

¹⁸³⁷ *Ibid.*, p. 188.

¹⁸³⁸ *Ibid.*, p. 188.

¹⁸³⁹ Statistics of Van Diemen's Land, 1842 - 1844, (Government Printer, Hobart Town, 1845), p. 1.

¹⁸⁴⁰ *Ibid.*, p. 1.

further explained that 900 men were waiting for waged private service, though he expected that number to double the following year if the financial difficulties experienced by the colony did not subside. He expected that the employment of the prisoners would be 'unhappily frustrated' by the suspension of a large proportion of the convict labour employed on the public works and roads, and asked Stanley to consider confining the payment of wages to probation gangs engaged in private works.

Several days later, Wilmot again requested that 'the pecuniary regulations respecting convict labour be relaxed, and allow the colony to reap the advantages of the immense labour power' afforded by the new system'. He assured Stanley that the government was doing everything in its power to 'induce the settlers and other proprietors, and persons requiring labour, to engage with the probation men' but was finding the depressed state of affairs in the colony an 'insurmountable obstacle'. Evidence of this was to be found in the number of country allotments sold in the colony, where the convicts were traditionally employed, plummeting from 49,742 acres in 1843 to only 4,619 acres in 1844. Wilmot concluded that

'Until a reaction has taken place, and the produce of the soil bears a remunerating price, probation labour will not be in demand'. 1844

It was a clear warning, and one which was unlikely to please Stanley. By the close of the year, there were 9844 probationary convicts and 15,082 'old convicts' in Van Diemen's Land¹⁸⁴⁵, an increase of nearly 1000 since June 1843. Of those probation men only 2310¹⁸⁴⁶ were in private service, while 6116¹⁸⁴⁷ were employed in the probation

¹⁸⁴¹ Wilmot to Stanley, 5 December 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 194.

¹⁸⁴² *Ibid.*, p. 194.

¹⁸⁴³ Statistics of Van Diemen's Land, 1842 - 1844, (Government Printer, Hobart Town, 1845), p. 8.

Wilmot to Stanley, 5 December 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 194.

Wilmot to Stanley, 2 December 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 190.

¹⁸⁴⁶ Forster to Wilmot, 1 December 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 199.

¹⁸⁴⁷ Forster to Franklin, 12 July 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 214.

gangs, prompting Wilmot to declare that the number of 'passholders already on the hands of the government are many hundreds'1848, and was daily increasing. Once again, in contrast, Sir James Graham had written in December 1842 that 'it will be some time before we have 8000 convicts in the probation gangs'. Indeed, it is even more extraordinary when it is remembered that Montagu thought 10,000 convicts could be profitably punished in the gangs, not including those who were holders of probation passes. Montagu had explained that 'the number of convicts who will receive probation passes every year will be equal to the number transported annually from Great Britain, namely 4000', but as previously stated, 3677 convicts arrived in the colony during 1843, while only 2310 received probation passes. In any case, this was not the problem; the anxiety for Wilmot and Forster was in that there was no 'fair probability of the demand for labour being much increased by any causes in the colony'1849 - it mattered not how many convicts were emerging from the gangs if there was no employment for them, and this difficulty was compounded by the added competition of the ticket of leave and pardoned men. Wilmot added that with the unexpected growth in gang members, 'it is probable that much absconding will result'.

Writing in August 1844, Stanley admitted that the extraordinary and unforseen depression 'of all the springs of industry, and of all the resources of profitable employment in Van Diemen's Land, has disturbed the basis and the results of the calculations on which I proceeded in my despatch of 25 November 1842'. In what appeared to be a reference to Montagu's recommendations, Stanley explained that his proposals were based on what appeared to be an 'adequate authority' of the 'existence of such a demand for labour in the colony, either by the public at large, or by individuals as would provide for the profitable accommodation of the convicts'. Stanley added that

¹⁸⁴⁸ Wilmot to Stanley, 8 March 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 200.

¹⁸⁴⁹ Forster to Wilmot, 5 January 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 471.

¹⁸⁵⁰ Stanley to Wilmot, 31 August 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 202. In a despatch dated 27 July 1844, Stanley again explained that 'relying on information the highest and most authentic at that time within our reach, Her Majesty's Government concluded that the demand for the labour of the holders of tickets of leave in Van Diemen's Land was such that there was no reason to apprehend and deficiency of employment there'. See Stanley to Wilmot, 27 July 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 290.

'the intelligence which has recently reached me from Van Diemen's Land unfortunately shows that the information on which we relied was inaccurate, and that, so far from being entitled to count on a steady and effective demand for labour to an indefinite extent in that colony, it was found impossible, so lately as the month of March last, to procure employers for the convicts who were then passing in great numbers into the stage in which they were entitled to receive the rewards of their own labours.' Stanley however was reluctant to revise his opinions, and in a statement reminiscent of Arthur, declared that Van Diemen's Land 'was a convict settlement before it was a colony'. Stanley warned Wilmot that 'if the colonists could not afford more than £4000 per annum in return for the great benefit of having their public works executed at the expense of this country, it is of course quite reasonable that they should refuse to give more. But on the other hand', he continued, 'it is not less reasonable that the British Government should decline to enter into any such arrangement... if the free inhabitants cannot purchase the labour we have to sell, at a price which it is worth our while to accept, it remains for us to consider whether some other advantageous employment for it cannot be found!" 1853

Stanley again referred to 'the silence' of Wilmot's despatches on this question, and complained that he was still without 'any proof, or even suggestion, of the impracticability' of the home government's 'methods'. It puzzled the Secretary of State why the convicts were not producing their own 'food, shelter, clothing and implements of labour', and why the many public works required for the occupation of the convicts themselves were not generating profitable employment. 'Would such employment', he asked, 'tend to diminish future expenditure'?¹⁸⁵⁵

¹⁸⁵¹ *Ibid.*, p 290.

¹⁸⁵² Shaw observes that Arthur 'regarded Van Diemen's Land as a penal colony - as it was, and as the British Government intended it to be'. See Shaw, 'The Eldershaw Memorial Lecture'. Both Stanley and Arthur were wrong - Van Diemen's Land was a strategic settlement first to ward off the French.

Stanley to Wilmot, 31 August, 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 203. The £4000 referred to here is the amount incurred by the commissariat in maintaining the convicts clothes and rations. Obviously the colonial treasury incurred a much greater cost in providing for the upkeep of the police and gaols (£30,129 in 1844). Goderich used a similar argument in 1831 when he proposed to raise a tax on convict labour. Like Stanley, he also argued that 'no one had a right to free convict labour'. Goderich even asked Arthur to consider hiring out the convicts to settlers. See Shaw, Convicts and the Colonies, p. 255.

¹⁸⁵⁴ *Ibid.*, p. 203.

¹⁸⁵⁵ *Ibid.*, p. 203.

Stanley did not have to look much further than the Colonial Office records for an answer. Was it not Montagu who in 1831 had suggested that the

'convicts are unwilling labourers; their overseers have no interest in the work performed, and it follows that, the result is usually defective in quality and quantity, whilst great pilfering of the public stores by convicts so employed, has been found unavoidable, and they have in consequence, frequently been enabled to gratify their desire for ardent spirits, the effects of which lead to crime and consequent punishment, that might in the absence of the temptation have been avoided'?¹⁸⁵⁶

Inflexible and determined, Stanley told Wilmot that

'for these reasons, I cannot consent to depart from my instructions of 25 November. 1842'. 1857

In May, Wilmot reported that the masters refused to pay such high wages for 1st and 2nd class men, wishing of course, to have the best men, and therefore would not hire any but 3rd class men.¹⁸⁵⁸ Even then, he added, there was no 'proportionate savings to be made by the colonists after paying wages of £9 per annum'. He alluded to the minimum price of uncleared land being higher than lands in a good state of cultivation, 'with house and buildings upon them', and urged Stanley to re-consider encouraging immigration so that the demand for labour might 'be the result'. Ironically, Arthur's legacy still reverberated across the colony as Wilmot requested the very class of settler who had formed the 'backbone' of the assignment system 10 years before. In closing, Wilmot recorded that the number of men holding passes had increased from 3654 in December to nearly 7048, while the number of convicts to 'be thrown entirely on their own resources' was nearly

¹⁸⁵⁶ Montagu to Hay, Fulham, 8 April 1830, CO 280/27, p 173. See also Chapter 3.

¹⁸⁵⁷ Stanley to Wilmot, 31 August, 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 204.

Wilmot to Stanley, 29 May 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 205. The best class of convict served in the 3rd class.

2500. The number of convicts in the probation gangs had increased to 7475¹⁸⁵⁹, while 4937 held tickets of leave, and 4000 conditional pardons. With nothing but their labour to support them', declared the governor, 'and no labour being in demand, they either steal or starve'. In contrast, Wilmot understood that 'the number of prisoners sent from England and elsewhere' would increase to nearly 5000 per annum, immediately replacing those who would be withdrawn from government rations.

Here it is fair to comment that Wilmot's economic analysis was acute, contradicting the earlier condemnation of his competence by Stanley as a 'muddle brained blockhead', a judgement which has perhaps unduly coloured later assessments of Wilmot. 1863 While Wilmot did not impress as an administrator, his perception that economic vitality was necessary for the success of the probation system, and that without it the system would fail, shows that he was more correct than he has been given credit for. Just like his predecessors, Wilmot argued that economic vitality and demand for employment was central to any reformatory system, but Stanley's fixation on cost cutting ultimately sealed the fate of the probation system, although he naturally blamed Wilmot for the 'failure'. In his analysis of the breakdown of the probation system, historian Ian Brand observes that there were never enough funds available either during the latter half of Franklin's administration, or during Wilmot's term, to ensure that the men were classified as first intended, and that the 'most important object of the system was never, therefore, seriously attempted except at a few stations'. 1864 There was never enough clothing, bedding or tools, or not enough of good quality, and there were very few stations with sufficient buildings to house the convicts according to Stanley's instructions. Invariably, this led to many problems associated with the congregation of large numbers of men, including lack of supervision and damaging reports of idleness, poor productivity,

¹⁸⁵⁹ Forster to Wilmot, 12 July 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 214. This number increased to 7569 in June (see p. 221).

¹⁸⁶⁰Wilmot to Stanley, 29 May 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 205.

¹⁸⁶¹ *Ibid.*, p. 205.

¹⁸⁶² *Ibid.*, p. 206.

Stanley to Peel, December 1842, as quoted in Brand, *Probation*, p. 24. There is no date given in December.

¹⁸⁶⁴ Brand, Probation, p. 98.

homosexuality¹⁸⁶⁵ among the prisoners. Later, Charles Joseph Latrobe, who reported on the collapse of the convict probation system in Van Diemen's Land, commented that the system might have succeeded except for the 'want of preparation in the ground on which it was to be tried', and the remoteness of the colony. 1866 Theoretically, a strong economy might have encouraged the settlers to take up the convicts, and thereby given the administrators of the system, including Wilmot, the 'power to restrain and reform' 1867 as Arthur and his predecessors had done. According to Latrobe however, 'no government' was able to outlay enough expense to 'secure the maintenance of the discipline prescribed', nor the 'full power of facilitating and perfecting the arrangements' for their punishment. 1868 Subsequently, there were few competent officers or religious instructors who were prepared to work at the stations, and without a buoyant economy there was little prospect of success for the system.

Unfortunately for Wilmot, who bore the brunt of contemporary criticism and hardly less from later historians, was not prepared to challenge his master's views openly, and consequently he attracted a heavier portion of the blame. As things stood in Van Diemen's Land, the probation system was doomed to failure, and for all his economic acuteness, Wilmot, like Franklin, was misguided in supporting its continuation while the economy floundered and while Downing Street offered no financial relief.

Just as had occurred in the final phase of the assignment system, economic conditions began to intrude on successful outcomes, and Forster now warned Wilmot that while the demand for the services of the passholders remained below the level of supply, the passholders had to remain in the service of the government in a 'condition scarcely, if at all, superior to that from which they have emerged'. He did not expect any change in the present distressed state of the 'agricultural and mercantile' affairs of the colony, and 'apprehended that the supply of labour must eventually exceed the wants of the

¹⁸⁶⁵ This issue is discussed further in chapter 14.

¹⁸⁶⁶ Latrobe to Grey, 31 May 1847, as quoted in Brand, *Probation*, p. 124 and 129. Latrobe's report is also published in the British Parliamentary Papers (Transportation), Sessions 1847 - 1850, vol 8, p. 41. Latrobe to Grey, 31 May 1847, as quoted in Brand, *Probation*, p. 129.

¹⁸⁶⁸ *Ibid.*, p. 129.

colony'.¹⁸⁶⁹ In a desperate bid, Wilmot urged Stanley to allow 'Van Diemen's Land wheat to be imported duty free' into Great Britain, and to encourage the 'agricultural interests of the colony'.¹⁸⁷⁰

Two days earlier, Forster declared that after taking the 'entire charge of the convict department in 1843, he could not pretend to have gained much experience as to the workings of the system' established by Stanley. Forster recorded that 9690 convicts had arrived in the colony since June 1840, and by 1842, 6116 were serving their first stage of probation. A further 2083 had entered private service in addition to the 3205 men and 1078 women who had arrived previous to the disallowance of assignment. The increase in private service alone is extraordinary when it is considered that in 1835, the number of applications for convict labour only amounted to 3130. In comparison, the free population had increased only by 15,097 from 21,991 in 1835 to 37,088 in 1842.

In short, the free settlers were overwhelmed by the increase in labour between 1835 and 1844, and were incapable of absorbing the vast numbers of prisoners sent to Van Diemen's Land. Forster continually had this in mind, and regularly reminded Wilmot that the success of the system depended on the demand for the services of the passholders.¹⁸⁷⁴

While Forster applauded the conduct of the convicts after their emergence from the gangs¹⁸⁷⁵, the statistics told a different story. Writing to Stanley in February 1846, Robert Pitcairn, a solicitor in Van Diemen's Land, reported that the number of convictions in the Supreme Court of Van Diemen's Land in 1844 had risen to 325, 230 more than in 1839¹⁸⁷⁶, and further that 117 convictions in the Supreme Court were for robbery, which

¹⁸⁶⁹ Wilmot to Stanley, 14 July 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 208.

¹⁸⁷⁰ *Ibid.*, p. 209.

¹⁸⁷¹ Memorandum, M Forster, 12 July 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 209.

¹⁸⁷² *Ibid.*, p. 210.

¹⁸⁷³ Statistics of Van Diemen's Land for 1838 - 1841, Ewing to Franklin, 31 May 1843, (Government Printer, 1843, Hobart), p. xi.

¹⁸⁷⁴ Memorandum, M Forster, 12 July 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 211.

¹⁸⁷⁵ *Ibid.*, p. 210.

¹⁸⁷⁶ Pitcairn to Stanley, 4 February 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 498.

represented a 'total destruction of Van Diemen's Land as a free colony'. Pitcairn was particularly passionate in his protests against the probation system in Van Diemen's Land; in February 1846, he informed the Colonial Secretary, James Bicheno, that he 'could not avail himself of an invitation' he had received to Bicheno's evening party' on account that 'he could not eat his bread while, at the same time, he was doing all he could to injure the Colonial Secretary'! 1878

'The necessity of finding employment for undisposed of labour in the colony' weighed heavy on Wilmot's conscience. Writing to Stanley in late July 1844, the governor again pleaded that the labour market was 'overstocked' and that were 'no applications' for the convicts' services. Wilmot feared that the convicts would either fall back 'on the government as paupers, or... subsist themselves by plundering the settlers'. 1880

The crisis looming in Van Diemen's Land from the overwhelming number of convicts sent to the colony was not only reflected in Wilmot's concerns that the colony might be overrun by escaped convicts¹⁸⁸¹, but in the returns for land revenue available for colonial expenditure. Since 1837 the charges of the police and gaols had been transferred to the colonial revenue, which was largely augmented by land sales across the colony. In 1839 £29,720 from land sales was injected into the colonial revenue; in 1840 the amount increased to £52,905, but by 1843, the colonial land revenue did not amount to anything. 'On the contrary', wrote Wilmot, 'the colony actually contributed £1507 in aid of the land revenue, and since, the colony has received nothing'. In proportion, he continued, 'the police expenditure has necessarily increased with the number of prisoners under punishment' to the colony for the colony for the colony has received nothing'.

¹⁸⁷⁷ *Ibid.*, p 494.

¹⁸⁷⁸ Memorandum, Colonial Secretary's Office, 6 February 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 492.

¹⁸⁷⁹ Wilmot to Stanley, 18 July 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 224.

¹⁸⁸⁰ *Ibid.*, p. 224.

Wilmot to Stanley, 24 May 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 205.

Wilmot to Stanley, 24 January 1845, as reported in the British Parliamentary Papers (Transportation),
 Sessions 1843 - 1847, vol 7, p 235.
 Ibid., p. 236.

The land crisis was later summarised by James Stephen in November:

'The transfer of the land revenue to the colony formed the principal counterpoise to the charge for police and gaols, and at that time the land revenue was rising into great importance. During the ten years from 1834 to 1843 inclusive, it amounted on an average to upwards of £27,000 a year; but in 1844 it almost entirely ceased, and the Lieutenant Governor's reports hold out no prospect of its early recovery. At the same time the expense for police and gaols has risen to £36,737. The effect, therefore, has been, that in the last ten years the colonists had become liable to a charge far exceeding that which has been contemplated when the arrangement of 1834 was made, and had been deprived of nearly all the resource for sustaining that charge on which, in 1834, they had relied'. 1884

The ongoing decline in land sales also signalled a further crisis for Wilmot; at the very time the governor was calling for more immigrants to employ the probation pass holders in private service, Pitcairn reported that between January and June 1845, 1628 free people had left the colony for Port Phillip and New South Wales, while in 1843, only 24 immigrants came to the island colony, and only one in 1844. In contrast, 3618 immigrants from England arrived in New South Wales during the same period. By 1850, 15,000 colonists, emancipist and free, had crossed Bass Strait for Port Phillip.

The rural economy of Van Diemen's Land however had reached its zenith long before the crisis now affecting the colony. As previously stated, Governor Franklin was alarmed at the decline in land sales in the colony as early as 1837, while the 'tide of immigration had already set in towards the extensive pasture lands on the opposite coast'. Montagu also reported a downturn in February 1839, but said nothing on his return to England in

¹⁸⁸⁴ Stephen to Trevelyan, 27 November 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 287.

¹⁸⁸⁵ Pitcairn to Stanley, 4 February 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 494.

¹⁸⁸⁶ AGL Shaw, 'John West's Tasmania', *Bulletin of Tasmanian Historical Studies*, vol 1, (1990), p. 90. ¹⁸⁸⁷ See chapter 4 for an analysis of the economic depression in Van Diemen's Land in 1837.

June. This was evidence that Montagu misrepresented the economic depression in Van Diemen's Land when the new system was established. In July 1846, Wilmot made this abundantly clear:

Now the misfortune was (not defects in this part of the system, for the system was unobjectionable) that the expectations that the demand for labour would be equal to the supply, were disappointed. This demand was in full activity in 1841 and in previous years; when the new system was adopted, the colony was enjoying a fictitious prosperity, and prices were so high, that labour was in full demand; the settlers were making and spending fortunes, and the labour of the convicts was supplied to the local government without payment out of the colonial chest. It was therefore supposed by the home government, and justly so, that what had occurred antecedent to the introduction of the probation system, would be continued during the transit of the passholders from the punishment gangs to emancipation.¹¹⁸⁸⁸

Similarly, Thomas Ewing, honorary statistician to the government, explained in his statistical returns report for the colony that

'1839-40 was a year of high prices, from the great scarcity which prevailed in New South Wales, and from the large demand not only made by that colony for every kind of produce, but also by the new colonies of Southern Australia and Port Phillip, which were at the time almost entirely supplied from Van Diemen's Land. The influx of capital consequent on this caused a feverish excitement, and all projects for the profitable employment of money were favourably listened to, particularly if connected with Port Phillip, where the possibility of realising enormous profits by risking a small sum was a bait too tempting to be resisted, and the gambling propensities of human nature were called into action; and there were a few, possessing the means, who did not venture to embark some portion of their property in schemes which would now startle many from their wildness. At length the tide turned, and a sudden transition took place from

¹⁸⁸⁸ Wilmot to Gladstone, 10 July 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 556.

unbounded confidence to general distrust. The value of colonial grain was at the same time reduced, and kept under, by the large importations of foreign wheat into Sydney and the adjacent settlements; and the great over trading of 1840 caused the exchanges to be unfavourable, and, by abstracting large sums from the colony, hastened to increase the catalogue of evils. In short, there is no doubt that, had it not been for the large government expenditure consequent on transportation, the state of this colony would have been as bad, if not worse, than that of its neighbours'. 1889

Montagu was aware of this fickle demand for labour when he returned to England in 1839 and later 1842, and persuaded the British Government to confine transportation to Tasman's Peninsula and the unsettled districts of Van Diemen's Land. Montagu insisted that Van Diemen's Land required labour, and that employing the ticket of leave men in the unsettled districts would be advantageous to both New South Wales and Van Diemen's Land.

At any rate, Wilmot emphasised that 'the pecuniary difficulties of the settlers, as well as of the local government, had commenced, were increasing, and were apparently approaching a crisis which alarmed the whole settlement'. Land grants had fallen from 70 in 1838 to 32 in 1839, and by 1841, only 10 grants of land were made to the settlers of Van Diemen's Land. Interestingly, town and suburb allotments increased from 86 in 1838 to nearly 160 in 1840, representing a shift in the social movements of many of the settlers deterred by the high price of rural extensions. The decrease represented a huge reduction in the availability of employment of convicts after probation service, compounded by the extraordinary increase in convict numbers after 1841. Even Arthur admitted four years earlier that 'the demand for convicts is not so great - neither is the power of selecting the best assignees so extensive as it should have been had the old [land] regulations remained in force'.

¹⁸⁸⁹ Statistics of Van Diemen's Land for 1838 - 1841, Ewing to Franklin, 31 May 1843, (Government Printer, 1843, Hobart), p. v.

¹⁸⁹⁰ *Ibid.*, p. 5. Unfortunately, Ewing says nothing about whom these 'grants' were made, or under what circumstances.

The economy of convictism was also misrepresented by Forster as late as January 1845; in his second report on the state of the convict branch, the Comptroller General declared that Port Arthur was 'very effective as a place of punishment, and I have no doubt, that under good management, the labour of the convicts will be made to decrease materially the expenses of the settlement'. In reality, the return of the value of exports from the penal settlement, which had always been at the centre of Montagu's proposal, had fallen from £5322 in 1839 to £4239 in 1841 Is92, and continued to plummet to £195 in 1844, after which its returns were no longer recorded in the official statistics. Forster however was loosing interest in the system, and had little sympathy with Wilmot's plight. In April 1845 he applied for leave, and his thoughts turned to England and home.

Wilmot further explained that 3545 pass holders were now out of employment, with 6179 expected to emerge from the punishment gangs during the remainder of the year. At the end of 1844, Forster also reported that the number of convicts in the probation gangs had finally reached 8039, only two years after the new system was implemented. Forster meanwhile again reported that the service of the convicts in the gangs was much better than those convicts under the system of assignment, and suggested that the new system would have developed far more favourably 'under a different state of things'. Forster emphasised that there was a 'lack of outlets' for the great supply of convict labour in the colony, compounded by the depressed state of the economy.

Back in London, in a letter to Adam Turnbull, former Governor Franklin confirmed that the Colonial Office was becoming increasingly concerned about the success of the

Wilmot to Stanley, 31 January 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 238.

¹⁸⁹²Statistics of Van Diemen's Land for 1838 - 1841, Ewing to Franklin, 31 May 1843, (Government Printer, 1843, Hobart), p. 26.

¹⁸⁹³ Statistics of Van Diemen's Land for 1842-1844, Government Printer, 1845, table 50. Goods exported from Port Arthur included boots, bricks, coal, iron work, posts, potatoes, rails, shingles, straw, shoes, timber, leather clothing, spokes, rushes and lathes.

¹⁸⁹⁴ Forster died before he received a reply. See below.

Wilmot to Stanley, 31 January 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 237.

¹⁸⁹⁶ *Ibid.*, p. 237.

¹⁸⁹⁷ Forster to Wilmot, 27 January 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 238.

probation system, and indicated that Montagu's recommendations had come under fire. Franklin wrote:

'An M.P., who has the means of getting at information, told me the other day that he had understood that as regards convict matters, Lord Stanley has found out things were very different from what Montagu had reported them to be. I know too from other quarters that they are much puzzled at the Colonial Office as to what is best to be done on these convict matters. I know also that it has been admitted that it is evident from the accounts recently received things cannot remain as respects the convicts as they are, and that some changes will be necessary. The whole subject is I believe to be now enjoying this close attention at the Colonial Office - what the result may be I am not prepared to say'. 1898

In 1845 London was bombarded by what historian Ian Brand describes as a 'veritable flood of complaints about conditions in the colony'. 1899 Dr John Stephen Hampton, who had sailed to Van Diemen's Land in November 1844 aboard the convict transport Sir George Seymour¹⁹⁰⁰ as the ship's surgeon, wrote in March 1845 that he was 'sorry to have to state that there was an immense number of probation pass and ticket of leave men unemployed in Van Diemen's Land'. While Hampton as yet held no official position in the colony, he was critical of the system that had been established in Van Diemen's Land, and took a lively, if personal interest, in its management. It was not his first voyage to the colony, and according to historian Peter Boyce, 'he filled several assignments in convict transports to Van Diemen's Land'. 1901 In April Hampton condemned the situation, unequivocally recommending that convicts

'deserving of any indulgence whatsoever ought not to be sent to Van Diemen's Land, surrounded in all parts of the island by the contaminating influences of the worst

ADB, vol 1, p. 508.

¹⁸⁹⁸ Franklin to Turnbull, 21 January 1845, 21 Bedford Place, Russell Square, R.S 3/7(9).

¹⁸⁹⁹ Brand, Probation, p. 30.

¹⁹⁰⁰ The Sir George Seymour carried the first shipload of 'exiles' to the colony. According to Brand, these men had already served two years of their sentence in the new separate treatment penitentiary at Pentonville. In his November 1842 report, Stanley envisaged issuing the men with tickets of leaves or probation passes instead of serving time in the gangs. See Brand, *Probation*, p. 29.

1901 Hampton was born in Scotland in 1810, and was promoted surgeon superintendent in March 1843. See

description; taunted and jeered by the other part of the convict population as pets, psalm singers, Pentonvillians etc, invited and tempted in Hobart Town particularly, to the public houses while they have either money or clothes remaining. Hearing the triumphant reign of vice and infamy through the whole convict population described in language the most disgusting; feeling that the humane and philanthropic efforts that were made in England to reform and restore them to society, and their own self respect, have here, to say the least, assumed a very different character'. 1903

And in August, Hampton again referred to the great want of employment for the ticket of leave and passholders in the colony, and the 'extreme social degradation and demoralising contamination to which they are exposed throughout Van Diemen's Land'. 1904

Initially at least it was a relief for Wilmot when Hampton returned to London in April 1846 aboard the Sir George Seymour, but his damning observations were not forgotten by the Colonial Office. Having no sooner reached England, Hampton met with Sir James Graham at the Home Office to discuss a permanent posting in the colony¹⁹⁰⁵, and in May 1846, he was offered the post of Acting Comptroller General in Van Diemen's Land following Forster's death. 1906

Back in London, Stanley was in no mood for excuses from the local government. Writing to Wilmot in September 1845, the Secretary of State expressed his displeasure at the lack of information and assistance afforded him by the both the governor and the Comptroller General. 'Respecting the condition of the convicts', he declared, 'and the working of the system, the remarks which I have been able to gather from the documents

¹⁹⁰² JS Hampton, 1 March 1845, Hobart Town, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 398.

1903 JS Hampton, 30 April 1845, Hobart Town, as reported in the British Parliamentary Papers

⁽Transportation), Sessions 1843 - 1847, vol 7, p 398.

1904 JS Hampton, 9 August 1845, Hobart Town, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 398. ¹⁹⁰⁵ See chapter 14.

¹⁹⁰⁶ Brand, Probation, p. 46. See chapter 14 for details of Forster's death.

I have been emanated, are but occasional, slight and few'. He accused Forster of 'habitually confining himself to details, which, however important in other respects and for other purposes, leave me without any comprehensive view of the general progress and prospects of this momentous experiment'. He was equally critical of Wilmot:

'Your own despatches are confined almost exclusively to the exposition of financial difficulties, and of the increasing failure of any effective demand for the labour of the convict or the emancipated population... I must yet avow the regret with which I find myself, at the end of nearly three years, destitute of any clear understanding as to the conclusions which Mr Forster, as the immediate agent, and which you, as the chief superintendent, must have formed respecting the soundness of the principles, and the wisdom of the plans, which he and you have been called on to deliver'. 1908

Like Franklin, Wilmot and Forster had all too frequently 'represented the new probation system as, on the whole, successful', soliciting from Stanley the observation that he could find no 'plausible grounds for the abandonment of the new system'. Stanley reflected that with the abolition of assignment, 'the relation which placed the master and convict in positions analogous to those of a slave owner and a slave' had disappeared, and that there were less opportunities for the 'growth of hostile feelings between the convict and the free'. Stanley blamed the 'ineptitude of a free government for the problems associated with the management of the convicts' and the whole convict establishment. In closing however, Stanley acknowledged that there was a need to find a permanent outlet for the 'perennial redundancy of candidates' waiting for wages, and averted attention to the proposal of transferring the convict population to the Chatham Islands.

¹⁹⁰⁷ Stanley to Wilmot, September 1845 (undated), as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 267.

^{ì908} *Ibid.*, p. 268.

¹⁹⁰⁹ *Ibid.*, p. 276.

¹⁹¹⁰ *Ibid.*, p. 271.

¹⁹¹¹ *Ibid.*, p. 271.

Sir James Graham approved of the plan of establishing a new colony in the north of New Holland, and recorded that he was 'most anxious to see it carried into immediate execution'.1912

In a letter to the Lords of the Treasury in November, Stanley reluctantly agreed 'that the demand for labour in Van Diemen's Land' would 'be unequal to provide for the maintenance... of any number of convicts whose liberation there was likely to take place for a long course of years to come'. 1913 The British Government finally acknowledged the folly of transporting so many convicts to the Van Diemen's Land: 'It is Lord Stanley's conviction', wrote Stephen, 'that it has become an indispensable duty promptly to make some effective provision for relieving Van Diemen's Land from the constant and increasing pressure of the large body of pardoned convicts who are seeking there in vain the means of an independent and honest subsistence'. 1914

In a bid to relieve Van Diemen's Land of the growing number of convicts and pass holders in the colony, Stanley, on the previous advice of Montagu, directed that convicts who received pardons were 'now required only to remain in the Australian colonies in general, or only to abstain from returning to Europe... instead of requiring them, as formerly, to remain in the colony'. 1915 The lieutenant governor was also permitted to employ 'convict labour in imparting an increased value to wild lands, by the future sale of which the British Treasury may be reimbursed some part, if not the whole, of the outlay incurred in their improvement'. 1916 There was growing support in Britain for the suspension of transportation however, and Stephen drafted his proposal for the continuation of transportation, which is outlined in chapter 14.

¹⁹¹² Sutton to Stephens, 10 September 1845, as reported in the British Parliamentary Papers

⁽Transportation), Sessions 1843 - 1847, vol 7, p 280.

1913 Stephen to Trevallyn, 21 November 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 280.

¹⁹¹⁴ *Ibid.*, p. 281.

¹⁹¹⁵ *Ibid.*, p. 281.

¹⁹¹⁶ *Ibid.*, p. 281.

One month before Stanley's change of policy however, Wilmot was besieged by 'outspoken protests against taxation without representation' in the Legislative Council, and on 3 November 1845¹⁹¹⁷, six unofficial members of the Council resigned from the Council in protest at the 'swollen police and gaols expenditure' imposed upon the colony. The following day, the *Hobart Town Gazette* announced that 'Charles Swanston, Michael Fenton, John Kerr, William Kermode, Thomas Gregson and Richard Dry, Esquires, had resigned their seats'. In a despatch to Gladstone in 1846, Wilmot explained that the

'six gentlemen had united together, and had declared in open Council, by one of their number, "that no Bill should pass the Council until Her Majesty had paid out of the British Treasury, for the expenditure of the police and gaols of the colony". They carried out this declaration to the full extent, and compelled me to adjourn the Council, in consequence of the Highways and Lighting Bill being thrown out by them without discussion. And when the Council again met they still persevered in the declaration abovementioned; and finally, when their opposition was on the point of being defeated, respecting the estimates, they suddenly left the Council table in the midst of public business, and resigned their seats. Thus, by reducing their numbers, the whole of the public business, as far as legislation and the public business were concerned, was obstructed and defeated'. 1920

The feelings of the unofficial members of the Council however had been boiling for some time, and the resignations represented a major crisis in the continuation of the probation system in Van Diemen's Land. The action followed on from an earlier resolution that had been rejected by the official members of the Council:

'This Council do decline voting the sums stated in the estimates laid on the table for the payment of the judicial, police and gaol establishments during the ensuring year, as far as

¹⁹¹⁷ According to West, the Council met on 3 November 1845. See West, *History*, p. 190.

¹⁹¹⁸ Shaw, Convicts and the Colonies, p. 307.

¹⁹¹⁹ West, *History*, p. 190.

¹⁹²⁰ Wilmot to Gladstone, 10 August 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 562. The resignations left the Council without a quorum. See below.

the expenses of the convict department with respect to those items are incurred. At the same time they desire to place on record any expression of regret that they should, by a sense of duty, be compelled to adopt any measure likely even temporarily to embarrass His Excellency's Government'. 1921

According to West, the unofficial members 'maintained that it was their duty to hold the executive in check on behalf of the people, and whatever was not abstracted from their supervision by specific laws was proper for their consideration'. 1922 In a letter of explanation addressed to Stanley, the resigning members asserted that the expenditure was too much for the colony to bear, that crime was rising, and that the governor was working independently of legislative consent. 1923 The resignations however represented a turning point in the attitude of the masters towards their servants; most of the 'Six' were landed proprietors with a significant stake in the future of the colony, and had for many years employed convicts in the capacity of assigned servants and labourers. Swanston and Kerr in particular were once trusted councillors in Arthur's Government, and initially at least supported the development of the new convict system. 1924 The increasingly adverse character of the system however induced others to express their indifference for the probation system in its current form; Charles McLachlan¹⁹²⁵, another land owner and councillor during Arthur's governorship who had returned to England in 1842, still supported the assignment of convicts 'in lieu of quit rents', which had been increased after the assignment system ceased. 1926

¹⁹²¹ West, *History*, p. 192.

¹⁹²² *Ibid.*, p. 191.

¹⁹²³ *Ibid*, p. 191.

¹⁹²⁴ Gregson held a large grant of land near Jericho and East Risdon (*ADB*, vol 1, p. 475); Fenton received a large grant at Fenton Forest, near New Norfolk (*ADB*, vol 1, p. 371); Dry was proprietor of the fine farming property of Quamby near Launceston (*ADB*, vol 1, p. 329).

¹⁹²⁵ Wilmot to Gladstone, 10 August 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 564. Wilmot stated that McLachlan passed many estimates of the same nature during Sir George Arthur's governorship.

Wilmot to Gladstone, 10 August 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 562. Born in 1795, McLachlan arrived in Van Diemen's Land in October 1824 as the principal agent of a Scottish merchant firm. He was made a member of the Legislative Council in 1832 until he returned to England in 1842. McLachlan argued in England that convicts should not be removed from New South Wales to Van Diemen's Land. He died in 1855. See *ADB*, vol2, p. 176.

The resignations left the Council without a quorum, and Wilmot was unable to carry the colony's estimates until later the following year. This 'cabal' was termed the 'Patriotic 'Six¹⁹²⁷, and were 'eagerly espoused by the colony'. Dry and Gregson were even honoured by many of the settlers with gifts of plate and ovations, while Wilmot was forced to defend his governorship against charges of despotism in the press.¹⁹²⁸

In his own study of the events culminating in the resignations however, AGL Shaw recorded that James Stephen, Permanent Under Secretary of State for the Colonies

'thought the unofficial members quite right for the treasury had persisted from year to year, in defiance as I cannot but think of reason and justice, in throwing the whole current of convicts into Van Diemen's Land, by an ill-advised and unconsidered pledge to abandon transportation to New South Wales, with this office for acquiescing, without remonstrance, in these... decisions, which this office, for substituting probation gangs for assigned service, and with the Committee of the House of Commons for drawing up impractical rules regarding transportation which had the effect of destroying one evil - assignment - and producing another and much greater evil which now exists'. 1929

Indeed, Stephen was in retrospective mood. In January 1846, he wrote:

'I never served but one man (Mr Huskisson) who extorted the confession that his was a dominant understanding; nor but one (Lord John Russell) who compelled us to feel his was a dominant soul. The rest were throwings-up of the tide of life; common placemen in high station - mimes, or at best dramatists: I should say, actors'. 1930

This was a judgement of insight and prophecy on the inherent failings of imperial policy. But it was not to save Wilmot from a far more dramatic recall than that of Franklin.

¹⁹²⁷ Robson, *History*, p. 424.

¹⁹²⁸ West, *History*, p. 192.

¹⁹²⁹ Shaw, Convicts and the Colonies, p. 308.

¹⁹³⁰ As quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 182.

The Destruction of a Governor

The drama of the 'Patriotic Six' had not been without warning. Two months earlier, a petition was forwarded to Wilmot signed by 1750 free colonists protesting against the imposition of taxes in the colony and the devastation caused by the 'unbounded supply of convict labour' sent to Van Diemen's Land. 1931 According to historian Ian Brand in his examination of the probation system, the petition did not have much of an 'impact' on the governor¹⁹³², who explained to Stanley that 'on two succeeding Saturday evenings the petition was wheeled through the main street of town (Liverpool Street), in a barrow, with lanterns attached to it, for the purpose of being signed by anybody who chose to do so'. 1933 Wilmot unfortunately defended his government against all of the signatories claims, declaring that much of what the petitioners had written 'was to a great degree erroneous and exaggerated'. Just as Arthur had done years before, Wilmot argued that 'the number of signatures, compared with the free population of the colony, plainly shows what a small minority agree with the petitioners, inasmuch as the signatures to the petition are 1750, and the free population of the colony is 30,000'. 1934

While the 'avalanche of prisoners' continued to pour into Van Diemen's Land, Stephen stated that only 6000 convicts remained in New South Wales, and that the 'whole number holding tickets of leave' was only 13,000. In comparison, there were 24,926 convicts in Van Diemen's Land in 1843¹⁹³⁷, 26,972 in 1844¹⁹³⁸ and 28,869 in 1845.¹⁹³⁹

¹⁹³¹ Wilmot sent a copy of the petition to Stanley on 1 August 1845. See Wilmot to Stanley, 1 August 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 300. 1932 Brand, Probation, p. 33.

¹⁹³³ Wilmot to Gladstone, 10 August 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 565.

¹⁹³⁴ Wilmot to Stanley, 1 August 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 300. ¹⁹³⁵ *Ibid.*, p. 300.

¹⁹³⁶ Stephen to Trevelyan, 27 November 1845, as reported in the British Parliamentary Papers

⁽Transportation), Sessions 1843 - 1847, vol 7, p 288.

1937 Wilmot to Stanley, 2 December 1843, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 187.

Stephen's criticism of the Treasury however did not go unnoticed; by 1846, the 'necessity of affording relief to Van Diemen's Land' was described by the Assistant Secretary to Treasury at the Home office, CE Trevelyan, as 'urgent', aggravated by the 'financial and commercial embarrassment under which the colony' was labouring. 1940 In February. Trevelyan advised Stephen that the Lord's Commissioners of Her Majesty's Treasury 'have had under their consideration the circumstances' of the expenditure incurred by the government of Van Diemen's Land for the police and gaol establishment, and was pleased to report that the Treasury was prepared to grant aid towards 'defraying the expenditure... for the relief of the colonial police and gaol establishments'. 1941 Trevelyan referred to 'the very great increase in the number of convicts sent to Van Diemen's Land, as well as the new arrangement for the probationary discipline and subsequent dispersion of those convicts in service, or with tickets of leave'. 1942 He added that such measures 'must have occasioned a very material increase in the charges connected with the maintenance of the police and gaols establishments, and of prisoners in the gaols'. 1943

The good news from London however was tempered by the announcement that Forster, who had become increasingly ill in the last years of Wilmot's administration, had died on 11 January 1846. 1944 He was temporarily replaced by Thomas William Napier Champ, the Commandant of Port Arthur, who submitted his first report to London in August. 1945 In a sad ending for Forster's relatives and friends, his wife was reputedly admitted to the Stanwell Lunatic Asylum shortly after his death before returning to England for further treatment. 1946 From England, Lady Franklin wrote a short time after Forster's death that

¹⁹³⁸ Wilmot to Stanley, 14 July 1844, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 208.

¹⁹³⁹ Wilmot to Stanley, 5 August 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 213.

¹⁹⁴⁰ Trevelyan to Stephen, 2 February 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 285.

1941 *Ibid.*, pp 288 - 299. The Treasury made provision for £24,000 per annum

¹⁹⁴² *Ibid.*, p. 289.

¹⁹⁴³ *Ibid.*, p. 289.

¹⁹⁴⁴ A memorial was erected for Forster at St John's Church in New Town, and still stands today. The inscription is recorded in Appendix C.

¹⁹⁴⁵ Brand, Probation, p. 65.

¹⁹⁴⁶ Lady Franklin to Turnbull, 3 January 1847, RS 3/7(9).

'I was deeply shocked to hear of his sudden death and of the destitution of his wife and children and especially of the former's alienation of mind'.¹⁹⁴⁷

Six days before his death, Forster conceded in his final 'periodical report' to Wilmot that all was not well in the system he had long defended. Forster recorded that there were 11,824 male convicts in the probation system, 3268 of whom were at hiring depots unable to obtain private service. 3852 male convicts, he continued, would emerge from the first or punishment stage into the second or passholder stage during the ensuring twelve months. Forster despaired that he did not see any 'fair probability of the demand for labour being much increased by any causes operating in the colony', and reflected [with some sentiment perhaps] on the 'great advantage of the assignment system', whereby the convicts masters 'had a direct interest in making them valuable farm-servants, and there thus arose in a number of cases, a bond of union between master and servant, which I have good reason to believe is not the case now'. Forster's comments contrast sharply with his earlier report dated January 1845 which read:

'Notwithstanding the difficulties experienced in this particular part of the system, I have no hesitation in saying that as a whole it is vastly superior to any that has proceeded it, and, had the colony continued in a prosperous state, I feel convinced it would have worked well throughout, provided always that there had been an outlet afforded to keep down too great a supply of convict labour'. 1949

Even after Forster's death, Wilmot persisted with the argument that the deficiencies in the working of the probation system were 'connected with the financial difficulties of the colony':

'It has been supposed by the opponents of the probation system, that because they have denounced it as a failure that therefore it is a failure; and that though I may think it not a

¹⁹⁴⁷ Lady Franklin to Turnbull, 17 February 1845, RS 3/7(9).

¹⁹⁴⁸ Forster to Wilmot, 5 January 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 471. Forster refers to this report as his 'periodical report'.

¹⁹⁴⁹ Forster to Wilmot, 27 January 1845, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 240.

failure, and have not, in my communications to Lord Stanley, stated it a failure, nor enumerated other deficiencies in its working (not defects in the system) than those to which I have drawn his attention to, therefore defects do exist, and have been unnoticed and uncommunicated by me to the home government... I believe the probation system to be the best that has been or can be introduced to obtain the end contemplated'. 1950

With respects to the reform of the convicts, Wilmot added:

'The main feature in the probation system, and the pivot on which the success of it turns, is the continuous employment of the pass holders during their transit from probation to ultimate freedom, and thus fixing those habits of industry and subordination which are hoped to have been instilled into them while they were in the probation gangs. It was useless to inculcate habits of industry, and sow the seeds of amendment in the punishment gangs, if, after having left them, and became passholders, they were to resume all those habits of idleness which not only attend on crime, but probably in nine cases out of ten were the causes of original transgressions'.

1951

Forster concluded his final report by explaining that he could no longer abstain from submitting his thoughts on the 'present system of convict discipline', though he stopped well short of a complete attack on the probation system.¹⁹⁵²

Norfolk Island had fared little better; Forster had often complained that 'the communication [between Norfolk Island and Van Diemen's Land] must be more frequent than it has hitherto been', and that there is a 'good deal yet to correct as regards discipline and system'. The number of convicts on the Island in 1845 was nearly 2000, 800 more than in 1840 when Maconochie assumed command. Fortunately for Van Diemen's Land and probably Norfolk Island itself, the number of convicts on the Island never

¹⁹⁵⁰ Wilmot to Gladstone, 10 July 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 555.

¹⁹⁵¹ *Ibid.*, p. 555.

¹⁹⁵² Forster to Wilmot, 5 January 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 473.

¹⁹⁵³ Barry, *Maconochie*, p. 155 and p. 98.

reached 4000 as proposed by Montagu, though the number transported to the colony regularly exceeded his recommendation of 500 a year.

Forster's permanent replacement, John Hampton, who accepted Graham's offer of a permanent posting in the colony, left England in May 1846, and assumed his new post from Champ in October. 1954

Further representations reached the Colonial Office respecting the probation system in Van Diemen's Land. McLachlan, who still maintained a financial interest in the colony, declared that men of character and intelligence' did not wish to live in their present state surrounded by probation parties of 300 to 400 men in each, in dread of being plundered by night and by day'. 1955 McLachlan continued that many of the colonists made 'rapid advances when only a 'limited number of convicts were sent' to the colony prior to 1840. He advocated that most did not wish the end of transportation, but that it be 'restored to the system which was in operation' before the new system was introduced. 1956 McLachlan admitted that the increased emigration from the colony, 'occasioned by the oversupply of convict labour, was not foreseen by the colonists, though few anticipated that 16,256 convicts would be sent to the colony between 1840 and 1844, nearly equal to the whole convict population up to and including 1840. 1957 He concluded that the 'new convict system... is fast destroying the colony', such that it would soon become 'unfit for any man to inhabit'. 1958 'Shall Van Diemen's Land continue to be the sole receptacle of transported felons', he asked, 'not only from Great Britain, but likewise from her dependencies?'1959 McLachlan's letters were well received by WE Gladstone, the new Secretary of State at the Colonial Office, so much so that they were placed 'among the public records' in the House of Commons, and were sent to Wilmot for comment. 1960

¹⁹⁵⁴ ADB, vol 1, p. 510. Hampton remained in charge of the convict department for nine years, although later in his career, he was accused of corruption and using convict labour for his own profit.

¹⁹⁵⁵ McLachlan to Gladstone, 24 February 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 425. 1956 *Ibid.*, p. 425.

¹⁹⁵⁷ *Ibid.*, p. 428.

¹⁹⁵⁸ *Ibid.*, p. 429.

¹⁹⁵⁹ Ibid., p.429.

¹⁹⁶⁰ Wilmot to Gladstone, 10 August 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 562.

In May 1846, Gladstone, informed Wilmot that having taken into consideration 'the representations which have recently reached me relative to the state of the probation gangs, and to the transportation system in general, appear to leave no doubt that the moral condition of the convicts too commonly deteriorates after their arrival in Van Diemen's Land'. ¹⁹⁶¹ In particular, Gladstone made reference to Hampton's 'several reports', and like Stanley, criticised the governor for not providing London with 'such reports as to the progress and character' of the convicts partaking in the great 'experiment' in Van Diemen's Land. ¹⁹⁶² Gladstone agreed however that he could 'easily believe that, under the present circumstances of Van Diemen's Land, and with the redundance of labour which has prevailed there for the last two years, it may have been impossible for you to make any arrangements to ensure employment for these people'. ¹⁹⁶³ Notably, Hampton emphasised that a

'Mischievous economy also so much reduced the number of officers, cut down their salaries, and thereby prevented a proper class of men being employed, that it is only surprising to me more serious evils did not arrive'. 1964

The colonists of Van Diemen's Land no longer saw themselves as the 'passive instruments of punishment' which characterised Arthur's convict policy¹⁹⁶⁵, and demanded to be recognised as 'free colonists'¹⁹⁶⁶. McLachlan hinted that Stanley had been deceived by 'information he derived' in London, declaring that the colony could never have safely received 4000 to 5000 convicts annually.¹⁹⁶⁷ Similarly, in February 1847, while giving evidence before a House of Lords transportation committee on transportation in Britain,

¹⁹⁶¹ Gladstone to Wilmot, 16 May 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 397.

¹⁹⁶² Gladstone to Wilmot, 25 April 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 375.

¹⁹⁶³ *Ibid.*, p. 375.

¹⁹⁶⁴ Brand, Probation, p. 83.

¹⁹⁶⁵ McLachlan to Gladstone, 24 February 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 429.

¹⁹⁶⁶ *Ibid.*, p. 429.

¹⁹⁶⁷ *Ibid.*, p. 430.

the Anglican Bishop of Tasmania, Francis Russell Nixon¹⁹⁶⁸, declared that 'transportation to Van Diemen's Land ought to be immediately and entirely abandoned'. continued that 'the system of convict discipline, as latterly established in Van Diemen's Land, tends to engender a debased habit of mind amongst its unhappy objects (who as prisoners or as emancipists, form two-thirds, if not more, of the entire population)'. 1969 And later, the Launceston Examiner stated that Van Diemen's Land could no longer 'absorb the unskilled and unprofitable labour thrust upon the island, and the 'demoralisation occasioned by the introduction of a disproportionate number of prisoners'. 1970 In what too amounted to a broad sided rebuke of the previous Van Diemen's Land governors and administrators, the anonymous Launceston Examiner letter writer declared that 'the chiefs, desirous only of personal aggrandisement, influence and gain, have laboured to deceive their superiors, and to cast obscurity around their office conscious that the operation of the system could not be exposed'. While exonerating Wilmot from 'an active participation in conduct so censurable', he nevertheless spoke of the governor's dependence on his subordinates for information, and his 'clueless assumption that their statements were correct'. 1971

¹⁹⁶⁸ Nixon, born in 1803, was appointed Anglican Bishop of Van Diemen's Land in July 1843. He was made a member of the Executive Council a short time later. Nixon soon clashed with the governor over whose responsibility it was to discipline clergymen within the diocese, and argued that Wilmot was interfering with episcopal authority. Also, Nixon argued that the appointment and supervision of chaplains in the probation stations was a matter for the Church, although Wilmot asserted that it was his decision. The Anglican Chaplain, William Bedford, supported the governor however, and was critical of Nixon. The Colonial Office ultimately upheld Wilmot's authority, and Nixon subsequently set about to undermine the reputation of both the governor and the transportation system. In 1847, Nixon gave damning evidence before a House of Lord's Committee on the state of the convicts and the evils of transportation. His personal attack on Wilmot is briefly discussed later in this chapter. Nixon returned to Van Diemen's Land in 1848, and after a colourful career, returned to Europe, where he died in Italy in 1879. See *ADB*, vol 2, p. 286, and chapter 18 (Convicts, Church and State) of Robson's *History* for a full account.

¹⁹⁶⁹ Nixon to Earl Grey, 15 February 1847, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 441. Brand notes however that Wilmot and Nixon had clashed over the question of the nomination of religious instructors to the convicts, and frustration from that clash might be reflected in his condemnation. See I Brand, 'Charles Joseph La Trobe and the Van Diemen's Land Probation System'.

¹⁹⁷⁰ Extract from the *Launceston Examiner*, 31 January 1846, addressed to Joseph Hume, MP, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 499. ¹⁹⁷¹ *Ibid.*, p. 500.

Maconochie too had returned to England in 1844 and remained vocal in London, writing several pamphlets on crime and punishment, and offering his opinion on the system that had been developed in Van Diemen's Land.¹⁹⁷²

In May 1846, Stephen declared that the 'present system was intended to be one of a reformatory character, and information has been received from the Cape of Good Hope, where the colonial convicts are managed under the immediate supervision of its chief projector, Mr Montague [sic], which appears to indicate complete success." Far from criticising the actual concept of probation however, Stephen intimated that 'the immense mass of convicts now accumulated in Van Diemen's Land', and the employment of persons having no 'appreciation of its spirit and intentions', had not given the new system the 'fairest prospect of success'. 1974 He suggested that pouring 4000 to 5000 convicts a year into Van Diemen's Land 'would defeat all reasonable hope of their reformation', and expressed his opinion that the great stream of transportation 'should for the time, and in great part at least, be arrested'. Stephen argued that the numbers of convicts sent to Van Diemen's Land should be adjusted so as to meet the actual demands of the probation parties, the government and the colonists themselves.¹⁹⁷⁵ In an extraordinary twist, Stephen even noted that he had sent a despatch to the governor of the Cape, and presumably for Montagu's perusal, seeking advice as to how the system in Van Diemen's Land might be improved, and to ascertain whether it was 'probable' that further arrangements beneficial to the colony might be carried into effect in Van Diemen's Land. Stephen added however that the 'probation parties, intended to be the scene of reformatory influences, were nothing else than schools of advanced depravity'. 1976 No one took responsibility however for the decision to send all the convicts to Van Diemen's Land; Gladstone simply wrote:

¹⁹⁷² Grey to Denison, 30 September 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 516.

¹⁹⁷³ Stephen to Phillipps, 13 May 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 465. See Appendix D.

¹⁹⁷⁴ *Ibid.*, p. 466.

¹⁹⁷⁵ *Ibid.*, p. 466.

¹⁹⁷⁶ *Ibid.*, p. 465.

'But it has happened, either by enactment of positive laws or by pledges said to have been made by Her Majesty's Government, that no place is left in Australia for the reception of transported convicts from the United Kingdom, except Van Diemen's Land and Norfolk Island. And practically, from the system now in force as regards the last named place, this great annual accession of free labourers takes place in Van Diemen's Land alone. From this cause, aided by the operation of some collateral circumstances, the result has been (as appears by Sir Eardley Wilmot's reports), such an accumulation of free people seeking wages in that island, as effectually to choke up all avenues of employment'. 1977

Stephen was right; Montagu had met with unqualified success at the Cape, although the system developed there had little in common with the system that operated in Van Diemen's Land. In 1844, only 464¹⁹⁷⁸ convicts were employed on the roads at the Cape, while in Van Diemen's Land, nearly 14,115 men laboured in the probation gangs. ¹⁹⁷⁹ In 1845, Montagu explained that

'on the whole, I think there is every reason to be satisfied with the experiment [at the Cap] so far as it has been tried; while it confers benefit on the convicts who come under its operation, it will be of advantage to the colony'. 1980

Governor Maitland agreed with his Secretary:

'The advantages expected to be derived from the systematic application of convict labour to the roads have been realised to the utmost extent that the brief space of one year

¹⁹⁷⁷ Gladstone to Fitzroy, 7 May 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843-1847, p. 458.

¹⁹⁷⁸ Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 238. In 1843, the number was as low as 202, and the Civil Commissioners reported that only 147 of them could be effectively employed. See, p. 235.

1979 In 1844, there were 28603 convicts in Van Diemen's Land, 14,115 of whom were maintained by the

In 1844, there were 28603 convicts in Van Diemen's Land, 14,115 of whom were maintained by the government in the probation gangs. See *Statistics of Van Diemen's Land*, 1844 - 1853 (J Barnard, Hobart Town, 1854), p. 2. As previously stated (chapter 8), there were between 30,000 and 40,000 emancipated black slaves at the Cape.

¹⁹⁸⁰Extract from the Report of John Montagu, 20 January 1845, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852., p 238.

would allow. An important amelioration of the state of convicts themselves has been effected by the careful discipline and instructions to which they have been subjected'. 1981

As the convict gangs laboured on the roads and opened up vast tracts of wasteland in the interior, the central government profited from the collection of road taxes in the Provinces. While Montagu's convict scheme at the Cape was undoubtedly sound, it bore no comparison whatsoever to the system that was self-destructing in Van Diemen's Land. Crown land at the Cape was still largely uninhabited, and the roads, which were opened up across the colony using convict labour, conferred a significant benefit on the colonists. The gangs were able to be moved from one Province to another at short notice, and there was always employment for the small numbers of convicts controlled by the Central Road Board'. 1983

The system in Van Diemen's Land however was the total reverse to that which existed at the Cape, where the convicts were employed primarily for the benefit of the colonists.

Despite what had occurred in Van Diemen's Land, Stephen hinted that there was no intention on Sir James Graham's behalf of reducing transportation, anticipating 5000 to 6000 persons to be exiled from Britain to some outpost over the next two years, and probably 4000 to 5000 every year hence.¹⁹⁸⁴

According to Shaw there was also another point of conflict; 'apart from unemployment a nameless crime was also causing concern'. While the existence of homosexuality in the probation gangs was not a new phenomenon for the government of Van Diemen's Land in 1846, many of the latest complaints against the probation system included references to the 'great evil' that had arisen from 'herding' the prisoners together at

¹⁹⁸¹ Maitland to Stanley, 3 March 1845, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 238.

¹⁹⁸² *Ibid.*, p. 240.

¹⁹⁸³ *Ibid.*, p. 240.

Stephen to Phillipps, 13 May 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 467. Grey later informed Denison that he could expect 4000 convicts annually to be transported to the colony. See Grey to Denison, 30 September 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 512.

1985 Shaw, Convicts and the Colonies, p. 302.

night.¹⁹⁸⁶ Wilmot reported in March 1846 that Champ had implemented a number of 'preventative' measures aimed at alleviating 'the extent of the evil' which had been compounded by the 'exaggerated accounts of the existence of the evil which have been, and will be, transmitted home, for the purpose of augmenting the opposition to the probation system'.¹⁹⁸⁷ Wilmot assured Stanley that every precaution and prevention had been taken in the colony to 'prevent an increase or continuance of these horrible practices'.

Wilmot was unfairly accused by critics in the colony of keeping Stanley misinformed about the extent of homosexuality amongst the convicts, and in July 1846, he formally defended himself against the charges, though Stanley had not actually sought an explanation himself:

'In this colony I am accused either of being ignorant myself, or of having kept Lord Stanley in ignorance, of a nameless crime, prevalent among the prisoners. Fortunately, I am spared the odious necessity of proving the false hoods of such an imputation. Lord Stanley himself acknowledges that my despatch marked "Private and Confidential" (the first dated 2 November 1843, ten weeks after my arrival), put him in possession of certain practices, and drew his attention by a particular and necessary detail of the enormities practiced. His Lordship himself also clearly shows that these practices are not the result, but the inseparable consequences "of the transportation system, under whatever form it had hitherto assumed". 1988

Despite Wilmot's continued support for the probation system, Earl Grey, who succeeded Gladstone as Secretary of State at the Colonial Office, emphasised what he considered were the four obstructions to its effectual execution¹⁹⁸⁹:

¹⁹⁸⁶ Bishop of Tasmania to Earl Grey, 15 February 1847, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 443.

Wilmot to Stanley, 17 March 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 502.

¹⁹⁸⁸ Wilmot to Stanley, 10 July 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 555.

¹⁹⁸⁹ Grey to Denison, 30 September 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 512.

'First. It has been found impossible to maintain a proper system of discipline in the different gangs by the agency of officers or overseers, so numerically inadequate to the service to be performed.

Second. It has not been practicable to provide proper work for the convicts in the probation gangs and in the hiring depots, nor have the means existed of holding out sufficient inducements to them for the performance of that work.

Third. There have been no sufficient demand for the labour of the convicts who, either as passholders or as holders of tickets of leave, have been candidates for hired service; and the result has been to subject to great distress the ticket of leave men, who are dependent for their subsistence on the wages they can earn.

Fourth. There has existed a fearful propensity among the convicts to the commission of unnatural crimes, which have been fostered by the congregation of so many persons of the same sex in one spot, without providing the proper means of separation and superintendence'.

The following year, Grey finally accepted Stephen's argument for a 'great reduction in the average annual number of convicts transported to Van Diemen's Land', and of rendering 'the maintenance of the convicts no burden on the finances either of the mother country or of the colony'. In his celebrated suspension of transportation, Grey continued that Britain would never again 'resume at any time the pouring into Van Diemen's Land such an annual flood of transported convicts as have recently been sent to the island'. Indeed, such was the extent of Grey's attack on the very foundations of the system urged upon Downing Street by Montagu in 1839, and later in 1842, that the new Secretary of State even suggested that he planned to adopt a modification of the present system, combined with 'some of the suggestions of Captain Maconochie'. Grey went on to develop a new 'separate system' for introduction in Van Diemen's Land based on a

¹⁹⁹⁰ Brand, Probation, p. 65.

¹⁹⁹¹ Grey to Denison, 30 September 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 512.

'careful system of classification', and equal amount of toil for every convict in the solitary cells.1992

While London toyed with the feasibility of a new system for the colony, the Colonial Office 'had wearied of Wilmot's administration' and the governor was finally recalled on 30 April 1846 at a time when the number of convicts in the probation gangs had increased to 10,000.1994 Only days prior to receiving the despatch, Wilmot again defended himself against Stanley's and Gladstone's imputations of incompetence:

'But I trust you will not think it irrelevant to the great object I have myself, as well as Lord Stanley, in view, of ascertaining the success of the new probation scheme, if I endeavour to show that the incompleteness of mine and Mr Forster's respecting the convicts under his and my superintendence, was not occasioned by any remissness or inattention on the part of either of us, but solely arising from the shortness of the time during which the new system and been under our superintendence'. 1995

Wilmot's defence mattered little; Gladstone sent two letters to Wilmot; the first a public despatch announcing his recall, and a second referring to 'certain rumours relating to Wilmot's private life'. 1996 Gladstone told Wilmot that it did not seem that 'you have given your mind and time to the pressing exigencies of convict discipline', and that 'the government consider you have altogether failed in a principle portion of your public duty'. Gladstone concluded that there 'was no hope through your instrumentality to bring

¹⁹⁹² Ibid., p. 519. In looking for a new outlet for the convicts, Grey informed Governor Smith at the Cape that 'you are probably aware of the causes which have induced Her Majesty's Government to suspend the transportation of criminals to the Australian colonies, and to decide that for the future no criminal shall be transported thither'. Grey added: 'It is therefore proposed, that military convicts sentenced to transportation in that colony should be transferred to the Cape of Good Hope, in which there is reason to suppose they may be usefully employed, and will be judiciously superintended'. See Grey to Smith, 10 September 1847, as reported in the British Parliamentary Minutes (Transportation), vol 9, Session 1849, p. 38. 1993 Shaw, Sir John Eardley Wilmot, p. 14.

¹⁹⁹⁴ Wilmot to Stanley, 17 March 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 502. This number rose to 10,473 in September 1846 (p. 514).

¹⁹⁹⁵ Wilmot to Gladstone, 29 August 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 569.

¹⁹⁹⁶ Shaw, 'Sir John Eardley Wilmot', p. 5.

the character and results of transportation to a fair issue, of being enabled either to achieve success or even to ascertain failure'. 1997

Following Franklin, Wilmot's Government was also broken up under the weight of a convict system in decline. Contemporary historian James Calder later remarked in 1875 that:

'[Franklin] retired from Tasmania on 21 August 1843 amidst a storm of official annoyances enough to drive an ordinary man mad. They were directed at him from the same office that sent his successor, [Eardley Wilmot], to the grave three of four years afterwards'. 1998

Commenting on the failure of Wilmot to maintain the probation system, Grey declared:

'In carrying these regulations into effect serious difficulties have arisen, partly from inexperience, and partly, I fear, from the want of zeal of some of those to whom the execution of them has been entrusted. Those difficulties must also, in part, be referred to local causes, which were not originally contemplated, and partly to an economy on the part of this country, which, however well intended, has been followed by unforeseen and injurious results'. 1999

Wilmot is a tragic figure in the history of Van Diemen's Land Government. According to Robson, his reputation was 'slandered' by rumours of an immoral relationship with a younger woman, and in a private letter written before he died, Wilmot declared that he had been 'a victim of the most extraordinary conspiracy that had ever succeeded in defaming the character of a public servant'. Investigations by his family revealed that Bishop Nixon, already alienated from Wilmot over the issue of discipline of clergymen within the diocese, was further critical of Wilmot in a report to Earl Grey on prison

¹⁹⁹⁷ Shaw, 'Sir John Eardley Wilmot', p. 15.

¹⁹⁹⁸ J Calder, Recollections of Sir John and Lady Franklin, (Sullivans Cove, Adelaide, 1984), p. 76.

¹⁹⁹⁹ Grey to Denison, 30 September 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 512.

²⁰⁰⁰ Robson, *History*, p. 435. See also *ADB*, vol 1, p. 347.

discipline, and had urged Gladstone to 'rectify' the 'state of things' in Van Diemen's Land, and assured him that the rumours of an indecent liaison were true.²⁰⁰¹ Wilmot protested against the injustice of his recall until his death the following January, and was later exonerated by an independent inquiry to the satisfaction of his family and friends.²⁰⁰²

However unjust the claims might have been, his personal and political weaknesses were in any case seized upon by his subordinates, whose 'interested reports' on convict administration encouraged 'him to hold out hopes of success which were never realised'. According to West, Wilmot was unfortunate in his political position - 'had he at once declared the impracticability of Lord Stanley's schemes he might have been recalled'. Instead, he turned to Forster for direction, resisting any wholesale denunciation of the system. In the colony at least this was interpreted as an 'inflexible determination to carry out the system of probation under the instructions of Lord Stanley'; in London, it was interpreted as a lack of interest by the governor in the 'execution' of the convict system. Hardly surprisingly, Stephen, in a minute after Wilmot's death on public finances, hoped that his successor, 'Sir William Denison, does not mean that the funeral has been conducted at the public expense'. In any event, the funeral, regardless of expense, was a form of entertainment for some colonists, who watched the clergy clamber over each over trying to gain the lead position. West noted how the

'Anglican clergy [stepped] up before the coffin. When however, the bearers were in motion, the Catholic priests, by a rapid evolution, shot-a-head of the procession'.²⁰⁰⁴

In September, Denison, was instructed to 'take measures at once to break up the establishment at Norfolk Island, and to withdraw the whole of the convict population there to Tasman's Peninsula. Earl Grey's instructions followed a damning report on the Island by Robert Pringle Stewart, a respected visiting Magistrate of the Convict Department in Van Diemen's Land.²⁰⁰⁵ Stewart reported that the settlement 'has recently

²⁰⁰¹ *Ibid.*, pp. 433 - 434.

²⁰⁰² *Ibid.*, p. 436.

²⁰⁰³ Shaw, Probation System, p. 16.

²⁰⁰⁴ West, *History*, p. 198.

²⁰⁰⁵ Wilmot to Gladstone, 6 July 1846, Grey to Denison, 30 September 1846, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 533.

been in a most alarming state; that the prisoners were on the verge of an open mutiny; that life and property had become insecure; and that measures of the most decisive character should at once be taken to restore discipline and order amongst the convicts'. 2006 Writing in June, Stewart recorded that there were 2000 convicts at the settlement, all 'labouring' under second or more convictions.²⁰⁰⁷ Stewart continued that the 'state of affairs has arisen from the introduction of convicts of the worst description from Van Diemen's Land to an immediate association with men on the Island accustomed to, and in the enjoyment of, the latitude and indulgence of a previous system, by this means propagating the licentious fruit, of which the experiment of a former system gave promise'. Stewart was critical of Maconochie's indulgence towards the convicts and government officials alike, concluding that many of the officers who worked under the ex-Commandant were still engaged in 'trade with the convicts', which had been openly encouraged during his administration.²⁰⁰⁸ 'Their most important duties are thus neglected by the officers', he explained, 'that of admonishing, advising, and in fact tutoring those who are placed under their charge, and when superadded is the loss of moral influence resulting from the traffic of the subordinate officers with the men and their surreptitious employment of many, disorganisation is scarcely a matter of surprise'. 2009

It was hardly a surprise that Gladstone, who replaced Stanley as Secretary of State at the Colonial Office, informed Wilmot in March 1846, that transportation would be suspended to Van Diemen's Land for two years while the government worked out what it was going to do with the convicts.²⁰¹⁰

Following the abandonment of the settlement at Norfolk Island, Maconochie was again given the opportunity 'to annex hereto the explanations which a portion of it seems to require of me', setting down his thoughts in a letter to English politician, Mr B Hawes, Esq, M.P. This followed Grey's instruction that Maconochie might look over Stewart's

²⁰⁰⁶ *Ibid.*, p. 533.

²⁰⁰⁷ *Ibid.*, p. 537.

²⁰⁰⁸ *Ibid.*, p. 552.

²⁰⁰⁹ *Ibid.*, p. 547.

²⁰¹⁰ Shaw, Convicts and the Colonies, p. 308.

report, and offer his observations upon it. Having read the document, Maconochie concluded:

'I will venture to observe, that, deeply humiliating as this report is, it is full of interest and instruction, if received with due reserve. It is drawn up with much boldness and courage, and in the main its statements may doubtless be relied on. From the causes that I knew to be in operation, I expected indeed no other. But at the same time, the reasoning is singularly false throughout. It expresses no wish to enlarge the sphere of persuasion on the island, but merely desires to make the coercion more methodical. It is very possible that the outside may be thus made more seemly, but the core will remain rotten as ever'.²⁰¹¹

Maconochie had lost none of his passion and belief in the indulgence system, though like Stanley, Grey was in no state of mind for such rhetoric. Punishment remained the order of the day in London.

Returning to Van Diemen's Land, it was clear enough then that the principle reasons for the failure of the probation system was the arrival of prisoners in numbers far greater than could be adequately classified and accommodated, the economic depression which saw a drop in demand for their services, and administrative shortcomings arising out of a depressed treasury chest. The observation is well documented by modern historians: according to historian PR Eldershaw in his study of the convict department in Van Diemen's Land, a combination of factors, economic and administrative, coupled with the inescapable pressure of convict numbers, spelt failure for the gang or probation system.²⁰¹²

Responsibility for the new system has long been debated among historians, none more prominent than John West and more recently, AGL Shaw, who suggested that it was difficult to differentiate between Montagu, Franklin, Stanley, the Home Office and the

²⁰¹¹ Maconochie to B Hawkes, 19 January 1847, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p 560.
²⁰¹² Eldershaw, 'Convict System', p. 142.

Molesworth Committee when it came to prescribing blame for the new policy. There is no doubt however that Montagu impressed upon Russell in October 1839 and later on Stanley in November 1842 that Van Diemen's Land could absorb any number of convicts, and misrepresented the extent of the economic depression in Van Diemen's Land when the system was established. In her defence of Sir John Franklin, Professor Kathleen Fitzpatrick observed that 'there [was] no one more guilty than John Montagu' for recommending the continuation of transportation to Van Diemen's Land, and in the 'full knowledge that there was no possibility of the continuance of the assignment system'. 2013 In that context she is probably right, though Howick and Russell had already intimated that they had no intention of abandoning transportation entirely, and Russell's despatch of January 1839 already provided for the continuation of transportation to the Moreover, in 1842, Sir James Graham was colonies, albeit on a reduced scale. increasingly alarmed at the number of convicts being confined in the hulks in England, and signaled that a greater number of convicts were to be sent to the colonies. Montagu's responsibility however is much more complex than one of simply urging Russell and Stanley to continue transportation to Van Diemen's Land; no modern commentaries refer to Montagu's October 1839 memorandum on transportation in which he suggested that 'any' number of convicts might be directed to Tasman's Peninsula and the settled districts of Van Diemen's Land with a minimum of expense and a guarantee of 'easy' employment. The previously unpublished October memorandum precedes that well quoted August 1840 letter from London in which Montagu 'submitted in more detail his plan for convict discipline'. It is this dispatch on which some historians have concentrated their attention, and have based their conclusions as to the extent of Montagu's responsibility for the new system of transportation to Van Diemen's Land. The October memorandum however shows that Montagu was far more culpable for the crisis that gripped Van Diemen's Land after 1841 than most historians have prescribed; even if he can be credited with ensuring the continuation of transportation to Van Diemen's Land, it is the fact that he urged upon the government an extraordinary proposal to release what amounted to a flood of convicts into the colony, and ultimately, a decade of 'idleness, vice and crime'.2014 In November

²⁰¹³ Fitzpatrick, Sir John Franklin, p. 27.

²⁰¹⁴ Shaw, Convicts and the Colonies, p. 311.

1842, Montagu again urged the new Secretary of State to send 4000 convicts annually to Van Diemen's Land, nearly equal to the entire number of convicts sent to both New South Wales and Van Diemen's Land each year between 1837 and 1840. His proposals for a new probation system to replace Russell's were well received at the Colonial Office, so much so that they were subsequently included in Stanley's revised instructions to Franklin. Expensive and difficult to supervise, the probation system collapsed under the weight of a depressed economy saturated with unemployed convicts, and attracted sharp criticism for its chief superintendents, Wilmot and Forster.

On 13 October 1846, Charles Joseph Latrobe was appointed acting lieutenant governor of the colony until a replacement for Wilmot was settled upon. Instructed to review the probation system in the interim, Latrobe quickly turned his attention to the probation parties, and in particular, to the coalmines and the hiring depots. Reporting to the Colonial Office in May 1847, La Trobe declared:

'I need not conceal my conviction that any system which would accommodate vice without a sure and corresponding power to restrain and reform, must be termed a vicious one, and that the probation system, so called, has been a fatal experiment as far as it has proceeded, and the sooner it is put to an end the better, for the credit of the nation of humanity'.²⁰¹⁵

While Latrobe indicated that the scope of his report was restricted to an investigation into the 'actual state of the convict establishments', and 'how far was the probation system really adapted to answer the important ends proposed', he did anticipate the 'exile system' as a possible (politic) alternative to the probation system. Latrobe explained that if a convict was to be kept from returning to 'the theatre of his temptations and his crimes' after punishment, it would 'render his return to good character as easy to himself, as it would be advantageous or grateful to the surrounding community'. Latrobe concluded that punishing the convicts in penitentiaries in England 'would be a powerful ally in

²⁰¹⁵ Latrobe to Grey, 31 May 1847, as quoted in Brand, *Probation*, p. 129. Latrobe's entire report is reproduced in full.

restraining the passions and perfecting the wholesome discipline to which the convict is to be subjected', and then, for no more cost that the current expense of transportation, he could 'reap the fruits of a change in life' in the colonies.²⁰¹⁶

La Trobe concluded that Van Diemen's Land 'needed cheap convict labour if it was to develop its resources fully²⁰¹⁷, and by the end of 1847 after the British Government had 'drastically cut the numbers of convicts being transported, the unemployed surplus had virtually all been absorbed'.²⁰¹⁸ After much procrastination, the probation system was abandoned except for the men who had not served out their old sentences of probation, although transportation itself was to be resumed two years later in the contentious if not notorious "exiles" system in a final episode which was to extend to 1853 and beyond the scope of this thesis.

²⁰¹⁶ *Ibid.*, p. 129. The exile system as initially devised by Stanley was trialed in the colonies, although the solution was far too late to be acceptable - or successful. See Brand, *Probation*, p. 94.

²⁰¹⁷ *Ibid.*

²⁰¹⁸Shaw, 'John West's Tasmania', p. 90.

Conclusion

This thesis embarked on an analysis of how the fashionably reformist but impossibly overweighted and under resourced probation system of punishment was for a moment considered a practicable replacement for the convict assignment system in Van Diemen's Land. Charles Joseph Latrobe perceived this almost immediately when preparing his final report on the failure of the latter system, he commented: 'the assignment system was based upon more natural and therefore sounder and better principles than that which succeeded it (the probation system) and that with the imposition of judicious checks upon the treatment of the prisoners with fixed wages, the assignment system would have been found to be the best which could possibly have been devised'. In this he wrote perhaps more truly than he knew, for already the zenith of the first phase of primary economic growth which had been so boosted by the assignment system was passing. It is possible that a continuing assignment system (related properly to the capacities and needs of the settlers) may have prolonged it. This was not to be. The assignment system, which related penal outcomes of reform and punishment to economic productivity and economic rehabilitation, was discarded for political and ideological reasons, rather than a consideration of the real needs and capabilities of the Australian penal colonies. Clearly however the imposition of the probation system was to have a quite opposite effect, economically, socially and reformatively. That it was persevered with, to some extent, in 'the face of all reason' (James Stephen) was a consequence of political objectives and personal agendas both in London and Van Diemen's Land which was to profoundly affect the political development of the colony.

The scope of Charles Joseph La Trobe's investigation into the failure of the probation system was two fold;

'first, taking the present system as I found it, what was the real character of the arrangements made to carry out its principles, and the actual state of the various convict

establishments. Secondly, how far was the probation system, as here carried into operation, really adapted to answer the important ends proposed?'²⁰¹⁹

La Trobe was appointed administrator of Van Diemen's Land in October 1846 after Wilmot's recall, and by his own admissions, he was not in position to 'furnish' his report until he had spent some time in the colony. In May 1847, La Trobe, writing from Port Phillip, reported to Earl Grey, Secretary of State at the Colonial Office, that he had finally completed the report, and forwarded it home for attention. 2021

Unlike Maconochie, who was criticised by Forster in 1837 for not having inspected a single convict settlement, La Trobe visited a number of the probation stations across the colony and spoke to a number of the officials connected with the convict establishment. It was a massive task; La Trobe explained that

'the more I saw of the colony and the structure of society, the more I became aware of the difficulty in the way of the satisfactory attainment of the object by the means I had proposed'.²⁰²²

La Trobe considered it 'fortunate' that he was ably assisted in his investigations by the new Comptroller General, Doctor John Hampton, and acknowledged the 'advantage which I secured by the command of the valuable suggestions and ready co-operation of that experienced officer'. ²⁰²³

Before launching into his criticism of the probation system, La Trobe explained that none of the officials of the department 'were answerable for the success or failure of the experiment itself', and indicated that their conduct 'was not so generally unfavorable' as he had been led to anticipate.²⁰²⁴ La Trobe added that he could 'detect no unwillingness

²⁰¹⁹ Charles Joseph La Trobe to Earl Grey, 31 May 1847, as reproduced in Brand, *Probation*, p. 109.

²⁰²⁰ *Ibid.*, p. 109.

²⁰²¹ *Ibid.*, p. 109.

²⁰²² *Ibid.*, p. 110.

²⁰²³ *Ibid.*, p. 111.

²⁰²⁴ *Ibid.*, p. 112.

on the part of the superior officers to carry out as far as practicable the designs of the British Government'. He observed that the returns were in order, the records complete and the convicts were in excellent health. 2026

What then went wrong with the probation system? Quite simply, La Trobe explained that the

'the probation system whether sound in principle or not, had not had a fair trial, and could never have a fair trial, in this distant colony'.²⁰²⁷

It appeared to La Trobe that the convict on probation, and the passholder, had a fair chance of attaining the 'improved position designed for him', and the congregation of the convicts 'in masses during the time of probation' was favourable for the 'communication of moral and religious instruction'. Beyond that however, La Trobe declared that it was difficult to say where the real advantages of the probation system rested in comparison with the assignment system. There was limited accommodation and employment for the probation men, and the government was obliged to retain thousands of convicts 'in its hands'. The system was without 'proper classification', and while the principle of reformation was spoken of in the system's theory, in reality it was 'decidedly unfavourable to the reformation of the individual'.

Saturated with convicts, the gangs were characterised by idleness, petty insubordination and 'vice of every description'. Those convicts who did find employment undoubtedly regained their 'self respect in the service of masters', even though it brought no corresponding advantage' for the colonist. It was not in the colonists interest to instruct the convict in a 'useful art', having secured his services for only a short period of

²⁰²⁵ *Ibid.*, p. 112.

²⁰²⁶ *Ibid.*, p. 114.

²⁰²⁷ *Ibid.*, p. 115.

²⁰²⁸ *Ibid.*, p. 117.

²⁰²⁹ *Ibid.*, p. 117.

²⁰³⁰ *Ibid.*, p. 117. ²⁰³¹ *Ibid.*, p. 117.

²⁰³² *Ibid.*, p. 117.

²⁰³³ *Ibid.*, p. 118.

time.²⁰³⁴ In comparison, the assignment system 'was based upon more natural and therefore sounder and better principle than that which succeeded it'.²⁰³⁵ Reminiscent of Arthur's great claim that transportation was the 'best secondary punishment... ever yet devised'²⁰³⁶, La Trobe, as noted, even suggested that with 'the imposition of judicious checks upon the treatment of the prisoners, and with fixed wages, the assignment system would have been found to be the best that could possibly have been devised'.²⁰³⁷

Could the probation system then have ever worked? La Trobe thought so, and identified what he thought were the barriers to its success. It was obvious, he recorded, that the large number of convicts sent to the colony were probably the 'principle reason for its failure'.²⁰³⁸ The arrival of so many convicts meant 'the ground was not prepared' for their reception, and 'a well devised system of classification... had at the onset to be set aside as impracticable until there was a reduction in their number'.²⁰³⁹ The government was forbidden from employing the 'prisoners upon works of purely local or colonial advantage' unless the colony paid for them, and recourse to steady employment was difficult in the unsettled districts.²⁰⁴⁰ He also regretted that after 'all the stress laid upon the necessity of providing adequately for the religious and moral instruction of the convicts under the new system', its absence was glaringly apparent.²⁰⁴¹

The effect was that it was impossible to separate the newly arrived convicts from the old, and 'real and effectual and unbroken separation between the classes, at all times, had to be acknowledged impossible'. Subsequently, wrote La Trobe, 'probation stations today turned into punishment stations tomorrow'. ²⁰⁴²

It was here however that La Trobe did attribute some blame, though not directly. He appreciated that Stanley's instructions were issued 'under a very different impression from

²⁰³⁴ *Ibid.*, p. 118.

²⁰³⁵ *Ibid.*, p. 119.

²⁰³⁶ Shaw, Sir George Arthur, p. 92.

²⁰³⁷ Brand, *Probation*, p. 120.

²⁰³⁸ *Ibid.*, p. 120.

²⁰³⁹ *Ibid.*, p. 121.

²⁰⁴⁰ *Ibid.*, p. 121.

²⁰⁴¹ *Ibid.*, p. 125.

²⁰⁴² *Ibid.*, p. 123.

that which could have been conveyed, and were misleading as to the actual state of the colony. Montagu is not mentioned here, but he is clearly culpable. La Trobe reserved his criticism for the government as a whole, and its lack of 'communication with the mother country'. He acknowledged that the 'greater majority of officers only looked upon the appointment as a stepping stone to something better', and were guarded in their criticism of the new system.²⁰⁴³ Regulations gave way to makeshift solutions, and there was a 'want of proper understanding between the several government departments'. 2044 In Van Diemen's Land, he observed, a government was 'incited on the one hand by the earnest principle of doing what was right to the best of its ability, and on the other by the absolute necessity of practicing economy'. 2045

Unlike the assignment system, the probation system was 'fatally uncertain', and according to La Trobe, 'the supposed advantages of its trial... appear[ed] to be to the physical comfort of the convict', and 'decidedly against his moral improvement and reclamation'. 2046 The omission was evident in Stanley's November 1842 instructions, and in the politically safe but impractical recommendations of Montagu. Unsurprisingly, Latrobe refrained from a personal attack on the authors of the system however; after all, he too was mindful of his future in the colonial service.

Self interest and party politics in Van Diemen's Land dictated the course of transportation to the colonies between 1837 and 1845, and while responsibility for its demise is strongly contested, there is no doubt that John Montagu's ill conceived proposal based on an imaginary demand for labour contributed more than any other factor to both the initiation and then inexorably to the eventual breakdown of the probation system in Van Diemen's Land. This circumstance is the more notable when it is remembered that transportation had already been condemned in England by the Molesworth Committee and abolished in New South Wales. Montagu's recommendations for the continuation of transportation were deeply rooted in the penal politics of Van Diemen's Land, and

²⁰⁴³ *Ibid.*, p. 125. ²⁰⁴⁴ *Ibid.*, p. 127.

²⁰⁴⁵ *Ibid.*, p. 128.

²⁰⁴⁶ *Ibid.*, p. 129.

reflected the strong party spirit that Montagu and the rest of the Arthur "faction" imbibed. The Launceston Examiner observed in 1845 that the Arthur party

'engaged in a desperate effort to regain their power when it was shaken, and when they failed, their vengeance retaliated their loss'.

When Montagu returned to England in February 1839 after the potentially damaging Clapperton affair, he desperately sought the confidence of his political masters, and after assailing Maconochie's character to all who cared to listen, he offered his own revised blueprint for the penal system in Van Diemen's Land. Ambitious to the point of recklessness, Montagu proposed in the place of assignment a probation system which served to meet all the expectations of a British Government intent on reform as well as punishment, and at the same time, to elevate his status in the eyes of the Colonial Office as a great penal reformer in tune with the needs of society. It did not matter that his proposal was extraordinary and inevitably unworkable in a colony that could not finance the probation system, nor accommodate at all the vast numbers it generated; he found a willing ear in Lord John Russell, whose own political popularity was failing, and later Stanley, who was keen to stamp his own authority on the new system.

Like Arthur, the Launceston Examiner also noted that a governor could never be safe if his measures were opposed 'by private letter writers', and when Montagu was suspended from office in 1842, 'it was to be expected that he would vindicate his administration with the utmost care'. 2047 Just when Franklin appeared to have acted decisively however, he undermined his own action by fatally exhibiting a 'generosity of spirit which induced him to commend the abilities and integrity of Montagu, and it was consequently inferred by the Colonial Office 'that he doubted the propriety of his own measures'. 2048 Thus, according to the Launceston Examiner, it suited those who 'could not assail Franklin's integrity to ascribe imbecility to his understanding', and the friend of education and religion in Van Diemen's Land was subject to an unceremonious recall.²⁰⁴⁹

Launceston Examiner, 27 December 1845.
 Ibid.

²⁰⁴⁹ *Ibid*.

In a familiar defence, Montagu attacked Franklin's reputation at the Colonial Office, and consolidated his usefulness by submitting yet another blueprint for the continuation of transportation to Van Diemen's Land, only this time even more mischievous and wholly destructive. The continuation of the revised system of probation was endorsed with the overruling of Montagu's suspension and the re-appointment of Forster as Comptroller General of Convicts after Franklin, exercising a fleeting glimpse of sound political judgement, removed the former from office. Thus the convict system in Van Diemen's Land followed a new course set down by Stanley and the Colonial Office following the advice of Montagu.

Four years later the fatal consequence of Montagu's policy became abundantly clear when Latrobe, condemning the system the policy had produced, reported that he could not 'conceal his conviction, that any system that would accumulate vice without a sure and certain corresponding power to restrain and reform, must be termed a vicious one, and the probation system, so called, has been a fatal experiment so far as it has proceeded, and the sooner it is put an end to the better, for the credit of the nation and humanity'. 2050 In fact the vicious circle of gross convict congregation driven by political ambition and administrative miscalculation had run its course. 2051

 ²⁰⁵⁰ Brand, *Probation.*, p. 129.
 ²⁰⁵¹ See Appendix G for an epilogue for Montagu.

Appendix A - Montagu to Normanby, 10 October 1839

1st. The general principles and plan upon which transportation is in future to be conducted, are that 2000 convicts are to be sent annually from this country to Norfolk Island direct to be detained there for a fixed period in the first instance for the punishment of their crimes; - that the actual period of imprisonment should be liable to a subsequent abridgment, according to previous character; - the nature of the convict and conduct during punishment - that no prisoner is to be detained in Norfolk Island more than 15 years, and on leaving the island he is to enjoy a ticket of leave in the Australian colonies, until free.

2nd. Upon this principle I feel I might not offer any observation, but upon the plan for executing it there is not the same difficulty, and I will, therefore, point out what appears to be undesirable with it. -

3rd. Norfolk Island, I think, is objectionable on many accounts and I should prefer Tasman's Peninsula, and Forester's Peninsula which adjoins it if thought necessary, and I think that the convicts on removal from Norfolk Island should be sent to Van Diemen's Land only, and that early measures should be taken for relieving New South Wales of its penal character and its convict population.

4th. My objections to Norfolk Island are, that I should fear, in a short time, the number of convicts transported there would be to great for a small volcanic island of 17,000 acres of land, to admit of such a separation and classification of them, as would be essential for a fair trial of the punishment and probationary classes, and might, in consequence, tend by an injurious association, to corrupt rather than improve them; because as no sufficient natural difficulties intervene, it would almost be impracticable by artificial means to prevent constant intercourse amongst them so concentrated and congregated - but a fair trial would be afforded the plan at Tasman's Peninsula and Forester's Peninsula, which

contain about 200,000 acres of land, and so circumstanced, in respect to natural impediments, to enable the different classes to be widely dispersed, and easily employed there, without communicating with each other, or being too thickly congregated, and at the same time external intercourse with the inhabitants of Van Diemen's Land would be as at present effectually prevented.

- 5th. There is also the objection that Norfolk Island, from its size, would not continue to receive the proposed number of convicts from Great Britain for more than a few years, when an additional settlement for the surplus quantity must be provided in some part of New Holland, sufficiently remote from the settled districts to avoid escape, by which measure diversity in the treatment and discipline of the convicts would inevitably be introduced by different Superintendents, and thereby defeat the national system, which, to be permanently useful, must be uniform and certain in its operation. But at the Peninsula nothing of that kind is to be feared, as it is large enough to contain any number of convicts in distinct and widely separated parties.
- 6th. From the absence of sufficient impediments to intercourse at Norfolk Island, the chances of a simultaneous insurrection amongst so many convicts congregated together will be greatly increased and could only be counteracted by having a larger body of troops there than would be necessary on the Peninsula for the same number of men.
- 7th. After the buildings for the convicts at Norfolk Island have been completed, and a few hands required for rearing grain for the consumption of the settlement have been applied, the difficulty of finding, either permanent or profitable employment for all the men there would be great, and it is, therefore, probable that it would be necessary to undertake works, which for the necessity, might be dispensed with whereas at the Peninsula, the soil and climate are equally good for agricultural purposes, and the coal mines would afford endless, secure and profitable employment as would also felling and sawing timber of the forests for ships and house purposes, and it abounds in free stone and earth for buildings a brickyard for naval purposes, might with safety be beneficially established there, and in many other ways the convict later could, as at present, be directed to render

the capabilities of the Peninsula profitable, in articles for use or sale, with the advantage of instruction and useful experience to the convicts engaged upon them; and it should be borne in mind that the expense incurred in improving the soil of the Peninsula and erecting buildings, may be worked upon as an outlay which can, to a certain extent, be hereafter recovered if transportation should be discontinued and these lands become exposed to public competition, a result which cannot be calculated upon for Norfolk Island, as the land would be ineligible and useless to settlers, and the island would, as upon a former occasion, remain uninhabited when relinquished by the government.

- 8th. In addition to such works, cattle sheep and pigs might, from the peculiar character of the Peninsula, be kept in perfect safety and to any extent necessary to provide sufficient meat for the establishment. a measure experience has shown cannot with a due regard for the safe custody of the convicts, be recommended for Norfolk Island. Water mills can be erected there, and it has not the disadvantage of suffering loss or deterioration as corn or flour from weevil, or injury to salted meat from climate. -
- 9th. Several years experience has shewn that the convicts can be kept on the Peninsula with security. The isthmus which unites it to the mainland, is the only practicable mode of escape, and that is so very barren, as to be effectually guarded by a few soldiers.
- 10th. The great increase which must, inevitably, take place in the colonial marine establishment for receiving so many convicts from New Norfolk Island to New South Wales and Van Diemen's Land, and in keeping the island supplied with provisions, stores and such building materials as it does but possess, will be very great. but so much on account of its distance which is considerable/ about 1000 miles from New South Wales and 1500 miles from Van Diemen's Land/ but, on account of the delay, as well as the difficulty and danger to life and property during many parts of the year in loading and discharging vessels in bad whether, at some miles distance from the shore, it being inaccessible, excepting in one place, to boats. instances have occurred of vessels, whilst loading or discharging in boisterous weather, putting to sea and being compelled to communicate with the shore at considerable intervals, attended with dangerous delay.

Such objections are not applicable to the Peninsula, nor would any increase in the marine establishment be necessary.

11th. The vessels employed in the removal of convicts from Norfolk Island would require strong military escorts, with the proper number of reliefs in [?] on shore from that duty, and this, together with the early demand there will be for an increase of military on the island, would render it necessary to send another regiment to that station in a short time, and whenever it became expedient to form an additional convict settlement at any place on the continent of New Holland, the demands for military would be repeated and must be complied with.- but, if the Peninsula were selected, no additional troops beyond the present strength at Norfolk Island and Van Diemen's Land would be required for escorts, for protection, or for an additional settlement.

12th. The closeness of the Peninsula to the settled districts is an advantage which experience has shown confirmed. - Since Tasman's Peninsula was established in 1830 as a place of secondary punishment for convicts, it has been the policy of the local government to induce the colonists and strangers to visit and inspect its system of management in detail - Permission was early obtained by all persons of respectable appearance, and the most unrestrained intercourse with the convicts and authorities there was allowed. - The settlement was, also, frequently and unexpectedly visited by the governor and public officers not belonging to it. The effect of this policy has been to propagate, more usefully than any other mode could perhaps have done, the nature of the punishment and treatment of the convicts detained there, and may probably account for the preference which it is known the convict criminals of this country have expressed for transportation to New South Wales rather than Van Diemen's Land - but another and more important effect has been gained by it. The visitors/ many of whom are ministers of different denominations have always been requested to communicate with the government if anything occurred to them objectionable. - Valuable information has been in consequence obtained for improving the system, for ameliorating the condition of the convicts, and preventing crime. Under the new plan of rewards and punishment for convict discipline by daily marks to each individual, such a system of visiting would be

invaluable, as well to the government as the convict, for it must be apparent that anything which may tend to present an abuse of this great power, which, in practice will be entrusted to the overseer immediately in charge of convicts, must be beneficial. In various ways a convict might, by his overseer, be subjected to petty annoyances which taken separately would be insignificant. - but he might be systematically annoyed in a manner so imperceptible to thus, as to constrain him to endorse it, from fear of not substantiating his complaint, but, in time he would become sullen and desperate, his feelings would be immune, and in an unguarded moment he would commit mischief - his good marks then would be [?] by the bad, and the man would become reckless and more vicious. But, give such a man an opportunity of opening his mind unreservedly and with safety to himself to a kind hearted visitor, a minister, in all probability, of his own persuasion, though whom it would be made known to the government, inquiry would further and remedies be applied before the man would be free from his necessity to be silent, to further crime and punishment, and the system of the government would not be defeated by an influence, which would otherwise remain concealed.

13th. So long as men are situated as convicts at a penal settlement, there need be serious apprehension of revolt amongst them; they have the opportunity of communicating their knowledge, for whether they may be actuated from fear of being implicated, or from the hope of reward for the information given, experience has shewn that they cannot trust each other when they can divulge their plots with safety. To expect them, however to make such communications to the persons employed to superintend them is vain, they will not do it. The proceedings of the convicts, within the last few years at Norfolk Island and Tasman's Peninsula, have proved the superiority of the information obtained at the latter place. Revolt, although contemplated, has there never been attempted, but at Norfolk Island the reverse, with it fatal consequences, is unfortunately, too well recorded.

14th. The importance of visitors is equally applicable to the general arrangements of a penal settlement, for, from daily witnessing the scenes around them, the authorities have not always perceived objections and improvements which have occurred to strangers.

- 15th. A physical advantage in contiguity is also worthy of consideration. By semaphores which have been erected on the Peninsula, a communication can be made in ten minutes to the seat of government where the main body of troops are quartered, so that in case of any attempt at insurrection amongst the convicts, additional military aid can be supplied upon a few hours notice, and thus peculiarity [?] enables the permanent military force in the Peninsula to be smaller, than would be attempted with safety at such a distance as Norfolk Island.
- 16th. There is yet another advantage. The convicts are aware that the facility of removing them to Hobart Town for trial, before the Supreme Court for the serious offences, is so great, that they never commit crime for the purpose of procuring a removal of a day or two for themselves and witnesses, but at Norfolk Island the crimes committed for the purpose of being removed from their punishment for several weeks, during the passage and in a [?], here so systematic, that it became necessary to pass a law trying them in the Island, under commission from New South Wales, a dilatory, expensive and inconvenient mode of administering justice, where speedy example and summary punishment are so important.
- 17th. If it should be considered desirable, at any time, to try the silent or separate penitentiary system it could be accomplished with ease and little expense upon the Peninsula.
- 18th. No provision has been made by the new plan of the government for the treatment of female convicts. They could, however, be received on the Peninsula and be kept quite apart from the men, an arrangement for which Norfolk Island is not available. Their labour might be profitable as well as a punishment, by establishing a manufactory for the blankets and woollen clothes for clothing the male and female convicts. By good management I feel persuaded that, the blankets and cloth, now manufactured in this country for convict uses in those colonies, could in a short time be made on the Peninsula within the interior part of Van Diemen's Land.

- 19th. For these reasons I think Norfolk Island should be abandoned and the military and convicts removed to Tasman's Peninsula, and I will now proceed to state my reasons for considering it desirable to discontinue New South Wales as a penal settlement, and to relieve it, at an early period, of its convict character.
- 20th. As the convicts are employed by the government of New South Wales in chain and road parties and cannot be removed to Norfolk Island, they must be continued, as at present, until by good conduct, they acquire tickets of leave, or freedom. It will, therefore, hardly be practicable to diminish the expense of management, by removing a portion of the officers of the convict establishment in New South Wales to Norfolk Island, in time to superintend the increased numbers so soon to be sent there from England. But if these gangs are drafted to Tasman's Peninsula, the diminution in the New South Wales establishment might be speedily effected, and a few of the inferior officers only, who are the least expensive, would be required to accompany the men to the Peninsula.
- 21st. If, in addition to keeping the gangs in New South Wales, that colony is to receive more convicts, superintending them will be required in so extensive a country with the men dispersed on it, for unless they are strictly watched and seen by responsible officers at stated periods, a ticket of leave will be equivalent to freedom, and escapes from the colony will be of every day occurrence. But if the men, on hereafter, obtaining tickets of leave, were sent to the settled districts of Van Diemen's Land, there would be no [?], in that more [?] colony, to incur any additional expense for Superintendence.
- 22nd. By the plan of retaining road and chain gangs in New South Wales and sending ticket of leave men there from Norfolk Island, that country will continue subjected to all the prejudices and odium of a penal settlement, without recurring, in return, an equivalent in labour, indeed, such an amount of labour as would compensate the colonists. It is stated by the committee in this report, that migration and transportation to the same place are inconsistent and incompatible that while migration deprives transportation of its terrors; and is stigmatised and degraded by the continuation; transportation discourages

migration by demoralising the migrants, by bringing labour into disrepute, and by counteracting the moral effects. It therefore appears of the first importance to New South Wales since transportation cannot be depended upon for labour, that it should cease, and immigration increase. -

23rd. New South Wales must have labour, - transportation on the present plan, cannot supply it, but its Crown Lands are so extensive, that the sale of them would do so by appropriating the proceeds to immigration. Van Diemen's Land also requires labour, but the proceeds of its land sales are too insignificant to provide it, and immigration there must, therefore, cease. But the employment of the ticket of leave men in the settled districts would supply it with labour for some years. The adoption of such a plan would therefore, be advantageous to both colonies, whilst both would be injured by dividing the convict labour between them.

24th. The committee have also stated, that convicts ought not to be allowed, when free, to remain in the colony, in which they have served as convicts, and have recommended that their removal should be effected at the expense of the government. Van Diemen's Land are continued penal colonies and the enormous expense of it, to the nation, naturally occurs. But I think; both these difficulties would be overcome by the adoption of the plan suggested, for if, as the convicts holding tickets of leave in Van Diemen's Land become free, they proceeded to New Holland, they would, at once, enter on a new career, with the opportunity and means of acquiring and honest livelihood, unknown to those around them, and removed from objectionable associates; and the expense of their removal would be so trifling as to be within the means of any man who had previously held a ticket of leave; - the extensive sheep walks in the interior of New Holland will long provide employment for such men, and as their numbers, in proportion to the free migrants would be inconsiderable, their dispersion among them will, it may be hoped, be attended with the most beneficial results to their future lives and conduct.

25th. By confining transportation to Tasman's Peninsula and the settled districts of Van Diemen's Land for ticket of leave men, the government will have the opportunity of

affording the convicts more religious and moral institutions when less dispersed; than could be attempted by retaining the road and chain gangs and ticket of leave men in New South Wales, and another advantage in this concentration will be found in the diminution of military, for, I have no doubt, that at least, one regiment may be removed from the New South Wales military establishment, so soon as the gangs shall have been drafted to the Peninsula, and greater military reductions may, I doubt not, follow shortly afterwards.

26th. In a potential point of view, I fear that embarrassment will, here long, be experienced by the government in the Australian colonies by the adoption of the plan prepared by Her Majesty's Government for it should be borne in mind, that although the colonists have, from pecuniary motives, been induced to submit to laws which greatly infringe upon their privileges as Englishmen, from the consideration that they were necessary for convict discipline and the convict labour they so much relied upon, yet, it should not be overlooked, that those motives will cease to operate under the present arrangement, and if general opinion and politic feeling in the colony should effect a relaxation of those laws, the consequences may be of a serious nature. - and there is every reason to contemplate such an event, when the recent desire of the inhabitants for free institutions, their flourishing condition, and great accession of wealth and population, are daily considered.

27th. I am sure I offer the genuine opinion of every good colonist, of every man who has higher notions than his own personal advantage and aggrandisement in view, when I state, that free institutions and penal discipline are incompatible, and that the laws required for the latter must cease with the existence of the former. Under this opinion I have no doubt that the present state of society and feeling in New South Wales, and the absolute necessity that colony is under to provide labour for its wants, require the early establishment of free institutions, as a source of safety politically, and as an important means of increasing immigration, - but, in order to avoid the [?] of combining them with penal discipline as little as possible, I think all the convicts now employed there in road and chain gangs and in the service of the government, and the female convicts in the factories (in all about 5000) should previously be removed to Van Diemen's, and I think

also, that the colonists of New South Wales would expect to receive an equal number of migrants introduced into the colony at the expense of Her Majesty's Government, because by the removal of the convicts, the diminution of the charges for maintenance, superintendence and military would be so considerable, as to justify such an expectation.

28th. The circumstances and condition of Van Diemen's Land being different from those New South Wales, the necessity for a continuance of transportation to it would exist, in the form of its government and laws, but these differences might, hereafter, be removed when the state of the colony rendered transportation to its shores no longer desirable, for, as a body, the inhabitants are as fully qualified for free institutions as those of New South Wales.

29th. In a financial point of view, the adoption of my suggestions would I think, be extremely desirable, because I am of opinion that, they would produce the greatest amount of benefits at the smallest amount of costs. I have not the opportunity, at this moment, of referring to more recent documents than the statements of the expenditure for 1837, but, from these I find that the sum expended, in the colonies for convict purposes, in that year amounted to £340,000, of which £320,000 were defrayed by Great Britain, and from which are extended the charges for clothing and stores for convicts, the military, commissariat and ordinance departments, also defrayed in England, which must have amounted to one half as much more.

30th. By the plan I propose, the convicts in Tasman's Peninsula could be lodged, fed and clothed by their own labour, many articles might be produced by them for sale, to defray the expenses of superintendents and contingencies, - the removal then of all the convicts from Norfolk Island and the convict gangs from New South Wales would render unnecessary the ordinance, medical, commissariat and convict establishments, - the colonial [?] need not be increased, but, on the contrary, the losses acquired from Norfolk Island would be dispensed with, - the military establishments might be reduced by, at most, one regiment and another regiment be prevented proceeding there. - and from all these measures it could, I have no doubt, be entirely shewn that the decrease of

expenditure could exceed £10,000 per annum, and that when the whole charges, now incurred in the colony for convict purposes, might by judicious arrangements, be deployed by the establishment in Tasman's Peninsula, I am also persuaded that the effect of this plan of concentration could be, materially, to reduce the duties of the Civil, judicial and police departments in New South Wales and Van Diemen's Land, which are now maintained at an annual charge on the colonial [?] of about £300,000 and that important alterations in them, of a useful and economical description, could be introduced.'2052

²⁰⁵² Montagu to Normanby, 10 October 1839, Brighton CO 280/117, p. 67.

Appendix B - Chief Justice Pedder to Montagu, 5 February 1842 5 February 1842, Newlands

My Dear Captain Montagu,

You know my objection to joining in public addresses to government officers placed in the circumstances in which you now are, and if it is true as I have heard, that an address is to be made to you, I hope you will not impute it to any diminution of the great regard I have always professed, and really felt for you, that I still adhere to the rule which I laid down for myself at a time when I could not have anticipated it's application to you. But since you are pleased to think that the opportunities which I have had during 18 years of forming a just estimate of your merits as a public officer, have been such as would render my testimony satisfactorily to your friends, and others in England, who may hear of your case, I cannot refuse to comply with the wish you have expressed, that I should give it to the more private form of a letter, which you are at liberty to show whenever, and to whomever, you may judge it useful to do so.

On your arrangement of the business of the town adjutant's office I can add nothing for it never came under my observation and I might pass over the period when you were Clerk of the Councils by saying that you executed that office with fidelity to the government and with regularity and despatch - the only qualifications the office requires, but it was during that time, I mistake not, that the government, and the colony, realised the benefit of the great services you rendered them, when you took over the charge of the Treasury upon Mr Thomas' defalcation and flight, and when you projected, and carried into execution, those reforms in the administration of the post office which proved so eminently useful.

But it has been chiefly, since you became Colonial Secretary, that this community has been enabled to estimate your true value as a public officer, and I am sure your enemies will admit your thorough knowledge of every branch of the public service - your

unceasing application to business, your quickness and apprehension, your patient attention to the claims and representations which the settlers have had occasion to make to you, or through your office. Your punctuality and despatch, your zealous advocacy of all works of public utility, and the plain, open, intelligible and effective manner, in which you have brought forward, and conducted, all the measures of the government in the Legislative Council.

I know that the facility with which the great variety and large amount of the public business which has passed through your hands has been transmitted, especially since your last return to England, has been the subject of very general admiration and while, on the one hand, you have always appeared to me, to have maintained a due regard for the honour and the interest of the government, you have, on the other hand, won the very great share which you enjoy of the public's esteem, without ever condescending to run after popularity. But what, according to my observation, was your chief value, as a servant of the government, consisted not in the ability with which you discharged one or other or all of the many duties of your office, but in your character in the very high opinion, generally, entertained of your talents, your diligence, your sound judgement, and your honour, and in the general confidence which few colonial public servants have been fortunate enough to acquire, at least to the same degree. I have often witnessed its effect in the Legislative Council, and am enabled to say how great a benefit the government has derived from it, and I know it has had effects equally beneficial out of the Council. Of the latter, I could mention two instances which are, probably, unknown, both to the government and you and which have come to my knowledge very recently. But I must close, this I fear, too long letter. One can say much more of a man than to his face, and I could say much more of you, if I were writing to another - but I could not say less, even when addressing myself to you - God bless you, and those who belong to you, and in the confident hope that we may ere long meet again.

> I am My Dear Montagu, You're faithful and most attached friend, JS Pedder²⁰⁵³

²⁰⁵³ Pedder to Montagu, 5 February, 1842, Newlands, Montagu Manuscript, p. 18.

Appendix C - Inscription to Matthew Forster on Obelisk at Newtown

Sacred to the memory of Matthew Forster who died the sixth of January MDCCCXLVI aged 49. He entered the 85th Regiment as an Ensign in his sixteenth year. He served in the Peninsula and at New Orleans and was afterwards Major of Brigade in Ireland. In this colony, he successfully filled the responsible offices of Chief Police Magistrate, Colonial Secretary and Comptroller of Convicts. This monument has been erected by his private friends as a testimonial of their regard.

Appendix D - Overview of Montagu's Secretarial Duties at the Cape

Soon after his arrival at the Cape, Montagu took his oath as a member of the Legislative and Executive Councils. 2054 Initially at least, Montagu was pleased with the appointment, which was not all that dissimilar to his Secretaryship in Van Diemen's Land. In some respects, Montagu probably felt that he had not even left Van Diemen's Land; in April 1842, Stanley wrote to Napier informing him that he had considered the resolutions of a public meeting of the inhabitants of Cape Town requesting a Legislative Assembly, but was unable to depart from the 'established system on which the Executive government in the colonies was administered'. The Cape, continued Stanley, had only recently been divided into two separate governments, and that it was 'difficult to conceive a single Legislature elected by the people from two countries'. Some of the settlers however were not easily appeased by Stanley's rhetoric, and their protests became common place during Montagu's Secretaryship. 2056

According to historian JJ Breitenbach in his analysis of the Secretaryship to the government at the Cape, all appointments were considered by the Colonial Secretary,

²⁰⁵⁵ Stanley to Napier, 15 April 1842, as quoted in K Bell and WP Morrell, Select Documents on British Colonial Policy 1830 - 1860, p. 47.

²⁰⁵⁴ Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 185.

Later, Montagu was accused in the press of frustrating planned alterations to the constitution at the Cape; in 1851, he declared: 'One thing is quite clear, that the people are not fit for those liberal institutions proposed for them, and I believe that they will not be ripe for them for many years to come' (Montagu to Southey, 27 January 1851, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 262). It is noteworthy that concurrent with his protests was a strong push for a legislative assembly at the Cape by the 'Anti-Convict Association'. Like Stanley, Montagu argued that the two separate districts at the Cape frustrated a single legislature (representing a diversity of races, origin and language), though he would support a single legislature if the Colony were made into one colony, not two. Montagu suggested that the form of the new constitution, if it was enacted, should assume a bicameral legislature, with an upper house to keep a check on the lower, for he was suspicious of a 'popular sense'. Party politics was never far from his mind. For Montagu's view of the issue, see also Memorandum of Montagu, 10 April 1848, as quoted in Bell and Morrell, Select Documents on British Colonial Policy 1830 - 1860, p. 108. James Stephen also commented on the protests; see above, Memorandum of Stephen, [undated] December, 1848, p. 116.

subject to the governor's approval, and all correspondence had to be directed to him.²⁰⁵⁷ In 1833, the Executive and Legislative Councils were constituted at the Cape, both of which were represented by the governor, and the permanent heads of his administration.²⁰⁵⁸ At the Cape however, the Colonial Secretary actually presided over the Executive Council, though the governor still exercised the right to accept or reject its advice. In the early period of Montagu's Secretaryship, the governor was frequently absent on the frontier, leaving Montagu in 'defacto control', and it was not long before his influence was felt generally among the government officials.²⁰⁵⁹ Writing in October 1843, Montagu complained:

'In every branch of my office I am short handed, and I am daily to postpone something or other from not having sufficient assistance... I hope the Governor will point out the invaluable assistance of one efficient clerk... and a copying clerk... and with their aid I will endeavour to keep the current business from falling into arrear... I can assure His Excellency that I only desire to make my office efficient in clerks at the least possible expense'. 2060

In a minute attached to the despatch, Sir George Napier concurred with his new Colonial Secretary:

'The energetic and immediate despatch of business which, under the able superintendence of Mr Montagu, has hitherto characterised his office, requires able and energetic men as subordinates'.²⁰⁶¹

Napier's autocratic nature was unpopular with many of the colonists at the Cape, and he was content to leave much of the government's business to Montagu.²⁰⁶² In November

²⁰⁵⁷*Ibid.*, p 178.

²⁰⁵⁸ *Ibid.*, p. 180.

²⁰⁵⁹ *Ibid.*, p. 185.

²⁰⁶⁰ Montagu to Napier, 4 October 1843, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 190.

²⁰⁶² *Ibid.*, p. 181. Napier was alleged to have told an official that he was better to save his breath as all the important decisions were arrived elsewhere (other than in the Councils).

1843, Napier informed the Colonial Office that he had made arrangements for an inquiry into the colony's debt:

'In furtherance of this object, I directed the Secretary to government to prepare a full report upon the paper currency, and upon the ways and means of discharging it'. 2063

Montagu's attention had already been drawn to the *ad hoc* character of the colony's finances, and three weeks before Napier's announcement, he read his own memorandum to the Executive Council, making recommendations for the 'redemption of the colonial debt and for augmenting the colonial revenue'.²⁰⁶⁴ Montagu's statement of revenue and expenditure in the colony was one of the most comprehensive analysis' of the Cape's finances ever submitted to the Council²⁰⁶⁵, and was described by Napier as being 'better adapted to the present circumstances [of the colony] than any earlier resolution to which they may have come'.²⁰⁶⁶ Montagu also spoke of his plans to 'centralise the government' at the Cape, and to encourage cooperation between departments.²⁰⁶⁷

In March the following year, Stanley urged Napier's successor, Sir Peregrine Maitland²⁰⁶⁸, to actively pursue Montagu's recommendations for recovering the colony's outstanding debt, and that he should see to it

'that the proceedings for those purposes are effectually followed up'. 2069

Stanley added:

²⁰⁶³ Napier to Stanley, 22 November 1843, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 196.

Minutes of the Legislative Council, 7 November 1843, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 196. 2065 *Ibid.*, p. 196.

²⁰⁶⁶ *Ibid.*, p. 199. Napier also added that 'these new regulations were prepared by the Secretary to the Government'. See p. 193.

²⁰⁶⁷ *Ibid.*, p. 191. Montagu had gained a better understanding of the colony's administration after calling for returns from the various Districts. See also p 192.

²⁰⁶⁸ Maitland was succeeded by Sir Henry Pottinger in 1847.

Stanley to Maitland, 11 March 1844, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 198.

'I have already had the satisfaction of bearing testimony to the zeal and ability with which Mr Montagu had applied himself to the duties of his office, but I cannot conclude this despatch without a further acknowledgment of the very able and efficient manner in which he laid before your predecessor his views in regard to the extinction of the paper debt of the colony, and his proposal for carrying the measure into effect'.²⁰⁷⁰

On 30 November 1843, the *Graham's Town Journal* congratulated Montagu on his success:

'This colony has at last overcome her difficulties and gives promise of a brilliant and prosperous course. We must readily accord to the Secretary, Mr Montagu, considerable credit, not merely for ability, but what is still better, activity - putting the shoulder to the wheel, and impelling the cumbrous machine forward with a speed hitherto unknown. This shows the great advantage of aptitude to office, a consideration quite overlooked before in the selection of public officers here. This paltry debt, about which so much despondency has been felt, is now disposed of, and opens up a bright prospect for the future. With so careful a steward as Mr Montagu there can be no doubt the resources will be well husbanded'.²⁰⁷¹

Montagu made further recommendations for modifying the colony's port dues²⁰⁷², increasing shipping²⁰⁷³ to and from the colony, and for the improvement of the public works.²⁰⁷⁴ Montagu also made recommendations for centralising the Cape Town Police

²⁰⁷⁴ *Ibid.*, pp. 199-200.

²⁰⁷⁰ *Ibid.*, p. 198.

²⁰⁷¹ 30 November 1843, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 198. Most newspapers at the Cape commended his foresight.

²⁰⁷² *Ibid.*, p. 199. Port dues were the charges applicable when a boat put into harbour for water and supplies. Montagu argued that the dues were open to corruption, and recommended that they be abolished, or at least standardised in the Provinces. See p. 199.

²⁰⁷³ Montagu thought that by abolishing the dues, more ships would be encouraged to land in the colony. See p. 199. In their place, he recommended the implementation of 'customs dues'. There were three major harbours at the Cape; Table Bay, Algoa Bay and Simons Bay. Between 1844 and 1852, exports increased there from £211,226 to £382,357, while imports rose from £665,338 to £1,344,270. See tables in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 279.

Department²⁰⁷⁵ and Post Office²⁰⁷⁶, and resolved to re-direct taxes imposed by the local Municipalities at the Cape back into the colonial chest.²⁰⁷⁷

While the Executive Council paid tribute to the 'wisdom of his measures'2078 however, there were a flood of complaints from local government officials insinuating that he was 'allying with the merchants of Cape Town', and that he was withholding pecuniary aid from the Municipalities.²⁰⁷⁹ In the Legislative Council, Montagu denied the allegations:

"I deny the right of the Municipality to any higher amount of revenue than is required to ensure order and cleanliness'.2080

In a familiar protest, the pro-municipal²⁰⁸¹ press declared that Montagu and not the governor presided over the government:

'The real issue between the Council and the Municipality is the right of the Council to control, whenever it sees fit, the acts of the municipality. This principle, once conceded, it would be better to abolish municipal institutions throughout the colony... I speak of the Council, but it would be more correct to speak of the Hon. Secretary to government, for, as at present constituted, (the governor was away on the frontier), he is virtually the Council. If anyone doubts this, let him attend the debates, when any favourite scheme of the active but restless Secretary is introduced. The official members outnumber the non-Among the former there are but two men of ability, the Secretary to the official.

²⁰⁷⁵ In 1844, the Legislative Council referred to the provision of 45 new sets of uniform and forage for the Police horses. See p. 201. Montagu also identified anomalies in the financial management of the Police by the Cape Town Municipality. See p. 202.

²⁰⁷⁶ *Ibid.*, p. 217.

²⁰⁷⁷ Ibid., p. 200. There were eight Municipalities or Divisions in the Western Province, and six in the Eastern. See p. 288.

²⁰⁷⁸ They were ratified in the Executive Council on 23 December 1843. See p. 199.

²⁰⁷⁹ The Municipality was described as being an influential and strong corporate body of colonists. Much of their revenue was derived from port dues. See p. 200. Some also complained that government property was exempt from certain taxes (by Order of Ordinance No. 4, 1842). See p. 201. Regardless, Montagu imposed additional taxes on the Municipalities (Market Relief Bill on 24 April 1846). See p. 203.

²⁰⁸⁰ Ibid., p. 204. The farmers were particularly grateful, as they were required to pay less tax on their produce.

See p. 203.

2081 And largely town based press.

government and the Attorney General, of the latter, the less the better. The officials, the Attorney General tells us, must either vote with the government or resign; and this fact is so well understood by them, that it seems to save them the trouble of thinking at all of the matter, for during the debate on the Markets Improvement Bill, involving the most important principles yet brought before the Council, two of the official members were said to be asleep'.²⁰⁸²

As in Van Diemen's Land, no one doubted Montagu's administrative ability. Between 1843 and 1852, colonial revenue at the Cape increased by over £100,000²⁰⁸³, while port dues increased by nearly 17 per cent.²⁰⁸⁴ Customs revenue more than doubled²⁰⁸⁵ following Montagu's wharf reforms²⁰⁸⁶, while the number of local Municipalities fell from 16 in 1843 to 14 in 1852.²⁰⁸⁷ In comparison, the net revenue of Van Diemen's Land increased by only £10,000 during the same period.²⁰⁸⁸ His manner however did not 'breed a great love in the heart of the colonists'²⁰⁸⁹, and in a statement reminiscent of Sir George Arthur, he responded:

²⁰⁸² Zuid-Afrikaan, 18 November 1847, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 198. Complaints continued to be directed to his office by the Municipalities. See p. 206.

²⁰⁸⁹ Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 191.

²⁰⁸³ In 1843 the figure stood at £178,204. In 1852, it had increased to 275,547. See Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 279.

The increase in immigration naturally contributed to this success.

²⁰⁸⁵ In 1843 the figure stood at £75,190. In 1852, it had increased to £152,281. See Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 279.

At Table Bay, Algoa Bay and Simon's Bay, the three major ports at the Cape, the number of inward ships increased by 268 between 1844 and 1852. The number of outward ships increased by 246 over the same period. See Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 278.

This resulted in a decrease in taxes imposed on the colonists.

²⁰⁸⁸ From 170,308 in 1843 to 181,076 in 1852. See J Barnard, Statistics of Van Diemen's Land, 1844 - 1853, (Hobart Town, 1854). Free immigrants however were pouring into the colony; in 1805, there were 260,00 Europeans in Cape Colony; in 1860, that number had risen to 185,000, and 250,000 in 1875. See R Lewis and Y Foy, The British in Africa, (Weidenfeld and Nicolson, London, 1971), p. 119.

'We do not require for the purposes of government, any additional revenue by taxation; but if you require a reduction of the revenue, we must reduce the expenditure in proportion'.²⁰⁹⁰

Montagu denied that he had a 'personal' connection with any 'market' in the colony, explaining that he 'did not possess a house or any immoveable property, that in fact, he had no pecuniary or any other interests in any market established, or that hereafter be established in the colony'.²⁰⁹¹

Reminiscent of events in Van Diemen's Land however, the gulf between Montagu and Napier widened as his influence among the government officials increased during the disputes. In a letter to Arthur, Montagu explained:

'I like him [Sir George Napier] very much and we get on very well together, but he throws the whole colony upon me as he is too old for his work... I have always endeavoured to keep the governor in the proper place'.²⁰⁹²

Napier did not have too many kind words for Montagu either; the Reverend John Gell of Van Diemen's Land remarked in a letter to his friend, the wealthy colonist William Nairn, that

'The Private Secretary let out that Sir Charles Napier at the Cape told Sir Eardley or somebody that either he or Montagu must very soon go, for he could not stand his ways at all'.²⁰⁹³

One commentator at the Cape even suggested that Montagu had 'taken a firm hold on public business', and had 'in fact taken over the reins' of government.²⁰⁹⁴ When Napier

²⁰⁹⁰ *Ibid.*, p. 208.

²⁰⁹¹ *Ibid.*, p. 206.

²⁰⁹² Montagu to Arthur, 14 May 1844, Sir George Arthur Papers, 1821 - 1855, vol 16 A2176.

²⁰⁹³ Gell to Nairn, 22 August 1843, RS 3/7.

²⁰⁹⁴ Sir Henry Young, July 1847, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 189.

censured Montagu on one occasion and asked him to withdraw an objectionable letter he had addressed to the Council, a wedge was irreparably driven between them.²⁰⁹⁵

Montagu's confidence was boosted by news from Lord Stanley that the Colonial Office had dismissed Franklin's charges against him:

'I am directed by Lord Stanley to acknowledge the receipt of your letter of 16 January last in which you have furnished the explanations which his Lordship called upon you to make on the subject of the charges preferred against you by Sir John Franklin in his despatches of 13 May and 15 June last - in reply I am to acquaint you that His Lordship considers as satisfying the vindication of your conduct which you have afforded him.²⁰⁹⁶

When news of the acquittal reached Van Diemen's Land, The *Launceston Examiner*, a publication which had previously favoured Montagu in its articles, criticised Stanley's approbation of his conduct:

'Mr Montagu did no more than the ordinary character of men would lead us to expect. But the conduct of Lord Stanley, who should have been the calm and impartial judge, and the equal protector, is reprehensible, and almost contemptible'.²⁰⁹⁷

Montagu earned the gratitude of the majority of the colonists for his re-organisation of the government and the colony's finances. In support of his efforts to overhaul the judicial system, the *Graham's Town Journal* declared:

'Mr Montagu has supported the measure in the Council with that ability energy and tact, which has rarely, if ever, been surpassed in the discussion of any public service... he has performed a Herculean task in a manner which justly entitles him to the respect and confidence of the colony at large... Mr Montagu has taken his stand upon popular

lbid., p. 207.

²⁰⁹⁶ Stanley to Maitland, 16 April 1844, Sir George Arthur Papers, 1821 - 1855, vol 16 A2176.

²⁰⁹⁷ Launceston Examiner, 27 December 1845.

ground; he has stood forth as the advocate of the people... and he has well earned thereby, the applause and gratitude of the whole colony'.²⁰⁹⁸

The Eastern Province Herald also remarked:

'Give us a Mr Montagu for he is a very good impersonation of that separate and distinct government which we now agitate for. We must have a separate and distinct imperium in imperio; A Montagu, in fact, to designate things by a new and very significant appellative'. ²⁰⁹⁹

The Cape Frontier Times also added:

'Is there a settler dull as led who to himself at some time hath not said: "we have Montagu"'. 2100

It mattered not that a new governor was appointed in 1844; in 1847, at the end of his term, Governor Maitland reported:

'As to the civil state of the colony, I trust it will be found satisfactorily by Sir Henry Pottinger. The government departments are in an efficient condition, and the business is habitually conducted with due regularity. The customs revenue has been large, showing a healthy state of our commerce, and the treasury, in consequence, is in a very satisfactory state'.²¹⁰¹

There is no doubt Montagu revelled in the praise, and responded in typical party spirit:

²⁰⁹⁸ 3 January 1846, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 226.

²⁰⁹⁹ 28 October 1847, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 191.

²¹⁰⁰ 9 January 1845, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 209.

²¹⁰¹ Maitland to Grey, 27 January 1841, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 212.

'I know my duty and as a senior member of this Council I am not to be bullied or brow beat... So long as I am the servant of the public, I will allow no wrong to be done to the public without raising my voice against it'.²¹⁰²

Increasingly seen by the colonists as an advocate of reform and a defender of the people's welfare, Montagu turned his attention to ecclesiastical affairs, and in June 1844, he declared his intention to improve the facilities and organisation of the education system at the Cape. He remarked:

'The most pressing demands are made from nearly every part of the colony for an extension of the advantages which (the government schools) are found to bestow. I think we must be prepared to make a considerable advance in expenditure for schools next year, if we would keep pace with the pressing demands on us'.²¹⁰³

Consequently, between 1843 and 1854, the average daily school attendance in the colony increased by nearly 18,000 from 5000 to 23,500.²¹⁰⁴ Similarly, Montagu introduced into the Legislative Council an 'ordinance for the better regulation of the ecclesiastical affairs of the colony', resulting in the appointment of the first Bishop of Cape Town in 1849.²¹⁰⁵ He also averted attention to convicts²¹⁰⁶ at the Cape, and the necessity for the promotion of 'honest and steady habits' among them.²¹⁰⁷ While convicts were not transported to the Cape from Britain²¹⁰⁸, Montagu explained that

'to confirm the principles of vice in which a criminal has been reared, by forcing him into contact with others more hardened them himself, and then to turn him loose upon the

²¹⁰² As reported in the Cape Town Mail, 8 January 1846. See p. 226.

²¹⁰³ As reported in the Cape Town Mail, 20 July 1844. See p. 229.

²¹⁰⁴ *Ibid.*, p. 229.

²¹⁰⁵ *Ibid.*, p. 228.

While generally referred to as convicts by the authorities (including Montagu), the term means white and black settlers who were convicted in the colony rather than transportees.

²¹⁰⁷ Montagu also thought the judicial system needed re-organisation. There was a complex hierarchy of JP's, resident magistrates, civil commissioners, chief and puisne judges. See p. 225.

There was no need - in a petition from the commissioners of the Municipality for Cape Town, the chairman stated that 'the labouring population of the Cape consists chiefly of emancipated slaves and their children, between 30,000 and 40,000 in number. See HG Smith to Grey, 22 December 1848, as reported in the British Parliamentary Minutes (Transportation), vol 9, Session 1849, p. 26.

world exposed to temptations which have acquired additional force over his mind, by the pernicious associations of a prison, by adopting such a course, what we call the prevention of crime, becomes the promotion of crime, and the prison, instead of being an abode of correction, is turned into a school of vice'.²¹⁰⁹

His concern for their welfare however was tempered by his realisation that the 'convicts' of the colony comprised in themselves a misdirected labour force. In October 1843, Montagu remarked that the convicts were dispersed irregularly throughout the colony, and that few were engaged in useful or hard labour.²¹¹⁰ One month earlier, Montagu received a private letter from a colleague, which convinced him of the necessity of diverting bond labour and funds to the roads:

'The state, generally, of the public main roads in this division, is extremely bad, with the exception of that leading to Fort Beaufort, with its branches to several outposts, which is a military road, having been constructed by the Royal Engineer Department'.²¹¹¹

At that time, there were only 202 convicts in the colony, most of whom were employed in domestic service in the towns under little or no supervision.²¹¹² Montagu suggested that the convicts could be placed in gangs of 80 or 100 and employed exclusively on the 'main roads, opening mountain passes and constructing bridges'.²¹¹³ He also advised that a code of regulations was required for the management and discipline of the convicts, and that the construction of new roadways would contribute to an increase in the sale of Crown lands, improve communications, and attract investment to the colony. In January 1844, Montagu also suggested that Robben Island could accommodate the most hardened convicts, while those sentenced to hard labour could be employed on the roads under the

²¹⁰⁹ *Ibid.*, p. 227. Intimately connected with the convict question was his reform of the prison system, and in November 1847, he presented a Bill to the Council for improving the physical condition of the gaols.

See p. 226.
2110 Montagu to the Civil Commissioners, 15 June 1846. See p. 235.

²¹¹¹ Martin West to Montagu, 22 September 1843, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 234.

²¹¹² There were also 1235 prisoners in the colony's gaols. See p. 226.

²¹¹³ Montagu to the Civil Commissioners, 15 June 1846. See p. 235. Montagu envisaged opening up the markets and expanding his postal network. See p. 231.

direction of a 'central road board'.²¹¹⁴ Left alone to develop the new regulations, Montagu appointed convict overseers, superintendents and constables at the new road stations, all of whom reported directly to the Colonial Secretary's office. In addition, he divided the convicts into six classes according to their sentence, and he made provision for periodic inspection of the gangs by a resident magistrate.²¹¹⁵

One month later, Stanley indicated that he was pleased Montagu had again taken it upon himself to re-organise the management of the convicts, only this time at the Cape:

'I have received Sir George Napier's despatch of 27 October 1843 no. 212 on the subject of a place suggested by Mr Montagu, the Colonial Secretary of your government, for continuing and promoting the two objects of improved discipline among the convicts and a more effective administration of the Roads in the colony of the Cape of Good Hope... It is gratifying to me to observe that Mr Montagu is applying himself with so much zeal for the permanent interests of the colony and with so much ability to explain and to apply them'. 2116

Unknown to Stanley however, Montagu had long sort Arthur's advice where the propriety of such changes were contemplated, and his alterations to the existing system at the Cape was no exception:

'Thank you for your comments respecting the idea which I trust you on reading my papers about the Board Department... During the last year I have made some very important changes and improvements in the public departments. It is gratifying to know that my measures meet with the approbation of the good people in Downing Street - In a late despatch Lord Stanley speaks in high terms of my suggestions for the improvement of the road and convict departments in the colony and says that it is gratifying to see I am

²¹¹⁴ *Ibid.*, p. 238.

²¹¹⁵ *Ibid.*, p. 227.

²¹¹⁶ Stanley to Lt. Governor Maitland, 12 February 1844, Sir George Arthur Papers, 1821 - 1855, vol 16, A2176. Stanley's praise for Montagu was not only restricted to his penal administration: 'The colonial currency has been placed on a sound footing by the course suggested by Mr Montagu' (Stanley to Maitland, 19 April 1844, Sir George Arthur Papers, 1821 - 1855, vol 16, A2176).

exerting myself with so much zeal and authority for the permanent interests of the colonists and with so much ability to appreciate and explain and apply them... I have not heard from Forster for some time Sir E. Wilmot seems to be a very popular, and I hope he may be a man to the wants of the colony'.2117

In January 1848, one of the most important celebrations of the year was held in honour of the opening of the Montagu Pass between Cape Town and Grahamstown, constructed with convict labour, and which was described by the new governor, Henry Smith, as 'beyond my power of description'.2118 At last, Montagu felt vindicated. It mattered not that the number of prisoners at the Cape amounted to only a fraction of the total number of convicts sitting idle in the probation gangs in Van Diemen's Land, and that the demand for bond labour at the Cape was infinitely greater than the supply.2119 The total expenditure for the maintenance of the convicts at the Cape was only £20,000 in 1845, and in 1852, it had only increased to £27,000.2120 In contrast, nearly £244,000 was spent on the maintenance of the convicts in Van Diemen's Land²¹²¹, and yet there was a negligible revenue return for the colony. In comparison, the government at the Cape collected nearly £10,700 alone in 1845 from road taxes generated by the new public works. 2122 In 1853, the total expenditure on the maintenance of the convicts plummeted to only £5,590 at the Cape, yet the government collected a massive £6,064 in road tax. 2123 So confident was Montagu of success that he even suggested that 'the public' should be given the opportunity of suggesting alterations to the system, so as to enable the 'Central

Road Board' to 'correct any errors they might otherwise fall into'. 2124 One commentator

²¹¹⁷ Montagu to Arthur, 14 May 1844, Sir George Arthur Papers, 1821 - 1855, vol 16, A2176.

²¹¹⁸ Smith to Grey, 1 March 1848, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 241.

The number of convicts in Van Diemen's Land was still high; 25,459, 7277 of whom were maintained by the government. See Statistics of Van Diemen's Land, 1844 - 1853 (J Barnard, Hobart Town, 1854),

p. 2.
2120 These totals included the actual maintenance and discipline of the convicts, the salaries of the clerks and officials, and the grants for making the roads.

Figure for 1848. £152,800 was spent on salaries for the officers, and food and clothing for the convicts. A further £91,777 was spent on the military. See Statistics of Van Diemen's Land, 1848 (J Barnard, Hobart Town, 1854), return 71. 2122 *Ibid.*, p. 283.

²¹²³ *Ibid.*, p. 289. Between 1845 and 1853, £25,314 in total were spent on the system at the Cape.

²¹²⁴ *Ibid.*, p. 245.

even suggested that the Central Road Board was 'like a body without a head' when Montagu was absent from the Cape on business.²¹²⁵

In September 1848, Governor Smith reflected on the carefully built up arrangements at the Cape:

'[The management of the convict system] has been left by me, as by my predecessors, entirely in the hands of Mr Montagu, by whom it was devised in 1843. Its success is, no doubt, in a great measure, to be attributed to the interest he has continually felt in this subject, and to the fact that the application of its principles and the management of its details have always been left in the hands of its author. But it is also clear that it is founded upon sound principles, applicable to the circumstances of the colony'.²¹²⁶

Hardly surprising, Stephen's request was never forwarded from the Cape to Van Diemen's Land, though several years later, the Secretary of State at the Colonial Office expressed his 'entire satisfaction' with the system that had been developed there:

'The best reward to Mr Montagu for the thought and the exertions which it must have cost him, will doubtless be found in the sense of the service which he had been enabled to render his fellow creatures. I feel it not the less due to him to record the gratification with which I have pursued the accounts of the favourable results of his plan of convict management'.²¹²⁸

Montagu's successor at the Cape, Rawson W Rawson, added in 1855:

'before concluding, I cannot, upon a review of the foregoing summary of the Boards transactions, refrain from offering my humble meed of praise to my distinguished

²¹²⁵ Smith to Grey, 26 October 1849, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 245.

²¹²⁶ Smith to Grey, 6 September 1849, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 246.

Grey to Smith, 7 February 1850, as quoted in Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p. 247.

predecessor, the honourable J. Montagu, who devised, and put into execution, the scheme for improving the public roads, which has incontestably conferred so much benefit on many parts of the colony, and has laid the foundation for the general extension of similar advantages to all parts of it'. 2129

Regardless of Arthur's interest at the Cape, Montagu was a successful administrator in the colony, and his credits are highlighted in detail in chapter 14.

²¹²⁹ Quoted in the Cape Town House of Assembly, 1855. See p. 249.

Appendix E - Montagu in England 1839 - 1841

While Montagu was in England, there were others matters too, which occupied his attention. Lord Normanby had received a letter from the Van Diemen's Land Company alleging Montagu had used language 'disrespectful to the Company and unbecoming of a public officer in the Legislative Council'. As usual, Montagu capably defended himself against the imputations of the Company Directors:

'I am informed, that in a letter recently addressed to your Lordship by the Director of the Van Diemen's Land Company, there has been transmitted for your consideration the report of a speech I am represented to have made as Col. Sec. of VDL in my place in the Legislative Council of that colony in the month of August last, to the effect that the Company had deceived the workmen they had engaged in England and forwarded to the colony and that the Company are a set of kidnappers. The report of the speech imputed to me was furnished, as I understand, to the Directors by their solicitors Cartwright and Allport in VDL... I have taken the liberty of addressing your Lordship to inform you, that the report of my speech which has been forwarded by the Company's solicitors is incorrect.... It is true that I opposed the Company's demands for an Act of Council, but in doing so I hope your Lordship will believe that I used no such language as that imparted upon me. When the debate occurred in the Legislative Council, there were, to the best of my recollection, but four persons present in the Council chamber in addition to the Lieut-Governor and ten members of the Council, and these persons were A Stephen, the counsel for the Company, Mr Allport, the solicitor, Mr Hone, the Master of the Supreme Court and the short hand reporter for the Hobart Town Courier'. 2130

True to form, Montagu based his defence on the very medium that called for his dismissal after the Clapperton affair - the press:

²¹³⁰ Montagu to Normanby, 12 Alford Terrace, London, 29 June 1839, CO 280/117, p. 51.

'Neither of three persons I have named took notes, but the reporter did, and as the accuracy of the reports of the speeches made in the Legislative Council for that newspaper was always admitted, I take leave to transmit for your Lordships consideration the report in the *Courier* of my speech upon the occasion under consideration, and which I admit to be substantially - I might add - literally, - correct.'²¹³¹

His defence was sufficient, the accompanying minute reading: 'This is to be communicated to the VDL Company with Lord N. opinion that it is a satisfactory answer to the charge preferred against Mr Montagu.'2132

There were also favours to be done for the governor: in April 1840, Franklin issued Montagu with a private request to bring before the Secretary of State his proposal to appoint a botanist in the colony. While Franklin urged Montagu to support his application, Russell declared that he 'required further information as to the objects of such an institution'. The botanist was never appointed.

While in London, Montagu also busied himself with the affairs of the Derwent Bank of which he had been connected with in one form or another since its inception in January 1828.²¹³⁴ The Derwent Bank was largely 'a mortgage bank and its loans were principally used for the development and extension of Tasmanian agriculture and grazing', and was clearly in the interests of its shareholders that transportation should continue, since the existence of a cheap labour supply was a powerful inducement to invest in land.²¹³⁵ It was rumoured that Arthur was a secret shareholder in the firm, though the claims were never proven.²¹³⁶ It is highly unlikely Arthur would have possessed such shares, and in July 1828, he asked the Colonial Secretary to ensure that all the public officials in the colony withdrew 'their connexion with the establishment as speedily as a fair regard to their own individual interests'. Arthur was even given to understand that some officials saw his

²¹³¹ Hobart Town Courier, 10 August 1838.

²¹³² 1 July 1839.

²¹³³ Montagu to Russell, 15 April 1840, CO 280/117, p. 88.

²¹³⁴Robson, *History*, p. 258.

²¹³⁵Fitzpatrick, Franklin, p. 253.

²¹³⁶Robson, *History*, p. 258.

instructions as an 'imposition' and an 'interference with their private affairs', although this did not stop Arthur from pursuing the matter, and it was agreed to in the Executive Council later that day.²¹³⁷ This pleased some of the directors of the rival Van Diemen's Land Bank, some of whom were in opposition to Arthur's government.²¹³⁸ Montagu was particularly chastised by the then director of the Van Diemen's Land Bank, Anthony Fenn Kemp²¹³⁹, as holding a partnership in the establishment, though his protests went largely unheard after the Secretary of State declared that it was not necessary to 'exclude every individual who may fill a public situation from the possession of shares'.2140 In lieu of actually holding a directorship in the Bank, Montagu increased his shares in the establishment through his children and acted in the capacity of representative in the colony for a number of wealthy English investors.²¹⁴¹ In 1832 however, Montagu, 'by a considerable sacrifice divested himself of all connexion with the Bank, and pledged himself to have sold and transferred every share which he possessed in that establishment'. Such a course of action was necessary after Arthur recommended Montagu succeed Jocelyn Thomas as Colonial Treasurer while a replacement was sent out from England. The term 'transferred' however was loosely applied, as Montagu later spoke of six shares in the Derwent Bank held in his sons' names, 'two of which were in the name of John Edward, two George, and two Alfred'. 2142

²¹³⁷ Arthur to Burnett, 24 July 1828, HRA, III, VII, p. 593.

²¹³⁸For a full commentary on the banking establishments in Van Diemen's Land, and the propriety of the admission of government officials to their boards, see HRA, III, VII, pp. 830 - 837.

²¹³⁹Born in 1773, Kemp arrived in New South Wales as an ensign in the New South Wales Corps. Kemp played a leading role in the deposal of Governor Bligh, and in 1815, he was permitted to settle in Van Diemen's Land after declaring himself bankrupt. Kemp was an agitator in the colony, and was responsible in part for the recall of Governor Sorell in 1823. Kemp was a leading protester for British liberties in the colonies, and clashed with Arthur on a number of occasions. He died at Sandy Bay in 1868. See ADB, vol 2, p. 40.

²140 *Ibid.*, p, 833.

²¹⁴¹Fitzpatrick, Franklin, p. 255.

²¹⁴² *Ibid.*, p. 255. See also Arthur to Goderich, 11 December 1832, CO 280/36, p. 545.

Appendix F - Maconochie's Recall from Norfolk Island

Maconochie and his family had arrived at Norfolk Island on 6 March 1840²¹⁴³ following Russell and Normanby's decision to allow him to 'try an entire new system of convict management'. Maconochie had hoped to trial his proposal on a much smaller scale than Norfolk Island, but the urgency of the transportation debate in Britain did not afford such a luxury, and Maconochie, like all other penal administrators, was told to get on with it as best he could. Following his arrival in Sydney, Gipps was initially annoyed by Maconochie's enthusiasm, and stated that he had doubts as to 'any great results being produced by it'. Gipps' prophecy was realised one month after Maconochie arrived on Norfolk Island, and the governor was incensed that Maconochie had ignored his instructions as to the treatment of the doubly convicted convicts already on the Island, and established a 'system of extreme indulgence' for the rest. In the convict of the convicts already on the Island, and established a 'system of extreme indulgence' for the rest.

In the following months, similar indiscretions transpired which led Gipps and the Colonial Office to reconsider the experiment, though Maconochie pressed ahead with the system.²¹⁴⁸ In November 1840, Russell advised Gipps that he was 'free to put a termination to Captain Maconochie's experiment, if you should consider it necessary', and made a number of recommendations as to the future disposal of convicts already serving punishment on the Island, and for the arrival of convicts hitherto sent from Britain.²¹⁴⁹ Unfortunately for Franklin, many of the 'old hands' were to be sent to Van Diemen's Land, and Russell told Gipps to advise Franklin of the necessity to receive them as soon possible. In the following months however Gipps observed that Maconochie's system was 'working well' after the changes set down by Russell's despatch, albeit under a system of 'extreme indulgence', and in reply, Russell advised Gipps that he thought

²¹⁴³ Barry, Maconochie, p. 98.

²¹⁴⁴ Gipps to Normanby, 6 July 1840, HRA, I, XX, p. 400.

²¹⁴⁵ *Ibid.*, p. 401.

²¹⁴⁶ *Ibid.*, p. 403.

²¹⁴⁷ Gipps to Russell, 6 June 1840, HRA, I, XX, p. 689.

²¹⁴⁸ Russell to Gipps, 12 November 1840, HRA, I, XXI, p. 73.

²¹⁴⁹ *Ibid.*, p. 73.

Maconochie deserved some recompense, and recorded that 'the system appears to promise well'. Just as Maconochie's fortunes seemed to turn however, Russell was succeeded by the stern disciplinarian Lord Stanley, whose Permanent Under Secretary, James Stephen, having perused Maconochie's first annual report, commented that the Superintendent's mind was 'enveloped in a sort of fog which distorts the objects before him and perplexes his accounts of them'. Gipps and Stanley allowed the experiment to continue however for a further 12 months, but in August 1841, Gipps advised Stanley that 'the time is nearly arrived, when it will be proper to remove from the Island the prisoners, who during the last two years and a half, have been placed under the experimental system introduced by Captn. Maconochie'. Gipps alleged that the convicts were 'personally attached' to Maconochie and that

'punishment is rare on the island, and hardly ever severe. Attempts are frequently made to produce striking effects on even the worst men, by unexpected acts of leniency, forgiveness, or confidence, calculated to awaken and call into play the good feeling implanted in them by nature, but which may long have lain dormant; and such attempts are not unfrequently successful'.²¹⁵³

While he reported that 'overt or combined violence seldom occurred', Gipps recorded that petty crime abounded, and unnatural offences were on the increase. It also concerned the Governor that the some of the convicts on Norfolk Island were communicating with 'their old associates in this colony that the least deserving men are most in Maconochie's confidence'.²¹⁵⁴

At the same time Gipps was preparing his report, Stanley was also drafting a report to Gipps advising the governor to visit the Island and to satisfy himself as to the progress of the marks system on Norfolk Island. Gipps delayed his visit until February 1843, and after inspecting the settlement and speaking with the government officials there, returned

²¹⁵⁰ Russell to Gipps, 1 August 1841, HRA, I, XXI, p. 454.

²¹⁵¹ Gipps to Russell, 19 January 1841, HRA, I, XXI, p. 193.

²¹⁵² Gipps to Stanley, 15 August 1842, HRA, I, XXII, p. 206.

²¹⁵³ *Ibid.*, p. 206.

²¹⁵⁴ *Ibid.*, p. 207.

to Sydney 24 days later. Gipps reported to Stanley on his visit in April, and in a lengthy 23 page letter, concluded that only one system of management should be adopted on Norfolk Island in the place of Maconochie's trial. His observations however were noteworthy, and in particular his comments on assignment:

In assignment, a man is a slave, but still he is a slave in society; and to persons of unrefined minds or such as do not revolt at slavery, the condition of assignment is often a mild, and even enjoyable one, and very generally sought for in preference to government service. Assignment is the greatest and worst of lotteries; but human life itself is a lottery; it is at least made up of some principles which are fixed, and some fortuitous; and if the fortuitous ones were wholly taken away, mans inducement to amend his condition by his own exertions would be destroyed; his life would be hardly endurable'. 2155

Gipps need not have bothered to report so comprehensively on the penal experiment; on 29 April 1843, Stanley advised Gipps that he had settled on removing Maconochie from Norfolk Island, and appointing Major Childs to succeed him as Superintendent. Stanley explained that he based his decision on all the 'available information', and was bound to declare that Maconochie's 'projects appear to me to have been unsuccessful'. The decision however had been made over six months before, and Montagu, in his November memorandum, recorded that the 'present system of penal discipline at Norfolk Island was to end, and all the convicts now there [were] to be removed from it as quickly as practicable'. Anticipating resistance to the measure in Van Diemen's Land, Montagu urged Stanley to issue 'Positive instructions to receive the men from Norfolk Island as speedily as possible', which, he added, will 'doubtless be sufficient to ensure the zealous co-operation of those officers'.

²¹⁵⁵ Gipps to Stanley, 1 April 1843, HRA, I, XXII, p. 634.

²¹⁵⁶ Stanley to Gipps, 29 April 1843, *HRA*, I, XXII, p. 698.

Appendix G - Montagu's Epilogue

Meanwhile, in an epilogue to the penal drama in Van Diemen's Land, its principal actor and architect John Montagu, who had, with adroit patronage, successfully translated himself into the Colonial Secretary for Cape Colony since 1843, was also feeling the physical effects of nearly three decades of party politics. Indeed, things had changed so much in the civil service that in 1850, candidates for colonial postings were required to sit a 'civil service examination', the object of which was to 'ascertain that he possesses the requisite degree of education for the satisfactory execution of the official duties which will be entrusted in him'. 2157 In a familiar cry, the opposition at the Cape accused Montagu of dividing the people into parties or factions, while in November, the Cape Town Mail charged Montagu with being the 'virtual Governor' of the colony. Another commentator accused Montagu of direct association with the press, and it was claimed that he provided details of government business to the editor of the *Monitor* before it was even heard in the Legislative Council.²¹⁵⁸ Major political upheavals also gripped the colony during this period, including the push for representative government and the Kaffir frontier wars.²¹⁵⁹ Some opponents at the Cape even referred to the failure of transportation to Van Diemen's Land; in April 1849, the chairman, John Philip, declared:

'[if the convicts were introduced], a most fatal deterioration would inevitably take place; an opinion in which your memorialists are supported by the universal assent of the well informed of all classes in this country, as well as by the horrible results of the system of transportation now fully developed in New South Wales and Van Diemen's Land.'²¹⁶⁰

²¹⁵⁷ Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852, p 188.

Onder John Wonlaga 16.5 1652, p 1652 2158 Montagu's alleged use of the press when convenient appears to echo his alleged activity in Van Diemen's Land under Franklin.

Another Kaffir war was fought between 1850 - 1851. See Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope under John Montagu 1843 - 1852, p 190. Montagu conceded in 1850 that representative government was proper to the needs of the colony, but that its admittance would be unsettling. See p. 252. His opposition, though mild, was criticised by many whom had considered themselves supporters of his administration.

²¹⁶⁰ Cape Town, 20 April 1849, as reported in the British Parliamentary Minutes (Transportation), vol 8, Session 1847 - 1850, p. 174.

After nearly 10 years service at the Cape, Montagu applied for 15 months leave, and on 2 May 1852, he returned to London with his family. Montagu became seriously ill after several months in England, though reports continued to filter back to the Cape that he was still exerting his influence at the Colonial Office in a bid to delay changes to the constitution which governed the admittance of a representative assembly. Having spoken with Montagu at Downing Street late in 1852 however, the Earl of Derby feared that Montagu's 'health was irrecoverably broken, and that his life would not be much prolonged'. On 4 November 1853, Montagu died in England, surrounded by his family and friends. Montagu's eldest son, John Montagu, became Under Secretary at the Cape, though he too died unexpectedly in 1864. Another son, George, became Deputy Surveyor General at the Cape, until his death in 1863. 2162

In 1855, Montagu's bibliographical memoir was published in London, and among the many subscribers were two of the greatest influences in his life - his friend and uncle-in-law, General Sir George Arthur, and his banker, William Henry Hamilton.²¹⁶³
Meanwhile, a few months before on 26 May 1853, the last convict transport arrived in Van Diemen's Land, ending at last the tortuous episode of convict reformation in that colony.

²¹⁶¹ Montagu's death was reported in the *Hobart Town Courier* on 14 April 1854. Montagu's wife was presented with a £3000 subscription.

²162 Montagu had five sons in total, Alfred (1829 - 1898), Frederick (1832 - 1836) and Arthur (1841 - 1872)

²¹⁶³ Other subscribers included Earl Grey, Sir George Napier and Sir Harry Smith.

Appendix H - Montagu to Franklin, 10 December 1839

'Your accounts of your journey thro' the island and the reception you met with everywhere, were gratifying to my feelings, because I was assured of the improvement in a colony, in which I shall entertain a great interest, and I was also assured, that the colonists were duly appreciating your own worth and energies in praise, in spite of the untoward events which had tended, to a certain extent, to operate against you, - since it cannot be concealed that the workings and machinations of Capt Maconochie, for his own exaltation, to yr prejudice, had made their effect and pretty extensive too. - I have often reflected upon the extraordinary occurrences during the first twelve months of yr Govt' in most of which I had a part to perform and have as frequently wondered that they should have terminated so fortunately as they did, for the obstacles were numerous and sometimes perplexing, for in my situation, I was, naturally enough, I admit, exposed to suspicion of dislike to Maconochie and to serve a party purpose, and feeling the things, I fear you must sometimes have imagined that I was either too luke warm or too energetic in my words and actions. However, these things have all happily passed away, and I am sure you will not consider that I am more influenced by unkind feelings to Maconochie, upon whose countenance, I shall, in all probability, never look again, - when I assure you that I consider the day of your separation from him the most fortunate of your life; for I know more of his conduct than you did, or well could know, and for your sake, I rejoiced at the termination of his official connexion with you. But for that termination, you would never again have had such feelings of confidence evinced by the settlers as your late tour exhibited, and which I am persuaded will continue to increase towards you so long as you hold the government'.2164

²¹⁶⁴ Lady Franklin's Journal, 22 May 1840, MS 248/88.

Bibliography

1. Primary Sources

(a) Manuscripts (Royal Society Collection, University of Tasmania)

Derwent Bank and Swanston Letter Book, Outward Letters, Foreign, 22 May 1838 - 22 August 1845, RS 9/3(2)

Sir Ernest Clark Bequest, Correspondence with AL Wyn about the Franklin - Montagu Dispute, RS 7/112

William and John Clark Papers, Post Office and Correspondence Papers, RS 8/E19,

William and John Clark Papers, Finance Miscellaneous Papers, RS 8/C15

William and John Clark Papers, Miscellaneous, RS 8/B20

William and John Clark Papers, Miscellaneous Papers on Government Expenditure, RS 8/B49

WH Hudspeth Papers, The Rise and Fall of Charles Swanston, Papers and Proceedings of the Royal Society of Tasmania, University of Tasmania, 5 October 1948, p. 1-16, RS 3/1(2)

WH Hudspeth Papers, Notes on Sir John Franklin, RS 3/7

The Montagu Manuscript Copy of the Complete Correspondence that Passed between John Montagu and the Secretary of State for the Colonies with Regard to Mr Montagu's Disagreement with Sir John Franklin, London, 1843. Presented by Mrs GN Atkins, 5 November 1943, RS 114

Charles Swanston Lecture Notes, WH Hudspeth, 5 October 1948, RS 9/3, 2

(b) Microfilm

Sir George Arthur - Papers, 1821 - 55, A2161 - A2220; D290-D292/2, 64 Volumes

Accounts and Papers of the Select Committee on Transportation, Vol XXII

Letters by Lady Jane Franklin, MS 248/174/1-23

Journal by Lady Jane Franklin, MS 248/156-170

Letters by Sir John Franklin, MS 248/295-316

Journal by Sir John Franklin, MS 248/175

(c) Archives Office of Tasmania, Hobart

Colonial Office, Original Correspondence, Secretary of State, AJCP CO 280

Colonial Office, Miscellaneous, CO 284

Colonial Office, Entry Books of Correspondence, CO 408

Legislative Council Minutes, 1837-1844, SLTX/AO/JP/7

Governor's Letterbooks, GO 137

(d) Newspapers

True Colonist

Colonial Times

Hobart Town Courier

Murray's Review

Launceston Examiner

Hobart Town Gazette

Austral Asiatic Review

Sydney Gazette

(e) Tasmaniana Library, Hobart

Sir G Arthur, Observations Upon Secondary Punishment, (James Ross Printer, Hobart, 1833)

Sir G Arthur, Defence of Transportation, (George Cowlie, London, 1835)

Correspondence between the Late Colonial Secretary, Mr Montagu, and Mr Henslowe, Private Secretary to Sir John Franklin

R Whately, *Thoughts on Secondary Punishment: In a Letter to Earl Grey*, (B Fellowes Printer, London, 1832)

R Whately, Remarks on Transportation: And a Recent Defence of the System in a Second Letter to Earl Grey, (B Fellowes Printer, London, 1834)

(f) Private

Typescript of the GTWB Boyes Diary, Held by Mr Peter Chapman, University of Tasmania

2. Secondary Materials

R Andrews, Religion and Education in Van Diemen's Land, 1837 - 1843, Unpublished Honours Thesis, University of Tasmania, 1992

J Barnard, Statistics of Van Diemen's Land, 1844 - 1853, (Hobart Town, 1854)

JV Barry, *Alexander Maconochie of Norfolk Island*, (Oxford University Press, Melbourne, 1958)

M Bassett, The Hentys, (Melbourne University Press, Melbourne, 1954)

C Bateson, *The Convict Ships, 1787-1868*, (Brown and Son and Ferguson, Glasgow, 1959)

eds. K Bell and WP Morrell, Select Documents on British Colonial Policy 1830 - 1860, (Clarendon Press, Oxford, 1928)

M Bentley, *Politics Without Democracy*, (Fontana Press, London, 1996)

A Bertram, The Colonial Service, (Cambridge University Press, Cambridge, 1930)

JT Bigge, Report of the Commissioner of Inquiry into the State of the Colony of New South Wales, (Australian Facsimile Editions No. 68, Adelaide, 1966)

CP Billot, *The Life and Times of John Pascoe Fawkner*, (Hyland House, Melbourne, 1985)

P Boyer, Souls and Minds, Unpublished MA Thesis, History and Classics, University of Tasmania, 1972

I Brand, Penal Peninsula, (Jason Publications, Hobart, 1978)

I Brand, *The Convict Probation System*, (Blubber Head Press, Hobart, 1990)

I Brand, 'Charles Joseph La Trobe and the Van Diemen's Land Probation System', Bulletin of the Centre for Tasmanian Historical Studies, vol 1, (1988), p. 62

JJ Breitenbach, The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu, 1843 - 1852, Archives Yearbook for South African History, vol II, (Government Printer, Cape Town, 1959)

British Parliamentary Papers (Crime and Punishment), Irish University Press

British Parliamentary Papers (Transportation), Irish University Press

ed. PL Brown, Clyde Company Papers, (Oxford University Press, Melbourne, 1956)

P Burroughs, Britain and Australia, (Clarendon Press, Oxford, 1967)

NG Butlin, *Forming a Colonial Economy*, (Cambridge University Press, Cambridge, 1994)

SJ Butlin, Foundations of the Australian Monetary System, 1788 - 1851, (Melbourne University Press, Melbourne, 1963)

J Calder, Recollections of Sir John and Lady Franklin, (Sullivans Cove, Adelaide, 1984)

ed. P Chapman, *The Diaries and Letters of GTWB Boyes, Vol 1, 1820 - 1832*, (Oxford University Press, Melbourne, 1985)

ed. P Chapman, *Historical Records of Australia*, Series III, VII, (The Library of the Commonwealth Parliament, Australian Government Publishing Service, 1997)

M Clarke, 'The Case of Sir John and Lady Franklin', Tasmanian Historical Research Association, vol 20, (1973), pp. 67 - 81

J Clay, Maconochie's Experiment, (John Murray, London, 2001)

K Daniels, Convict Women (Allen and Unwin, Sydney, 1998)

J Duxbury, Colonial Servitude, (Monash Publications, Melbourne, 1989)

PR Eldershaw, 'The Convict Department', Tasmanian Historical Research Association, vol 15, 1968, pp. 130 - 147

WG Elliston, Statistical Returns of Van Diemen's Land 1824 - 1839, Compiled from Records in the Colonial Secretary's Office, (Collins Street, Hobart, 1839)

J Eyre, The Franklin - Montague [sic] Dispute, unpublished MA Thesis, History and Classics, University of Tasmania, 1939

K Fitzpatrick, Sir John Franklin in Tasmania, (Melbourne University Press, Melbourne, 1947)

A Fitzpatrick, *The British Empire in Australia*, (Melbourne University Press, Melbourne, 1941)

F Fleming, Barrow's Boys, (Granta Books, London, 2000)

J Flint, *The Cambridge History of Africa*, (Cambridge University Press, Cambridge, 1976)

WD Forsyth, Governor Arthur's Convict System, (Sydney University Press, 1970)

Sir John Franklin Collection at <<u>http://www.archiveshub.ac.uk/news/0407sif.html</u>>, 19 July 2004

Sir John Franklin, Narrative of Some Passages in the History of Van Diemen's Land, (Platypus Publications, Hobart, 1967)

A Gayer, The Growth and Fluctuation of the British Economy, (Oxford Press, London, 1941)

RW Giblin, The Early History of Tasmania, (Melbourne University Press, 1939)

RM Hartwell, *Economic Development of Van Diemen's Land 1820 - 1850*, (Melbourne University Press, Melbourne, 1954).

ed. D Heard, *The Journal of Charles O'Hara Booth*, (Tasmanian Historical Research Association, Hobart, 1981)

O Heyward, "A Stronghold of Learning and a School of Christian Gentlemen": Christ College, Tasmania - From its Beginning Until its First Closure in 1856', *Tasmanian Historical Research Association*, vol 20, (1973), pp. 42 - 81

JB Hirst, Convict Society and its Enemies, (George Allen and Unwin, Sydney, 1983)

P Howell, 'Of Ships and Sealing Wax: The Montagu's, the Navy and the Law', *Tasmanian Historical Research Association*, vol 13, (1966), pp. 101 - 128

H King, Richard Bourke, (Oxford University Press, Melbourne, 1971)

V Korobacz, The Legislative Council of Van Diemen's Land 1825 - 1855, Unpublished MA Thesis, History and Classics, University of Tasmania, 1971

V Korobacz, 'The Legislative Council in Van Diemen's Land', Bulletin of the Centre for Tasmanian Historical Studies, vol 20, (1974), pp. 7 - 21

MCI Levy, Governor George Arthur, (Georgian House, Melbourne, 1953)

R Lewis and Y Foy, The British in Africa, (Weidenfeld and Nicolson, London, 1971)

G Mackeness, Some Private Correspondence of Sir John and Lady Franklin, Part I and II, (DS Ford Printers, Sydney, 1947)

A McMahon, 'The Convict Stations of Norfolk Bay', Tasmanian Historical Research Association, vol 13, (1966), pp. 53 - 69

ACV Melbourne, Early Constitutional Development in Australia, (St Lucia, University of Queensland Press, 1963)

H Melville, *The History of the Island of Van Diemen's Land*, (Australian Facsimile Edition, Adelaide, 1967)

O MacDonagh, A Pattern of Government Growth 1800 - 60, (MacGibbon and Kee, London, 1961)

RB Madgwick, *Immigration into Eastern Australia*, 1788 - 1851, (Longmans, London, 1937)

WA Newman, Biographical Memoir of John Montagu, (Harrison, 59 Pall Mall, 1855)

ed. D Pike, Australian Dictionary of Biography Vol 1, (Melbourne University Press, Melbourne, 1967)

ed. D Pike, Australian Dictionary of Biography Vol 2, (Melbourne University Press, Melbourne, 1967)

S Reid, The Prime Ministers of England, (J. M Dent, London, 1906)

J Ritchie, 'Towards Ending an Unclean Thing: The Molesworth Committee and the Abolition of Transportation to New South Wales, 1837 - 40', *Historical Studies*, 67, (1976), pp. 144 - 64

J Ritchie, *Punishment and Profit*, (William Heinemann, Melbourne, 1970)

J Ritchie, Lachlan Macquarie, (Melbourne University Press, Melbourne, 1986)

L Robson, *History of Tasmania Vol 1*, (Oxford University Press, Melbourne, 1983)

M Roe, 'Three Letters of HP Fry', Tasmanian Historical Research Association, vol 11, (1963 - 64), pp. 20 - 28

AGL Shaw, 'Sir George Arthur after 10 years', *Tasmanian Historical Research Association*, vol 2, (1986), pp. 4 - 14

AGL Shaw, 'Three Knights: Sir James Stephen, Sir John Franklin and Sir John Eardley Wilmot', *Tasmanian Historical Research Association*, vol 36, (1989), pp. 141 - 153

AGL Shaw, Copies of all Correspondence on the Subject of the Military Operations Lately Carried on Against the Aboriginal Inhabitants of Van Diemen's Land, (Tasmanian Historical Research Association, Hobart, 1971)

AGL Shaw, 'Van Demonian Influences on Port Phillip District 1834 - 1850', Bulletin of the Centre for Historical Studies, vol 2, (1988-89), pp. 15 - 33

AGL Shaw, 'Sir John Eardley - Wilmot and the Probation System', *Tasmanian Historical Research Association*, vol 11, (1963), pp. 5 - 19

AGL Shaw, 'The Eldershaw Memorial Lecture: A Colonial Ruler in Two Hemispheres; Sir George Arthur in Van Diemen's Land and Canada', *Tasmanian Historical Research Association*, vol 17, 1970, pp. 80 - 102

AGL Shaw, Sir George Arthur, Bart, (Melbourne University Press, 1980)

AGL Shaw, Convicts and the Colonies, (Faber and Faber, London, 1966)

AGL Shaw, 'John West's Tasmania', *Tasmanian Historical Research Association*, vol 1, (1990), 82 - 97

AGL Shaw, 'The Origins of the Probation System in Van Diemen's Land', Bulletin of the Centre for Tasmanian Historical Studies, vol 6, (1953), pp. 16-28

AGL Shaw, A History of the Port Phillip District, (Melbourne University Press, Melbourne, 1996)

Statistics of Van Diemen's Land for 1838 - 1841, Ewing to Franklin, 31 May 1843, (Government Printer, Hobart, 1843)

ed. L Stephen and S Lee, *The Dictionary of National Biography*, (Oxford University Press, London, 1917), vol i

ed. L Stephen and S Lee, *The Dictionary of National Biography*, (Oxford University Press, London, 1917), vol vii

G Stephens, 'The Gell Job: Early Developments in Private and Tertiary Education in Tasmania', *Tasmanian Historical Research Association*, vol. 24, (1977), pp. 105 - 117

ed. CR Sanderson, The Arthur Papers, Being the Canadian Papers Mainly Confidential, Private and Demi-Official, (University of Toronto Press, Toronto, 1957), vol 2

Statistics of Van Diemen's Land for 1842-1844, (Government Printer, Hobart, 1845)

C Turnbull, Black War, (Sun Books, Melbourne, 1965)

HG Turner, A History of the Colony of Victoria, (Longmans Green and Co., London, 1904)

Van Diemen's Land Annual for 1837 (William Gore Elliston, Hobart Town, 1837)

ed. F Watson, *Historical Records of Australia*, Series I, Series III, (The Library of the Commonwealth Parliament, Canberra, 1921)

J West, *The History of Tasmania*, (Angus and Robertson, Sydney, 1971)

Wendover's History at http://members.iinet.net.au/-irevnold/history.html, 19 July 2004

J Woodberry, Andrew Bent and the Freedom of the Press in Van Diemen's Land, (Fullers Bookshop, 1972)

EL Woodward, The Age of Reform 1815 - 1870, (Oxford at The Clarendon Press, 1958)