

Treaty Making in Van Diemen's Land

By

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Treaty-Making in Van Diemen's Land

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Abstract

The aim of this thesis is to analyse the Aboriginal crisis in Van Diemen's Land with a view to establishing what effective efforts were made in the late 1820s and early 1830s towards realising a treaty between the colonial administration and the Aboriginal tribes of Van Diemens Land. The idea is not a new one. In 1995 Professor Henry Reynolds' published *Fate of a Free People* in which he argues that for a number of prominent Aboriginal leaders, at least, a *de facto* peace treaty was negotiated with the Colonial Government. Reynolds focuses primarily on roles played by the Aborigines in bringing their people in and their interpretation of how the crisis was concluded. This thesis does not challenge Reynolds' claims. Instead, it attempts to evaluate the Aboriginal-settler clash from the perspective of the Colonial Government, and Lieutenant-Governor Sir George Arthur in particular. Specifically it seeks to determine to what extent Arthur participated in a treaty-making process, even if he did not ultimately conclude a treaty with the Aborigines of Van Diemen's Land.

This thesis examines British policies towards the Aborigines of Van Diemen's Land from the time of its official settlement in 1804 through to the effecting of the Treaty of Waitangi in January 1840. While it focuses in greatest detail on relations between the colonial government and the Aborigines of Van Diemen's Land in the 1820s and early 1830s, the study of colonial relations is broadened both chronologically (to 1840) and geographically—north to mainland Australia, and east to New Zealand—to include brief accounts of the negotiations of the Batman treaty and the Treaty of Waitangi, so as to provide a wider context by which to evaluate Governor George Arthur's efforts with treaty-making in the Van Diemen's Land.

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Abbreviations

ADB:	Australian Dictionary of Biography
AHS:	Australian Historical Studies
AOT:	Archives Office of Tasmania
BPP:	British Parliamentary Papers
CO:	Colonial Office
CSO:	Colonial Secretary's Office
DNB:	Dictionary of National Biography
HRA:	Historical Records of Australia
HRNSW:	Historical Records of New South Wales
HRNZ:	Historical Records of New Zealand
HRVic	Historical Records of Victoria
HTC:	Hobart Town Courier
HTG:	Hobart Town Gazette
PRO:	Public Records Office
THRA:	Tasmanian Historical Research Association

The Natives' Lament

*Oh! where are the wilds I once sported among,
When as free as my clime through its forests I sprung,
When no track by the few which our fires had made,
Had tarnished the carpet that nature had laid;
When the lone waters dashed down the darksome ravine,
O'erhung by the shade of the Huon's dark green;
When the broad morning sun o'er our mountains could roam,
And see not a slave in our bright Island home.
When our trees were unscath'ed, nor our echoes awoke,
To the hum of the stranger, or woodman's wild stroke;
When our rocks proudly rose 'gainst the dash of the main,
And saw not a bark on the wide azure plain;
When the moon through the heavens roll'd onward, and smil'd,
As she lighted the home of the free and the wild.
Oh! My country, the stranger has found thy fair climb,
And he comes with the sons of misfortune and crime;
He brings the rude refuse of countries laid waste,
To tread thy fair wilds, and thy waters to taste;
He usurps the best lands of thy native domains,
And their children must fly, or submit to his chains;
He builds his dark home, and he tricks it about,
With trinkets and trifles within and without;
When the bright sun of nature sinks into the main
He light little suns to make day-light again;
And he calls a crowd round him, to see him preside,
And our tyrant himself is the slave of his pride!
Oh! dearer to us, is our rude hollow-tree,
Where heart joins to heart with a pulse warm and free;
Or our dew-covered sod, with no canopy o'er it,
But the star-spangl'd sky,—we can lay and adore it!
Or if worn with fatigue, when the bright sun forsakes us,
We lay down and sleep, till he rises and wakes us!
Our wants are but few, and our feelings are warm,
We fear not the sun, and we fear not the storm;
We are fierce to our foes, to our loves we are fond,
Let us live and be free—life has nothing beyond.
Oh! I would not exchange the wild nature I bear,
For life with the tame sons of culture and care,
Nor give one free moment as proudly I stand,
For all that their arts and their toils can command.
Away to the mountains, and leave them the plains,
To pursue their dull toils, and to forge their dark chains.*

(Author Unknown, *Colonial Times*, 5th May, 1826)

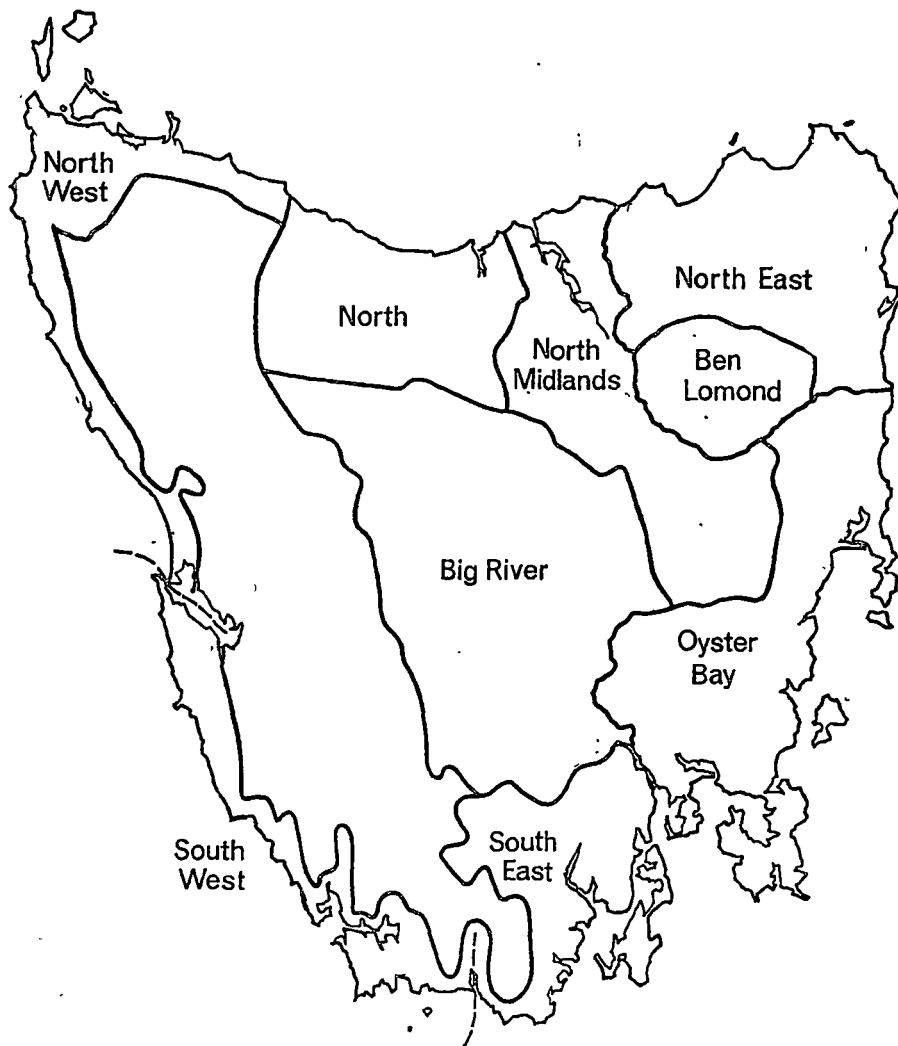


Figure 1:
Territorial Boundaries of the Aboriginal Tribes of Van Diemen's Land prior
to British Settlement. *Source: Lyndall Ryan's The Aboriginal Tasmanians*

Chapter 1

Introduction

On Sunday 18 April 1999, the Tasmanian government announced it would transfer ownership of the Wybalenna Aboriginal Station Historic Site to the Flinders Island Aboriginal community. Drafted and signed at Whitemark on Flinders Island, the decree was dubbed the “Treaty of Whitemark”. Though not a treaty in any legal sense, still the agreement is viewed by many in the community as a symbol of the process of “...reconciliation that puts the past to a positive use for the future.”¹

The idea of negotiating a modern treaty between Australian Aboriginal groups and the Australian Commonwealth government has been circulating since the late 1970s. The treaty movement began in 1979 when the National

¹M. Roughley-Shaw, ‘Wybalenna and the Treaty of Whitemark,’ *Indigenous Law Bulletin*, 4, no.22 (1999), pp.10-11.

Aboriginal Council passed a resolution calling for a “‘Treaty of Commitment’ [to] be executed between the Aboriginal Nation and the Australian Government.” The resolution was supported by the Aboriginal Treaty Committee, a group of prominent non-Aboriginal Australians, including H.C. (Nugget) Coombs, C.D. Rowley and Judith Wright McKinney. Until 1983 the Aboriginal Treaty Committee agitated for the creation of a “treaty, covenant or convention freely negotiated with the Commonwealth Government by their representatives.”²

Both the Liberal and Labor parties have paid “lip service” to the notion of a treaty, though neither has ever made serious efforts to negotiate one.³ Successive federal governments have, instead, focused on the concept of reconciliation, resulting in the passing of *Council for Aboriginal Reconciliation Act* in 1991. However, many Australians, both Aboriginal and non-Aboriginal, feel

²P. Bayne, “The Makarratta: A Treaty with Black Australians”, *Legal Services Bulletin*, 6, (1981), pp.232-236; “Proposed Treaty Between Aborigines and the Commonwealth”, *The Australian Law Journal*, 53, (1979), pp.743-744; “We Call for a Treaty Within Australia, Between Australians”, advertisement in *The National Times*, week ending August 25, 1979 in S. Harris, *‘It’s Coming Yet...’ An Aboriginal Treaty Within Australia Between Australians*, (Canberra, 1979), p.12.

³The debate continues whether a modern treaty is the best option for a true and lasting healing between Aboriginal and non-Aboriginal Australia. While a modern treaty is not the concern of this thesis, prominent in the debate is the controversial historian and author, Keith Windschuttle, who argues against a treaty. In his recent book, *The Fabrication of Aboriginal History*, Windschuttle attempts to demonstrate that no historical context exists for its consideration—though his argument is notable for the extraordinarily brief consideration it gives to the key deliberations of the Executive Council of Van Diemen’s Land during 1830 and 1831; see K. Windschuttle, “Why There Should Be No Aboriginal Treaty”, *Quadrant*, (2001), pp. 15-24 & K. Windschuttle, *The Fabrication of Aboriginal History, volume one: Van Diemen’s land, 1803-1847*, (Sydney, 2002); see especially ‘The Non-Existence of an Aboriginal Treaty’ section, pp.232-237.

that true reconciliation cannot even begin until issues regarding land rights are addressed. In this regard, a major advance came on 3 June 1992 when the High Court of Australia handed down its judgement on what has come to be known as the *Mabo* case.⁴

Taking ten years to conclude, Eddie Koiki Mabo finally won a posthumous victory for his people when the High Court determined that the Murray Islanders retain sovereign title to their lands because native title in the Murray Islands had never been extinguished. In December the following year the *Native Title Act* was passed which established in law that where groups could prove so, the Government would recognise other native title claims.

With the passing of the *Council for Aboriginal Reconciliation Act* in 1991, the favourable conclusion of the *Mabo* case in 1992 and the establishment of the *Native Title Act* in 1993, powerful precedents have been established in both the executive and legal arms of government for Aboriginal land rights claims, and, thus, reconciliation, to advance.⁵ Nonetheless, progress has not

⁴*Mabo and Others v. Queensland* (No. 2) (1992) 175 CLR 1 F.C. 92/014.

⁵H.C. Coombs, "Signing an Australian Peace Treaty," *Social Alternatives*, 1.6, (1980), pp.63-64; "A Treaty and the NAC" in E. Olbrei, *Black Australians: The Prospects for Change*, (Townsville, 1982), pp.57-80; *Two Hundred Years Later: Report by the Senate Standing Committee on Constitutional and Legal Affairs on the Feasibility of a Compact or 'Makarratta' Between the Commonwealth and Aboriginal People*, (Canberra, 1983), pp.7-25; "Makarratta or Treaty—What Can Be Achieved? Who Will Be the Parties?", *Human Rights for Aboriginal People in the 1980s*, (Sydney, 1983), pp.109-126; K. Baker. *A Treaty with the Aborigines?*, (Canberra, 1988), pp.1-50; M.P.K. Sorrenson, "Treaties in British Colonial Policy: Precedents for Waitangi" in W. Renwick (ed), *Sovereignty & Indigenous Rights: The Treaty of Waitangi in International Contexts*, (Wellington, 1991), pp.7-29; D. Mercer, "Terra Nullius, Aboriginal Sovereignty and Land Rights in Australia: The Debate

always been smooth and some believe that a modern treaty is still the only option for true and lasting healing between Aboriginal and non-Aboriginal Australia.⁶ It is this issue that the recent publication *Treaty*⁷ addresses.

Treaty authors Sean Brennan, Larissa Behrendt, Lisa Streinlein and George Williams consider the feasibility of a modern treaty between the government and the indigenous peoples of Australia. They examine the state of Aboriginal land rights in Australia, tracing the reconciliation process. They discuss issues of sovereignty and native title and consider treaty-making practises in other nations such as the United States, Canada and New Zealand. An overarching

Continues", *Political Geography*, 12.4, (1993), pp.299–318; G. Johns, "Reconciliation: Read the Fine Print" (Draft Document for Aboriginal Reconciliation), *Quadrant*, 43.11, (1999), pp.16–20.

⁶The year 2000 was an important one in this regard. Professor Henry Reynolds, a staunch advocate for a treaty, gave a number of public lectures across the country, each time discussing the idea of creating a treaty to deal with the continued marginalisation of Aboriginal groups socially, politically and legally. The September 2000 issue of the *Australasian Journal of Philosophy* focussed solely on issues relating to indigenous rights and its first article discussed some philosophical issues regarding treaties and treaty-making. On 13 October 2000 a one day symposium was held at the University of Newcastle, entitled *Treaties and Constitutions: Representing Indigenous Peoples in the Pacific*. The conference sought to gather together academics, lawyers and community representatives to discuss the possibility of eventually negotiating a treaty between the Australian Aborigines and the Federal government. Problems faced by Pacific countries, including Fiji where treaties have been concluded but which still face difficulties representing native groups within western-based constitutions, were discussed. These issues were evaluated within the broad historical contexts within which they have developed; see R. Goodin, "Waitangi Tales", *Australasian Journal of Philosophy*, 78.3, (2000), pp.309–333; other articles in this issue include: J. Thompson, "Historical Obligations", R. Sparrow, "History and Collective Responsibility", D. Ivison, "Political Community and Historical Injustice", J. Raikka, "The Moral Relevance of Cultural Disadvantage", A. Kolers, "The Lockean Efficiency Argument and Aboriginal Land Rights", and R. Perrett, "Indigenous Language Rights and Political Theory: The Case of Te Reo Maori".

⁷S. Brennan, L. Behrendt, L. Strelein & G. Williams, *Treaty*, (Annandale, 2005).

theme that emerges from the book is that the challenges involved in concluding a treaty seem overwhelming to some and that despite the political rhetoric there is not sufficient motivation at the federal level to see a treaty negotiated. However, the authors maintain that a treaty is still the most promising option for reconciliation. Certainly, they are realistic about the difficulties and limitation of treaties. "A treaty is not a panacea" they note. "A national agreement or a range of sub-national treaties around the country will not solve all of the problems confronting Indigenous people and the wider Australia community." Nonetheless, a treaty "offers a process broad enough to address both the practical and the symbolic and, as a foundational document for a renewed society, it can speak to the past, the present and the future."⁸

The idea of an Australian treaty has gained prominence since Professor Henry Reynolds, in his 1995 book, *Fate of a Free People*, claimed that what resulted from the Aboriginal crisis in Van Diemen's Land of 1824 to 1831 was in effect a *de facto* treaty between the colonial government of Van Diemen's Land and the Big River and Oyster Bay Tribes. Reynolds looks to a little known, and rarely considered, petition sent by eight Wybalenna residents to Queen Victoria in March 1847 as evidence that an agreement had been reached.

⁸Brennan, *et al*, *Treaty*, pp.153 & 155.

The petitioners claimed that “we were not taken prisoners but freely gave up our country to Colonel Arthur then the Governor after defending ourselves”.⁹ Reynolds holds this to be definitive evidence that, for the Aborigines at least, a deal was brokered that, in effect, could be viewed as a *de facto* treaty between the Lieutenant-Governor of Van Diemen’s Land, George Arthur and Big River tribe of the east coast.¹⁰

Historians including Lyndall Ryan and A.G.L. Shaw have considered the idea. While both recognise that the Aborigines certainly could claim rights to the land, even within British legal guidelines, and that Arthur, himself, eventually came to realise this, neither go so far as to accept that an actual treaty was effected. Shaw argues that Arthur “was inclined to recognise Aboriginal rights, and so to deny the *terra nullius* doctrine.” However, Shaw feels that the notion of *terra nullius* was ingrained so deeply in the colonial psyche that an official acknowledgement of Aboriginal land rights would never have been made.¹¹

In the 1996 edition of her book *The Aboriginal Tasmanians*, Ryan responds to Reynolds with a similar sentiment. By her interpretation of the contemporary records she finds it impossible to recognise that a formal treaty with

⁹H. Reynolds, *Fate of a Free People*, (Ringwood, 1995), p.8.

¹⁰H. Reynolds, *Fate of a Free People*, pp.7-9.

¹¹A.G.L. Shaw, “Sir George Arthur After Ten Years”, *Bulletin of the Centre for Tasmanian Historical Studies*, 1.2, (1986), p.10; For a discussion of the term *terra nullius* and the recent debate about its origins see Chapter 2.

the Aborigines could have ever been authorised. However, she does agree that the governor, with the help of George Augustus Robinson, a missionary who spent five years in the wilderness of Van Diemen's Land "conciliating" the Aborigines, managed to secure an Aboriginal surrender through inducements which the latter took to be a negotiation of the terms of peace.¹²

Indeed, there is no question that an official, ratified treaty with the Tasmanian Aborigines which acknowledged and protected their exclusive access to, use of, and sovereignty over specific tracts of lands, such as those negotiated in north America during the same period, was ever attempted in Van Diemen's Land. Nor, during the Aboriginal crisis, did Arthur ever suggest that a treaty should actually be negotiated. A number of circumstances—political, economic and military—existed (or, to be sure, did not exist) in Van Diemen's Land that hindered the evolution of race relations based on treaty-making traditions there.

So why did Governor Arthur and before him, Chief Justice John Lewes Pedder, come to the conclusions that they did about the need for a treaty with the Aborigines of Van Diemen's Land? The task of this thesis is to examine what Arthur was doing and saying during the Aboriginal crisis that showed in fact that he was—even if only subconsciously—formulating Aboriginal policies

¹²L. Ryan, *The Aboriginal Tasmanians*, (St. Leonards, 1996), p.xxviii.

that emulated those implemented in other parts of the world where treaties were the primary tool for managing race relations.

§

The term ‘treaty’ originated in the fifteenth century. In Middle English it meant “a settlement or arrangement arrived at by treating or negotiating; an agreement, covenant, compact, contract.”¹³ Its modern definition is “a contract between two or more states, relating to peace, truce, alliance, commerce or other international relation; also a document embodying such contract, in modern usage formally signed by plenipotentiaries appointed by the government of each state.”¹⁴ The 1969 Vienna Convention on the Law of Treaties solidified this meaning, defining a treaty as “an international agreement concluded between States in written form and governed by international law. . . .”¹⁵

During the seventeenth and eighteenth centuries treaties concluded between European colonial powers and native groups tended to reflect the original, less stringent meaning. It was only after the Revolutionary War in north America, when the sovereign rights the Native American nations became an issue, that treaties evolved into formalised agreements that followed specific

¹³J. Simpson and E Weiner (eds), *Oxford English Dictionary*, 2, (Oxford, 1989).

¹⁴C. Soanes and A. Stevenson (eds), *Oxford Dictionary of English*, 2, (Oxford, 2003).

¹⁵United Nations, Treaty Series, vol. 1155.

guidelines for their negotiation and ratification. It was the less formalised definition that guided Britain's treaty-making traditions with Native American nations which, for the most part, were focused on establishing the terms for peace and political alliance.¹⁶

To be sure, never during Aboriginal crisis did Arthur suggest that a treaty with the Aborigines be attempted. Rather, what he and others in his administration made repeated references to was the need to conciliate and negotiate with the Aborigines. So what did they mean when they spoke of conciliation and negotiation, and how did this relate to treaty-making?

The *Oxford English Dictionary* defines "conciliation" variously as "the action of bringing into harmony; harmonizing", "reconcilement; the gaining or winning by quiet means", "peaceable or friendly union" and "conversion from a state of hostility or distrust; the promotion of good will by kind and considerate measures; the exhibition of a spirit of amity, practice of conciliatory measures".¹⁷

From the beginning of settlement, as this thesis will consider, the Colonial Office instructed the governors of New South Wales and its outlying territories

¹⁶Interestingly, it is to this definition that consideration of a modern Australian treaty has reverted. Thus, the authors of *Treaty* use the term to mean "political agreements involving Indigenous peoples and governments that have a binding legal effect." A modern treaty, they conclude, will be defined by three characteristics. It will be "a starting point of acknowledgement"; there will involve "a process of negotiation" and it will have "outcomes in the form of rights, obligations and opportunities." See Brennan *et al*, *Treaty*, p.3.

¹⁷<http://dictionary.oed.com/>.

to establish peaceable and harmonious relations with the Aborigines. The Secretaries of State for the Colonies were well aware that the Aborigines needed to be accommodated and that they needed to be protected from the deleterious affects of settlement. This was very much the case in Van Diemen's Land. Later, when relations became strained, as they did in every colony, the focus of Aboriginal conciliation moved to a "conversion from a state of hostility or distrust". To achieve these aims the Colonial Office and early governors, alike, realised that they would have to negotiate with the Aborigines the terms of their accommodation. Where treaties came into consideration in Van Diemen's Land was with the realisation that, at the end of a long and deadly war, the Aborigines could only be conciliated by means of negotiation if the negotiations took the form of a treaty. Treaties in other British colonies had allowed, if only temporarily, for harmonious relations such as those Arthur sought in his own colony, and much that Arthur advocated for as he developed his Aboriginal policy was achieved in other colonies through the negotiation of treaties. It was only after the opportunity to conclude one had passed, however, that he realised that a treaty might have been the answer that had eluded him throughout the crisis.

§

In order to examine what effective efforts were made in Van Diemen's Land

towards concluding a treaty between the Colonial Government and the Aborigines, this thesis will evaluate the evolution of race relations in the colony, concentrating primarily on the years 1803 to 1831. However, this focus necessarily requires broadening both chronologically and geographically in order to evaluate what treaty-making policies and practises, implemented in other parts of the world, might have been guiding Arthur in Van Diemen's Land. Chapter 2 will examine a number of historico-legal aspects of the treaty-making tradition that evolved in British colonies, and specifically the north American colonies, especially as they related to native groups. Theories of sovereignty, as well as those of scientific racism, will be evaluated to place in context the unique nature of the treaty-making process as it was carried out with these native groups. Three cases brought before the United States Supreme Court in the 1820s and 1830s will be reviewed to illustrate just how challenging were issues of native sovereignty and land rights to colonial policy makers in the eighteenth and nineteenth centuries.

The years from the initial settlement of Risdon Cove in Van Diemen's Land in 1803 until the end of Lieutenant-Governor Sorell's administration in 1824 will be discussed in Chapter 3. The development of race relations during this time reflected the uncertainty that guided the development of the colony as a whole. Though the break out of war was a seemingly shocking turn

of events, this chapter will demonstrate that very few opportunities existed for the incorporation of the Aborigines into the various social, economic and political structures in Van Diemen's Land and, as such, in hindsight war was almost inevitable.

The nature of the Aboriginal guerrilla war against the European settlers and convicts that plagued Van Diemen's Land for almost a decade will be considered in Chapter 4. This chapter seeks to demonstrate just how effective guerrilla-style warfare proved to be. It will show that the guerrilla combatants were so proficient that, despite an initial abhorrence of this kind of warfare, ultimately the colonial government found that if it was going to resort to force to quell Aboriginal hostilities, this was the only style of combat that would prove effective. Chapter 5 subsequently focuses on the military policies that Arthur implemented in the hopes of ending the Aboriginal crisis by force.

Chapters 6 will examine the conciliation policies that Arthur subsequently adopted which ultimately proved far more effective than the use of force. By engaging agents, in the form of a group of Aboriginal women and later George Augustus Robinson, to go to the Aborigines, Arthur was finally able to achieve Aboriginal conciliation, regardless of the longer-term sacrifices that he realised he would need to make on their behalf. The activities of the Aboriginal women as well as those of Robinson throughout his initial "friendly missions" to the

Aborigines of the west and north coasts will be discussed in this chapter to give a context to the events that finally led to contact with the Big River and Oyster Bay tribes.

Chapter 7 will then review Robinson's time with the sealers of the Bass Strait. The role played by the sealing community, both in undermining Robinson's efforts and in demonstrating that the Aborigines of Van Diemen's Land could survive an upheaval even more drastic than the invasion of their lands, will be discussed. This chapter will also consider how and why, during Robinson's time in the straits, Arthur was forced to conclude that there seemed no alternative to exiling those Aborigines of Van Diemen's Land who still survived. The lead up to and eventual meeting with the Oyster Bay and Big River tribes will then be examined in Chapter 8. It was during this time that Arthur's actions, conscious or otherwise, came closest to emulating those of someone who, under different circumstances, might very well have concluded a treaty.

Chapters 9 and 10 move away from Van Diemen's Land to focus on treaties that were concluded after the end of the Aboriginal crisis—specifically the Batman Treaty and the Treaty of Waitangi. Though it was never recognised by colonial officials as having any legitimacy, the Batman Treaty of 1835 was still an extraordinary event. This chapter will consider what transpired both

before and after Batman negotiated his treaty with the Aborigines of Port Phillip in order to show how attitudes to Aboriginal land rights had evolved since the end of the Aboriginal crisis in Van Diemen's Land. The final chapter will focus on the negotiation of the Treaty of Waitangi. The aim of this chapter is to consider to what extent the decision of the Colonial Office to conclude a treaty in New Zealand might have been guided by Aboriginal policies and practises across the Tasman Sea.

Chapter 2

Treaty-Making Traditions

“You are with the consent of the Natives to take possession of convenient Situations in the Country in the Name of the King of Great Britain. . .”¹

In December 1827 Van Diemen’s Land settler, William Walker of Breadalbane, wrote to Governor Arthur’s office with the suggestion that a treaty might be negotiated with the Aborigines of Van Diemen’s Land. Four years later, Chief Justice John Lewes Pedder, in a speech to the Executive Council in February 1831, presented it as an alternative to Aboriginal exile. It was only

¹King’s instructions to Captain James Cook, 1772 in J.C. Beaglehole (ed.), *Journals of Captain James Cook on his Voyage* (Cambridge, 1955), p.clxviii.

after exile had become, to Arthur's deep regret, inevitable, that the Governor realised that this is what he should have done all along. Consequently, he wrote to the Colonial Office on a number of different occasions to advise them to seriously consider negotiating treaties with the Aborigines of the new colonies in South Australia and Swan River in Western Australia. Lamenting that he had not pursued this course with his own native subjects, Arthur had come to the conclusion that race relations could only be successful if the land rights of the Aborigines were officially acknowledged and defined; and the only way to effectively do this was with a treaty.²

To be sure, race relations in other British colonies had been evolving through treaty-making processes for several centuries before Van Diemen's Land was settled. In the north American colonies treaties were the main tool by which colonial powers maintained formal relationships with native groups. In Africa, too, European governments and private enterprises, alike, had been concluding treaties with indigenous groups throughout the previous century.³ So by the time George Arthur made his seemingly remarkable plea for a treaty in Australia there already existed a long and solid history of treaty-making throughout the British empire. This chapter will consider what precedents and

²Walker to Burnett, 20 December 1827, CSO 1/316/7578, Reel SLTX/AO/CS/114, p86–88; Minutes of Executive Council, 23 February 1831, in Arthur to Murray, 4 April 1831, CO 280/28, PRO Reel 247, pp.436–438.

³See T. Bennion, *Treaty Making in the Pacific in the 19th Century & the Treaty of Waitangi*, (Wellington, 1987).

traditions existed that led Arthur to conclude that a treaty with the Aborigines of Australia was just as necessary.

2.1 Treaties as Political Tools

Scholar of Native American history, Francis Paul Prucha, makes the important point that the treaties concluded during the settlement of north America during the eighteenth and nineteenth centuries were fundamentally a western mechanism. They were used by European colonial powers to legitimatise and solidify their claims to lands where a prior sovereignty claim had been recognised.⁴ In theory, these treaties should have been a tool by which the colonial power and the indigenous group in question could both protect their rights. However, in practice, they became a method by which the colonial powers sought to gain control of the peoples and resources of the new lands.

Treaties concluded during the colonial period in north America were negotiated primarily for economic and political purposes. As the British, the French, and to a lesser extent the Spanish vied for dominance there, treaties with Native American tribes were negotiated so as to create a buffer between the colonial adversaries. Eventually as Britain ousted France and Spain from

⁴F.P. Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkley, 1994), p.xiv.

the region, the need for alliances with Native American nations became less important and the political clout of the various native groups quickly dwindled. At the conclusion of the Revolutionary War the newly established United States of America claimed sovereignty over all of the lands to the east of the Appalachian Mountains, and those tribes whose holdings fell within the borders of the new states were the first to be stripped of all of their rights and dispossessed of their lands altogether as they were forced onto reserves away from white settlement. The history of treaty-making in north America in essence is a history of marginalising indigenous groups as pawns in a struggle between competing European powers.⁵

Nonetheless, treaties were still entered into, and native groups, in theory at least, were granted an element of control over their own destinies. What processes, then, were implemented to ensure that native groups would ratify these political agreements? Again, a look at the north American story gives the clearest insight. Treaties involved very specific procedures. Formal ceremonies took place, usually at a site in the territory in question, and usually in the presence of a number of delegates from both parties. These delegates held the solemn ceremonies that were undertaken as important. For Native American groups the completion of elaborate gift-giving ceremonies was fundamental

⁵F.P. Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley, 1994), pp.xiii-xiv; K. Sorrenson, "Treaties in British Colonial Policy: Precedents for Waitangi", pp.15-29.

to the process. Gift-giving played a central role in diplomatic relations, for its use as a metaphor in many Native American languages meant the offering and receiving of gifts came to have complex meaning. What was offered and to whom held specific meaning for the indigenous groups and so the English, French and later the United States government invested vast resources in providing the appropriate endowments. The offering of the initial gifts, followed by the promise of gifts in perpetuity, then, symbolised for the Native American nations the ratifying of those pledges which the written treaty detailed.⁶

Similarly, European powers concentrated on ceremonies involving the compilation and signing of the various official documents. These documents were their evidence that negotiations had been concluded and so the signing and witnessing of the papers became the most important element of the treaty-making process for the Europeans. In the words of modern political philosopher, Robert Goodin, “[s]igned agreements, concluded by ceremonies sufficient to signal their seriousness to all concerned serve[d]” to “signify the consent of the signers.”⁷ By the time Britain was ousted from north America, treaties concluded with Native American nations had taken the form of legally binding

⁶F.P. Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln, 1984), pp.16-17; W. Jacobs, *Wilderness Politics and Indian Gifts: The Northern Colonial Frontier, 1748-1763* (Lincoln, 1966), pp.11-28.

⁷Goodin, “Waitangi Tales”, pp.313-314.

documents signed by representatives of the Native American groups, government agents and finally the President, himself, and always involved a discussion of sovereignty. While the negotiation process could be long and complex, for both parties involved it was the completion of the ceremony which held the greatest importance because it denoted that a *de jure* treaty had been concluded.⁸

While treaties ultimately did not create political equality between the colonising and the native groups, nevertheless, their ratification, which came to inevitably involve the transferring of title to land, still undeniably acknowledged that the indigenous groups involved had originally held a right to the lands upon which they presided—at least to the degree that the hegemonic powers involved sought to offer these groups some measure of compensation for their loss. This was so because, as Reynolds explains, the Native American nations “were in occupation of the land and had rights based on immemorial possession—they had what became known as native title.”⁹ Thus, land could only be appropriated through “negotiation and purchase.” This, however, led to an anomaly as the sovereignty of the various Native American nations gradually eroded, effectively creating a body of what United States’ Chief Justice

⁸Prucha, *The Great Father*, pp.16-17; Jacobs, *Wilderness Politics and Indian Gifts*, pp.11-28.

⁹H. Reynolds, “The Aboriginal Land Rights of the Tasmanian Aborigines”, *Bulletin for the Centre for Tasmanian Historical Studies*, 2.1 (1988), p.24.

John Marshall would later dub “domestic dependent nations”. These nations fell into a liminal position where they were under the protection of and reliant on the United States government for economic support, but still technically sovereign entities.¹⁰

Issues of sovereignty and nationhood, however, have not always been elements of the treaty-making tradition. The very early treaty-making practices, especially those focussed on negotiating for political or military alliance, were much more informal and defined by the relationships between and the motivations of the parties involved. During the Middle Ages treaties whose aim was to establish peace were often not even committed to paper. Instead, as medieval historian, Hanna Vollrath, explains, “most peace treaties were concluded without a written document. . . . Other gestures were employed instead to validate the pact: oaths were sworn, hostages exchanged or sureties given, and very often the whole procedure was rounded up by a kiss of peace.”¹¹ As late as the eighteenth century British peace treaties with Native American tribes reflected this same flexibility. Rather than signed and ratified contracts that acknowledged the sovereignty of each party involved, they came in as reports, speeches, meetings, conferences, even journals that detailed negotiations

¹⁰Prucha, *American Indian Treaties*, p.5.

¹¹H. Vollrath, “The Kiss of Peace”, in R. Lesaffer (ed), *Peace Treaties and International Law in European History: From the Late Middle Ages to World War One* (Cambridge, 2004), pp.162–163.

carried between British agents and Native American groups.¹² The titles given to a number of seventeenth and eighteenth century treaties give an indication of their variety: "Articles of Peace Between the Most Serene and Might Prince Charles II... and Several Indian Kings and Queens", "Propositions Made by the Sachems of the Three Maquas Castles to the Mayor, Aldermen and Commonalty at Albany, 25th February, 1690", "A Journal of what Passed in the Expedition of His Excellency Coll. Benjamin Fletcher, Captain General and Governor in Chief of the Province of New-York etc. to Albany, to Renew the Covenant Chain with the five Canton Nations of Indians, the Mohaques, Onydes, Onondages, Cayouges & Sinnekes, 1696", "The Conference with the Eastern Indians, at the Ratification of the Peace, held at Falmouth in Casco Bay in July and August, 1726".¹³

The agents concluding the treaties, moreover, were not necessarily representatives of a sovereign nation. In Africa, Asia and the Pacific private companies wishing to expedite their penetration into new lands would often negotiate commercial agreements with indigenous groups which were recognised as treaties by their own governments. With the tribal societies of the Pacific treaties of friendship and peace were concluded as a way to introduce

¹²Prucha, *American Indian Treaties*, pp.xiii-xiv.

¹³H. De Puy, *A Bibliography of the English Colonial Treaties with the American Indians, Including a Synopsis of each Treaty* (New York, 1917).

Christianity to the islands as well as a means to establish commercial ties.¹⁴

In north America the most celebrated treaty-maker—because it is said that his treaty with the Delawares was the only one never broken—Quaker William Penn, did not act as the King's representative when he negotiated with the tribe. Charles II had granted Penn vast tracts of land in what would be later the eastern portion of Pennsylvania. However, Penn was not satisfied with merely having the King's permission to settle there. He felt obliged to negotiate with the Delaware nation for the purchase of those tracts he intended occupying. Penn had lofty plans for his new settlement which would be a refuge for those who had been persecuted for their religious views. For this reason, of central importance to Penn was that the Delawares were treated appropriately. Even before he arrived in Pennsylvania he wrote to them seeking their "...love and consent, that we may always live together as neighbours and friends." In 1682 he concluded the "Treaty of Shackamaxon" or the "Great Treaty."¹⁵ All of this he did as a private settler, never at the behest of the British government.

Additionally, treaties did not always acknowledge the sovereignty of the

¹⁴T. Bennion, *Treaty-Making in the Pacific in the Nineteenth Century and the Treaty of Waitangi*.

¹⁵Penn to Delawares, 18 October 1681, in J. Soderlund (ed), *William Penn and the Founding of Pennsylvania, 1680-1684, A Documentary History* (Philadelphia, 1983), p.88; G. Nash, *Red, White and Black: The Peoples of Early North America* (Englewood Cliffs, 1974); H.E. Wildes, *William Penn* (New York, 1974); M. Geiter, *William Penn* (London, 2000).

parties involved. While settlement remained confined to the eastern seaboard in north America treaties negotiated with Native American tribes were not necessarily focussed on land rights. Because of the size of north America it seemed that there would always be enough land for Native American and European groups to coexist. However, as settlement continued to expand south and west treaties concluded with the eastern nations increasingly focused on defining the limits of their sovereignty and native title.

To be sure, in colonial north America land rights always played a central role in the treaty-making process because the British and French had to accommodate the various Native American tribes on whose lands they had hegemonic designs. However, the land itself was not always the focus of treaties being concluded. Rather it was the activities of the parties on that land that was at issue. Most of the early British treaties with Native American groups sought peace and friendship. These treaties all had the central aim of securing alliances with the Native American nations so as to maintain the economic and political balance of power in north America. The fur trade had quickly developed in north America as native groups found a commodity that the colonists eagerly sought. Similarly, treaties of peace and friendship were concluded when tensions seemed likely to lead to war. When war broke out

both sides discovered that they needed the support of those Native American groups in the regions being fought over. Similarly, when war broke out between Native American groups, they, too, sought the support of the colonial powers. As such, many treaties were negotiated to establish and confirm economic, political and military alliances. Consequently, the colonial treaties of north America tended focused on peace and friendship. It was only later, after the Revolutionary War that the character and form of treaties evolved into documents of international law.¹⁶

2.2 The Explorers and Scientific Racism

Eighteenth century Europe has been characterised as the Age of Enlightenment. It was a time when scientific enquiry flourished, when intellectual enquiry about religion, society and culture was based in empiricism and science. It was a time when the British and French sought to learn more about the lands and the people of the Pacific, a region still relatively unknown. The Englishman, William Dampier, had explored sections of the coast of Western Australia in 1688 and then again in 1699. His description of the land and its people left a lasting impression on future explorers, especially the English

¹⁶Vollrath, "The Kiss of Peace", pp.162-183; H. De Puy, *A Bibliography of the English Colonial Treaties with the American Indians, Including a Synopsis of each Treaty*; Prucha, *American Indian Treaties*, pp.xiii-xiv; K. Sorrenson, "Treaties in British Colonial Policy: Precedents for Waitangi", pp.15-29.

voyager, Captain James Cook who, one hundred years later, would claim the east coast in the name of King George III. However, real interest in the Pacific did not develop until after French-British tensions in Europe had eased with the end of the Seven Years War in 1763. At the behest of several newly formed scientific societies, voyages of exploration were sponsored. Both territorial ambition and scientific curiosity motivated French and British efforts (and served to keep each wary of the other's activities), though for the French, exploration took priority over acquisition. Consequently, the French added significantly more to the knowledge base, albeit limited, already gleaned about the region and its people.¹⁷

Following discovery was a need to classify. European scientific enquiry attempted to place what was being revealed into context. Included in this classification were the various peoples who inhabited the new antipodian lands being explored. Moral philosophical thought attempted to establish a scale by which to categorise their biological and social development. This scale came to be known as the "Great Chain of Being." It was a static scale, created by God,

¹⁷Though in no position to equal Britain as a global power, France did entertain some territorial ambitions in the south Pacific. The nation still hoped to re-establish in the southern hemisphere the position that it had lost in the north hemisphere when Britain had won Canada in the Seven Years War. The efforts of Bougainville, de Surville and Marion du Fresne were all aimed toward this end; see J. Dunmore, *French Exploration in the Pacific*, 1 (Oxford: 1965); see also D. Miller (ed), *The Blackwell Encyclopedia of Political Thought* (Oxford: 1991), pp.166-170; J C. Beaglehole, *The Exploration of the Pacific* (London, 1966), & N.J.B. Plomley, "The French in Van Diemen's Land: Organisation and the Fruits of Discovery", *Bulletin of the Centre for Tasmanian Historical Studies*, 2.1 (1988), pp.4-20.

wherein the place of all living beings, from the simplest single-cell organism through to the highly complex human being, did not change. Humankind, it was determined, had reached the peak of this scale. However, the various human races were far from equal. Some were determined to be more socially and politically advanced than others. From this emerged a social philosophy that attempted to evaluate where on this scale the various human races were placed “to determine which stage in the history of civil society offered the best condition for the social and spiritual well-being of humankind”.¹⁸

The native peoples of the Australian colonies were regarded as “savages” by many who observed them. Their small numbers, their hunter/gatherer mode of subsistence, and their lack of Christianity relegated them, in the minds of their observers, to the lowest on the scale of human development. Writing in 1688, Dampier was the first European to record his impressions of the Aborigines of Australia.¹⁹ Though his experience with the Aborigines was fleeting, spending only about a week amongst them, he concluded that they were “the miserablest people in the world... and setting aside their humane shape differ but little from brutes.”²⁰ However, other early explorers were more philosophical about what they observed. Captain James Cook appreciated their simplicity. “From

¹⁸R. Dixon, *Course of Empire* (Melbourne, 1986), pp.6-7.

¹⁹W. Dampier, *A New Voyage Round the World. Describing particularly, the Isthmus of America, Several Coasts and Islands in the West Indies, ... their Soil, Rivers, Harbours, Plants, ...* I (London, 1703).

²⁰W. Dampier, *A New Voyage Round the World.*, p.464.

what I have seen of the natives of New-Holland they may appear to some to be the most wretched people on Earth," he wrote,

but in reality they are far more happier than we Europeans; being wholly unacquainted not only with the superfluous but the necessary conveniences so much sought after in Europe, they are happy in not knowing the use of them. They live in tranquillity which is not disturb'd by the inequality of condition. . . .²¹

Members of the d'Entrecasteaux expedition to Van Diemen's Land in February 1793 drew similar conclusions. Elisabeth-Paul-Edouard de Rossel noted that "the way of life of these people [is] so close to nature" and their "honesty and bounty are so much in contrast with the vices of the civilisation."²² Unacquainted and unencumbered by the complexities of civilised life brought about by a focus on intellectual thought, social sophistication and a close association with God, the Aborigines were viewed by those impressed by their seemingly simple existence as "noble savages"—a term coined by social philosopher Jean Jacques Rousseau.²³

²¹J.C. Beaglehole, *The Journals of Captain James Cook: The Voyage of the Endeavour, 1768-1771* (Cambridge, 1955), p.399.

²²A. Ferguson, "An Essay on the History of Civil Society" in Dixon, *Course of Empire*, p.8; N.J.B. Plomley & J. Piard-Bernier, *The General: The Visits of the Expedition Led by Bruny d'Entrecasteaux to Tasmanian Waters in 1792 and 1793* (Launceston, 1993), p.307.

²³"Jean-Jacques Rousseau, 1712-1778" in K. Thompson, *Fathers of International Thought* (Baton Rouge, 1994), pp.94-98; For a discussion of this theory of human social and political development, especially as it has been applied to the Aborigines of Australia see R. McGregor, *Civilisation or Extinction: The Destiny of the Aborigines in the White Australian*

Philosophers and social theorists differed about which of the two states was preferable. One school of thought claimed that living in a state of nature held virtues as the noble savage “spurns luxury, the intrusion of the mercenary arts, and the passion for private ownership of land and property.”²⁴ Conversely, others considered that without civilisation man is merely a brute, an “ignoble savage”, prone to warfare, cannibalism and human sacrifice, and “representing the zone of transition between man and the higher animals.”²⁵ From this emerged the idea that only “civilised” man has the power to reason and this allows him to develop a “divinity” that can ensure a closeness with God that savage man can not hope to attain.²⁶

The idea that a certain amount of happiness came from living simply was contrasted with the assumption that it was absolutely necessary that man attempt to advance along the scale of humanity for, according to one philosophical school, as espoused especially by James Burnett (also known as Lord Monboddo), in the late eighteenth century,

[i]t is the destiny of man to liberate his mind from the perceptions

Imagination, c.1880-1939, Doctor of Philosophy, James Cook University (Townsville, 1993), and R. McGregor, *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory, 1880-1939* (Carlton, 1997).

²⁴Dixon, *Course of Empire*, p.8.

²⁵Dixon, *Course of Empire*, pp.17-18.

²⁶Dixon, *Course of Empire*, p.18; see also Prucha, *The Great Father*, p.7.

of sense. He must cultivate those aspects of his nature which distinguish him from the animal and vegetable creations and attain a state as close as possible to that of the 'divine intelligences': and 'if we cannot be gods, let us continue to be men, and not to be degraded brutes'.²⁷

Monboddo's interpretation of the scale of man, thus, condemned the "noble savage" as a political being or entity deserving of political consideration. Robert Dixon, author of *The Course of Empire: Neo-Classical Culture in New South Wales, 1788-1860*, notes the contributions of Lieutenant-Colonel David Collins to this new ethnographic discipline.²⁸ As judge-advocate in New South Wales from 1788 to 1796, Collins spent nine years observing the Aborigines in and around Botany Bay. In that time he took a keen interest, ultimately publishing a forty-four page account of his observations of their culture and society. Indeed, he came to know a few individuals intimately and while he never completely understood their customs and habits, he eventually realised that it was their social development rather than their intellectual limitations that kept them in their "state of nature".²⁹

²⁷Dixon, *Course of Empire*, pp.17-18.

²⁸Dixon, *Course of Empire*, pp.18-19.

²⁹D. Collins, *An Account of the English colony in New South Wales [from its first settlement in January 1788, to August 1801: with remarks on the dispositions, customs, manners, &c. of the native inhabitants of that country. To which are added, some particulars of New Zealand* (London, 1802); see also J. Currey, *David Collins: A Colonial Life* (Melbourne,

That they are ignorant savages cannot be disputed; but it is hoped that they do not. . . appear to be wholly incapable of becoming one day civilized and useful members of society.³⁰

To be sure, Collins noted that the Aborigines of New South Wales demonstrated a number of social and intellectual characteristics shared by their European counterparts. They were a moral people who distinguished between “good and bad”. They had a strong work ethic, proving “as handy and as useful as any other persons could have been.” Most significantly, they had a sense of land ownership. Certain parcels of land were the exclusive property of individuals and ownership of that land usually passed from one generation to the next.³¹

Collins also chronicled the quick decline in race relations that followed settlement. He was concerned that the Aborigines’ lack of ability to distinguish between various European groups would exacerbate hostilities.³² When he arrived in Van Diemen’s Land in 1804 to begin his tenure as Governor of the new colony of Van Diemen’s Land he would quickly learn that similar trends in race relations would follow. His native policies, limited as they were,

2000), Chapter 7 for a discussion of Collin’s experiences with the Aborigines of New South Wales.

³⁰D. Collins, *An Account of the English colony in New South Wales* . . . , p.394.

³¹D. Collins, *An Account of the English colony in New South Wales* . . . , pp.355, 385 & 386.

³²D. Collins, *An Account of the English colony in New South Wales* . . . , p.18.

were based on the assumption that the Aborigines of Van Diemen's Land were similarly socially and intellectually degraded, and that they too would be unable to distinguish between the intentions of the various European groups.³³

The idea that savages and barbarians could be "civilised" and drawn up the scale of humanity was prominent in nineteenth century European. Ultimately it was reflected in the policies of the various British colonists and colonial administrators of the time, such as Governor Collins and the 'conciliator' G.A. Robinson.³⁴ Bound to this was the notion that social advancement was possible only if the Aborigine was converted to Christianity and also taught to live the civilised life of one who cultivates the soil. When explaining his reasons for believing that the interior of New Holland was uninhabited Cook's botanist, Joseph Banks pointed to this natural progression of man to determine that none but coastal societies could survive in this arid land:

The sea has I believe been universally found to be the chief source
of supplys [sic] to Indians ignorant of the arts of cultivation: the
wild produce of the Land alone seems scarce able to support them

³³See Chapter 3 for a discussion of the Risdon Cove affray in 1804.

³⁴Robinson—who would come to work with and know the Aborigines of Van Diemen's Land more intimately than any other government official—spoke of the desire to raise "in the scale of beings... the inhabitants of this territory"; see N.J.B. Plomley (ed.), *Friendly Mission: The Tasmanian Journals and Papers of George Augustus Robinson, 1829–1834* (Hobart, 1966), p.51.

at all seasons, at least I do not remember to have read of any inland nation who did not cultivate the ground more or less, even the North Americans who were so well versd [sic] in hunting sowl [sic] their Maize. But should a people live inland who supported themselves by cultivation these inhabitants of the sea coast must certainly have learnd [sic] to imitate them in some degree at least, otherwise their reason must be supposd [sic] to hold a rank little superior to that of monkies [sic].³⁵

The British and French held to these intellectual preconceptions during the exploration of the Pacific in the eighteenth and nineteenth centuries. These social theories would provide a context for their observations of native peoples in their natural state. Thus the Aborigines of New Holland and Van Diemen's Land were relegated to the position of "savages" on the social and intellectual scale of humankind.

The legal status of both the Aborigines and the British in the new lands was judged and maintained accordingly. As such, in 1820, James Stephen, then permanent legal counsel to the Colonial Office and later Colonial Under Secretary, articulated the position of the British government towards native

³⁵J.C. Beaglehole (ed.), *The Endeavour Journal of Joseph Banks, 1768–1771*, 2 (Sydney, 1962), pp.122–123.

land rights. Describing the power of the king to make laws and the extension of these laws to the colony of New South Wales—which, at that time, included Van Diemen’s Land—Stephen determined that, “the Colony was acquired neither by conquest nor cession, but by the mere occupation of a desert or uninhabited land.”³⁶ An Aboriginal policy, once it was required, was further simplified because with “primitive man as a fit object for the Christian virtue of charity”³⁷ the road was cleared, in the eyes of policy-makers at least, for indigenous populations to be accommodated, albeit in the lowest strata of the English class system. Their rights as quasi-citizens could be summarily dismissed as a focus on their “civilisation” and Christianisation was given priority over their protection and the promotion of their rights as the original possessors of the land, and equal members of society.

2.3 Theories of Sovereignty

New South Wales and Van Diemen’s Land were settled according to assumptions about the rights of European explorers and “discoverers” to make claims to foreign lands, established by two hundred years of European legal tradition.

Since the middle of the sixteenth century legal and political theorists such as

³⁶J. Stephen, Opinion *re* validity of statute 20 George II, c.xix, in Bathurst to Brisbane, 7 October 1822, *Historical Records of Australia*, IV.1 (Sydney, 1914–), pp.412–417.

³⁷Dixon, *Course of Empire*, pp.21–22.

Jean Bodin, Hugo Grotius, Thomas Hobbes and John Locke had been developing theories of international relations. Now that there was a need to apply these theories, European nation states seeking to claim new lands had to justify, according to tenets of international law, how they could claim possession of lands that were already peopled. To this end, theories concerning the rights of the “discoverers”, as well as the lack of rights of some native groups concerned, to make claims to those same land had to be formulated. The basis of many of these theories were founded upon notions of “sovereignty”, which ultimately determined the extent to which a nation state could claim political autonomy and independence.³⁸

The notion of “sovereignty” was first developed by the French philosopher, Jean Bodin, in the 1550s. Writing at a time when many European nations were in a state of domestic disarray, Bodin’s theories were developed in response to the need to establish political harmony among states whose histories were long and very much intertwined. Bodin argued that a state, or more specifically, a government, could not rule effectively unless it had absolute legal power and political authority over the people it claimed to represent.³⁹

³⁸For a discussion of theories of sovereignty and international relations see K. Thompson, *Fathers of International Thought*, J. Suanzes, “Sovereignty in British Legal Doctrine”, *Murdoch University Electronic Journal of Law*, 6.3 (1999), pp.1-45, URL: <http://www.murdoch.edu.au/elaw/>; ; F.H. Hinsley, *Sovereignty*, 2 (Cambridge, 1986).

³⁹J. Franklin (ed), J. Bodin, *On Sovereignty: Four Chapters from The Six Books of the Commonwealth* (New York, 1992), pp.1-45.

A century later the English lawyer and philosopher, Thomas Hobbes, developed a similar argument. In his famous treatise, *Leviathan*, Hobbes spoke of the development of society in terms of the creation of a social pact between individuals who, having been born into state of nature where life was “poor, nasty, brutish and short”, sought physical protection from a greater power. This power would be the “state”.⁴⁰ The development of the state, then, came about as individuals ceded their individual natural rights to this more powerful political and legal authority in return for its protection. Both Bodin and Hobbes felt that for government to be effective, political rule must come from “above”, that the government held absolute political and legal authority. Nevertheless, the government’s sovereignty ultimately lay with the ruled, rather than the ruler, because the government would not exist without the people, for it was merely an agent of the people, carrying out the peoples’ will and acting for the good of the people.⁴¹

At the conclusion of the English Civil War, seventeenth century political philosopher, John Locke (1632–1704), developed the argument that not only was the state responsible for protecting its citizens, but the people had the right to reject the government, even replace it, if the state did not fulfil its responsibilities to its citizens. Locke focussed on property rights. He argued

⁴⁰ “Thomas Hobbes, 1588–1679” in K. Thompson, *Fathers of International Thought* (Baton Rouge, 1994), pp.76–80.

⁴¹ “Hobbes” in Thompson, *Fathers of International Thought*, pp.76–80.

that society existed to protect private property rights. These property rights come into being, however, only after the individual cultivates and develops the property: “[w]hatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.” Writing at a time when the parliament was subsuming much of the monarchy’s authority, Locke argued fervently for the notion of “popular sovereignty”. He was a convincing advocate of the idea that the government was obliged to protect each individual’s “natural rights”, the most important being personal and property rights.⁴²

Jean Jacques Rousseau (1712–1788), writing during the age of the Enlightenment, also considered the development of the “civil” individual, most notably perhaps in his 1762 publication, *du Contrat Social*.⁴³ Society and societal order, for Rousseau, was the ultimate determiner of morality. He held that standards of morality begin and end with society. Society is greater than the sum of all of its parts (i.e. individuals within society) because the “general will” is different from the will of each citizen. In other words, citizens acting together will behave differently than if acting alone. This “general will” is Rousseau’s popular sovereignty, albeit in a very abstract sense.⁴⁴

⁴²J. Locke, *Two Treatises of Government* (London, 1966), pp.129–141.

⁴³J.J. Rousseau, *Du contrat Social, ou, Principes du Droit Politique* (Amsterdam, 1762).

⁴⁴A. Mazrui, “Alienable Sovereignty in Rousseau: A Further Look”, *Ethics*, 77.2

In the 1760s English jurist, William Blackstone, addressed the concept of sovereignty in his *Commentaries on the Laws of England*.⁴⁵ This most famous work sought to completely review and revise theories of English law. Even as newer English laws focussed more on the people and less on the monarchy, Blackstone remained unsure about where a state's ultimate sovereignty lay. He defined the "state" as a collective of individuals working together to form a single voice. However, he also conceived parliament to be a "supreme, irresistible, absolute, uncontrolled authority..."⁴⁶ where these same people were obliged to obey its authority. In a sole paragraph relating to the rights and responsibilities of Britain as a coloniser, Blackstone wrote,

...our more distant plantations in America, and elsewhere, are also in some respects subject to the English laws. Plantations, or colonies in distant countries, are either such where the lands are claimed by right of occupancy only, by finding them desart [sic] and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest, or ceded to us by treaties. And both these rights are founded upon the law of nature or at least upon that of nations.

(1967), pp.107-121; K. Thompson, *Fathers of International Thought*, pp.94-98; 'Jean Jacques Rousseau (1712-1778)' entry, *The Internet Encyclopedia of Philosophy* URL: <http://www.iep.utm.edu/r/rousseau.htm>.

⁴⁵W. Blackstone, *Commentaries on the Laws of England, Book the First* (Dublin, 1766).

⁴⁶Blackstone, *Commentaries on the Laws of England*, p.49.

But there is a difference between these two species of colonies, with respect to the laws by which they are bound, For it is held, that if an uninhabited country be discovered and planted by English subjects, all the English laws are immediately there in force. For as the law is the birthright of every subject, so wherever they go they carry their laws with them. But in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws. . . .⁴⁷

With specific reference to the colonisation of north America, Blackstone noted the unique relationship of the Native American nations to their colonisers:

Our American plantations are principally of this latter sort, being obtained in the last century either by right of conquest and driving out the native (with what nature justice I shall not at present enquire) or by treaties. And therefore the common law of England, as such, has no allowance or authority there; they being no part of the mother country, but distinct (though dependent) dominions. . . .⁴⁸

⁴⁷Blackstone, *Commentaries on the Laws of England*, p.104–105.

⁴⁸Blackstone, *Commentaries on the Laws of England*, p.105. For a discussion of Blackstone's theories see: W. Blackstone, *Commentaries on the Laws of England*; W. Blackstone, *The Sovereignty of the Law* (Toronto, 1973), pp.34–39; J. Jezierski, "Parliament or People: James Wilson and Blackstone on the Nature and Location of Sovereignty", *Journal of the History of Ideas*, 32.1 (1971), pp.95–106; G. Jones (ed), & J. Suanzes, "Sovereignty in British Legal Doctrine", pp.1–45.

By the 1830s philosophers including Englishman John Austin had developed theories of popular and absolutist notions of sovereignty that sought to reconcile these opposing theories. Austin proposed that the reality of the English political situation was that the monarchy—an absolutist form of government—shared its authority with the parliament—a popular form of government. Sovereignty lay with the combined authority of both.⁴⁹ Austin's commentaries were significant because he published them at a time when a number of colonial governments were also considering where and to what extent notions of sovereignty played a role in the political relations between themselves and the various native groups with whom they found they must form relationships.

While political debate over theories of sovereignty vacillated between absolutist and popular, at its most fundamental the notion of "sovereignty" developed as a theory pertaining to the meaning of political and legal authority in terms, not of one's power or control over other governments or states, but of one's independence from other governments or states. Thus, regardless of the nature of a state's authority, a state can still claim to be sovereign if it can demonstrate that it can and does exist as a separate functioning entity, free

⁴⁹S.M. Woody, "The Theory of Sovereignty: Dewey Versus Austin", *Ethics* (1968), pp.313–318; see also "John Austin and the House of Commons as Trustee of the Electorate", J. Suanzes, "Sovereignty in British Legal Doctrine", p.38–42.

from control from other states.⁵⁰ This is important to note in light of the legal and political theories of international relations being developed during the seventeenth, eighteenth and nineteenth centuries which had a direct impact on those native groups who were, in every case, feeling the deleterious impact of European “discovery” and “settlement” of their lands—be they recognised nation states or otherwise.

2.4 New South Wales: the “Desert & Uninhabited” Land

When Captain Arthur Phillip, commander of the First Fleet, arrived in Botany Bay on 26 January 1788 no one questioned whether or not this group of soldiers and convicts had the right to be there, because Cook had taken possession of the east coast of New Holland several years earlier. This assumption grew from deeply ingrained notions about both the basis on which colonial powers could legitimately colonise foreign lands and the position of the native peoples with regard to their own rights to those same lands.⁵¹

Captain James Cook, who, on his first voyage to the South Pacific during

⁵⁰A. James, *Sovereign Statehood: The Basis of International Society* (London, 1986), pp.3–9) & J. Suanzes, “Sovereignty in British Legal Doctrine”, pp.38–39; W. Blackstone, *Commentaries on the Laws of England* (Oxford, 1765–1769), p.49.

⁵¹Section heading reference: Stephen, Opinion *re* validity of statute 20 George II’, c.xix, pp.412–417.

the years 1768 and 1775, had “claimed” New Holland on behalf of King George III, had established the basis for Britain to later colonise that land. To be sure, he had been given precise instructions for how he was to establish his claim. “You are with the consent of the Natives”, his Royal instructions of 1768 stated,

to take possession of convenient Situations in the Country in the Name of the King of Great Britain, and to distribute among the Inhabitants some of the Medals with which you have been furnished to remain as traces of your having been there. But if you find the Country uninhabited you are to take possession of it for His Majesty by setting up proper Marks and Inscriptions as First Discoverers and Possessors.⁵²

Cook, thus, returned to Britain having claimed, as “first discoverer,” the east coast of New Holland. Though on a number of occasions throughout his travels Cook observed Aboriginal groups, the explorer, nevertheless, felt that it was appropriate to “take possession” of New Holland. By British legal interpretation, his claim was legitimised thus: during the eighteenth century when eastern New Holland was being considered as a possible penal colony, new theories of empire building were emerging due to the efforts of jurists such

⁵²J.C. Beaglehole (ed.), *Journals of Captain James Cook on his Voyage*, p.clxviii.

as M. de Vattel, Christian Wolff and Hugo Grotius. British claims to the east coast of New Holland and Van Diemen's Land followed strict tenets established in international law that established a framework by which colonial powers could claim new territories. Sovereignty over new lands could be established by carrying out a process of acquisition. After "discovery" an inchoate, or preliminary, title to the land could be claimed. Inchoate title could then be made inviolate by settling the land with colonial subjects. Once settled, a permanent sovereign claim could be made.⁵³

This process, however, could only be undertaken if the land was "unoccupied" or as Henry Reynolds describes it *terra nullius*. Reynolds uses the term in two different ways. Literally, he states, its Latin meaning is "empty land" or "unoccupied land", but for the sake of nineteenth century European legal doctrine a land was considered *terra nullius* if it was "a country without a sovereign recognized by European authorities and a territory where nobody owns any land at all, where no tenure of any sort existed."⁵⁴ New South Wales and Van Diemen's Land were considered *terra nullius* because at that time Britain did not recognise a previous claim of indigenous "ownership", and no other European power disputed Britain's claim.

If there appeared to be a politically-organised community already existing

⁵³See H. Reynolds, *The Law of the Land* (Ringwood, 1992), Chapters 1 & 2, & pp.7-53.

⁵⁴Reynolds, *The Law of the Land*, p.12. ^

in the land and a rival claimant sought to take possession then the latter had two options: the original possessor could be convinced to submit to a new sovereign, or the land could be purchased from the original sovereign. New South Wales and Van Diemen's Land, later in 1803, fell to the British by the first method, "first discovery and effective occupation", because the land was considered unoccupied. Cook's orders, though, clearly indicate that he was authorised to purchase the lands of those Aboriginal groups he met, though of course he had to communicate this desire to the Aborigines.⁵⁵

In international law, questions of ownership were more complex than recognising that people merely inhabited the land which was being "discovered". The British justified their claim over New Holland based on two criteria. Firstly, those who had explored the various Australian coasts before the British did not attempt to settle any region of the continent. As such, they did not even establish inchoate title to it. Secondly, the notion that the Aborigines might hold native title to their various lands was summarily dismissed because the Aborigines were deemed far too primitive to claim such rights. Cook and Banks found no evidence of a farming or cultivating culture along the coastline and so, guided by Lockean theory, they did not consider that the Aborigines had any possessory rights to the lands over which they ranged. Consequently,

⁵⁵A. Frost, "New South Wales as *Terra Nullius*: The British Denial of Aboriginal Land Rights", *Historical Studies*, 19.77 (1981), pp.514-515.

they were in no position to negotiate its transfer, nor to receive compensation for relinquishing it.⁵⁶

Cook also felt justified in claiming British sovereignty over New Holland and Van Diemen's Land because of the apparent scarcity of people on the coast. He inferred that this also indicated that inland tracts of land must also be uninhabited. Having observed lands free of cultivation along the coastline, Banks conjectured that the interior must also be uninhabited because no group could survive away from the coast without cultivating crops upon which to survive. If inland groups had developed techniques for cultivating the land there would be evidence of such activity along the coastline. Combined with this was the apparent pusillanimity of a people whom Banks was convinced would "speedily abandon the Country to the New Comers" if settlement was to follow. For all of these reasons Cook felt justified in claiming New Holland as a land uninhabited by a "civilized" sovereign government. To this end, the British colonial authorities assumed that they were in a solid position to later settle their new "discoveries" as convict colonies, because for all political and legal intents and purposes the land was *terra nullius*.⁵⁷

Michael Connor recently criticised the use of the term "*terra nullius*" by

⁵⁶Frost, "New South Wales as *Terra Nullius*...", p.515; Reynolds, *The Law of the Land*, p.11; Beaglehole, *Journals of Captain James Cook*, p.148.

⁵⁷Beaglehole, *Journals of Captain James Cook*, p.146; Beaglehole, *The Endeavour Journal of Joseph Banks*, p.122.

historians and legal scholars. Taking a very literal position he argues that, rather than being a term used to describe the legal reality of colonial Australia, *terra nullius* is a modern expression first used in a 1977 legal case by Paul Coe who “sensed its usefulness for the emerging political arguments in favour of Aboriginal land rights.” Subsequently, Connor maintains, the term was introduced into mainstream Australian politics by High Court Justice Lionel Murphy who, by making reference to it, helped usher in its acceptance as a “...legal and historical doctrine for explaining Australia’s sovereignty.” Connor concludes that *terra nullius* “...was never used by the British government to justify the settlement of New Holland”, rather it has been adopted by historians seeking to influence modern legal and political debates”.⁵⁸

Nonetheless, regardless of when the term *terra nullius* was coined, as historian Merete Borch explains, in the early decades of the nineteenth century “it became settled in law that the land inhabited by Aboriginal peoples, who subsisted on hunting and gathering, could be regarded as ownerless and therefore taken possession of as if it had been uninhabited.” Consequently, British “doctrine which proclaimed land inhabited by hunters and gatherers to be

⁵⁸ “Michael Connor: Dispel Myth of Terra Nullius and Historians are on Shaky Ground”, *The Australian*, 9 July 2004; M. Connor, “Error Nullius”, *The Bulletin* (Sydney), 26 August 2003, pp.76–78.

ownerless, became fairly widespread in legal thinking in the nineteenth century.”⁵⁹

§

There is nothing new in the suggestion that British possession of New Holland and Van Diemen’s Land was inappropriate at best, unlawful at worst. The processes that the British explorers and early colonisers followed to ensure legitimate ownership, in the eyes of European law, meant that British sovereignty was never seriously questioned or challenged by another European power. New Holland had been previously “discovered” (i.e. explored) by the Dutch and the Spanish; Van Diemen’s Land, by the Dutch and the French. However, all three had lost their inchoate title having failed to take occupation of either New Holland or Van Diemen’s Land in a timely manner.⁶⁰ Had closer attention had been paid by the early explorers to the Aborigines in both lands, evidence would have been gleaned of political, cultural and social systems. However different these may have been from European models, their existence might have convinced the early explorers and colonisers to reconsider their assumptions about the sovereign rights of the various groups with whom

⁵⁹M. Borch, “Rethinking the Origins of *Terra Nullius*”, *Australian Historical Studies*, 32.117 (2001), p.238.

⁶⁰K. McNeil, *Common Law Aboriginal Title* (Oxford, 1989), p.2.

they came into contact. In the meantime, the problem in Van Diemen's Land was that after two decades of ever-expanding settlement various Aboriginal groups began to resist further intrusion into their lands. As they became more politically and militarily adept a number of colonists began to realise the challenge that the Aborigines were presenting to British sovereign claims to the island.

The breakdown of race relations between the Aborigines and the colonists during Governor Arthur's time ultimately led him to recognise certain Aboriginal rights and privileges to lands that the British legal system had not recognised at settlement in 1803. Consequently he was forced to face the Aboriginal challenge while English law failed to address the confusing and often contradictory laws that led to the colonisation of a land that was neither desert nor uninhabited. Hence, Arthur's troubles stemmed primarily from the fact that Cook had made a terrible error when he failed to recognise that Aborigines of New Holland had at least possessory rights to lands upon which they resided. Arthur's comments regarding the missed opportunity to negotiate a treaty with the Aborigines of Van Diemen's Land⁶¹ reflected what was happening in other parts of the world, and in particular North America.

⁶¹This will be discussed in detail in Chapter 10.

2.5 Domestic Dependent Nations

By the time Arthur came to consider the notion of a treaty in Van Diemen's Land, those being negotiated in north America were very much focused on resolving issues of Native American land rights and sovereignty. During the 1820s and 1830s three cases were brought before the United States Supreme Court that dealt directly and decisively with the concept of tribal sovereignty. Their outcomes established the foundation of federal Indian law in the United States.

The two major actors were the Cherokee nation and the State of Georgia. Adjudicated by Chief Justice John Marshall, the outcome of the cases came to be known as the "Marshall Trilogy". Marshall's judgements gave a legal context to the unique concept of the trustee-ward relationship that had developed between the federal government and most Native American tribes. The nature of the relationship was, Marshall found, such that the Native American nations had developed as "domestic dependant nations", not directly answerable to, but also not completely independent of the United States government. The Marshall trilogy was the American legal precedent that determined views of native sovereignty across the globe at the time. The three federal cases heard by Marshall were *Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832).⁶²

⁶² *Johnson v. M'Intosh*, 21 U.S. 543, 5 L.Ed. 681, 8 Wheat. 543 (1823); *Cherokee Nation*



Figure 2.1:

Chief Justice John Marshall, 1755–1835, Source: Library of Congress Prints and Photographs Division Washington, D.C. 20540 USA:
<http://memory.loc.gov/ammem/>.

To be sure, the judicial process which finally determined the position of native American nations under federal United States law took more than two decades to conclude. It began with a case in 1810 that was brought before the Supreme Court that involved the question of Indian native title. *Fletcher v. Georgia*, 30 U.S. 1, 5Pet.1, 8L.Ed.25 (1811); *Worcester v. Georgia*, 31 U.S. 515, 6Pet.515, 8L.Ed.483 (1832). For a detailed study of the Marshall trilogy and events surrounding it see: Jeremy Hunt Gates, *Westward Removal: Andrew Jackson and the Fate of the Eastern Cherokee*, unpublished PhD thesis, University of Miami, 1988; & F.P. Prucha, *Documents of U.S. Indian Policy* (Lincoln, 2000).

v. Peck was a suit concerning fraudulent land sales made by the Georgian government. Though the Cherokees were not represented in the case, because a portion of the land in question was Cherokee land, the Federal Court was forced to consider the tribe's native title to it. What the Court found was that the Cherokees held a title "certainly to be respected by all courts, until it be legitimately extinguished."⁶³

Thirteen years later in 1823, *Johnson v. McIntosh*, the first of Marshall's trilogy of native title cases, came before the Supreme Court. This was the first federal case that sought to directly answer a native title question. The case involved two white parties who were both claiming title to a parcel of land in Illinois, 50 million acres in size. Johnson, the plaintiff, claimed he had purchased the land from a group of Native American tribes from northwest of the Ohio River. McIntosh, the defendant, also argued that he held title to the land because he had received the land through a grant from the Federal Government. The central issue for Marshall was "confined to the power of Indians to give, and of private individuals to receive, a title, which can be sustained in the courts of this country." Marshall ultimately held that while the Native American nations were free to dispose of land to non-native Americans, those receiving the land would be subject to the same restrictions to which

⁶³M. Ball, "John Marshall and Indian Nations in the Beginning and Now", *The John Marshall Law Review*, 33.1175 (2000), p.1184.

the original possessors, as wards of the government, were subject. Marshall, thus, ruled for McIntosh, noting that title to lands must “depend entirely on the law of the nation in which they lie”. However, he made sure to note that as a result of colonisation, native American “rights to complete sovereignty, as independent nations, were necessarily diminished” and thus their rights to dispose of soil thence denied. Nonetheless “the doctrine of discovery did not destroy Native American claims to the land. . . . Sovereign nations that claimed by discovery and maintained authority by conquest were still morally and legally obliged to respect the Native American right of occupancy.”⁶⁴

By the end of the 1820s the state of Georgia had begun an aggressive campaign to extend its jurisdiction over those Cherokee lands which fell within its borders. Supported by a sympathetic federal government, the removal of the tribes of eastern Georgia appeared inevitable. Andrew Jackson, a staunch advocate for a removal policy, had won the presidency the previous year. With gold recently discovered in Georgia, pressure to remove Native American tribes from the state intensified. Though the Cherokee nation fiercely resisted Jackson’s efforts, the president was determined to see his plans come to fruition. In May 1830 Jackson’s removal bill was signed into law. Jackson legitimised his position to his opponents by arguing that the continued exposure of whites

⁶⁴Prucha, *Documents of United States Indian Policy* (Lincoln, 2000); K. Newmyer, *John Marshall and the Heroic Age of the Supreme Court* (Baton Rouge, 2001), pp.443–444.

to native American groups would ultimately result in the latter's demise (an argument used by Governor Arthur when discussing the option of removing the Tasmanian Aborigines). Jackson held that

[surrounded] by the whites with their arts of civilisation, which by destroying the resources of the savage doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware⁶⁵ is fast overtaking the Choctaw, the Cherokee and the Creek. That this fate surely awaits them if they remain within the limits of the States does not admit of a doubt.⁶⁶

Tacitly acknowledging his government's inability to effectively control the activities of whites against Native American tribes, the President argued that by removing these groups, he would be saving them from "this fate [that] surely awaits them if they remain within the limites [sic] of the States..." On the new reserves established in Oklahoma, Jackson promised, the dispossessed nations "may be secured in the enjoyment of government of their own choice, subject to no other control from the United States..." While he maintained that the move must be a voluntary one, he also made clear that those who chose to stay would be subject to state and federal laws.⁶⁷

⁶⁵These were tribes from the New England region whose numbers had been decimated in earlier centuries by frontier wars and European disease.

⁶⁶President Jackson on Indian Removal, December 8, 1829 in F.P. Prucha (ed), *Documents of U.S. Indian Policy*, pp.47-48.

⁶⁷Newmyer, *John Marshall and the Heroic Age of the Supreme Court*, p.444; Prucha,

Having failed with the legislature, the Cherokee nation turned to the courts for justice. In March 1831 notice was served to the Georgian governor and attorney general, stating that a motion would be filed with the Supreme Court asking the court to

restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, 'go directly to annihilate the Cherokees as a political society, and to seize for the use of Georgia the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.'

The suit stated that "the Cherokee Nation of Indians is a foreign state, not owing allegiance to the United States, nor to any State of this Union, nor to any prince, potentate or State, other than their own..." that the Cherokees were "a sovereign and independent state... [that] ...had been repeatedly recognized, and still stands recognized by the United States, in the various treaties subsisting between their nation and the United States." *Cherokee Nation v. Georgia* was brought before Chief Justice Marshall. Marshall heard the case with a view to determining whether or not the Federal Court had jurisdiction in this matter.⁶⁸ Marshall found that the "Indian tribe or nation

Documents of United States Indian Policy, pp.47-48.

⁶⁸M. Ball, "John Marshall and Indian Nations in the Beginning and Now", p.1184; Newmyer, *John Marshall and the Heroic Age of the Supreme Court*, p.446; Prucha, *Documents of United States Indian Policy*, pp.57-59

within the United States is not a foreign state in the sense of the Constitution, and cannot maintain an action in the courts of the United States.” However, neither was it completely dependent upon and answerable to the laws and authority of the state in which its territory lay. Instead, in what has come to be arguably his most famous determination, Marshall found that

[t]hough the Indians are acknowledged to have an unquestionable and, heretofore, unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated *domestic dependent nations*.⁶⁹ They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile, they are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian.⁷⁰

Twelve months later, Marshall heard the third case in the trilogy—*Worcester v. Georgia*. What resulted outside the courtroom was a dispute where justice

⁶⁹ Author’s emphasis.

⁷⁰ *Cherokee Nation v. Georgia*, 30 U.S. 1, 5Pet.1, 8L.Ed.25 (1831).

fell victim to state and federal politics. Samuel Worcester and eleven other men working as missionaries in the Cherokee territory in New Echota were arrested and tried for illegally residing on Cherokee land. The state of Georgia claimed that they had not obtained a permit from the state to do so, and so were in violation of laws protecting native American nations from uncontrolled contact with whites. Worcester and his colleagues were found guilty and sentenced to four years hard labour. Using Worcester as their example, the Cherokees took their case to the Federal Court claiming that Georgia's actions were unlawful because they were in direct violation of federal treaties made with the Cherokee nation. Marshall found for Worcester. He upheld the Cherokee's claim that they remained an independent and autonomous state, despite their inevitable dependence on the federal government and that the state of Georgia did not have the right to impose its laws in Cherokee lands. Ultimately, Marshall concluded, Samuel Worcester had been illegally tried and imprisoned. Marshall opined that

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of

Congress. The whole intercourse between the United States and this nation, is, by our Constitution and laws, vested in the government of the United States.

Marshall ordered that the Worcester's judgement be reversed and annulled.⁷¹

Georgia's governor, George Gilmer and also President Jackson ignored Marshall's findings and the men remained incarcerated. The following year Wilson Lumpkin won governorship of Georgia. Faced with another political crisis—the nullification crisis⁷²—Lumpkin sought to quickly and quietly put an end to the Worcester controversy. He offered to release Worcester and his colleagues if they agreed to a few minor concessions. Hoping to continue his crusade as a free man, Worcester accepted the governor's offer. However, the political momentum to remove the Cherokee could not be abated and three years later the process began to remove the Cherokee nation to the state of Oklahoma, in what came to be known as the *Trail of Tears*⁷³

⁷¹Prucha, *Documents of United States Indian Policy*, pp.60–62.

⁷²The issue essentially evolved into a conflict between several southern states (South Carolina and Georgia in particular) and the Federal Government over the protection and expansion of states' rights to include the ability to nullify federal laws that compromised states' rights. These states opposed Congress' attempts to impose tariffs on southern states in order to protect and promote northern industries; for a discussion of the Cherokee case and the nullification crisis see E. Miles, "After John Marshall's Decision: *Worcester v. Georgia* and the Nullification Crisis," *The Journal of Southern History* (1973), pp. 519–544.

⁷³W. McLoughlin, *Cherokee Renaissance in the New Republic* (Princeton, 1986), pp.428–451.

The Marshall trilogy established a precedent for Native American policy-making and politics that continues to have an impact on issues involving native title. Marshall's findings in *Cherokee Nation v. Georgia* reflected the jurist's struggle to balance justice and the law. Marshall finally came to a decision which demonstrated his talent as a jurist. At first his findings seemed, in the words of Professor Kent Newmyer, "insultingly paternalistic". However, as Newmyer also points out, Marshall's opinion was a reflection of a "record of two centuries of relations between Anglo-Americans and Native Americans...[that]...was full of unresolved tension between empowerment and dependency."⁷⁴ Hence, Marshall's conclusion that the Cherokee nation, like every other native American nation, had, in fact, evolved into a "domestic dependant nation" demonstrated a broader view of the place and role of native groups in north America. Centuries of trading, warring, treaty-making and land sharing had led to this. The reality was that the Cherokees were neither completely bound to, nor completely independent of, those Anglo-American governments with whom they were required to interact.

Ultimately, Chief Justice John Marshall's judgements had little effect on the politics of race relations at the time. States' rights prevailed over native rights and the Cherokee found themselves exiled and powerless. However, the

⁷⁴Newmyer, *John Marshall and the Heroic Age of the Supreme Court*, p.446-7.

opinions to come from the Marshall trilogy came to have a significant impact on relations between native and colonising governments across the globe and far into the future. Where Marshall was successful was that he provided a legal context by which native nations who had lost any real military or economic autonomy could still maintain an element of political independence. They could claim a species of sovereignty that acknowledged native title even while being dependent on an external “guardian” government. To this end, native groups had and have been able to develop relations with their host governments that reflect the unique nature of their dependence, independence and interdependence.

Chapter 3

From Black Peace to Black War

To my way of thinking, I have never been able to conceive that there was justice and equity on the part of the Europeans in seizing, in the name of their Governments, a land seen for the first time, when it is inhabited by men who have not always deserved the title of savages or cannibals which has been given them. . . .”¹

Though the royal instructions to the early governors of Van Diemen’s Land provided a pragmatic formula for developing harmonious relations with the Aborigines, precedents established during the first three decades of contact dictated that just the opposite would most likely result. This chapter will examine the nature of race relations from the settlement of Risdon Cove in

¹Baudin to King, 23 December 1802, *Historical Records of New South Wales*, V (Sydney, 1901), p.830.

September 1803 to the end of Governor William Sorell's tenure in April 1824 to demonstrate that there was very little chance that the peaceful nature of race relations during the early years would or could endure and that war was almost inevitable.

3.1 First Contacts

New Zealand Historian, James Belich, in his review of Reynold's *Fate of a Free People* asserts that the "Black Peace—twenty years of little violence and considerable interaction—was as remarkable as the Black War."² Even a cursory examination of the events of the first fifteen years of settlement does, indeed, indicate that hostilities between Aboriginal and settler communities remained relatively confined and limited.

Orders from London to the early explorers established a context in which friendly and conciliatory contact should and could be made. Indeed, as discussed above, the explorers were encouraged to negotiate with indigenous groups to occupy lands in a way that would be considered fair and equitable for all parties concerned. Cook, it will be recalled, was instructed to take possession of "convenient situations" only with the consent of the natives.³

²J. Belich, "Black Peace, Black War", Review of Henry Reynolds' 'Fate of a Free People: A Radical Re-examination of the Tasmanian Wars', *Meanjin* (1995), p.712.

³King's instructions to Captain James Cook, 1772 in J.C. Beglehole (ed.), *Journals of Captain James Cook on his Voyage*, p.clxviii.

The early governors, too, were instructed to protect the Aborigines from some of the deleterious effects of settlement. Their royal orders were to

to endeavour by every possible means to open an intercourse with the natives, and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them. And if any of our subjects shall wantonly destroy them, or give them any unnecessary interruption in their exercise of their several occupations, it is our will and pleasure that you do cause such offenders to be brought to punishment according to the degree of the offense.⁴

While these orders to protect the “exercise” of the Aborigines “in their several occupations” hardly indicated a recognition of Aboriginal proprietary rights to the land, let alone actual ownership of it, they did reveal an attempt to balance justice with Imperial colonial ambition.

Implicit in the King’s orders was the presumption that because certain Aboriginal activities were to be protected and because the majority of indigenous Australians were nomadic hunter/gatherers, then ultimately their movements throughout the land, if not their possession of it, also was to be protected. As such, it is instructive that such orders were formulated given

⁴George III to Arthur Phillip, 25 April 1787, *Historical Records of Australia*, I.1, p.13.

that these very characteristics marginalised Aboriginal groups as Crown subjects who enjoyed few, if any, rights as British citizens.

The nature of Aboriginal nomadism, indeed, lay at the core of Britain's justification that the Australian continent was land unoccupied by a sovereign. This concept remained solid in colonial law and politics well into the nineteenth century. Governor David Collins' observations of the Aborigines as representing "mankind before it had united into a society" were made after a decade of contact. James Stephen's opinion that New South Wales was a "desert or uninhabited land" was formulated more than thirty years after settlement.⁵

As noted, the means by which Cook justified claiming New Holland as an uninhabited land came directly from the fact that as hunters and gatherers the Aborigines were deemed primitive and uncivilised and therefore unable to claim sovereignty over that land which Cook claimed in the name of the British king; and this tenet of English law remained inexorable throughout Australia's colonial history.

⁵John Thomas Bigge's recommendation to the House of Commons that the Aboriginal tribes of Australia must have "an unfettered range over a large tract of territory"—the very characteristic that deemed them uncivilized—was also made after 40 years of settlement, though he also revealed a subtle change in perspective with his prophetic contention that without access to this 'unfettered range' "the black population will undergo a gradual diminution in proportion to the advances of the white population into the interior"; see Beaglehole, *Journals of Captain James Cook*, p.148; Stephen, Opinion *re* validity of statute 20 George II', c.xix, pp.412–417; D. Collins, *An Account of the English colony in New South Wales*, p.350–395; J.T. Bigge, Report of the Commissioner of Inquiry on the State of Agriculture and Trade in the Colony of New South Wales, House of Commons (13 March 1823), p.83.

An international focus provides a context as to the seemingly incongruous motivations guiding the policy makers in the Colonial Office. The orders relayed to the early lieutenant-governors reflected closely those incorporated by the Royal Proclamation of 1763 sent to the colonial governors throughout north America. The proclamation deemed that indigenous groups were to “live under our protection”; that Native American groups “should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us, are reserved to them, or any of them, as their hunting grounds.” The proclamation also established the Crown’s exclusive right of pre-emption over Native American holdings.

And whereas great frauds and abuses have been committed in purchasing lands of the Indians, to the great prejudice of our interests and to the great dissatisfaction of the said Indians: In order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do with the advice of our Privy Council strictly enjoin and require that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians, within those parts

of our colonies where we have thought proper to allow settlement.⁶

This had ramifications that extended into the next century and throughout the British colonies.

To be sure, the Royal Proclamation was created out of political necessity. Once Britain had defeated France in the Seven Years War, potential resistance from Native American groups now posed the greatest obstacle to British control over north America. The orders contained in the Royal Proclamation then were focused on placating Native American groups so that colonisation could continue with minimal resistance.⁷ Nevertheless, despite its political underpinnings, the Royal Proclamation of 1763, like the King's orders to Governor Phillip, still provided for the protection of both the native peoples and their hunting grounds.

However, though the royal orders to the governors of Van Diemen's Land had the Royal Proclamation as their precedent, the political situation was very different in Van Diemen's Land. Britain's principal motivation for formulating the various native policies laid out in the proclamation was to undermine France's position in north America by strengthening its alliances with the Native American nations. Britain did not need to do this in Van Diemen's Land. For a short time France took an exploratory interest in the region but

⁶George III, *By the King, a Proclamation*, 7 October 1763 (London, 1763).

⁷H. Zinn, *A People's History of the United States, 1492–Present* (New York, 1999), p.59.

retreated once New South Wales Governor Phillip Gidley King claimed it as a British territory. Thus, even before the arrival of the *Lady Nelson* there was no motivation to establish political ties with Aboriginal groups to help foster interdependence, such as had been developed between British settlers and Native American groups.⁸

Another reason that race relations failed to develop as colonial officials had hoped in Van Diemen's Land was that the earliest contacts between Aborigines and Europeans were frequently hostile and violent. Before 1803, relations between European and Aboriginal groups developed without the benefit of an official Aboriginal policy because European sealing and whaling groups—a fraternity who, in any event, had little regard for official colonial policy—had moved into the region before Van Diemen's Land was officially colonised.⁹

Sealing and whaling vessels had frequented the north and east coasts of Van Diemen's Land since shortly after Matthew Flinders discovered seals on Preservation Island in 1796. A sealing community, comprised primarily of European men and Aboriginal women from north and east coast bands, quickly developed. It was a harsh life for its members, especially its women. Most of

⁸King to Napean, *HRA*, I.4, pp.247–249.

⁹see T. Jetson, "An Island of Contentment?: A History of Preservation Island", *Tasmanian Historical Research Association, Papers and Proceedings*, 43.1 (1996), pp.29–46; N.J.B. Plomley, *The Sealers of Bass Strait and the Cape Barren Island Community*, (Hobart, 1990); S. Murray-Smith, "'Beyond the Pale': The Islander Community of Bass Strait in the Nineteenth Century", *Tasmanian Historical Research Association, Papers and Proceedings*, 20.4 (1973), pp.167–200.

the islands were rocky, barren and windswept. Sealing was labour-intensive and fraught with danger. The women did most of the work. Added to this was the violence that the women often had to endure. William Stewart, writing to the New South Wales colonial secretary in 1815, revealed that the sealers obtained some Aboriginal women from the coastal tribes by force, keeping them as slaves and trading them amongst one another. Punishment for disobedience, he reported, often involved clubbings and whippings.¹⁰ When George Augustus Robinson made contact with a number of women in the islands fifteen years later, they relayed the same accounts. One woman recalled how she had been removed from her family as a child after her tribe had been raided by a group of sealers. She admitted to Robinson that

the white men tie the black women to trees and stretch out their arms...and then they flog them very much, plenty much blood, plenty cry... Said some of the sealers beat the women on the heads with big sticks and make the blood run down the face, and cut them with knives.”¹¹

A number of sealers, themselves, verified these reports. They admitted to treating the women as chattels, punishing them harshly when the women did not comply with their wishes. James Munro of Preservation Island reported

¹⁰Stewart to Campbell, 28 September 1815, *HRA*, III.2, pp.575–576.

¹¹Plomley (ed.), *Friendly Mission*, p.249.

that a sealer on Kangaroo Island "cut the flesh off the cheek of a black boy and made him eat it." John Anderson, living on Woody Island, told Robinson that "the sealers tied up a black woman to a tree and then cut the flesh off her thigh and cut off her ears and made her eat it."¹² It was not uncommon for sealers to kill Aboriginal women who proved defiant.¹³ Nonetheless, because they proved indispensable to the community, the women eventually found their place and in time the culture became very much matriarchal.

Early contact between Aboriginal groups and Vandemonian settlers on the Tasmanian mainland, on the other hand, established different precedents because Aboriginal and European groups did not develop an interdependence such as had evolved in the Bass Strait islands. From the start, contact was fraught with uncertainty. It was apparent to some even before settlement that a context for hostilities had been established by the way in which Britain had claimed the lands of New Holland.

Until 1798 Van Diemen's Land was thought to be part of New Holland proper. With the discovery of the Bass Strait, Britain's claims to the southern island were suddenly much less certain. Consequently, having received word late in 1802 that a French vessel was exploring the waters off Van Diemen's

¹²Plomley (ed.), *Friendly Mission*, p.357.

¹³Plomley (ed.), *Friendly Mission*, pp.249; For a discussion of the sealers and sealing community in Bass Strait see Chapter 7.

Land, Governor King quickly dispatched the *Cumberland* to King Island off the north coast of Van Diemen's Land. Once there an English flag was planted and hoisted on the site where the crew of the French vessel *Naturaliste* had been camped.¹⁴ *Naturaliste's* captain, Nicholas Baudin thought the "childish ceremony was ridiculous," even more so because of the fact that in their haste to make their territorial claim the British sailors had hoisted the flag upside down. Baudin's criticisms did not end there. He was contemptuous of the way Britain had claimed New Holland with little regard to the rights of its native inhabitants.¹⁵ In his letter to King he professed:

[t]o my way of thinking, I have never been able to conceive that there was justice and equity on the part of the Europeans in seizing, in the name of their Governments, a land seen for the first time, when it is inhabited by men who have not always deserved the title of savages or cannibals which has been given them... [N]ot only have you to reproach yourselves with an injustice in seizing their land, but also in transporting on a soil where the crimes and the diseases of Europeans were unknown all that could retard the progress of civilization, which has served as a pretext to your Government.¹⁶

¹⁴King to Napean, *HRA*, I.4, pp.247–249.

¹⁵Baudin to King, 23 December 1802, *HRNSW*, V, p.830.

¹⁶Baudin to King, 23 December 1802, *HRNSW*, V, p.830.

Eventually this would also become apparent to numerous colonial officials and settlers.



Figure 3.1:
Navy Lieutenant John Bowen, 1780-1827; Image taken from
<http://www.parliament.tas.gov.au/php/Bowen.htm>.

After a permanent British presence had been established with the arrival of the *Lady Nelson* under the command of Navy Lieutenant John Bowen in September 1803, tensions between the English and the Moomairremener band of Risdon Cove gradually developed. Initial contact was cordial and limited. Shortly after the new settlers erected their camps they were approached by a lone Moomairremener man. They offered him gifts and he perused them briefly before retreating, indicating that he did not want to be followed. Over

the next few months the Moomairremener made efforts to control the settlers activities along the eastern shore of the Derwent, particularly with respect to their hunting native game.¹⁷

The arrival of Colonel David Collins in February 1804 with 308 convicts and and some fifty others, including settlers, led to an increase in tensions as greater numbers led to more frequent contact. To be sure, Collins, who assumed the authority over this small settlement, arrived in Van Diemen's Land with very different intentions. He hoped that amicable relations could be developed and that a species of tolerance could be established between his ragged band and the locals. He was aware that the Moomairremener might very well view the settlers as intruders. However, he did not feel a responsibility to limit the spread of settlement nor to restrict the hunting of native game in order to ensure that the Europeans did not encroach on the lifestyles of the natives.¹⁸

Shortly before Collins assumed the administration of the colony, Aboriginal-settler tension manifested itself. On 3 May 1804, nine months after the arrival of the *Lady Nelson*, a group of Moomairremener, reported to number between 300 and 500, descended upon the cove, taking a kangaroo from a gamekeeper and surrounding a hut situated at a distance from the camp. Bowen was absent from the settlement, having left on a journey to the Huon River, so

¹⁷Bowen to King, 20 September 1803, *HRA*, III.1, p.198, 221& 664.

¹⁸Currey, *David Collins: A Colonial Life*, Chapters 7 & 14; A.G.L. Shaw (ed.), J. West, *The History of Tasmania* (Sydney, 1971), p.262; Ryan, *The Aboriginal Tasmanians*, p.73.

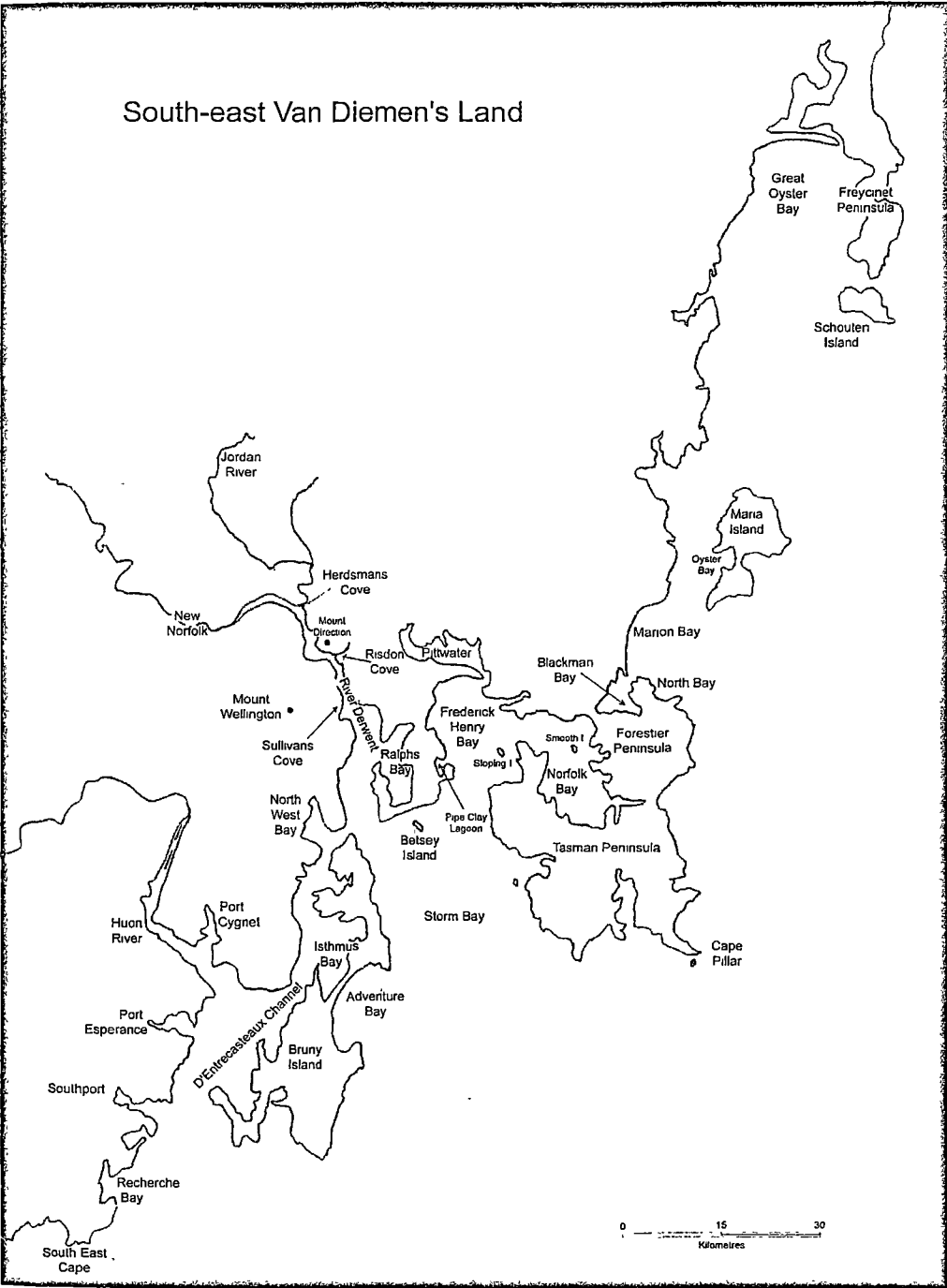


Figure 3.2:
South-east Van Diemen's Land; *Source: Phillip Tardif's John Bowen's Hobart: the beginning of European settlement in Tasmania*

Acting-Commandant Lieutenant William Moore had been placed in charge. Moore sent three soldiers to disband the group at the hut and fired off a cannon in an attempt to fend off those who had congregated around the camp. In a panic the British soldiers fired at the group. One was slain instantly but others who had been injured managed to escape, making it impossible for Moore to determine just how many had been killed. Eventually two other bodies were found. They were taken by Surgeon Mountgarrett, dissected, preserved in vats of salt, and then shipped to New South Wales. Two of the dead were the parents of a boy who Reverend Robert Knopwood later baptised as Robert Hobart May. The boy was shortly afterwards returned to his people. Nevertheless, a few days later the Moomairremener attacked a group of labourers from the settlement, Collins believed, as an act of retribution.¹⁹

In his report to Collins, Moore affirmed his convictions that the Moomairremener's "design was to attack us." Their numbers and "own hostile appearance," he reported, as well as an attack on a settler's wife and Moore's own servant, "convinced me of their intentions" to use violence. Their "appearance and numbers I thought very far from friendly." Though he ordered his soldiers "not to fire if they could avoid it," he reported that, ultimately they "found it necessary, and one was killed on the spot, and another was found dead in

¹⁹Bowen to King, 20 September 1803, *HRA*, III.1, pp.238, 242–243 & 282.

the valley.”²⁰

Reports of the Risdon affair presented to the Aborigines Committee, convened by Governor Arthur twenty-six years later to inquire into the deterioration of relations with the Aborigines, offered a number of alternative perspectives on the incident. William Stocker and Robert Evans conceived that the Moomairremener had come down for a ‘corrobbery’.²¹ Reverend Knopwood thought that “our people went from the camp to attack the natives.”²² Edward White wondered if the Aborigines had been on a kangaroo drive. He wrote that he

saw 300 of the natives come down in a circular form, and a flock of kangaroos hemmed in between them; there were men, women and children; they looked at me with all their eyes; I went down to the creek, and reported them to some soldiers, and then went back to my work; the natives did not threaten me; I was not afraid of them. . . The natives did not attack the soldiers; they would not have molested them; the firing commenced about 11 o'clock; there were a great many of the Natives slaughtered and wounded.²³

²⁰Moore to Collins, 7 May 1804 in Collins to King, 20 September 1803, *HRA*, III.1, pp.242-43.

²¹Evidence of William Stocker & Robert Evans in Report of the Aborigines Committee in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, pp. 427 & 429-430.

²²Evidence of Robert Knopwood in Report of the Aborigines Committee in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, pp. 425.

²³Evidence of Edward White in Report of the Aborigines Committee in Arthur to Murray,

Collins' report to Governor King reflected how shocking the affair was to the small settlement. He worried that relations between the settlers and Aborigines would never mend. He thought there was

...reason to fear that, from the vindictive spirit of these people, I may hereafter feel the unfortunate effects of them. . . I well know that these indiscriminating savages will consider every white man as their enemy, and will if they have opportunity revenge the death of their companions upon those who had no share in the attack, but I shall make a point, if it ever is in my power of doing away the evil impressions, which by this and a former affair they may have received of our disposition towards them.²⁴

While the affray, as Keith Windschuttle argues, might have been an isolated incident, having resulted from panic and confusion, some settlers still believed that it set the precedent for future race relations. Though not present at Risdon Cove, James Kelly, sometime sealer and whaler, and Harbourmaster and Pilot at Hobart Town later suggested that "the attack at Risdon was the cause of all that happened afterwards." He gave evidence to the Aborigines Committee that the settlers at Risdon were "attacked suddenly and unprovokedly" by

15 April 1830, CO 280/24, PRO Reel 244, pp. 427–429.

²⁴Collins to King, 15 May 1804, *HRA*, III.1, p.238.

the Moomairremener who “wished to drive the whites out of the country.”²⁵

Regardless of this, Collins had his doubts about the band’s hostile intentions towards the settlers. Collins was naive neither about those who were reporting to him, nor the customs and behaviour of the Aborigines whom he was bound to protect. Certainly the inclusion of women and children in the group indicated that they were probably in the area for a social gathering rather than a bloody confrontation. Nevertheless, upon receipt of reports from Moore and Collins, Governor King acknowledged that Moore was “compelled to fire on the natives, but I hope the measure you had in contemplation to gain their confidence has succeeded.” After the settlement was moved to Sullivan’s Cove in 1804, peace resumed again, though Aboriginal groups on the opposite shore continued to try to control the activities of colonists sent out to procure native game.²⁶

Six months after the Risdon affray William Paterson was sent north to establish a settlement of 143 convicts and soldiers at Port Dalrymple on the Tamar River. Before Paterson’s departure, King forwarded his orders to the

²⁵Evidence of James Kelly in Report of the Aborigines Committee in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, pp.420–424.

²⁶Collins to King, 15 May 1804, *HRA*, III.1, pp.238–239, 242–243 & 281–282; Windschuttle, *The Fabrication of Aboriginal History*, pp.11–28; Ryan, *The Aboriginal Tasmanians*, p.75;

new lieutenant-governor. The instructions guiding relations with the Aborigines were the same as those Collins had been sent upon receipt of his commission. Like Collins, Paterson was directed to conciliate the Aborigines and ensure, as far as he was capable, that settlement had as little impact on them as possible.²⁷

Like the Moomairremener at Risdon Cove, the Leterremairrenener of Port Dalrymple did not immediately make contact. But when a group of about eighty finally visited Paterson's settlement the soldiers offered them gifts which they readily accepted. The Leterremairrenener tried to remove other articles from one of the soldier's tents, but when Paterson's men stopped them, they "retired peacably" [sic]. Paterson's hopes of a close acquaintance with them were soon dashed, however, when a group of Aborigines he supposed were from the same band returned to the settlement and, again, attempted to remove the contents of a tent belonging to a guard of marines. When the Aborigines threatened one of the sergeants, a marine shot at the group, killing one and wounding another. Paterson predicted that "this unfortunate circumstance I am fearful will be the cause of much mischief hereafter. . . ."²⁸

Paterson's subsequent instructions to his soldiers were very clear. He emphasised that they were to make efforts to encourage friendly contact with the

²⁷Instructions to W. Paterson, 1 June 1804, *HRA*, III.1, pp.590.

²⁸Paterson to King, 26 November 1804, *HRA*, III.1, pp.606-607.

Aborigines and under “penalty of the severest punishment” he warned them against any type of behaviour that would agitate them. Having been at Risdon Cove the previous year, Paterson and his soldiers were aware of what had transpired there. The difference with the Leterremairrenener, however, was that they already had a history with European sealers in the region. Brian Plomley, thus, contends that the Port Dalrymple people seemed to have been more hostile than their southern counterparts. He suggests that their greater numbers, deeper encroachment by sealers into their hunting grounds and previous, often unfriendly, contact with these sealers, may have all been factors which predisposed the Leterremairrenener to be hostile and aggressive towards the Europeans.²⁹ On the other hand, the few reports of contact between soldiers and Aboriginal groups that Paterson forwarded to Governor King over the next year indicates that those under Paterson’s command apparently followed his instructions, for the meetings always ended amicably.³⁰

3.2 Control, Competition and Collaboration

In the years prior to George Arthur’s arrival three colonial governors—David Collins, Thomas Davey and William Sorell—all made an impression on the

²⁹Plomley, *Friendly Mission*, p.23.

³⁰Paterson to King, 19 November 1804, 27 December 1804, 8 January 1805 & December 1805 *HRA*, III.1, pp.609–610, 621, 629 & 649.

small colony of Van Diemen's Land. While in office each was forced to consider the burgeoning character of Aboriginal-settler relations. As greater numbers of Europeans encroached deeper into Aboriginal lands, each successive governor was required to pay closer attention to the interaction between the colonists and Aborigines.

During Collins' tenure of Office, until his death in March 1810, there were relatively few encounters with Aboriginal groups, hostile or otherwise in the south, although the Risdon affray left an indelible mark on the early colonists. To the north, there was much more contact between Aboriginal and European groups because of the presence of sealers in the region. Though few contemporary records exist that chronicle the details of this contact, the sealers and Aborigines had developed an interdependence that dictated that contact remain frequent.

In the south, on the other hand, it was decades before such a familiarity developed. For the most part when Aboriginal groups approached settlers it was in the outlying areas and for the purpose of controlling their hunting activities. The destruction that the hunters' dogs wreaked, however, was apparently obvious from the start for the Aborigines did not hesitate to kill the creatures when they confronted hunting parties.³¹ However, it was four years

³¹Ironically, dogs later became very important to Aboriginal groups, who used them for protection against increasingly hostile colonists. Sometimes groups would have hundreds



Figure 3.3:

J. W. Beattie's *Col. David Collins, R.M., Lieut.-Governor*, 1896; Source: Allport Library and Museum of Fine Arts, State Library of Tasmania; image taken from <http://images.statelibrary.tas.gov.au>.



Figure 3.4:
J. W. Beattie's *Col. Thos. Davey, R.M., Lieutenant Governor*, 1896; Source:
Allport Library and Museum of Fine Arts; image taken from
<http://images.statelibrary.tas.gov.au>.



COLONEL SORELL.

Figure 3.5:
W. McCleod's and J.W. Beattie's *Colonel Sorell*, 1886 Source: Tasmanian
Library, State Library of Tasmania; image taken from
<http://images.statelibrary.tas.gov.au>.

before a European was killed during one of these hostile encounters.³²

In her article, "Culture Contact in the County of Buckinghamshire, Van Diemen's Land, 1803-11"³³ historian, Marie Fels, argues that during the first decade hostilities between Aboriginal and settler groups were confined to competition for food resources. Even then it was not for another three years that the hunting of kangaroo by the settlers had a deleterious affect on the Aboriginal groups in the area. Settlers were forced to hunt kangaroo because administrative mismanagement and misfortune left the small colony close to starvation. The first and second hunting periods, which were carried out between September and December 1804, and July and October 1805, nevertheless, passed with little incident.

The third hunting period, which lasted from April 1806 to March 1807, of dogs attached to their party; see for example, Plomley, *AboriginalSettler Clash*, pp.15, 21, & 26; Hobart Town Gazette, 15 April 1828; Colonial Times, 4 May 1827; Arthur to Huskisson, 17 April 1828, HRA, III.7, pp.178184; Walpole to Arthur, 29 October 1830, CSO 1/324/7578, AOT Reel SLTX/AO/CS/117, no page numbers supplied; Hobart Town Courier, 29 May 1830; Plomley, *Friendly Mission*, pp.570-71; Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.435-453.

³²An avid diarist, Reverend Knopwood provided the most comprehensive account of Aboriginal-settler contact during the earliest years of settlement in Van Diemen's Land; see M. Nicholls (ed), *The Diary of the Reverend Knopwood, 1803-1838, First Chaplain of Van Diemen's Land* (Hobart, 1977); Moore to Collins, 7 May 1804 in Collins to King, 20 September 1803, HRA, III.1, pp.242-43.

³³M. Fels, "Culture Contact in the County of Buckinghamshire, Van Diemen's Land, 1803-11", *Tasmanian Historical Research Association*, 29.2 (1982), pp.47-79.

finally produced some Aboriginal resentment as kangaroo stocks quickly dwindled. Extreme weather conditions, exacerbated by Aboriginal firestick farming, drove the kangaroo inland. This forced the European hunters further afield and deeper into Aboriginal lands. Six conflicts were recorded, each indicating that the Aborigines were attempting to deny the hunters their catch. Fels hypothesises that at this stage, “it appears to be not so much the presence of the invaders that Aborigines objected to, but the specific practice of taking food which they considered to be theirs.” Fels concludes that, indeed, the first eight years of settlement were surprisingly peaceful given that competition for food had an almost immediate affect.³⁴

Even with the presence of those three classes of colonists whom Arthur later pointed to as the main offenders against the Aborigines—the bushrangers, the convict stock keepers and the sealers—race relations remained relatively calm during the first two decades of settlement. This was the case because at this stage the activities of these groups did not threaten Aboriginal society and culture (though when violent encounters occurred they were often shocking enough to kindle enduring resentments in some bands). Fels notes that the bushrangers had the worst record of abuse. However, she argues that their very survival would have depended upon them remaining amicable with those tribes

³⁴M. Fels, “Culture Contact in the County of Buckinghamshire, Van Diemen’s Land, 1803-11”, pp.47-79.

with whom they would inevitably have come into contact.³⁵ Later reports, indeed, indicate that a number of bushrangers became intimately involved with Aboriginal groups and were actually aided in their cause by this association.³⁶ As to the stock keepers, while they, too, gained reputations for their inhumanity towards the Aborigines, in 1811 there were still too few of them to make a great impact. At that time only one stockyard, manned by a few convicts, had been established beyond New Norfolk. So, too, the small numbers of sealers operating in the south meant that the impact of their presence on the southern bands would have been minimal. Moreover, generalisations about the bushrangers, stock keepers, and sealers seem to be unfairly damning given that none of these groups had the opportunity, even if they had the motivation, to inflict upon Aboriginal groups the violence and cruelty thought to have been carried out by them.³⁷

Such was the peace that the colony enjoyed so that the early governors found few reasons to make reference to them in their correspondence with the Colonial Office. During his short sojourn Bowen reported that he had “not seen a single native yet.” Those who had come across them found them “very shy and have since retired entirely from us.” Bowen did not apprehend that

³⁵M. Fels, “Culture Contact in the County of Buckinghamshire, Van Diemen’s Land, 1803-11”, pp.47-79.

³⁶see West, *The History of Tasmania*, p.625, fn.26.

³⁷Fels, “Culture Contact in the County of Buckinghamshire, Van Diemen’s Land, 1803-11”, pp.47-79.

“they would be of any use to us” and so dismissing the orders to “...open an intercourse with the natives, and to conciliate their affections” he made no active efforts to seek them out, “thinking myself well off if I never see them again.”³⁸

Collins, too, had few problems after settlement was moved across the Derwent River to Sullivan’s Cove. Once settled on Mouhenemener land he had not “found the Natives of this part of New Holland inclined to come in our way... at present we have not had any intercourse with them, which I do not much regret...”³⁹ Collins had been instructed by the Colonial Office that the colony should be settled in the “King’s Peace”, and that the Aborigines “and their property” should be treated and protected according to the same British laws that applied to the colonists. It was seven years, however, before Collins felt forced to publicly repeat these instructions.⁴⁰

³⁸Bowen to King, 20 September 1803, *HRA*, III.1, p.198; Orders to the New South Wales Governors, *HRA*, I.2, p.52.

³⁹Collins to King, 8 January 1805, *HRA*, III.1, p. 281; General Orders, 7 January 1805, *HRA*, III.1, p.529.

⁴⁰This does not suggest, however, that colonists were not alarmed by reports of Aboriginal attacks. Some were fully aware of continuing attempts by Aboriginal groups to control the movements and activities of the colonists. In 1807 Reverend Knopwood noted despairingly that the “natives have been very troublesome for a long time but not so desperate as lately... The natives endeavour to keep the men and dogs in the vallies that they may throw stones at them which they do with great force and exactness.” However, this demonstrates that continued attempts to control settler movements, rather than a desire to carry out acts of retribution against them, seems to have been the main focus of these Aboriginal activities; see General Orders, 7 January 1805, *HRA*, III.1, p.529; M. Nicholls (ed.), *The Diary of the Reverend Robert Knopwood, 1803–1838*, (Hobart, 1977), p.132; Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.435–453.

Indeed, not only did the Aborigines and settlers, for the most part, avoid hostile contact, some even managed to establish collaborative and cooperative arrangements for land and resource sharing. Beginning in 1808, an injection of settlers from Norfolk Island into the Coal River Valley, New Norfolk and Norfolk Plains saw settlement expand inland beyond the beachheads of Hobart Town and Port Dalrymple. At this stage, the number of convicts in the colony was still small and so labour was in high demand. Evidence exists that Aboriginal children were utilised occasionally as labourers, though no permanent or long term arrangements seem to have been secured.⁴¹

Those who did form good relations with their Aboriginal neighbours found themselves in frequent contact with them. Mouheneenner and Moormairremener groups paid regular visits to Reverend Knopwood at both his Battery Point property, Cottage Green, and later his farm at Clarence Plains. Such was the regularity of their visits to Battery Point that in 1814 Knopwood was commissioned by Governor Davey to victual them with food supplies from the commissariat. M. Nicholls (ed), *The Diary of the Reverend Knopwood, 1803–1838, First Chaplain of Van Diemen's Land*.

For the Moormairremener Knopwood's residence on the eastern shore came

⁴¹see M. Monypenny, 'Going Out' and 'Coming In': Cooperation and Collaboration Between Aborigines and Europeans in Early Tasmania, unpublished Honours thesis, University of Tasmania, 1995; Ryan, *The Aboriginal Tasmanians*, Chapter 4.

to be regarded as a retreat. News of his generosity and goodwill reached other bands, too, who also made visits, camping at the bottom of his property and partaking of a variety of vegetables which Knopwood supplied from his extensive garden. His relationship with one group became so familiar that by 1814 the clergyman was able to convince a number of young women to remain at his house long enough to have their portraits painted.⁴²

While Knopwood was very aware of the worsening hostilities between the Aborigines and settlers, and maintained an active interest in the operations against them, still his relationship with the Moorairremener, in particular, remained genuinely amicable. This may have been the case because Knopwood, even if unintentionally, had entered into a relationship with them that met all their criteria for equitable land and resource sharing. The trust that grew between them, thus, buffered their relationship against those hostilities that were developing around them.

However, by 1814 some of these cooperative arrangements, especially those between the Aborigines and agriculturalists in the Coal River district, began to break down. In June that year Davey felt the need to publish a warning against the removal of Aboriginal children from their tribes:

It having been intimated to the Lieutenant Governor that a very

⁴²M. Nicholls, (ed.), *Diary of Robert Knopwood*, pp.145, 182, 232 & 293–294; see also *Mercury*, 26 November 1874.

marked and decided hostility has lately been evinced by the natives in the neighbourhood of the Coal River in the attack they made upon the herds grazing in that district it is not without the most extreme concern he has learnt that the resentment of these poor uncultivated beings, has been justly excited by a most barbarous and inhumane mode of proceedings acted upon towards them, viz, the robbery of their children!⁴³

Not everyone agreed with this interpretation. Many believed that by removing Aboriginal children from their families they were saving them from what would otherwise be their inevitable demise, that they were providing them with the opportunity to become civilised and Christianised.⁴⁴

Despite the efforts of the Aborigines to discourage such activities, forced removal of Aboriginal women and children from their bands developed as a theme of Aboriginal-settler relations. As early as 1806 Knopwood recorded the abduction of a child from Brown's River and even as late as 1830 settlers were

⁴³Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.437.

⁴⁴In 1818 William Kermode of Hobart made an experiment of two Aboriginal boys who were found apparently abandoned outside New Norfolk. One of the boys died. The other, whom Kermode named George Van Diemen, was sent to England in 1821 to be educated. George remained in England until 1826 before he was sent back to Van Diemen's Land. Arthur, who by then was Governor of Van Diemen's Land, hoped that George, now a young man, could be employed as a government agent "especially with a view to the amelioration of his country men." Nothing came of the exercise, however, for George died in December 1827; Plomley, *Friendly Mission*, pp. 475-476, fn. 278; Hay to Arthur, 14 March 1827 & Arthur to Hay, 14 March 1827, *HRA*, III.5. pp. 322-323 & p.607;

seeking permission from the colonial government to attach Aboriginal children to their households.⁴⁵ The sealers had long been accused of stealing women from coastal tribes and according to Ryan by 1817 at least fifty Aboriginal children were living with outlying settlers.⁴⁶

The removal of children became such a serious issue that by March 1819, Davey's successor, William Sorell, felt forced to act. He ordered the district constables in Pitt Water and the Coal River Valley to take an account of the number of children living with European families. In a public proclamation, he forbade the settlers from taking Aboriginal children into their homes, except if given specific permission by the parents. Those children who were found in the custody of colonists who could not justify their actions, he announced, would be removed to the "native" institution in Hobart Town.⁴⁷

⁴⁵The roving party leader, John Batman, sought permission from Governor Arthur to adopt an Aboriginal boy who had been left behind after a bungled attempt to capture a Ben Lomond band. The boy was later baptised as Ben Lomond; see Nicholls, *The Diary of the Reverend Robert Knopwood*, p.99.

⁴⁶Ryan, *The Aboriginal Tasmanians*, p.79.

⁴⁷Government Order, 15 March 1819, *Hobart Town Gazette*; L. Ryan, *The Aboriginal Tasmanians*, p.78; Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.438; Plomley, *Friendly Mission*, p.41.

3.3 Economic Development & Aboriginal Dispossession

The ability of both the Aborigines and settlers to accept and adapt to each another's presence in the early years was due primarily to the fact that for the first two decades the population and spread of settlement remained limited. Though the arrival of the *Lady Nelson* in September 1803 followed by the *Calcutta* and her supply ship, the *Ocean* in February 1804 marked the permanent invasion of Aboriginal Tasmania, in January 1805 there were still less than 500 Europeans in the small colony. The arrival of 700 Norfolk Island expatriates in 1807 and 1808 changed this. In 1810 a further 1,100 colonists arrived in Van Diemen's Land and the arrival of the *Indefatigable* in 1812 injected 200 more convicts into the colony. In 1814 the population of Van Diemen's Land was still just under 2,000. By 1823 it had grown to over 10,000. Up until Sorell's departure from office in April 1824 the landing of twenty-nine convict ships brought another 4,177 prisoners to the island. As to the Aboriginal population, contemporary statisticians estimated that at settlement they numbered around 7,000, though modern scholars conjecture that their numbers ranged anywhere from 4,000 to over 20,000.⁴⁸

⁴⁸Ryan, *The Aboriginal Tasmanians*, pp.xx, xxii & 73-82; L. Robson, *A History of Tasmania*, v.1 (Melbourne, 1983), pp.32-44; *Statistical Returns of Van Diemen's Land or Tasmania from the Date of its First Occupation by the British Nation in 1804 to the End of the Year*

During the first fifteen years of settlement the economy was supported by a mix of agricultural and pastoral activities. Most of the produce and livestock was supplied to the Colonial Government for victualling. The agricultural industries developed in those districts where the Norfolk Islanders had settled. Produce such as wheat, barley, peas, and potatoes⁴⁹ were listed in the early statistical returns. Livestock reared in the colony included horses, cattle and sheep.⁵⁰

Pastoralism, however, soon replaced agriculturalism as Van Diemen's Land's most lucrative industry. An ideal climate, good grazing conditions, comparatively low costs and an abundance of land, allowed the industry to grow with relative ease. Soon Tasmanian wool became one of the most prized wools on the international market.⁵¹

1823 (Hobart, 1856), pp.3-11; West, *The History of Tasmania*, pp.29-78; R.M. Hartwell, *The Economic Development of Van Diemen's Land, 1820-1850* (Melbourne, 1954), pp.31-54; C. Bateson, *The Convict Ships, 1787-1868* (Glasgow, 1959), pp.306-321 & 326-329.

⁴⁹The harvesting of potatoes is of significance to the Aboriginal-settler story of Van Diemen's Land for various Aboriginal groups came to rely on the vegetable—a rich source of carbohydrates—as a staple, their traditional food sources having dwindled.

⁵⁰Robson, *A History of Tasmania*, pp.68-77; Ryan, *The Aboriginal Tasmanians*, 78; H. Hull, *Statistical Survey of Tasmania from the Years 1816 to 1865, Inclusive* (Hobart, 1866).

⁵¹The decline of the British wool-producing industries, combined with an increase the quality and quantity in Germany's wool output led England's markets to falter. When Britain discovered that New South Wales and Van Diemen's Land were producing wool of equal, if not better, quality, than Germany, it reduced the duties on colonial imports and the German market was thus thwarted. By 1830 the Australian colonies led the world in its wool production. In the year Sorell left office 17,160 pounds of wool was exported to Britain and Europe; see Hartwell, *The Economic Development of Van Diemen's Land*, pp.31-54; *Statistical Returns of Van Diemen's Land or Tasmania...*, pp.3-11; S. Roberts, *The Squatting Age in Australia, 1835-1847* (Melbourne, 1975), pp.35-48; see also H. Carter, *His Majesty's Spanish Flock: Sir Joseph Banks and the Merinos of George III of England* (London, 1964).

With the growth of the pastoral industry came a change in nature of land alienation and utilisation. While the agriculturalists had taken up relatively small plots along the major water courses, the graziers moved further afield, establishing sheep runs throughout the midlands region. The agriculturalists were able to farm their relatively small plots of land intensively. The pastoralists, on the other hand, required much larger grants for their flocks. The majority of these grants were located throughout the central plateau. These undulating and grassy plains were the lands that the midlands bands had spent millennia establishing as kangaroo pastures.⁵²

By 1820 Van Diemen's Land had close to 200,000 sheep. These kangaroo pastures, which provided the Aborigines with their main meat source were fundamentally altered by the introduction of such large numbers of sheep. Historians have variously viewed the development of pastoralism as facilitating both the rise and decline in the kangaroo population. Plomley argues that the establishment of farms and sheep runs would have caused a decline in kangaroo numbers, as the animals were dispossessed of their natural grazing lands. Windschuttle, conversely, maintains that, if anything, the evidence indicates that British farming and grazing practises encouraged an increase

⁵²Hartwell, *The Economic Development of Van Diemen's Land*, pp.53-55; G. Frankland, *Report on the Transactions of the Survey Department of Van Diemen's Land, from the Foundations of the Colony to the end of Colonel Arthur's Administration* (Hobart, 1837), p.4.

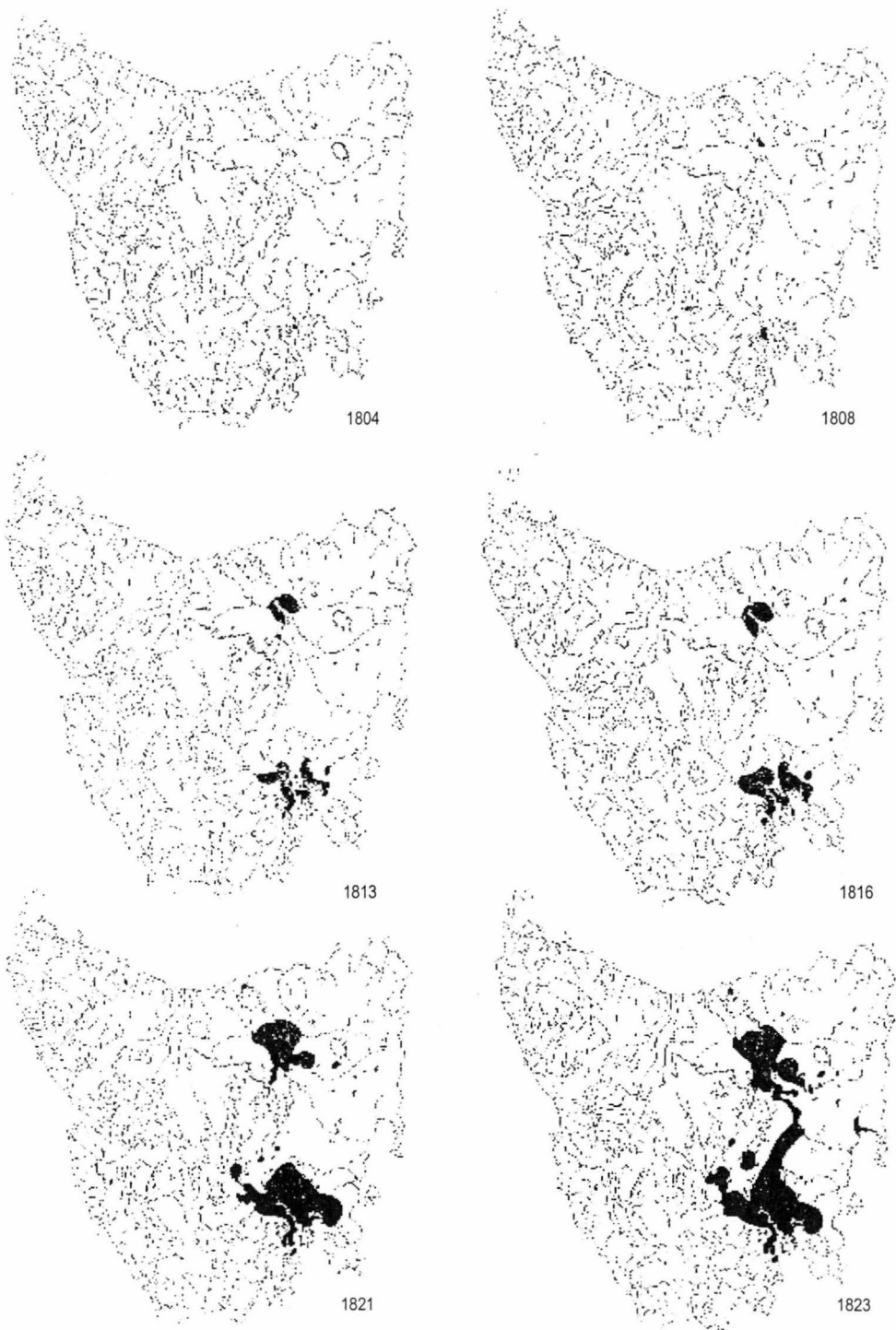


Figure 3.6:
Land Alienation in Van Diemen's Land, 1804–1823;
Source: Sharon Morgan's Land Settlement in Early Tasmania

in the population of native game.⁵³ Whether or not kangaroo numbers increased or decreased, Aboriginal society was, nonetheless, disrupted by the development of land-based British industries. Because no other industries or institutions developed that allowed for the incorporation of Aboriginal groups, there existed few opportunities for them to adapt to the loss of access to their traditional lands.

To be sure, the early agriculturalists employed Aboriginal labourers to farm their plots, but it was a piecemeal affair that often resulted in conflict rather than conciliation. No evidence exists that Aboriginal groups were systematically employed as agriculturalists and those who were recruited tended to be youths. With the influx of cheap and plentiful convict labour from Norfolk Island future incorporation of Aboriginal groups into the agricultural industries was not again attempted.⁵⁴

The sealers on the other hand effectively incorporated the Aborigines into

⁵³Plomley, *Aboriginal/Settler Clash*, p.18; Windschuttle, *The Fabrication of Aboriginal History*, pp.87–95.

⁵⁴Other experiments with employing Aboriginal labour also proved unviable in the long term. Edward Curr, who was an agent for the London-based Van Diemen's Land Company—a pastoral company established in the north west of the colony—employed a number of young Aboriginal men as shepherds in 1830 when he found convict labour in short supply. This was a time, however, when hostilities were at their height and the Aboriginal and convict labour classes had grown very wary of one another. The youths stayed only briefly, likely feeling threatened and harassed by the convict stock keepers. See Plomley, *Friendly Mission*, pp.234.

their industries. Just as Native American labour became essential to the Spanish and British industries in north America, Aboriginal labour, especially female labour, became an integral part of the sealing, and later the mutton-birding, industries in the Bass Strait communities. In the southern colonies of north America the Spanish utilised native labour in their mining and agricultural industries. As with the Bass Strait sealers, many Spanish colonists took Native American women as wives or sexual partners, which also served to strengthen the ties between European and native groups. In the northern British colonies economic interdependence came in the form of trading alliances. As Britain struggled to maintain its political dominance over France in the region, trade with Native American groups was encouraged. Fur was the primary commodity traded.⁵⁵

However, when private traders turned to illegal or fraudulent means to increase their profits, relations with their Native American trading partners often soured. Moreover, as interaction between the two groups became increasingly intimate the Native American groups inevitably suffered as their cultural, social, political and economic traditions gave way to new European ones. Nevertheless, in the longer term, trade led to a greater incorporation of the two societies and as Native American groups adapted to new ways they

⁵⁵J.P. Prucha, *The Great Father*, pp.11-21.

gained enough political and economical strength that Britain found it necessary to recognise their tribal sovereignty so as to maintain their allegiances.⁵⁶ In Van Diemen's Land proper no such opportunities for this style of interdependence came to exist and, as a consequence, as race relations began to decline, so too did the colonial policy-makers' estimation of the value of such interaction with the Aboriginal groups.

The year Sorell took office was a critical one in the decline of race relations in Van Diemen's Land. Ryan notes that there was a short lull during the middle of the decade because the Aboriginal groups who were most adversely affected by agriculturalism had disbanded, but by 1817 those who remained had formed loose alliances with one another and were joined by a number of Aborigines who had fled their white custodians.⁵⁷ These groups came to be known by contemporary commentators as "tame mobs" and two of the most notorious members of these fraternities were Musquito and Black Tom.

Musquito had originally been a member of the Broken Bay tribe in Sydney but, suspected of murdering several tribeswomen, was sent to Norfolk Island. Musquito was taken to Van Diemen's Land in 1813, probably with a group of Norfolk Island expatriates, and employed as a stockman and tracker against

⁵⁶J.P. Prucha, *The Great Father*, pp.11-21.

⁵⁷Ryan, *The Aboriginal Tasmanians*, p.79.

the bushrangers. When he was not returned to Sydney as promised, he escaped and joined a band in the Oyster Bay region. Black Tom, likewise, had lived with Tom and Sarah Birch at Lovely Banks after having been taken from his people as a child. As a young adult he fled and joined Musquito.⁵⁸ Nineteenth century historian, James Fenton described Musquito and Black Tom thus:

... [They] had lived for many years with the English, acquiring a perfect knowledge of their ways, and becoming familiar with their language and household arrangements, again joined their countrymen when they heard of the slaughter of their relatives. The natives, knowing their enemy so well, proved formidable foes...⁵⁹

Musquito and Black Tom now affiliated with the tame mobs, the Aboriginal bands of the east were in a position to begin in earnest their campaign to resist white settlement, though because of the nature of their guerrilla-style warfare, it would be a number of years before this would become apparent to the colonial administration.⁶⁰

⁵⁸For details of Black Tom's life and activities see *Colonial Times*, 10 & 17 November, 1 December 1826, 20 April, 17 November 1827, 27 September 1828, *Tasmanian and Australasian Review*, 21 November 1828; James Ross to Simpson, 22 June 1828, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.141-142.

⁵⁹J. Fenton, *A History of Tasmania from its Discovery in 1642 to the Present Time* (Hobart, 1884), p.102.

⁶⁰West, *The History of Tasmania*, pp. 267-8; Melville, *The History of the Island of Van Diemen's Land*, pp. 32-40; Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p. 411 & 416; Plomley, *Friendly Mission*, pp.314-15; Ryan, *The Aboriginal Tasmanians*, p.101.

Though, during his time in office, Sorell did not predict what was to come, perceiving that Aboriginal-settler hostilities would remain confined by the piecemeal contact between the two groups, he was, nonetheless, not unaware of the potential for hostilities to spread and intensify. Two years into his tenure he issued a proclamation to the colony. He spoke about the long and sustained history of settler violence against Aboriginal groups. Though he did not foresee that war was imminent, he did prophetically warn the settlers that it was a very real possibility that the Aborigines would coordinate their efforts against them if the nature of race relations did not change.⁶¹ The potential for worsening hostilities, Sorell admitted, had developed in large part from the “extension of the grazing grounds, and progressive occupation of the country” which he, nevertheless, had no intention of limiting. The governor, instead, called upon the colony to avoid, where possible, violent encounters and, more specifically, he forbade settlers from removing Aboriginal children from their families. To this end, Sorell felt that if harmony between the Aborigines and settlers could be fostered then the Aborigines could be conciliated, their acrimony assuaged, and the expansion of settlement could continue without interruption.⁶²

⁶¹see Chapter 4 for a discussion of the Aboriginal-settler conflict in Van Diemen’s Land that did, indeed, develop into war.

⁶²Government Order, 13 March 1819, *Hobart Town Gazette*; L. Mickleborough, Colonel William Sorell, Lieutenant-Governor of Van Diemen’s Land 1817–1824: An Examination of His Convict System and Establishment of Free Settlement, unpublished Master of Arts thesis, University of Tasmania, (Hobart, 2002), p.189.

Consequently, wishing to encourage continued economic growth Sorell actively promoted the further development of the pastoral industries by liberally granting land. In the words of historian R.W. Giblin: "the man with some capital, apparent ability to use it wisely, and desirous of obtaining wide areas for his purposes, seldom applied in vain to the Minister." In the year preceding his untimely departure Sorell approved grants totalling nearly half a million acres of Van Diemen's Land most valuable grazing lands.⁶³ This was more than the combined total acreage granted since European settlement and, indeed, the largest amount ever granted in one single year in the history of Van Diemen's Land's. Arthur, who continued in Sorell's wake, managed to alienate less than 300,000 acres over four years between 1824 and 1828.⁶⁴

Land was alienated by other means as well. Grazing leases and tickets

⁶³Such was Sorell's success that Giblin described the years immediately before his departure, as "the new era." Giblin claimed that these years "were the most important in the growth of the colony," A group of prominent settlers petitioning London for Van Diemen's Land's separation from New South Wales described the affluence enjoyed during Sorell's administration: "[T]he increased tide of emigration, so wisely directed to its shores by Your Majesty's ministers, and bringing along with it so considerable an influx of capital, has infused an active spirit of agriculture and pastoral improvement, has enlarged the facilities of trade, and stimulated commercial enterprise, and must necessarily tend to the rapid development of the great natural resources of the country;" see Giblin, *The Early History of Tasmania*, p.331 & 363; Memorial to His Majesty the King soliciting separation from government of New South Wales, 26 November 1824, *HRA*, III.4, p.579.

⁶⁴Giblin, *The Early History of Tasmania*, p.331; Memorial to His Majesty the King soliciting separation from government of New South Wales, 26 November 1824, *HRA*, III.4, p.579; S. Morgan, *Land Settlement in Early Tasmania: Creating an Antipodean England* (Cambridge, 1992), pp.165-169; P. Scott, "Land Settlement" in J.L. Davies (ed.), *Atlas of Tasmania*, (Hobart, 1965), pp.43-45; T. McKay (ed.), *Index to Early Land Grants, VDL, 1804-1823* (Hobart, 1994), pp.1-30; G. Frankland, *Report on the Transactions of the Survey Department of Van Diemen's Land, from the Foundations of the Colony to the end of Colonel Arthur's Administration*; Robson, *A History of Tasmania*, pp.106-118.

of occupation were issued to both free settlers and ticket-of-leave convicts who could demonstrate an ability and willingness to develop the land. In the earlier times when land was still plentiful it was a common practise by the agriculturalists to utilise plots adjacent to their own grants: While they grew their crops close to the river, on the lands behind the rivers, usually at the base of hills or mountains, they grazed their stock. The haphazard method by which boundaries were plotted and land claimed, and a poor system of recording claims meant that much more land was being utilised than officially recorded.⁶⁵ The consequences, then, for Aboriginal groups affected, was that these land alienation processes effectively set in stone their dispossession, even before it could be plotted on a map.

Contemporary historian and newspaper editor, Henry Melville, described the state of affairs facing Arthur on his arrival, and some effects of this affluence on Aboriginal society:

In this year [1824] the Aborigines of the island began to annoy the settlers to a degree that required some active measures of the Government to allay the outraged feelings of this ill-fated race of human beings. These poor bewildered creatures had been treated *worse* than were any of the American tribes by the Spaniards. Easy,

⁶⁵R.M. Hartwell, *The Economic Development of Van Diemen's Land, 1820-1850* (Melbourne, 1954), p.54.

quiet, good-natured, and well-disposed towards the white populations, they could no longer brook the treatment they received from the invaders of their country. Their hunting grounds were taken from them, and they themselves were driven like trespassers from the favorite [sic] spots for which their ancestors had bled, and had claimed by conquest...In self-defence were these poor, harmless creatures driven to desperate means, their fine kangaroo grounds were taken from them, and thus they were in want of their customary food; and when every other means of obtaining a livelihood was debarred to them, necessity compelled them to seek food of their despoilers.⁶⁶

Modern scholars perusing contemporary sources might be apt to comprehend that a “black peace” seemed to last until around 1823. The failure of the early governors to keep comprehensive records, combined with the absence of a colonial press (the *Hobart Town Gazette and Southern Reporter* only went to press in June 1816) meant that news and events were not recorded in the frequency nor the detail which later became the norm, especially during Arthur’s tenure. Consequently, with regard to Aboriginal-settler relations, one can only speculate upon their nature and frequency. Presumably the government

⁶⁶H. Melville, *The History of the Island of Van Diemen’s Land, from the Year 1824 to 1835 Inclusive* (London, 1835), pp.23-24.

orders and proclamations reflected a little. However, there would certainly have been much that was not reported to the colonial authorities. The lack of evidence of hostilities, thus, might suggest that the colony was enjoying peace. Indeed, the fact that Commissioner, John Thomas Bigge, reporting on the state of affairs in Van Diemen's Land in 1823 felt "there is not reason to presume that the black natives are numerous, or that they will [pose] any serious resistance to the extension of future settlements," demonstrates just this.⁶⁷ On the other hand, by 1823, the newspapers that were in operation were reporting the activities of Aboriginal groups now active throughout the pastoral districts, and the colonists had even come to know something of the Sydney Aborigine, Musquito, who led many of the raiding missions. A brief reference by Arthur to their activities shortly after his arrival in 1824 suggests that the new governor was certainly aware of the dangers that these groups potentially posed. In a letter to the Colonial Office, he noted in passing that, of late "the fears of the settlers have been much, and certainly justly excited by the late unusual hostile proceedings of the natives." Perceptive as Arthur was, however, it is unlikely that at this stage he could have predicted war.⁶⁸

Nonetheless, the conditions for war were ripe. So little was gleaned of Aboriginal society or culture during the first two decades that most colonists

⁶⁷J. T. Bigge, Report on Agriculture and Trade in New South Wales, p.83.

⁶⁸West, *The History of Tasmania*, pp.48, 563; Plomley, *Aboriginal/Settler Clash in Van Diemen's Land*; Arthur to Bathurst, 15 August 1824, *HRA*, III.4, p.162.

simply could not comprehend a people so very different from themselves. Consequently, interaction when it occurred was fraught with uncertainty. Uncertainty developed into fear which then evolved into hostility, and eventually deep and enduring acrimony. When amicable relations between colonists and Aboriginal group were established, they were piecemeal affairs that did not develop into permanent relationships. Furthermore, so self-sufficient was this convict colony that the need to permanently incorporate Aboriginal labour into the European industries that had been transplanted into Van Diemen's never arose. Moreover, there was no need to establish political relations with Aboriginal tribes because there were no foreign rivals to threaten Britain's claim to the colony. As a result, the Aborigines of Van Diemen's Land found themselves dispossessed of their lands and livelihood, yet unable to secure an alternative means of subsistence. Ultimately, this meant that it would only be a matter of time before those Aboriginal groups which had survived the first two decades of European colonisation began to resist it, rather than continue the futile attempt to adapt to it.

Chapter 4

“The Quarrel of the Natives with the Europeans”

The species of warfare which we are carrying out with [the Aborigines] is of the most distressing nature: they suddenly appear, commit some act of outrage and then as suddenly vanish: if pursued it seems impossible to surround and capture them. . . .¹

When George Arthur assumed governorship of Van Diemen’s Land in 1824 he was about to face an insurgency which even a veteran soldier like himself could not have anticipated. The Aboriginal crisis of 1824–1831 was a campaign

¹Title quote: Arthur to Goderich, 10 January 1828, *Historical Records of Australia*, Resumed Series III.7, p.27; “species” quote: Arthur to Murray, 12 September 1829, *HRA*, Resumed Series III.8, pp.607–609.

against the settlers of the midlands and east coast defined by guerrilla tactics involving clandestine 'hit-and-run attacks'. British military responses, for the most part, combined traditional confrontation with similar attack-and-retreat strategies. By utilising this style of warfare Aboriginal guerrilla groups, despite diminished numbers and inferior weaponry, were able to endure for nearly a decade.

This chapter will consider the nature of the guerrilla insurgency, concluding with a discussion of Arthur's experiences with this very different style of warfare. Theories of "just war" will be discussed to demonstrate how and why many people, both Aboriginal and European, felt that the Aborigines were justified in their destructive and deadly campaign against the colonists. How the Tasmanian Aborigines utilised guerrilla tactics will then be considered in order to show the very real threat that the Aborigines posed if not to colonisation as a whole then, at least, to those Vandemonians who found themselves the target of Aboriginal hostilities. The phases through which the war progressed will then be reviewed to highlight the the changing motives of, and strategies employed by, the guerillas the guerrillas as their numbers dwindled and their campaign weakened. Finally Arthur's knowledge of guerrilla warfare gleaned from the experiences of Wellington against Napoleon in the Iberian Peninsula as well as his own with the bushrangers of Van Diemen's Land will

be discussed to place into perspective how his early experiences would guide his formulation of Aboriginal policies when it came time for decisive measures to be taken.

4.1 Theories of Just War

Many prominent settlers in Van Diemen's Land in the 1820s and 1830s were sympathetic to the plight of the Aborigines and their efforts against European encroachment onto their lands. Theirs was a campaign, these colonists felt, that was justified and legitimised by theories of how and why war could be fought, formulated by international jurists. Of particular note is the sixteenth century, scholar, jurist and statesman, Hugo Grotius, who came to be known throughout European intellectual circles for his theories of "just war".²

Grotius formulated theories of international relations that established a context for the development of an "international society." Known as the "father of international law", Grotius espoused the idea that nations are bound by morally defined values that guide their interaction with one another.³ Grotius recognised that he was theorising about a set of European nations, with their own specific moral and religious codes. Subsequently, he took care to outline

²"Hugo Grotius" entry, *Routledge Encyclopedia of Philosophy* (London, 1998), p.185.

³H. Bull, B. Kingsbury & A. Roberts (eds.), *Hugo Grotius and International Relations* (Oxford, 1990), pp.1–64; 'Hugo Grotius' entry, *Routledge Encyclopedia of Philosophy* (London, 1998), p.185; "Hugo Grotius – Restatement of the Just War Doctrine", *Peace Research Reviews* (September 1978), pp.30–33.

the place of non-European nations and specifically native groups (especially those with whom European nations might come into contact) in relation to the European world.

Grotius held that discovery did not negate the property rights of native groups. Regardless of the fact that they might be infidels, the land over which they presided was their own property and European powers making claims to these lands could not do so on the principle that the land was without a sovereign.⁴ One will recall that three centuries later Baudin drew precisely the same conclusions when he denounced the actions of Governor King in claiming Van Diemen's Land as a British territory. (Indeed, Baudin felt that the injustices of the British actions were worsened by the fact that the Aborigines of Australia, who it was long presumed by others were wicked, witless and lacking in religion, "have not always deserved the title of savages... which has been given them..."⁵) Grotius argued, then, that native peoples held the same rights to utilise the processes of war and peace to protect their property (though he also recognised that how these rights should be upheld was subject to their own systems of law and order). To be sure, Christians and non-Christians, alike, if they were to go to war to protect their property rights,

⁴Bull, Kingsbury & Roberts (eds.), *Hugo Grotius and International Relations*, p.45.

⁵Baudin to King, 23 December 1802, *Historical Records of New South Wales*, 5, p.830.

were both bound to a set of morals and values—their rules of war—that defined how they were to utilise violence and aggression to protect their rights.

Grotius argued that war should only be utilised to achieve peace. He recognised that there are basic natural rights to which every nation is entitled and that in the absence of a supra-national authority, war is often the only means to uphold these rights. Grotius felt that only three conditions justified the use of war: a nation could go to war to defend itself against another power; it could go to war to recover property; or it could go to war to inflict punishment.⁶ Ultimately, then, in line with Grotius' formula, a number of historians, both contemporary and modern, came to recognise that the Tasmanian guerrillas were justified in their war against the settlers.

4.2 The Tasmanian Guerrillas

The word "guerrilla" became a part of the English language in the first decade of the nineteenth century. It came into existence during the Napoleonic wars after the Duke of Wellington, in alliance with Spain and employing Spanish

⁶H. Bull, B. Kingsbury & A. Roberts (eds.), *Hugo Grotius and International Relations*, pp.1–64; "Hugo Grotius" entry, *Routledge Encyclopedia of Philosophy*, p.185; "Hugo Grotius – Restatement of the Just War Doctrine", *Peace Research Reviews* (September 1978), pp.30–33.

"guerrillos", successfully drove Napoleon's army out of the Iberian Peninsula.⁷ The *Oxford English Dictionary* defines "guerrilla" warfare as "an irregular war carried on by small bodies of men acting independently."⁸ The *Macquarie Concise Dictionary* more specifically defines "guerrilla" as "a member of a small, independent band of soldiers which harasses the enemy by surprise raids, attacks on communications and supply lines, etc..."⁹ Contemporary Tasmanian historian, Henry Melville, certainly saw the Aboriginal-settler clash as a guerrilla war. He charged the Aborigines, bushrangers and Arthur's own civilian roving parties with having carried out guerrilla campaigns. Henry Reynolds maintains that, indeed, these guerrilla campaigns had the significant effect of holding back frontier settlement.¹⁰

Conversely, Keith Windschuttle argues that what occurred in Van Diemen's Land was not a guerrilla war because the Aborigines were not politically nor militarily organised (though Secretary of State, Earl Bathurst, certainly understood that Aboriginal groups were capable of organising themselves politically and militarily and, indeed, as early as 1825 directed that Governors Darling

⁷For a general discussion of the history, methods and aims of guerrilla warfare see L Gann, *Guerrillas in History* (Stanford, 1971), pp.2-3 & A.J. Joes, *Guerrilla Warfare: A Historical, Biographical and Bibliographic Sourcebook* (Westport, 1996).

⁸*Oxford English Dictionary* definitions: *guerre*: war; *guerrilla*, *guerilla*: 'diminutive of *guerra* war; Wellington specifically used the term in 1809 when he noted, "I have recommended to the Junta to set... the Guerrillas to work towards Madrid" (*The Oxford English Dictionary* (Oxford, 1989), p.923).

⁹*The Macquarie Concise Dictionary*, (Sydney, 1998), p.425.

¹⁰Melville, *The History of Van Diemen's Land*; H. Reynolds, "The Black War: A New Look at an Old Story", *THRA, Papers and Proceedings*, 31.4, pp.1-8.

and Arthur "repel [their] aggressions... as if they proceeded from subjects of an accredited state."¹¹) The Aborigines, Windschuttle claims, were merely raiders and looters looking to pilfer and murder for revenge. Moreover, they were not guerrilla combatants, he holds, because their raids were not made on enemy troops but on civilians and those carrying out the attacks were operating in territories to which they had no "cultural, linguistic, tribal or kinship connections of any kind..." Windschuttle states, the "... Aborigines never developed any of the forms of organisation, command, strategy, intelligence or weapons supply that have been associated with genuine guerrilla warfare in other countries over the past two hundred years." He contends that the guerrilla warfare thesis is nothing more than an attempt by orthodox historians to impose "concepts derived from the political structure of the modern world... with no cultural filter of any kind, onto the mental universe of a hunter-gatherer people."¹²

However, in proposing such an argument, Windschuttle has, himself, failed to consider the guerilla warfare thesis through a cultural filter. He has focused on the methods and motivations of European guerrilla warfare, rather than considering how and why it was utilised by native groups throughout history. It is true that the Tasmanian Aborigines most likely did not "spontaneously

¹¹Arthur to Murray, 4 November 1828, *HRA*, III.7, p.628.

¹²K. Windschuttle, *The Fabrication of Aboriginal History*, p.102–103.

adopt... a form of combat that was not a part of their existing cultural repertoire... " as he has accused the "orthodox historians of Tasmania" of claiming. Rather they adopted a form of combat, with its associated organisation and strategies, that came naturally to small, mobile bands.¹³

Windschuttle argues that one of the reasons that those who led the hit and run attacks could not be considered leaders of a resistance guerrilla movement was because they were not members of the tribe that they were leading. However, others who have studied aboriginal military systems have shown that not all guerrilla leaders were necessarily tribal leaders. In his work, *The Skulking Way of War*, Patrick Malone considers the use of guerrilla tactics by native Americans during the early seventeenth century. Often-times native guerrilla warfare involved the formation of temporary alliances between tribes. The leader of the allied bands was usually a sachem whose authority was in effect only as long as it took to carry out their campaign. Their leadership was often temporary and heredity tended to play no part in the assumption of their new role. Their authority was determined primarily by the extent to which they could glean support from members of the tribe or tribes.¹⁴ Leadership of Aboriginal guerrilla groups in Van Diemen's Land devolved to figures such as

¹³The Tasmanian Aborigines employed just such guerrilla tactics, possibly because, as military historian Lewis Gann, speaking generally of this style of warfare, argues, "they come easily to... nomadic people who lack the means to raise regular armies;" see Gann, *Guerrillas in History*, pp.2-3.

¹⁴P. Malone, *The Skulking Way of War* (Baltimore, 1993), pp.9-32.

Musquito and Black Tom in a similar fashion, whose knowledge of white ways made them natural choices to lead the resistance campaign.

Windschuttle also maintains that the Tasmanian Aborigines could not be considered guerillas because they lacked military organisation. Again, Windschuttle takes too narrow a view of this style of warfare. He misses the point that one of the primary characteristics of this type of warfare is the limited goals of the hit and run assaults. The goal was to attack, ambush and then retreat very quickly. That there may have been no geographic pattern to their attacks did not mean that they were not militarily organised, just that they chose their targets based on different criteria.

Moreover, Windschuttle's argument that this could not be considered warfare because the Aborigines targeted settlers rather than troops indicates that he misses a second important point—that settlers and settlement were the enemy. It was the outlying settlers, as Arthur himself lamented, who inflicted the most violence and bloodshed on the Aborigines. So retribution was due to those who caused the injury or who were associated with the cause of injury, be they troops, convicts or free settlers. A closer perusal of the events of the Aboriginal-settler clash in Van Diemen's Land indicates that the Aborigines of the midlands and east coast were, indeed, involved in guerrilla warfare which was so successful that the British troops, themselves, came to realise

the effectiveness of employing this style of battle.¹⁵

Military historians and strategists have determined that a central aim of any guerrilla campaign tends to be the removal of an intruder from one's territory. Certainly this appears to have been one of the main aims of the Aborigines of Van Diemen's Land, though revenge, retribution and later, procurement of food, were also important goals of the war.

Many settlers understood that they were fighting over territory. In 1827 residents along the Macquarie and Elizabeth Rivers lamented that "the murders that [the Aborigines] have committed are not so much the pursuit of private revenge as of a plan reconciled by them as a native for the extirpation of the white inhabitants with whom they doubtless consider themselves at war."¹⁶ As late as February 1830, a land owner in the Clyde district, Isaac Sherwin, was told in no uncertain terms of his trespass. A group who had attacked his property stood on an elevated rock on the opposite side of the river and cried, "parrawar! parrawar! go away you white buggers, what business have you here?" Settlers in the district certainly perceived that the Aborigines "viewed us as the intruders..."¹⁷

¹⁵See Chapter 5 for a discussion of Arthur's use of guerrilla tactics during the Aboriginal-settler clash.

¹⁶Memorialists to Arthur, 20 November 1827, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp. 72-75.

¹⁷Plomley has determined that "parrawar" means 'throw', 'get away', 'go away'; see N.J.B. Plomley, *A Word-List of the Tasmanian Aboriginal Languages* (Launceston, 1976); Sherwin to Arthur, 23 & 27 February 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.

The effectiveness of the Aboriginal campaigns led some to believe that they would, indeed, be forced from their grants. In November 1827 northern residents reported to Arthur that the alarm which had been created in the Launceston and Norfolk Plains districts threatened to cause the "abandonment of such property as is not in the immediate vicinity of an armed force. . . ." By 1830, Bothwell Division Constable, Humphrey Howells, had concluded that the Aborigines were "the common enemy to civilisation."¹⁸

In response to declining numbers and the increasingly forceful counter-measures of the colonial government, the aims of the guerrilla insurgents changed throughout the Aboriginal crisis. However the primary tactic they employed to attempt to achieve their goals remained consistent. Aboriginal groups used the element of surprise as the main tool in their arsenal against the enemy. They would make a hit-and-run attack on a property and/or its residents, quickly retreating into the wilderness so as to avoid a counter-attack. In February 1828 a horse belonging to a convict servant at St. Patrick's Plains was speared. It was reported that "no sooner had they perpetrated this act of cruelty than the natives fled (and were not seen either before or after the act)".¹⁹ In September 1830 George Scott's house on the Upper Macquarie

430-433 & 438-443.

¹⁸Cornwall County Residents Memorial to Arthur, 24 November 1827, Vicary to Arthur, 16 August 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.72-75 & 564-565; *Colonial Times*, 5 June 1829.

¹⁹Clark to Burnet, 25 February, 1828, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114,

River was besieged and the cook was killed. "[T]he attack was so sudden," Scott wrote, "that the man was speared before they had any idea of a native even being near."²⁰

Arthur's description of what the colonists faced illustrated how effective this style of campaign proved to be. "The species of warfare which we are carrying out with [the Aborigines]", he wrote to the Colonial Office, "is of the most distressing nature: they suddenly appear, commit some act of outrage and then as suddenly vanish: if pursued it seems impossible to surround and capture them..."²¹ The aptitude with which the guerrillas ran their campaign, moreover, was not lost on the Executive Council. In August 1830 its members reported that these "acts of warfare" are "proofs... of the skill with which the natives have availed themselves of... to make their hostile approaches unperceived, of their patience in watching for days the habitation of those whom they design to attack, and of the frightful celerity with which they avail themselves of any unguarded moment to fall upon the inmates..."²²

A feature of the hit-and-run campaign, which often proved even more effective than physical violence was that of psychological warfare. The guerrillas

pp.105-107.

²⁰Scott to Douglas, 30 September 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.652-654.

²¹Arthur to Murray, 12 September 1829, *HRA*, Resumed Series III.8, pp.607-609.

²²Extract from the Minutes of the Executive Council, 27 August 1830, in Arthur to Murray 20 November 1830, CO 280/25, PRO Reel 245, p.400.

of Van Diemen's Land employed it well. Settlers reported feeling harassed and living in dread, the attacks having been "conducted with much cover and secrecy." So effective was this strategy that the anticipation of an attack for one convict servant was more distressing than the actual attack itself. Having lived in fear for so long, when, after a confrontation near Little Swanport, the government sawyer was "slightly wounded", he was "so terrified that he ran off to Mr. Buxton's and was taken very seriously ill immediately on his arrival there and expired on the 16th from fever brought on by fright." The man, it was believed, was literally scared to death.²³

The Tasmanian guerrillas also took advantage of the terrain in which they were operating. They made use of the vulnerability caused by the isolation of the stock keepers and their huts. "The occupation of an industrious settler," wrote Captain William Clark in 1830, "generally detains him in his field or abroad with his cattle so that his house becomes an easy prey to the insidious attacks of these savages who will for days and weeks together watch a house which they have marked for plunder²⁴ till they effect their purpose."²⁵ This

²³Bryan to Abbott, 2 July 1827; Simpson to Burnett, 13 March 1828, Torlesse to Vicary, 15 February 1830, Aubin to Arthur, 18 September 1830; , CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.46-48, 122-124, 422-423 & 629-30.

²⁴*The Oxford English Dictionary* tellingly defines 'plunder' thus: "to rob (a place or person) of goods or valuables by forcible means, or as an enemy; esp. as done in war or a hostile incursion; to pillage, rifle, ransack, spoil; to rob systematically (*The Oxford English Dictionary*, p.1084).

²⁵Clark to Burnett, 22 February 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, p.426-429.

willingness to wait patiently for the most favourable opportunity to make an attack allowed the guerrillas to gain a good knowledge of their adversaries. Settlers were often left feeling utterly vulnerable. Thomas Vicary wrote to the Governor noting that "the knowledge the natives have of the defenceless state of the house is very astonishing as they have invariably made their attacks on the departure of the means of defence."²⁶ The Aborigines had a good knowledge of their enemy because, contrary to Windschuttle's claim that they did not utilise intelligence,²⁷ they invested a great deal of time and energy observing their adversaries, coming to know their movements and habits intimately.

As the Tasmanian guerrillas became more desperate their attacks on settlers increasingly focused on the theft of European goods—what Reynolds has dubbed this "economic warfare".²⁸ In 1824 the *Hobart Town Gazette* reported that "a tribe of natives visited the shepherds' hut of Mr. Temple Pearson, which they robbed of every article they could carry off, and afterwards drove the whole of his flock of sheep into the river, where they commenced spearing and otherwise destroying them."²⁹ In February 1828, the surveyor, William

²⁶ *Tasmanian and Australasiatic Review*, 11 June 1830; Vicary to Burnett, 12 February 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.404–405.

²⁷ Windschuttle, *The Fabrication of Aboriginal History*, pp.122–130.

²⁸ H. Reynolds; *The Other Side of the Frontier: Aboriginal Resistance to the European Invasion of Australia* (Ringwood, 1982), pp.86–87.

²⁹ *Hobart Town Gazette*, 24 April 1824.

Sharland, was "robbed of everything useful."³⁰ Since establishing a property at Oatlands, Thomas Hobbs' property was attacked no less than six times. "[No sooner do I see a prospect of getting some returns from the farm," he lamented, "than the natives come and rob me of all."³¹

On many occasions small supplies of food stuffs, blankets and clothing were removed for later use by Aboriginal groups. At other times much larger quantities were removed or destroyed and certainly, the offenders might have taken the provisions to stock-pile. However, such supplies would have been useless to groups constantly on the move. More likely, then, the removal and destruction of property probably indicates that they were trying to interfere with the settlers' livelihoods.

Windschuttle argues that the Aborigines were not plundering huts as part of a guerrilla campaign but that their "principal reason for...violence was their desire for British consumer goods" for which they had acquired a taste.³² What Windschuttle fails to consider is why the Aborigines developed such a strong desire for British consumer goods.

The foodstuffs that the Aborigines tended to take were bread, sugar and

³⁰ *Tasmanian*, 8 February 1828.

³¹ Hobbs to Burnett 20 May 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.509-510; one may recall the famous utterings of the other, more philosophical Thomas Hobbes: life is "poor, nasty, brutish and short...."

³² Windschuttle, *The Fabrication of Aboriginal History*, pp.122-130.

tea. These were foods that were easy to carry and consume on the move. More importantly, they provided an instant source of energy that the Aborigines would have desperately needed to stay mobile. Ultimately, they had acquired a taste for European foods such as bread, tea and sugar because they needed to supplement, or in many cases, replace their dwindling traditional food sources.

Another strategy employed by Aboriginal groups involved restricting settlers' movements. If the guerrillas were able to interrupt communication between settlements they could interfere with the settlers' ability to work their grants. Captain Torlesse wrote to Arthur in February 1830 describing such a case. "As to the natives", he lamented,

I can assure you we all now feel too fearful of their being near us, that we never move without a gun. If the cart has to go to the mill or elsewhere we lose the services of one man at home, being obliged to send two, one as a driver, the other as a convoy. Mrs. Torlesse is uneasy if I were to go as far as the barn and even to that short distance I always carry a gun. The trouble and loss they have and will still cause us is quite harassing.

In a postscript Torlesse sought permission to "exchange my grant at the Hollow Tree for one near Hamilton, Mrs. Torlesse being in a very uneasy state of mind,

our lives are daily in jeopardy."³³

The skills which the Tasmanian guerrillas utilised allowed them to endure despite their decreasing numbers. They were able to resist the expansion of settlement, procure food supplies even when native sources had been depleted, and thus remain politically and militarily active. Melville described their efforts well when in July 1830 he wrote:

the attacks and depredations of the Aborigines on the white people of this Colony, and on stock-huts, remote only a few miles from the townships and military stations assume a regular and alarming consistency, and evince on the part of the blacks a cunning and superiority of tactic which would not disgrace even some of the greatest military characters.³⁴

4.3 Phases of War

War between the Aborigines and settlers of Van Diemen's Land began in earnest around the time that Arthur assumed his commission as governor and lasted until the end of 1830 when the number of attacks dropped significantly. Until the end of 1829 the number of attacks each year where property owners

³³Torlesse to Arthur, 15 February 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.422–423.

³⁴*Colonial Times*, 16 July 1830.

or their servants were killed, always outnumbered those attacks where plunder was the primary motive. In 1830 this changed as the Aborigines found themselves almost completely reliant on European goods such as flour and blankets for survival, and thus forced to make plundering raids in order to procure them. By 1831 the efforts of Arthur's military operations against the Aborigines combined with Robinson's activities amongst them finally broke their resistance.³⁵

During the first four years of war the efforts of the remnant tribes of the midlands and east coasts—the tame mobs—defined the nature of the guerrilla campaign. The midlands band that was headed first by Musquito and later by Black Tom was particularly well versed in European ways and carried out most of the raids against the settlers during the initial years of war.³⁶ This set the tone for the rest of the war and allowed the guerrillas to begin their campaign in earnest. Arthur was aware of the danger that the likes of Musquito and Black Tom posed and their capture remained a priority for him. When Musquito was captured in 1824, he was tried and found guilty of murder.

The following year he and his associate, Black Jack, were hanged for their

³⁵Plomley, *The Aboriginal/Settler Clash*, pp.26–27.

³⁶Melville, *The History of the Island of Van Diemen's Land*, pp.32–35, 56–57. Windschuttle argues that Musquito and Black Tom were little more than "black bushrangers." However, it is important to remember that those who led the raiding parties, according to guerrilla war theorists, did not necessarily have to have tribal or even kinship ties to the group, nor did they require them to be recognised as leaders of the raiding parties whose goals were limited and whose techniques were foreign to the Europeans; see Windschuttle, *The Fabrication of Aboriginal History*, p.70.

crimes. The next year two others, Jack and Dick, were also captured, tried and hanged. Arthur hoped that the executions "may tend, not only to prevent the commission of similar atrocities by the Aborigines, but to induce towards them the observance of a conciliatory line of conduct..." Black Tom was captured in November 1827. Rather than being tried and executed, however, he was housed in the prison at New Norfolk until he was attached to Gilbert Robertson's roving party in 1829. Arthur probably realised that the hanging of the first three might not have demonstrated a conciliatory line of conduct on his own part.³⁷

The early activities of the tame mobs reflected a desire to redress injustices suffered by their people. This is supported by data, however incomplete, that shows that for the first four years of the war the goal of most Aboriginal attacks seemingly was to maim or kill the property owners or their servants.³⁸ Anecdotal evidence also bears this out. In the Western Creek district James Cubitt found himself the victim of nine Aboriginal attacks over a five year period. Robinson noted in his diaries that Cubitt had massacred many and that he "kill[ed] the natives for sport." Norfolk Police Magistrate, Malcolm Laing Smith reported that "the natives have long vowed vengeance on [Cubitt] who has been a terror to them in that neighbourhood". During one attack,

³⁷*Hobart Town Gazette*, 16 September 1826; *Tasmanian and Australasiatic Review*, 16 November 1827.

³⁸Plomley, *The Aboriginal/Settler Clash*, p.26.

one man cried out to Cubitt, "we will have you yet."³⁹

The deaths of 104 settlers during those revenge years finally moved Arthur to respond. Late in November 1827 he increased the military presence throughout the midlands. He sent an additional twenty-six field police to the Western Creek to aid civil powers already stationed there. He issued a garrison order calling for magistrates, field police and the military to work together to protect the isolated settlement. Any effect that the augmentation of force had, though, seems to have been minimal, for as Police Magistrate, Peter Archer Mulgrave reported from Port Dalrymple:

The strength of the country close to the cultivated districts . . . renders it difficult to overtake the black natives and effectually drive them back without a much greater force than I am able to collect or having recourse to severities which I should not conscientiously justify.⁴⁰

³⁹Cubitt resided with his fellow convict servant, Thomas Johnson, Johnson's Aboriginal wife, Dolly Dalrymple, and their two children. Johnson and Dolly found themselves targets for revenge because of their association with Cubitt. Interestingly, Johnson was later granted a pardon by the government for Dolly's actions during an attack. When their hut was surrounded, Dalrymple took Johnson's double-barrelled shot-gun, climbed into the loft of the hut and shot at the group until they retreated. She killed twelve of them in all; see Plomley, *Friendly Mission*, p.219, *Colonial Times*, 6 January 1826, 7 March 1828, 28 September 1831; *Hobart Town Gazette*, 24 September 1831, *Hobart Town Courier*, 24 September 1831; N.J.B Plomley (ed), *Jorgen Jorgenson and the Aborigines* (Hobart, 1991), p.125; *Journal of the Land Commissioners for Van Diemen's Land, 1826-28* (Hobart, 1962), p.80; Smith to Burnett, 7 September 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, p.954-957; Murray to Arthur, 5 November 1830, CO 408/7, PRO Reel 290, p.83.

⁴⁰*Colonial Times*, 26 January 1827; Plomley, *The Aboriginal/Settler Clash*, 26 & 56-58; *Tasmanian and Australasiatic Review*, 16 November 1827; Government Notice, *Hobart Town*

By the end of 1827 it had become clear that race relations would only worsen. Almost daily Arthur's office was receiving correspondence from settlers throughout the colony who were suffering at the hands of Aborigines. The letter from William Walker of Breadalbane in December 1827 stood out for it was one of the very few that did not detail an account of an Aboriginal attack or slaying. Walker wrote to Arthur describing what he perceived was an Aboriginal spiritual site that he had happened upon during his travels. He explained that he was relaying the details of what he had discovered in the hope that if the colonial administration had a more intimate knowledge of Aboriginal society and culture in Van Diemen's Land then the cause of hostilities might be better understood, and more effective conciliatory policies could be implemented. Specifically, Walker hoped that "some kind of treaty or coming to an understanding with the natives" could be reached, "in order to prevent the frequent murders they commit."⁴¹

The year 1828 saw the war moving into its second phase as the Aborigines began focussing their efforts equally on plunder and murder. Sixty-three reports of plunder were recorded—three times the number for 1827. Arthur

Gazette, 29 November 1827; Mulgrave to Burnett, 17 December 1827, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.84–85.

⁴¹Walker to Burnett, 20 December 1827, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.86–88; Chief Justice John Lewes Pedder, of course, also made the suggestion, but not for another four years, by which stage the regrettable fate of the Aborigines was all but sealed (see Chapter 7 for a discussion of Pedder's suggestions for a treaty).

realised that this was the period that marked the beginning of a concerted fight for food. He wrote to the Secretary of State that the Aborigines "complain that the white people have taken possession of their country, encroached upon their hunting grounds, and destroyed their natural food, the kangaroo. . . ." He also understood the need to "afford them some temporary relief in food and clothing."⁴² By 1831, though the Aboriginal crisis was nearing an end, still the Aborigines Committee noted the Aborigines' "thirst for plunder" and "the encreased [sic] desire manifested on the part of the Blacks to procure blankets, flour, tea, tobacco, fire arms and articles of dress."⁴³

To Arthur's mind, the only long term solution was to establish "settled districts" and to eventually create a reserve for the Aborigines away from settlement.⁴⁴ However, in the short term, these boundaries served to merely exacerbate Aboriginal hostilities. By sanctioning a policy to harass and drive them from those districts in which they procured food, Arthur forced the inland tribes to adopt more desperate measures in order to access food and shelter. Nonetheless, the skill with which guerrilla groups were able to avoid capture by civilian and military parties who were scouring the bush meant

⁴² Arthur to Goderich, 10 January 1828, *HRA*, Resumed Series III.7, p.28.

⁴³ Aborigines Committee Report, 24 October 1831 in Arthur to Goderich, 25 October 1831, CO 280/30, PRO Reel 248, p.158.

⁴⁴ Arthur to Goderich, 10 January 1828, *HRA*, Resumed Series III.7, pp.26-29; Plomley, *Aboriginal/Settler Clash*, p.17 & 26; The establishment of settled districts and reserves will be discussed further in Chapter 5.

that, for a while at least, they were able to hold their ground. They were not driven out, but neither were they able to easily access traditional food sources. Hostilities, consequently, intensified.

The year 1830 proved to be the most intense year of the war. However, though settlers and their convict servants continued to fall victim to Aboriginal attacks, the focus of the guerrilla campaign moved to plunder. Guerrilla groups were forced to procure most, if not all, of their provisions from stock huts or properties. Their need for food, necessarily, became greater than their need for revenge and they adapted their raiding campaigns accordingly. In February 1830 Arthur described the situation that settlers faced. "[T]heir exploits in the pursuit of plunder have rendered them much more daring and robust...and it is rather the apprehension that they may become still more formidable that makes me uneasy than any dread of their present prowess." Land Commissioner, Roderic O'Connor, also realised that "the natives are more anxious to plunder than to murder." The Aborigines Committee even recommended the destruction of the kangaroo "by hunting, shooting, or other means, within the limits prescribed to the natives" be prohibited. The Colonial Office supported the recommendation.⁴⁵

⁴⁵ Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.405-406 & Roderic O'Connor, 17 March 1830 in Minutes of Evidence Taken Before the Committee for the Affairs of the Aborigines in Report of the Aborigines Committee in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.431; Report of the Aborigines Committee in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.499; Plomley, *Aboriginal/Settler*

By the end of 1830 the efforts of military operations and those of G.A. Robinson began to have an effect. In 1831 the number of attacks dropped dramatically. The constant presence of armed colonists in districts that had once been the safe retreats of the Aborigines meant that Aboriginal groups were forced to remain constantly on the move. They could not access traditional food sources, nor could they make their annual migrations to the coast. They were kept on alert day and night by settler parties scouring the bush the members of which had begun to carry out their own surprise raids. Even the use of dogs to alert sleeping groups of imminent danger was not always successful. Hungry and cold, Aboriginal groups were forced to continually make raids for food and blankets. By the end of 1831 the Aboriginal war was all but over. The number of attacks reported dropped dramatically from 222 in 1830 to just sixty-six by the end of 1831.⁴⁶ Those who had not been killed by the military, roving parties or settlers carrying out their own punitive missions, had either died from European diseases or were about to surrender themselves into Robinson's custody and would soon be transferred to a reserve in the Bass Strait Islands.

Ultimately, the Tasmanian guerrilla campaign failed because, as Gann observes of guerrilla warfare generally,

Clash, pp.26-27.

⁴⁶Plomley, *Aboriginal/Settler Clash*, pp.15, 21 & 26.

... when all is said and done, [guerrilla wars] are only the weapon of the weak. They succeed only when the opponents' will to resist has already been worn down by other means, or if the partisans are supported by large foreign enemies.⁴⁷

The Tasmanians had neither of these advantages.

4.4 The Peninsular War, the Bushrangers and Colonel Arthur

Though to some the Aborigines proved a formidable foe who for a time seemed capable of threatening the very future of colonial Van Diemen's Land, in reality the Tasmanian guerrillas had little chance of succeeding against an invader with greater numbers, superior weaponry, and who were far more militarily organised. Moreover, that this enemy was also willing to learn and adopt those very skills which the guerrillas had used against them for so long, demonstrated a desire to effect a decisive victory. To be sure, Arthur arrived in Van Diemen's Land with knowledge, albeit academic, of guerrilla warfare.

Because of battles recently fought and won in the Iberian Peninsula during the Napoleonic wars, British military leaders had become well aware of the

⁴⁷L. Gann, "Guerrillas and Insurgency: an Interpretative Survey," *Military Review*, 46.3 (1966), p.59.

advantages that this mode of warfare offered. This would have been particularly so of Arthur (though he did not actually serve in the Peninsula) who was in regular contact with senior officers throughout the colony such as Colonial Auditor, G.T.W.B. Boyes and Assistant Commissary General Moodie who had served in the war.⁴⁸

During the years 1808 to 1813 Britain, under the command of the future Duke of Wellington, Arthur Wellesley, formed an alliance with Portugal to defend the Peninsula against Napoleon's hegemonic designs there. With the use of regular troops in Portugal supported by small partisan forces, known as "guerrillos" in Spain, Wellington eventually won victory against Napoleon. Though Wellington's major victories in a number of regular battles such as Vittoria and Salamanca ensured that Napoleon was finally forced from the Iberian Peninsula altogether, the Spanish guerrillas, operating in their own territories, played a central role in making a French presence in Spain and Portugal difficult to maintain. Finally, Napoleon was forced out and Wellesley returned home victorious and with a new knowledge of a very effective mode of warfare.⁴⁹

⁴⁸Moreover Arthur had access to a wealth of publications on the war; see for example: P.W. Buckham's *Personal Narrative of Adventures in the Peninsula during the War, 1812-1815* (London, 1827), & P. Chapman (ed), *The Diaries and Letters of G.T.W.B. Boyes* (Melbourne, 1985), especially Chapter 2, Peninsular Prologue.

⁴⁹D. Chandler, *On the Napoleonic Wars* (London, 1994), pp. 167-68 & 180; D. Gates, *The Napoleonic Wars* (London, 1997), pp.171-195.

Closer to home, a bushranging crisis had flared up shortly after Arthur's arrival which gave the governor the opportunity to experience guerrilla warfare first-hand. To be sure, the bushrangers had never been politically motivated. They were not guerrilla combatants trying to overthrow the colonial authorities. Their sole objective was survival. Having, as historian Lloyd Robson describes, "found a hunting and a wandering life to their taste",⁵⁰ the bushrangers of Van Diemen's Land sought only to protect their hard-won freedom from colonial subjugation. However, their use of guerrilla tactics in their plundering raids certainly gave Arthur the opportunity to learn about the machinations of this style of warfare, even if he was not facing an adversary with political ambitions.

Bushrangers had roamed the Van Diemen's Land hinterland since early settlement. A bandit sub-culture had developed during the administrations of Davey and Sorell, so much so that both governors found themselves facing a crisis. These self-proclaimed "gentlemen foresters" would use hit-and-run tactics to steal sheep and cattle from outlying farms and properties. They would then trade the stolen stock for arms and ammunition. So prolific was bushranging during the early years that Robson argues that "Davey's administration continued in a state of virtual siege."⁵¹ Historian, Hamish Maxwell-Stewart,

⁵⁰Robson, *A History of Tasmania*, 1, p.79.

⁵¹Robson, *A History of Tasmania*, 1, p.88.

conjectures that for a time bushranging became an integral part of the colonial economy.⁵²

The bushrangers developed intricate networks of communication, relying on colonists—mostly convict servants—in the outlying districts to keep them informed. Settlers as distinguished as Reverend Knopwood and Edward Lord were even suspected of being involved with certain groups. So effective was this system that the bushranger Michael Howe, the "Lieutenant Governor of the Woods", was able to remain in regular correspondence with Governor Davey. The bushranging problem continued until 1827, ebbing and flowing, as bandit leaders were flushed out, captured, and replaced with new recruits. The taking of Howe in October 1818 led to the capture of the majority of the rest of the bushrangers who were still at large, and three months later the bushranging network had temporarily collapsed. However, when Matthew Brady and his gang escaped from Macquarie Harbour in June 1824, the colony, this time under the administration of Arthur, was, again, faced with a bushranging crisis. Brady continued to prosecute marauding raids throughout the colony for the next two years.⁵³

The bushranging gangs were able to endure because, like their Aboriginal

⁵²H. Maxwell-Stewart, *The Bushrangers and the Convict System of Van Diemen's Land, 1803-1846*, unpublished PhD Thesis (Edinburgh, 1990).

⁵³see Robson, *A History of Tasmania*, p.79, Examination of E. Abbott, 8 March 1820, Examinations Taken Before John Thomas Bigge, The Commissioner of Enquiry, *HRA* III.3, p.265.

counterparts, they too survived under conditions, and employed tactics classic to guerrilla warfare. They were small, mobile conglomerates able to carry on their depredations whilst avoiding capture. In contrast to the Aborigines, however, the bushrangers found their greatest strength in the popular support they were able to muster. So celebrated was Brady that after his capture Brady's prison cell was over-run with visitors and Arthur even worried that his hanging would result in the convict's martyrdom. When Brady was still at large, his tenacity had awed Arthur. "[T]he skill and conduct of this extraordinary man" wrote the Governor in April 1826, "...baffled the united effort of the civil and military power for their apprehension." Arthur realised the tactical advantages Brady's gang enjoyed. "In addition to the natural facilities of a mountainous country to an armed banditti," he wrote to the Colonial Secretary,

there is such a combination and communication kept up between the bushrangers and the convict stock-keepers throughout the colony, that, whilst these miscreants acquire the most accurate information of all the measures that are resorted to for their apprehension, their pursuers are misled and imposed upon by every device that can be practised.⁵⁴

⁵⁴ Arthur to Bathurst, 11 April 1826, *HRA*, III.5, p.139.

Arthur considered that this crisis was serious enough to employ whatever force was required to end it. He utilised a number of counter-insurgency strategies that ultimately ended bushranging as an institution. Davey had tried to flush out the bandits by offering rewards for their capture, by sending armed parties into the bush to hunt them down and then by declaring martial law against them. This was at least temporarily effective, but Macquarie, as Governor in Chief, resented what he considered to be a usurpation of his authority and cancelled the order.⁵⁵ Sorell, however, was able to re-establish control for a time. Like Davey, he offered rewards for the capture of bushranging gangs. But he also stationed permanent military parties along routes known to be used by the bushrangers and limited the movements of free and convict alike, issuing passports and calling for weekly musters. In effect Sorell created a police state and it was under these conditions that Howe was eventually captured and law and order returned to the colony for a time at least.⁵⁶

Arthur, though, was in a better position to end bushranging permanently and employed much harsher measures to achieve his aim. Van Diemen's Land had gained independence from New South Wales shortly after his arrival and he

⁵⁵Macquarie's own offer of amnesty to those who surrendered allowed the groups in question to simply give themselves up so as to avoid prosecution and then later to return to the bush; see Proclamation Relating to Bushrangers, in Macquarie to Goulburn, 12 May 1814, *HRA*, III.3, pp. 264–265.

⁵⁶Robson, *A History of Tasmania*, pp.79, 96–97; see also Examinations Taken Before John Thomas Bigge, *HRA*, III.3, pp.252–253, 263, 273–74, 315 & 318.

was able to make legally-binding rulings to effect law and order in the colony. Arthur's immediate response to bushranging, like Sorell's, was to augment the military. He requested and received an additional regiment from Sydney and then divided the colony into military districts in order to coordinate their activities. He also organised bushranger hunting parties led by the military. As mentioned, attached to one was Musquito who had been employed for his tracking skills. All of these schemes were implemented, as with the Aboriginal crisis, in an attempt to harass the bushrangers.⁵⁷

Focusing on the colonists, Arthur also employed a number of tactics in an attempt to undermine the networks of popular support that the bushrangers established. In order to encourage colonists to disavow their loyalties to the bushrangers, Arthur also offered rewards for their capture or information leading to their capture. However, he increased it from £50 to 100 guineas (£105), as well as offering 300 acres of land for each bandit captured and released to the authorities. To the convicts, Arthur offered the incentive of a free pardon as well as a share of the monetary and land rewards. At the same time Arthur created some very effective disincentives towards taking to bushranging or colluding with known felons. He threatened to very publicly prosecute and hang anyone found collaborating with the bushrangers. Those outlaws whom he

⁵⁷see Robson, *A History of Tasmania*, pp.141–143.

captured were also hanged in front of large crowds, and their bodies were left on public display for weeks afterwards for the colonists to view and ponder over. Arthur hoped that this would serve as an example for others considering a similar lifestyle.⁵⁸

Arthur's final scheme, and the one which finally quashed bushranging gangs, was to release prisoners to infiltrate the groups. The rewards offered were so great that a number were convinced to join the gangs and then report their findings to the police. When Brady's location was reported, a military party managed to track him down and shot him. The injured bushranger managed to escape but was later found by the settler, John Batman, who took him into custody.⁵⁹

The reaction of the colonial government to bushranging was far more severe than it was to the Aboriginal crisis. Though Aboriginal groups were able to effect unremitting harassment on remote settlements for a much longer period, they were treated with far greater humanity than the bushranging gangs. Despite the fact that they inflicted greater injury and suffering upon larger numbers of settlers, only four were tried and hanged. In comparison, between the years 1807 and 1836, more than one hundred bushrangers were

⁵⁸Arthur to Bathurst, 11 April 1826 & 3 October 1826, *HRA*, III.5, pp.138-141, 441-2, 445-448.

⁵⁹Robson, *A History of Tasmania*, p.143.

executed for their crimes.⁶⁰ Indeed, when an Aboriginal group was found to have murdered Bartholemew Thomas, brother to Colonial Treasurer and Aborigines Committee member, Jocelyn Thomas, those involved were not executed, but instead removed to the Aboriginal establishment at Gun Carriage Island.⁶¹ The difference between the Aborigines and the bushrangers was that the latter had the ability to garner the support of many colonists. The Aborigines, on the other hand, were never regarded as a part of colonial society and, indeed, to most they were the enemy. However, the bushrangers were supported and aided, not only by convicts, but sometimes by their masters. To this end, these "gentlemen foresters" posed a much greater threat to law and order in the colony.

Consequently, like his predecessors, Arthur felt it vital that bushranging be quashed completely and decisively. With the Aborigines, though, the issues were more complex. Once war was over Arthur needed to accommodate the Aborigines within the colonial setting, even if only on its fringes. In order to do this he realised that he must re-establish peace based on mutually satisfying arrangements, even if these arrangements were guided by principles of superior British rights.

⁶⁰H. Maxwell-Stewart, *The Bushrangers and the Convict System of Van Diemen's Land*, p.218.

⁶¹The murder of Bartholemew Thomas and his servant James Parker will be discussed further in Chapter 8.

Chapter 5

Conciliation by the Sword

I cannot divest myself of the consideration that all aggression originated with the white inhabitants, and that, therefore, much ought to be endured in return before the blacks are treated as an open and accredited enemy by the government.¹

Lieutenant Governor Sir George Arthur arrived in Van Diemen's Land a strong and worthy candidate for the job of colonial penal administrator. As Superintendent of Honduras from 1812 to 1823, "Arthur's administration of Belize," in the words of biographer, S.W. Jackman "foreshadowed his entire career." His time there gave him experience as leader of a multi-racial, class-based society where British rule was not absolute. As British laws were not

¹Arthur to Goderich, 10 January 1828, *Historical Records of Australia Resumed Series*, III.7, p.29.

enforceable in Honduras (even though British citizens constituted most of its upper white classes), Arthur was compelled to work around existing laws and social customs to effect reform. Unfortunately, he never acquired the art of diplomacy that would gain him public support, and this would continue to hound his career during future commissions in Van Diemen's Land and Upper Canada.²

Nevertheless, Arthur gained the respect and support of the Colonial Office in London which would ensure future career success. Arthur was guided by strong principles and a solid faith: "[M]y first consideration [is] to do my duty to His Majesty's Government"... "I am the responsible servant of the government, and whatever the commands of that government are, it is my duty to obey them."...³ This was supported by an evangelical faith acquired early in adulthood and maintained solidly throughout the rest of his life. Bound to the latter was his humanitarian view on slaves and indigenous peoples that led him to adopt a position of protector and advocate, often in opposition to others under his command. The paternalism that underpinned his Aboriginal policies reflected the times in which he was living. Historian, A.G.L. Shaw

²S.W. Jackman, *A Slave to Duty: A Portrait Sketch of Sir George Arthur, Bart, PC, KCH* (Melbourne: 1979), p.38; A.G.L. Shaw, *Sir George Arthur, bart, 1784-1854: Superintendent of British Honduras, Lieutenant Governor of Van Diemen's Land, and of Upper Canada, Governor of the Bombay Presidency* (Carlton, 1980).

³A.G.L. Shaw, *Sir George Arthur, bart*, p.59.



Figure 5.1:
J.W. Beattie's *Col. George Arthur, Lieut.-Governor*, 1896. Source: Allport
Library and Museum of Fine Arts, State Library of Tasmania;
image taken from <http://images.statelibrary.tas.gov.au>.

eloquently describes Arthur thus:

High-handed because well-intentioned, he was more concerned with reforming abuses than with protecting rights, particularly, if the latter seemed to conflict with his ideas of humanity. . . . Already manifest were many characteristics that were to appear constantly throughout his career—an almost incredible industry, strong imperial sentiments, a passion for approbation of his work from his superiors, a desire for the financial rewards which he was convinced he needed for the sake of his family, a strong dislike of opposition. . . . and an undoubted humanitarianism based on a deeply felt devotion to his Calvinist brand of Christianity. His views on what might be done for his subjects were, for his time, enlightened, and subject to due economy, he was more ready than most contemporary administrators to use government powers to put them into practice and to further the religious ideals he thought so important. To the self-seeker, as to the libertarian, such qualities were often displeasing, but to the Colonial Office they seemed very satisfactory, particularly when accompanied by the belief that his first duty was to obey, not to evade, its orders (if he could not persuade

it to change them)...⁴

Arthur's commission in Van Diemen's Land was focused necessarily on the administration of a penal colony for transported convicts. The majority of his time was spent reworking a system which, if successful, would reform the misguided characters of the convicts through labour, discipline and religious instruction. Those who defied the system would find themselves in a prison cell at Port Macquarie, Maria Island or later, Port Arthur.⁵ As such, although he seemed as well trained as anyone could be for what was to come, the issue of race relations in Van Diemen's Land was not Arthur's primary concern. Nevertheless, from the very beginning of his tenure he was forced to pay close attention to the Aborigines of Van Diemen's Land.

In January 1828 Arthur wrote to the Colonial Secretary, Viscount Goderich, describing the circumstances under which he had assumed power on 14 May 1824:

On my succeeding to the government I found the quarrel of the
Natives with the Europeans, occasioned by an unfortunate step
of the officer in command of the garrison on the first forming of

⁴A.G.L. Shaw, *Sir George Arthur, bart*, pp.59–60.

⁵Port Arthur, and especially its 'model prison', was designed around principles established by Jeremy Bentham aimed at reforming the mind through programs aimed at disciplining the mind and soul.

the settlement, was daily aggravated, by every kind of injury committed against the defenceless Natives, by the stock-keepers and sealers, with whom it was a constant practice to fire upon them whenever they approached, and to deprive them of their women whenever the opportunity offered.⁶

By the time Arthur penned his reflections, he had been living with a guerilla war for four years. Arthur had come to realise that, like his Aboriginal adversaries, he needed to systematise his approach to the problem. The final solution—an end to war and the conciliation of the Aborigines—was achieved through a dual strategy of increased force, later replaced by an active effort to make contact with the Aborigines on their terms.⁷ However, force, tempered with humanity, was Arthur's first choice and his own employment of guerrilla tactics allowed him to eventually prevail.

5.1 Reserves

The colonial newspapers agitated for the removal of the Aborigines from Van Diemen's Land for a number of years⁸ before Arthur raised it with the Colonial Office because he was vehemently opposed to the idea. In a despatch to

⁶Arthur to Goderich, 10 January 1828, *HRA Resumed Series* III.7, p.27.

⁷Reynolds, *Fate of a Free People*, pp.51 & 133; W. Townsley, *Tasmania from Colony to Statehood, 1803-1945* (Hobart, 1991), p.31.

⁸*Colonial Times*, 17 November 1826, 26 January 1827, 23 February 1827 & 6 July 1827.

Colonial Secretary, Viscount Goderich, he wrote, “[n]othing short of the last necessity could tolerate so great an aggravation of their injuries, as they would unquestionably consider removing them from their native tracts.” Arthur was convinced that the removal of some groups would merely lead to the intensification of acrimony in others. Instead, trying to effect a separation which would allow the Aborigines to maintain their traditional modes of living, he proposed an alternative option:

The measure which I am rather inclined to attempt is to settle the Aborigines in some remote quarter of the island, which should strictly be reserved for them, and to supply them with food and clothing, and afford them protection from injuries by stock-keepers, on condition of their confining themselves peaceably to certain limits, beyond which if they pass, they should be made to understand they will cease to be protected.

Arthur realised that there would be problems associated with confining a nomadic people to such a small tract of land, but he believed that in the long term they could be weaned from their “migratory habits” as they settled into more civilised lifestyles.⁹

⁹Arthur to Goderich, 10 January 1828, *HRA Resumed Series*, III.7, pp.28–29.

The idea behind creating reserves throughout the British colonies was based on the concept that indigenous peoples could be civilised and Christianised in a controlled setting and then incorporated into the European society. By placing Aboriginal groups on reserves they could be protected from the depravity of the worst features of contact with the lower classes, whilst simultaneously being taught the skills of civilised society. This is what a later House of Commons Select Committee, called to gather evidence on the state of native groups throughout the British colonies, would recommend for future British colonies.¹⁰

In north America, the management of nineteenth century native affairs was guided by similar separation policies. After many Native American nations had been dispossessed by continued and ever-expanding settlement in the east, the federal government concluded that the only real way to effectively separate the Native American groups from the settler populations was to accommodate the former on reserves. Consequently, treaties were concluded with them to extinguish their native title and the various nations were accommodated on small parcels of land thereafter. In most cases the reserves were established within the tribes' original holdings. According to Prucha, the "goal was to

¹⁰This committee released its findings in two reports in 1836 and 1837; see Report From the Select Committee on Aborigines (British Settlements) (with Minutes of Evidence, Appendix and Index), 7.538, 1836 & Report From the Select Committee on Aborigines (British Settlements), 7.425, 1837.

ease the immediate conflicts between the two cultures and to prevent, as far as it was in their power to do so, the utter destruction of the weaker party.”¹¹ This, indeed, was Arthur’s aim also.

In the Australian colonies, on the other hand, the treaty process was never utilised. Rather reserves were merely created and Aboriginal groups were confined to them. Governor Lachlan Macquarie had created a number of reserves during his time in New South Wales, though his were meeting places where Aboriginal groups could access food and blankets. Continued hostilities between the Aborigines and settlers convinced Macquarie that the complete integration of black and white society was not feasible. Nonetheless, he made attempts to assimilate those whom he found receptive to European ways. At Parramatta in 1814 he created a “native institution” for Aboriginal children. Boys were taught the “mechanical arts” and girls were trained in domestic duties. To demonstrate his regard for his Aboriginal wards, Macquarie also held an annual “friendly meeting” where they were fed “good” English food such as roast beef, plum pudding and beer.¹²

¹¹Prucha, *The Great Father*, p.317.

¹²By 1824 Macquarie’s successor, Governor Thomas Brisbane, was distributing gifts of pipes, tobacco, slops and blankets to the more aggressive Aboriginal chiefs in an attempt to dissuade them from continuing their hostile activities against the colonists; see Macquarie to Bathurst, 8 June 1816, 4 April 1817, *HRA*, I.9, pp.144–45 & 342; Brisbane to Bathurst, 14 February 1824, Bathurst to Brisbane, 19 August 1824, *HRA*, I.11, pp. 226 & 350.

Macquarie set aside two other plots of land at Middle Cove and Blacktown for a number of Aboriginal chiefs. He established a farm at George's Head for sixteen adults and built fishing huts for a group at Elizabeth Bay. He also, unsuccessfully, petitioned the Colonial Office to create a large reserve for the Aborigines. Governor Brisbane was more successful and in 1825 he was able to grant 10,000 acres of land to the London Missionary Society for the creation of a reservation near Tuggerah Beach Lake "for the improvement of the religious and civil condition of the Aborigines thereof."¹³

¹³Later in the nineteenth and twentieth centuries reserves in other Australian colonies eventually came to function as repositories for dispossessed Aboriginal groups. In South Australia and Queensland, in the words of north Queensland historian Noel Loos, reserves "aimed to be self-sustaining entities, which provided education, housing, medical care and employment for the Aboriginal 'inmates'." The pastoral and agricultural industries in both colonies relied on reserve Aborigines as a source of cheap labour. Though a strong humanitarian temperament brought about the establishment of Aboriginal missions by the various religious institutions, the increasing authority granted to the overseers by various pieces of legislation led to a situation where the welfare of the Aboriginal inhabitants soon became a secondary issue. Increasingly restrictive legislation, outlined in the 1897 Act, allowed overseers almost total control over the residents' life and liberties. Legally enforceable by-laws dictated everything from what apparel they could wear to how to care for their children. Though the legislation was protectionist in theory, for all intents and purposes, as Noel Loos suggests, "Aborigines and Torres Strait Islanders lost their legal status as British citizens and became, in fact, wards of the state." Moreover, the reserves having been established in an age of Darwinist theories of evolution, according to Loos, they "had first been seen as temporary expedients while the Aborigines died out." Finding that their occupants were not dying out, reserves became a control mechanism by which Aboriginal groups could be marginalised, existing as a liminal class of European colonial society; see J. Broadbent & J. Hughes, *The Age of Macquarie* (Carlton, 1992), pp.11, 32-33 & 84; R.H.W. Reece, *Aborigines and Colonists: Aborigines and Colonial Society in New South Wales in the 1830s and 1840s* (Sydney, 1974), p.109 & 111; Macquarie to Bathurst, 8 June 1816, *HRA*, I.9, pp.144-45; T. Brisbane, "Deed of Trust to Aboriginal Mission", 8 February 1825, *HRA*, I.11, pp.512-514; Bathurst to Darling, 31 July 1825, *HRA*, I.12, p.46; J. Ritchie, *Lachlan Macquarie* (Carlton, 1986), pp.132 & 186.) P. Brock, "Pastoral Stations and Reserves in South and Central Australia, 1850s-1950s," *Labour History*, 69 (1995), p.106; N. Loos, "A Chapter of Contact", in H. Reynolds (ed.), *Race Relations in North Queensland* (Townsville, 1993), pp.22, 27 & 29.

In Van Diemen's Land Arthur considered four locations for an Aboriginal reserve. They included the north-eastern corner of the island, the Tasman Peninsula, Maria Island and Bruny Island. Only on Bruny Island was one ever established. Robinson, later came to realise his mistake in not considering more seriously the north-east. Indeed he hinted at the idea that the Aborigines would have moved to the region voluntarily had something akin to a treaty been negotiated. "Had this country been known—and its qualities—at the early settling of the colony," he wrote, "and proper arrangements made with the natives here, they might have dwelt without molesting the whites; it will never be of use to the white people..."¹⁴

A reserve on the Tasman Peninsula was never established because of the failure of Arthur's Black Line to push the eastern tribes into that district; and Maria Island was deemed unsuitable because it was considered too close to the settled districts. Robinson established a reserve on Bruny Island in April 1829 but disease amongst its Aboriginal residents forced its closure less than a year later.¹⁵

¹⁴Plomley, *Friendly Mission: The Tasmanian Journals and Papers of George Augustus Robinson, 1829–1834*, p.388.

¹⁵This will be discussed further in Chapter 5; Plomley, *Friendly Mission*, pp.105–106.

5.2 Settled Districts

Arthur's first active attempt at pacification was to try to push the Aborigines out of the "settled districts". Lamenting that "we are undeniably the first aggressors," Arthur was "convinced of the absolute necessity of separating the Aborigines altogether from the white inhabitants, and of removing the former entirely from the settled districts, until their habits shall become more civilized."¹⁶ Arthur felt that by separating the two groups, each could be protected from the other's hostility and violence. The settled districts would encompass the whole of the midlands and east coast, except for the north-east corner.

On 15 April 1828, Arthur published a government proclamation which stated "that for the purpose of effecting the separation required, a line of military posts will be forthwith stationed and established along the settled districts". Within these districts, Arthur commanded, "the Aborigines shall and may not...penetrate or in any manner, or for any purpose....And I do hereby strictly command and order all Aborigines immediately to retire or depart from, and for no reason, or on no pretence...to re-enter..." The military and civilians, alike, were "entreated" to resist the use of force against the Aborigines "except for necessary self-defence" and told that they would face prosecution if any such Aborigine "complain[ed] to some constituted authority

¹⁶Proclamation Separating the Aborigines from the White Inhabitants, 15 September 1828, in Arthur to Huskinson, 17 April 1828, *HRA Resumed Series*, III.7, pp.178–184.

of any such misconduct, or ill treatment. . . ”¹⁷

Arthur, however, realised that he could only achieve his intended goals by creating conditions satisfactory to those he was planning to dislocate. Noting that “the Aborigines wander over extensive tracts of country, without cultivating, or permanently occupying any portion of it,” he concluded that he could only end hostilities by “allot[ting] and assign[ing] certain specified tracts of land to the [Aborigines], for their exclusive benefit, and continued occupation.” In the short term, moreover, nothing was to

prevent the Aborigines from travelling annually (according to their custom) until their habits shall have been rendered more regular and settled, through the cultivated, or occupied parts of the island to the sea coast in. . . on condition of their respective leaders being provided with a general passport. . . .¹⁸

Most importantly, Arthur realised his settled districts policy needed to have the support of Aborigines and so “a negociation [sic] with certain chiefs of Aboriginal tribes” was planned.¹⁹ These negotiations, however, did not occur before force invariably became the primary means by which Arthur’s orders

¹⁷Proclamation Separating the Aborigines from the White Inhabitants, 15 September 1828, in Arthur to Huskinsson, 17 April 1828, *HRA Resumed Series*, III.7, pp.178–184.

¹⁸Proclamation Separating the Aborigines from the White Inhabitants, 15 September 1828, in Arthur to Huskinsson, 17 April 1828, *HRA Resumed Series*, III.7, pp.178–184.

¹⁹Proclamation Separating the Aborigines from the White Inhabitants, 15 September 1828, in Arthur to Huskinsson, 17 April 1828, *HRA Resumed Series*, III.7, pp.178–184.

were carried out.²⁰ Nevertheless, supported by Secretary of State, Sir George Murray, who understood “the extremely difficult task of inducing [these] ignorant beings...to acknowledge any authority short of absolute force, particularly when possessed with the idea which they appear to entertain in regard to their own rights over the country...”²¹ Arthur perceived the creation of the settled districts as the most likely means to peacefully separate them from the European population.²²

Arthur’s “settled districts” scheme had a number of antecedents, some of which Arthur may well have been aware of from his time in British Honduras. In 1796 the United States Congress concluded that a line was needed to separate settler land from Native American holdings. A provisional division of white and native American settlement had been first established with the Royal Proclamation of 1763 which deemed that lands west of the Appalachian mountains were off limits to white settlement. It was “Indian country for the Indian nations.” While the concept of the line remained ineradicable, the line itself moved over time. Gradually it was pushed south and west as various Native American nations treated with the colonial governments exchanging their traditional homelands for the promise of annuities and alternative guaranteed lands to the west. When Arthur took power in Van Diemen’s Land, the north

²⁰ Arthur to Huskisson, 17 April 1828, *HRA*, III.7, pp.178–184.

²¹ Murray to Arthur, 20 February 1829, *HRA Resumed Series*, III.8, pp.261–262.

²² Arthur to Huskisson, 17 April 1828, *HRA Resumed Series*, III.7, p.182.

American line followed the Red River from its mouth in the Mississippi Delta north to Lake Superior.²³

In New South Wales the notion of creating “settled districts” had also been considered. Judge-Advocate Atkins made the suggestion in 1807 and later in 1816 Governor Macquarie had found it necessary to enforce military action against Aboriginal groups who had continued to attack colonists in the outlying settlements. When punitive military expeditions against the Aborigines failed to return peace to the colony Macquarie decreed that “no black native or body of black natives shall ever appear at or within one mile of any town, village or farm, occupied by, or belonging to any British subject, armed with any warlike or offensive weapon....”²⁴

Additionally, the use of passports was attempted in north America, South Africa and New South Wales. In north America they were issued to white settlers who sought to trade with Native American groups. In South Africa and New South Wales passports were issued to indigenous groups who sought temporary access to the settled districts. Macquarie’s 1816 proclamation, though expelling hostile Aborigines from settlement, allowed for those who were deemed “peaceful” and “inoffensive” to “be furnished with Passports or

²³Prucha, *The Great Father*, pp.24–25 & 315.

²⁴Atkins to King, 20 July 1805, *HRA*, I.5, p.503; Macquarie to Bathurst, 8 June 1816, *HRA* I, 9, p.142.

Certificates to that Effect, signed by the Government....”²⁵ A more recent precedent for Arthur was the implementation of a pass system by Governor Richard Bourke in South Africa the previous year. Its aim was to control the movement of Kaffir and Hottentot labour groups while at the same time protecting them from exploitation by their employers. The system was finally overturned because rather than protect them, it forced the Hottentots into an even more miserable state of bondage.²⁶

5.3- Martial Law

By Spring 1828 such was the tenor of hostilities that though Arthur had not yet “resign[ed] all hope of pacifying those angry feelings which are at present but too evident on both sides,” he “felt the painful necessity of adopting some decided measures to suppress the encreasing [sic] spirit of resentment manifested by the coloured inhabitants of this colony.” On 1 November 1828, Arthur declared martial law in the settled districts, officially proclaiming that the colony was in a state of war. On 1 October 1830 he had extended martial law across the whole of Van Diemen’s Land in order to carry out his Black

²⁵Macquarie to Bathurst, 8 June 1816, *HRA*, I.9, pp.141–145; H. King, *Richard Bourke* (Melbourne, 1971), pp.109–136.

²⁶Macquarie to Bathurst, 8 June 1816, *HRA*, I.9, pp.141–145; H. King, *Richard Bourke* (Melbourne, 1971), pp.109–136.

Line operations, though he never intended it as a licence for settlers to indiscriminately slaughter Aboriginal groups. The “destruction of the Aborigines” was not his aim. Murray regretted Arthur’s need to resort to such measures, but approved the proclamation nonetheless. He hoped that martial law would “not only secure the lives and property of the settlers, but benefit the natives themselves”. Murray entreated Arthur to repeal martial law as soon as possible.²⁷

Four years previously, finding he had no other “legal intermediate powers to suppress the aggressions of the Aborigines,” Sir Thomas Brisbane had declared martial law against Aboriginal groups in the Bathurst region after they had continued to attack settlers and their properties. Four months later Brisbane repealed the order “finding the measures, which have been adopted have had the desired effect; as, by the latest accounts, the hostile natives were hourly coming in to tender their submission and sue for peace and protection.”²⁸ Secretary of State, Lord Bathurst, endorsed Brisbane’s actions by his subsequent instructions to Brisbane’s successor, Darling (a copy of which Darling gave to Arthur). “[R]especting the manner, in which the native inhabitants are to be treated when making hostile incursions for the purpose of plunder”, Bathurst wrote,

²⁷Arthur to Huskisson, 17 April 1828, *HRA*, III.7, p.178; Murray to Arthur, 25 August 1829, *HRA Resumed Series*, III.8, pp.587–588.

²⁸Brisbane to Bathurst, 3 November 1824, *HRA*, I.11, pp.409-11, 430-31.

you will understand it to be your duty when such disturbances cannot be prevented or allayed by less vigorous measures, to oppose force by force, and to repel such aggressions in the same manner, as if they proceeded from subjects of an accredited state.²⁹

These instructions were portentous for they tacitly sanctioned the use of violence against native groups, even though general Imperial policy focussed on their protection and security.

For Arthur the instructions, which he quoted precisely to the Executive Council, were especially significant because they ultimately guided the decision to implement martial law against the Aborigines of Van Diemen's Land.³⁰

With martial law having been effective in New South Wales, Arthur had a precedent to follow when he decided to impose it on the Aborigines of Van Diemen's Land. Support from the Colonial Secretary convinced him that he was right to follow this course of action. Murray's sanction was particularly important for, according to modern historian, John McMahon, the *Manual of Military Law* declared that martial law could be enforced only under exceptional circumstances. McMahon argues that although

²⁹Bathurst to Darling, 14 July 1825, *HRA*, I.12, p.21.

³⁰Though Windschuttle argues against the notion of an Aboriginal war in Van Diemen's Land, it must be noted that Arthur's decision to declare martial law was based precisely on Bathurst's directions to treat the Aborigines as if they were at war against the colony; see Windschuttle, *The Fabrication of Aboriginal History*, pp. 95–111; Arthur to Murray, 4 November 1828, *HRA Resumed Series*, III.7, pp.625–635.

the proclamation warned that common law still applied in martial law areas, except on military operations against the natives, it did protect whites from the rigours of common law when involved in any dubious killing of an Aborigine when on patrol.”³¹

The letter of the law was put to the test when a Van Diemen’s Company shepherd, Nathaniel Russell, killed an Aboriginal woman at Emu Bay in reprisal for an attack by her group on him and his companion, Richard Sweetling. The application of martial law in the district offered a loophole by which Russell, Sweetling and their overseer, Alexander Goldie, eventually avoided prosecution.

On 21 August 1829 a party under the supervision of Alexander Goldie came across a group of Aborigines at Emu Bay. Upon being observed the group fled, but not before Russell “fired at one just as she was taking the scrub and shot her.” She died after Richard Sweetling struck her from behind with an axe. Goldie took a second woman hostage. Van Diemen’s Land Company manager, Edward Curr reprimanded Goldie severely. “That the killing of this woman

³¹McMahon notes that Governor Davey’s proclamation of martial law against the bushrangers was annulled by Governor Macquarie and though Arthur’s was never challenged he took pains to define the specific districts in which it was enforced; see Arthur to Murray, 4 November 1828, enclosures, 2–4; see J. McMahon, *The British Army and the Counter-Insurgency Campaign in Van Diemen’s Land With Particular Reference to the Black Line*, unpublished Masters of Humanities Thesis, University of Tasmania, 1995, pp. 26–27; Arthur to Murray, 4 November 1828, *HRA*, III.7, pp.625–635; Brisbane to Bathurst, 3 November 1824, *HRA*, I.11, pp.409–411.

amounts to murder in a moral sense,” he stated, “I have no doubt whatever, and as little that you are a guilty party accessory to the crime. What may be thought of it in a legal sense I do not know...”³²

Curr, as District Magistrate, carried out the inquiry the followed the slayings. Forwarding his findings to the Company’s directors, he concluded that the “existence of martial law at the time the act was done, takes the case out of the rules to be found in the books which the Justices of the Peace are ordinarily provided with...” He, thus, considered that

the effect of proclaiming Martial Law to be to place the Natives against whom proclaimed, (no exception in this respect in favour of Women and Children) and if found within the limits specified in the Proclamation, beyond the pale and protection of the Law. That to destroy those against whom Martial law is proclaimed, ceases to be an offense [sic] against the civil Law...”³³

Arthur could not “but feel the deepest and most poignant regret, that a Native Female should have been destroyed under the circumstances represented.”

He sent the correspondence that had passed between Government House and

³²Goldie to Curr, 16 September 1829, Curr to Goldie, 30 September 1829, Curr to Arthur, 19 December 1829, in Arthur to Hay, 20 November 1830, C.O. 280/25, PRO Reel 245, pp.432 & 476–477.

³³Curr to Arthur, 19 December 1829, in Arthur to Hay, 20 November 1830, C.O. 280/25, PRO Reel 245, p.440.

the Van Diemen's Land Company to the Solicitor-General in Van Diemen's Land, Alfred Stephen, who, in the end, for want of information, could not form an opinion on whether or not a crime was committed. However, Stephen did "apprehend the effect of the Proclamation to be, certainly, to place the Aborigines, within the prescribed limits on the footing of open enemies to the King, in a state of actual warfare against him" and that "I think therefore, that the Pursuit of the Natives by Mr. Goldie and his party, was lawful."³⁴ While the proclamation of martial law allowed Goldie and his men to avoid potentially severe legal repercussions, it also demonstrated that the Tasmanian Aborigines, for all intents and purposes, did not enjoy the protection of His Majesty's laws.

5.4 The Aborigines Committee

In March 1830 Arthur established the Aborigines Committee, a group comprised of colonial civil servants, clergymen and the colonial surgeon. It was chaired by Archdeacon William Broughton who was visiting from Sydney at the time. The committee's task was to "collect the most ample information, and to consider what measures it would be necessary to pursue. . . ."³⁵ Charged

³⁴Stephen to Arthur, 3 February 1830, in Arthur to Hay, 20 November 1830, C.O. 280/25, PRO Reel 245, pp.434 & 462.

³⁵All references to the findings of the Aborigines Committee, unless otherwise noted, are taken from the Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray,

with obtaining “a connected view of the origin, progress, and existing character of [the Aborigines’] hostilities”, the committee considered the evidence of numerous witnesses from throughout the colony. As well as Broughton, the committee was attended by Reverend William Bedford (who had replaced Knopwood as senior chaplain upon his arrival in Van Diemen’s Land in 1823), Reverend James Norman (chaplain at Sorell), District Magistrate Peter Archer Mulgrave (who at various times had also held the positions of Superintendent of Schools and Chief Police Magistrate at Launceston), Dr James Scott (colonial surgeon at Hobart Town), Samuel Hill (Port Officer and Superintendent of Colonial Marine in Hobart Town), Jocelyn Thomas (Colonial Treasurer and member of the Executive Council) and Charles Arthur, the governor’s nephew. Charles Arthur was first employed as his uncle’s private secretary and later as Barrack Master and colonial aide-de-camp.³⁶

The Committee’s first task was to call prominent landowners to present their perceptions of the Aboriginal crisis. As to who were first aggressors, opinions varied. Some considered that the stock keepers and sealers alone had caused the hostilities. Others concluded that it was settlement itself that had

15 April 1830, CO 280/24, PRO Reel 244, pp.408–453.

³⁶It is interesting to note that James Ross, pressman and editor, who had as much knowledge of the Aborigines as anyone, was not invited to join the committee. He had first hand experience living with Aboriginal groups on his “Hermitage” property and was able to report an amicable relationship with them; see entries for William Broughton, William Bedford, James Norman, Peter Archer Mulgrave, James Scott, Samuel Hill, Jocelyn Thomas and Charles Arthur in *Australian Dictionary of Biography* (Melbourne, 1966).

driven the Aborigines to their aggressions. The Risdon affray was recounted on several occasions. A number of people recognised that the Aborigines had developed a “desire for European comforts” which had originated from those too-generous settlers who had kept the various bands supplied with provisions. Some thought that the Aborigines were aware of the good intentions of the government and the more respectable settlers, and therefore it might be possible to open a conciliatory line of communication. James Cox agreed with Edward Curr who more perceptively believed that aggressions “have been kept up equally by both parties, chiefly from the impossibility of coming to an understanding as to the causation of hostilities.”³⁷

Suggestions were sought for solutions to overcome hostilities. William Barnes and Edward Frank proposed that Aborigines could be provided with gifts to distribute to their families, “to whom they will communicate what they had been told and how they had been treated.” The latter, however, thought that the offering of gifts should be combined with force “...to impress them with fear and then possibly the hand of amity will not be rejected”. Captain Clark concurred, positing that “a system of coercion [sic] tempered with mercy should now commence...the sword in one hand and the olive branch in the

³⁷James Cox and Edward Curr in Answers given by settlers and others to certain questions submitted together by the Aborigines Committee, CSO 1/323/7578, AOT Reel SLTX/AO/CS/117, pp.351–354 & 360–378.

other. . . .” Roderick O’Connor favoured the sword, making the robust suggestions that “some of the worst characters would be the best to send after [the Aborigines].” Douglas Ibbens, O’Connor thought, “with his double-barrelled gun”, “would soon put an end to the eastern mob if he were employed.” Referring to the north American experience, Edward Curr gave a most astonishing recommendation. “Savages have been civilized through the medium of their vices”, he declared,

. . . . The first part of the process has been to treat the savages to drink and smoke. (I do not mean that this has been done systematically.) Occasional indulgence soon grows into a habit. When their supply is stopped they begin to consider how they can renew it, and they soon understand that they can only have their wants supplied by giving an equivalent. This is the first dawning of trade: they procure skins that they may barter them for spirits and tobacco, and then the graduation from drunkenness to Christianity seems not very remote.³⁸

Arthur hoped, rather, that if he offered rewards for the capture of Aborigines, the settlers would be encouraged to take active measures to conciliate

³⁸ Answers given by settlers and others to certain questions submitted together by the Aborigines Committee, CSO 1/323/7578, AOT Reel SLTX/AO/CS/117, pp.360–378.

them. Ryan argues, however, that this policy merely served to encourage people to engage in “black catching”.³⁹ Two years previously Governor Darling had offered rewards for the capture of Aborigines who were carrying out attacks around Fort Wellington. Darling hoped to prevent further hostilities by taking certain individuals captive, hoping that if they were treated “with kindness and attention” they would then return to their people with a better impression of the settlers. In a more brutal experiment in north America rewards—or bounties—were offered for the scalps of Native Americans. Indeed, this Native American practice was adopted by settlers in New England when bounties were offered for the scalps of Maine’s Penobscot Indians.⁴⁰ Arthur’s plan was much less lucrative. He offered £5 per adult and £2 per child but insisted that the individuals be taken into custody voluntarily and unharmed.⁴¹

The Aborigines Committee presented its findings and recommendations to

³⁹Ryan, *The Aborigines Tasmanians*, p.102.

⁴⁰Male scalps drew a bounty of £40 and female and children’s scalps, £20; see J. Axtell & W. Sturtevant, “The Unkindest Cut, or Who Invented Scalping”, *William and Mary Quarterly* (July 1980), p.452.

⁴¹It is interesting to compare the rewards offered for bushrangers as against those offered for Aborigines. Arthur’s desire to temper with humanity all of his actions against the latter led him to limit the force with which he dealt with them. Arthur occasionally enjoyed the results for which he hoped. He endowed the reward of a conditional pardon to John Banfield, convict shepherd to the Police Magistrate, William Laing Smith of Whiteford Hills, for his “firmness and coolness” in bringing in a group of Aborigines. Banfield convinced them to go with him by offering them bread and blankets. According to Smith, “he became so friendly with all three as to induce them to go opossum shooting with him, by which stratagem he led them to the military party stationed at Captain Moriarty’s”; see Darling to Huskisson, 28 August 1828, *HRA*, I.14, pp.350–351; Smith to Parramore, 28 September 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.643–645; Smith to Burnett, 28 September 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.639–642; *Hobart Town Gazette*, 9 October 1830; Ryan, *The Aboriginal Tasmanians*, p.102.

the Executive Council on 19 March 1830. The committee concluded that the colony was in crisis. Chairman Broughton speculated that “the total ruin of every establishment is but too certainly to be apprehended unless immediate means can be devised for suppressing the system of aggression under which so many are at this time suffering. . . .”⁴² Though much attention was paid to the offensive activities and behaviour of the Europeans against the Aborigines, the committee ultimately concluded that it was “a lurking spirit of cruelty and mischievous craft” that motivated the most aggressive tribes. The “acts of violence on the part of the natives,” the panel considered, should not be viewed simply as acts of retribution. Rather, they were the result of “a wanton and savage spirit. . . impelling [the Aborigines] to mischief and cruelty. . . .”⁴³

The committee’s recommendations combined increased force against Aboriginal aggression, with a greater sensitivity—despite the Aborigines’ “wanton and savage spirit”—to the causes of those hostilities. The “base and barbarous conduct which some [stock keepers and convict servants] have pursued towards the natives,” the committee deduced, combined with the destruction of the Aborigines’ “principal source of sustenance”—the kangaroo—had caused the

⁴²Aborigines Committee Report, 19th March 1830 in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.447.

⁴³Aborigines Committee Report, 19th March 1830 in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.440.

current crisis. Both activities needed to be checked and offenders severely punished. Realising, though, how effective the Aborigines had become against the settlers—especially those in outlying areas—more attention was paid by the committee to preparing settlers to better resist their Aboriginal assailants. The committee recommended that the sanctioned operations against the Aborigines be better managed (using the magistrates in the various police districts), with access to resources such as ammunition increased. Moreover, those who were employed against the Aborigines needed to be “engaging leaders of higher qualification,” regardless of their convict or settler station.⁴⁴

To encourage the Aborigines to, themselves, seek peace Arthur experimented with picture boards to relay his message. He realised that he could not negotiate with them until he was able to communicate effectively with them.

5.5 Picture Boards

Arthur seems to have become intrigued by the idea of using pictures to communicate with the Aborigines when Surveyor General, George Frankland, wrote to him with the idea in February 1829. “I have lately had an opportunity of

⁴⁴Aborigines Committee Report, 19th March 1830 in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, pp.448–451.

ascertaining that the aboriginal natives of Van Diemen's Land are in the habit of representing events by drawings on the bark of trees," he wrote,

and that the march of a certain party of Europeans over a country before unfrequented by us was found a short time afterwards drawn with charcoal on a piece of bark, by a tribe of natives who [had] been observed attentively watching their movements. The carts, the bullocks, the men, were distinctly represented, according to the exact number that really existed.

In the absence of all successful communication with these unfortunate people, with whose language we are totally unacquainted, it has occurred to me that it might be possible through the medium of this newly discovered faculty, to impart to them to a certain extent, the real wishes of the government towards them, and I have accordingly sketched a series of groups of figures, in which I have endeavoured to represent in a manner as simple and as well adapted to their supposed ideas, as possible, the actual state of things (or rather the origin of the present state) and the desired termination of hostility.

The proposal which I venture to make is that, if Your Excellency approves of the drawings, they should be multiplied, and being made on more durable materials, should be fastened on trees in those remote situations where the natives are most likely to see them. . . .”⁴⁵

Arthur sought Robinson’s opinion on the likely success of such a venture. Robinson apparently encouraged Arthur, for an editorial in the *Colonial Times* four months later indicated that the Governor had the drawings commissioned so as “to be placed in the bush for the contemplation of the Aboriginal Inhabitants.” However by September, Robinson feared that the venture would come to nothing: “The Governor might as well publish his proclamation to gum trees as to the blacks,” he wrote, “for who was there to explain it to them?”⁴⁶

⁴⁵ At least four signboards and a number of lithographs still survive, housed in museums as far away as Cambridge and New York City. Debate exists about whether Governor Davey or Arthur was the original author. Anecdotal evidence exists that during Davey’s time pictures were posted on trees around what is now Battery Point. However, Frankland’s letter to Arthur and references to the lithographs in Robinson’s journal, indicate that it is more likely that Arthur commissioned and distributed those illustrations which are housed in various museums today; see Frankland to Arthur, 4 February 1829, Tasmanian Archives, LSO 17/1; K. Little, “A British Proclamation of Justice to the Tasmanians, 1815,” *Man: A Record of Anthropological Science*, XLV, nos.1–18 (1945), p.1; J. Morris, “Notes on a Message to the Tasmanian Aborigines in 1829, Popularly called “Governor Davey’s Proclamation to the Aborigines, 1816”, *Australiana*, 10.3 (1988), pp.84–87; Melville, *The History of the Island of Van Diemen’s Land*, pp.31–35; Plomley, *Friendly Mission*, p.92; *The Mercury*, 26 November 1874; Hudspeth to Mitchell Librarian, 20 June 1947; Frankland Correspondence File, Tasmanian Archives; M. Hookey, *Bobby Knopwood and His Times: from the Diaries of 1804–1808, 1814–1817* (Hobart, 1929), p.86.

⁴⁶ *Colonial Times*, 5 March 1830; Plomley, *Friendly Mission*, p.209.

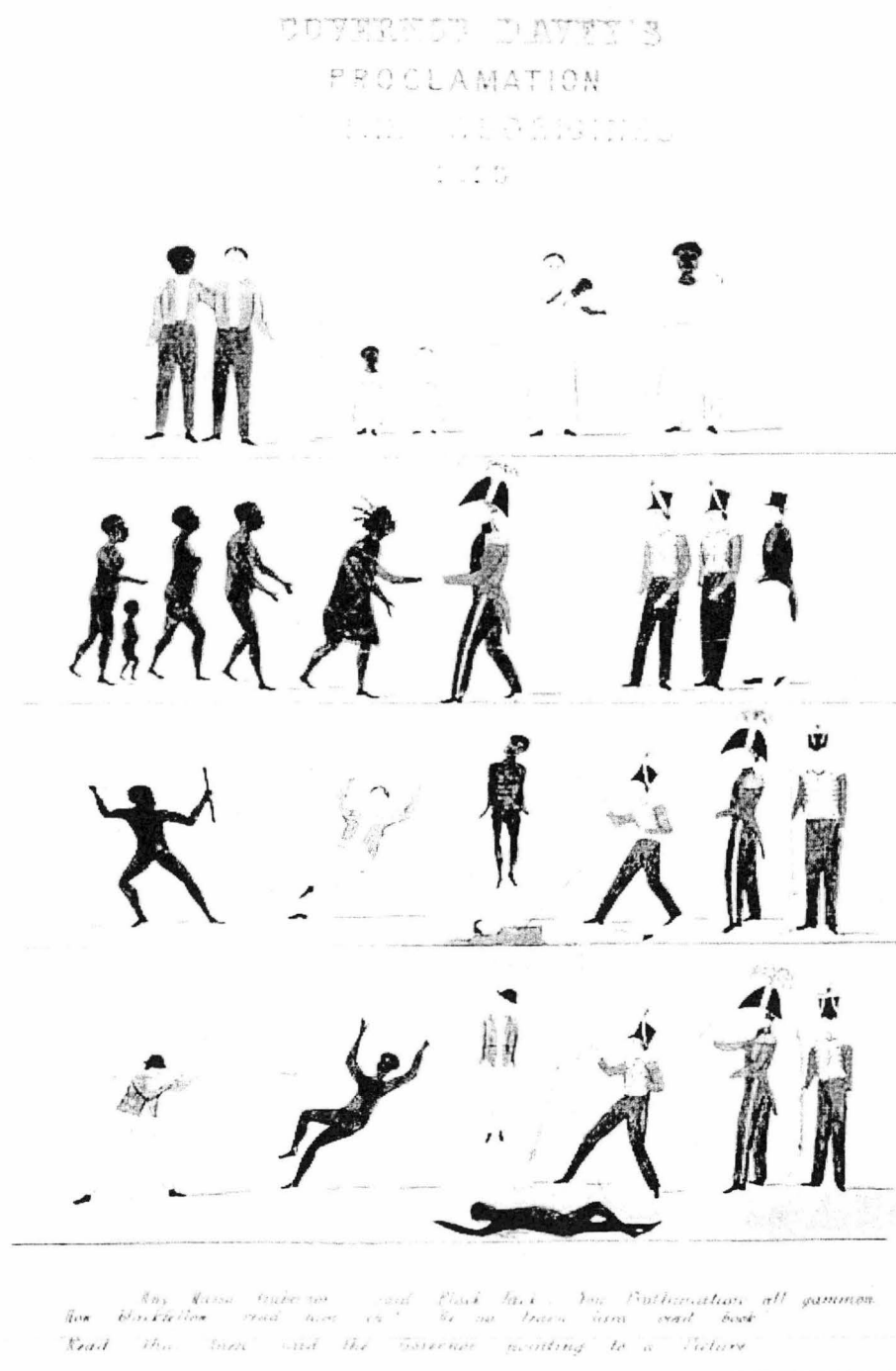


Figure 5.2:
Governor Davey's Proclamation to the Aborigines, 1816; Source:
Allport Library and Museum of Fine Arts; image taken from:
<http://images.statelibrary.tas.gov.au>.

Arthur addressed this problem by presenting a copy of the hieroglyphic to the Stoney Creek chief, Umarrah, who was now attached to Robinson's mission party. The colonial newspaper, the *Tasmanian*, reported that

[t]his sketch Numarrow prized very highly. He spoke of it repeatedly, and carried it with him when he went away. It is not therefore impossible but that he may yet intend to conciliate his sable brethren, rather than stimulate them, as has been apprehended, to fresh depredations.⁴⁷

Arthur also sent boards to the commandant at Launceston, Major Abbott, who distributed them to Captain Welsh at Perth who had two Aboriginal boys living with him. He also distributed them to a party of western Aborigines who were being sent to Edward Curr at Circular Head to be returned to their people.⁴⁸

It is unclear where else the illustrations were hung, or who else was employed to distribute them. Certainly it is difficult to know how they were

⁴⁷ *Tasmanian*, 26 November 1830.

⁴⁸ The three youths had originally been captured by Robinson and shipped to Launceston in order that Robinson could collect a reward for them. Arthur then ordered Abbott to return the three to Circular Head. They were: Pendowtewer from Robbin's Island, and Narrucker and Linemerrinnecer from Rocky Point. It is likely that at this point Arthur was engrossed in planning for the Black Line operation. Focussed on capturing the Big River people, Arthur seems to have wanted to demonstrate his good regard for those individuals and groups who appeared receptive to his conciliatory efforts. Though he was offering rewards for their capture, he was also inclined to return to their own people any who proved cooperative; see *Tasmanian*, 26 November 1830; Abbott to Burnett, 30 August 1830, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118, pp.159–160; Plomley, *Friendly Mission* pp. 108–109 & 434.

interpreted. Fifty years later, historian, James Calder, was still scathing in his analysis of them:

This masterpiece of picture writing is divided into four compartments, in the two first of which the abstract idea of peace, friendship and unity are represented, and justice—that is to say hanging—in the other; but in all of them there is such a muddle of love and enmity, peace and war, that it would take a clearer head than mine to do justice to the design by description.⁴⁹

It is questionable whether the picture boards or the increased presence of armed colonists throughout the settled districts created the deeper impression. Certainly the existence of civilian roving parties, employed to gather up Aboriginal groups, communicated to them that Arthur was willing to use force to achieve his desired results.

5.6 Roving Parties

The roving parties were small groups of men employed to track and capture Aboriginal tribes. When fully established and organised these parties which were composed of civilians and convict servants were centrally administered

⁴⁹ *Mercury*, 25 November 1874.

by Oatlands District Magistrate, Thomas Anstey. They were led by the Chief District Constable at Richmond, Gilbert Robertson, convict field policeman, Jorgen Jorgenson and free settler John Batman who also employed a number of Sydney Aborigines as guides. McMahon describes the parties as “essentially bounty hunters... [who] rather than reacting to raids... maintained a harassing pressure on the Aborigines, driving them from place to place within their normally safe retreats.”⁵⁰

The roving parties were created in November 1828 when Robertson, with the assistance of Black Tom, employed as a guide in the Richmond district, captured five Stoney Creek tribe members near Swanport, including the prominent tribal leaders, Jemmy and Umarrah.⁵¹ Robertson realised that Aboriginal resistance could only be broken if the guerrilla leaders were captured. He was convinced that

it will be impossible to protect the white inhabitants from the outrages of those savages or to prevent the blacks from being sacrificed on every occasion to the revenge or barbarity of the stock keepers while there is a black native chief at large in the settled districts... I do not conceive that it would be impossible to catch

⁵⁰McMahon, *The British Army and the Counter-Insurgency Campaign in Van Diemen's Land*, p.28.

⁵¹Umarrah's Aboriginal name was Kan.ne.her.largenner or Mole.te.he.er.lag.gen.ner. 'Umarrah' seems to have been a corruption of Hugh Murray, the name of a settler from Campbell Town; see Plomley, *Friendly Mission*, pp.992 & 1002.

every native in the settled districts within twelve months if the government would go to a little expense and trust the direction of the parties to the persons who are capable of making such a charge and will conscientiously perform the duty which they undertake.

Robertson began to understand some of political machinations guiding the Aboriginal activists. To Arthur he declared:

They consider every injury they can inflict upon the white men as an act of duty and patriotism and however much they may wreak the punishments which our laws inflict upon them, they consider the sufferers under punishment as martyrs in the conquest of their country. They effect a degree of foolish simplicity in their intercourse with the white inhabitants but they are in reality a shrewd, cunning race having ideas of their natural rights which would astonish most European statesmen.⁵²

Though Robertson was convinced that Umarrah had the skills to negotiate peace with the colonial government, he was concerned at the chief's apparent lack of authority amongst the remnant tribes.⁵³

⁵²Robertson to Lesailly, 17 November 1828, CSO 1/331/7578, AOT Reel SLTX/AO/CS/118, pp.168–177.

⁵³Robertson to Lesailly, 17 November 1828, CSO 1/331/7578, AOT Reel SLTX/AO/CS/118, pp.168–177; Arthur to Brigade Major, 2 January 1829, CSO 1/317/7578; AOT Reel SLTX/AO/CS/115, pp.5–6; *Tasmanian and Australasiatic Review*, 28 November 1828.

Arthur supported Robertson's scheme and on 2 January 1829 he was directed to "take charge of a roving party of 10 or 12 men to be employed against the aborigines." Robertson was placed under the authority of the Brigade Major and promised a salary of £150 per year.⁵⁴

Soon after Jorgenson and Batman were employed to lead parties. Jorgenson understood their role was to "protect the settlements" and to force the various Aboriginal groups into a situation where they could be captured "without the parties in pursuit of them being compelled to shed more human blood than should be necessary to bring them to a sense of justice and moderation." Jorgenson was probably the most thoughtful and capable of all of the roving party leaders. He had experienced the Aborigines in their own environment and had given the whole Aboriginal question much consideration, the conclusions of which he readily shared with Governor Arthur. Indeed, Arthur eventually developed and implemented a number of Jorgenson's suggestions (though he did not acknowledge them officially, or even privately in written correspondence, as being Jorgenson's ideas).⁵⁵

Though well-intentioned, the roving party scheme enjoyed little success

⁵⁴Robertson to Lesailly, 17 November 1828, CSO 1/331/7578, Reel SLTX/AO/CS/118, pp.168-177.; Arthur to Brigade Major, 2 January 1829, CSO 1/317/7578, AOT Reel SLTX/AO/CS/115, pp.5-6.

⁵⁵Two of these suggestions were 1) reserves to be established on Aboriginal lands in the north west of the colony and 2) cultural missionaries to be sent to live amongst the Aborigines and acclimate them to European ways. See Chapter 6 for a more complete discussion of Jorgenson's suggestions for the conciliation of the Aborigines.

and the reports that Anstey received reveal that about three times as many Aborigines were killed as were captured.⁵⁶ Certainly there is evidence that the roving party leaders were not the most suitable candidates for their positions. Robertson resented the fact that he had to answer to Anstey and he refused to collaborate with the other roving party leaders. He used his position for private profit, employing those under him to work his grants in the Richmond district. Likewise, Batman, at times seemed ill-equipped for his commission. In the words of contemporary historian, John West, he mingled "humanity with severity".⁵⁷

When Batman came across a band comprised of members of the Oyster Bay, Ben Lomond, Campbell Town and Stoney Creek tribes near his property early in September 1829 he shot most of them in a bungled attempt to carry out a reconnaissance of the group. He did, however, manage to take into custody a woman and a small child. The following morning he found eleven men and two women wounded and dying, three of whom he took back to his residence. However, finding "it quite impossible that [they] could walk and often trying them by every means in my power, for some time found I could not get them on I was obliged therefore to shoot them." A few weeks later he was able to capture a party of eleven alive, which included three women, two infants,

⁵⁶Plomley (ed.), *Jorgen Jorgenson and the Aborigines of Van Diemen's Land*, p.21; Ryan, *The Aboriginal Tasmanians*, p.102.

⁵⁷West, *The History of Tasmania*, p.281.

three boys, and two young men. The six adult males in the group managed to escape. Batman retained an infant boy and a young man. He christened the boy "Ben Lomond" and the young man he learnt was named Mungo. Both seem to have been sons of the Oyster Bay chief, Mannalargenna. Mungo was attached to a party led by John Danvers to act as a guide, tracking those who escaped.⁵⁸ As Melville noted, Batman's clandestine methods for capturing Aboriginal groups were typical of the Aborigines' own hit-and-run tactics.⁵⁹

Conflicting forces were at work regarding the roving parties. Arthur encouraged the parties' efforts by augmenting the military along the settlement frontiers to hem in the Aborigines. But he still insisted that they were to be treated with humanity and kindness. A lack of accurate reporting leaves the true character of the roving parties difficult to define. To be sure, the roving parties did not act as humanely as Arthur entreated, and there were times when their aggression went unchecked. That Batman felt he could officially report the killing of an entire band suggests he realised that Arthur probably would probably not enforce the sanctions he had proclaimed against the needless killing and injuring of Aborigines. Outlying settlers, too, were protected by the blanket of martial law and also by the problems associated with

⁵⁸J. Calder, *Some Account of the Wars, Extirpation, Habits &c., of the Native Tribes of Tasmania* (1875), p.17; Jorgenson to Anstey, 18 June 1829, CSO 1/320/7578, AOT Reel SLTX/AO/CS/116, pp.275–278; Batman to Anstey, 7 September 1829, CSO 1/320/7578, AOT Reel SLTX/AO/CS/116, pp.142–146; *Colonial Times*, 17 February 1830.

⁵⁹Melville, *The History of the Island of Van Diemen's Land*.

collecting and verifying evidence against the guilty parties in question.

The roving parties were disbanded in January 1831 after the Black Line operation, at which point there remained little further need for them. Arthur, too, had for a long time been “discouraged at the total want of success of all the parties who have been employed... against the Aborigines...” Jorgenson listed a number of reasons for the roving parties’ lack of success⁶⁰ and indeed, the two objectives he outlined at the commencement of the scheme were not achieved. The continued attacks on settlers indicates that the roving parties did not effectively protect the whole of the settled districts. However, other indirect success did come from the scheme. For Batman’s part at least, the killing of one band and the capture of a second one drastically reduced the number of attacks on settlers in the Ben Lomond district. In the two years previous to Batman’s employment as a roving party leader the number of attacks had been gradually escalating. From February 1827 until late August 1829 the district suffered seventeen attacks, as stock huts were raided and livestock speared. Eight convict servants were killed, five of them belonging to

⁶⁰Jorgenson listed these as: 1) the want of a comprehensive plan for the roving parties, 2) a lack of discipline, 3) inveterate laziness, 4) the offer of indulgences to the convicts irrespective of success, 5) deceit practised by the roving party leaders, 6) the unwillingness of the black trackers to capture their fellow Aborigines and 7) attributing their lack of success to the skills of the Aborigines; see Anstey to Burnett, 15 December 1829, CSO 1/320/7578, AOT Reel SLT/AO/CS/116, pp.55–57; Plomley (ed.), *Jorgen Jorgenson and the Aborigines of Van Diemen’s Land*, p.25.

William Talbot of Fingal. After the capture of the band, hostilities eased considerably.⁶¹ More significantly, by attaching Aboriginal guides to the parties, an avenue of communication was opened between Arthur and the Aborigines. All of the Aborigines with whom Arthur had the opportunity to meet had been attached to roving parties. Later, these same individuals were attached to Robinson's "friendly mission" and played an integral part in bringing in the hostile eastern tribes.

5.7 The Black Line

Arthur's final attempt at ending hostilities with the use of military force was an operation that came to be known as the "Black Line." The scheme combined conventional military strategies with guerrilla tactics. Arthur did not make his decision lightly to carry out the Black Line operations. For the desperate governor this was the final option in a scenario where the use of force, many believed, had become inevitable. After collecting information on the state of the colony's affairs from the various administrators under his command and seeking advice from the Executive Council, Arthur found himself forced to act against the Aborigines.

⁶¹ *Colonial Times*, 9 February 1827 & 28 August 1829; *Hobart Town Courier*, 8 December 1827, 12 April, 15 November, 13 December, 1828, 4 April, 16, 23, 30 May, 18 July, 28 August 1829; *Launceston Advertiser*, 13 April 1829; Simpson to Burnett, 1 April 1828, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.137-138.

Letters from Major Douglas, Captain Vicary and Thomas Anstey all brought unwelcome news. Vicary wrote to Arthur from Bothwell regretting that “the measures which I have adopted for the security of this District have failed in their effect.” Major Douglas reported that, far from being expelled from the settled districts, the Aborigines had kept him busy in the Jericho region. Late in August, Anstey revealed that “the natives have evinced towards the white inhabitants, during the last two days, a spirit of the most determined and rancorous animosity.” Reporting on the death of Thomas Hooper, the Police Magistrate concluded that it is “my firm opinion, that the Aborigines are, now, irreclaimable and that the coming Spring will be the most bloody that we have yet experienced.”⁶²

However, at this time, presented with a surprising feat of conciliation by Robinson, Arthur was actually vacillating between conciliation or more war-like measures. He struggled painfully with a decision he was being forced to make. The governor had long maintained that the Aborigines and settlers could coexist in his colony and he was apt to believe that he could effect such a result. In a final attempt towards this end he, again, entreated the colonists to develop friendly and conciliatory relations with the Aborigines. Finding

⁶²Vicary to Arthur, 16 August 1830; Anstey to Arthur 24 August 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.564–565, 591–594.

hope in the fact that “a less hostile disposition towards the European inhabitants has been manifested by some of the aboriginal Natives of this Island, with whom... Mr. G.A. Robinson [has] succeeded in opening a friendly intercourse”, he entreated the *Hobart Town Gazette* readers to continue to foster “the good understanding which has thus happily commenced.” Any “Aborigines [who] appear without evincing a hostile feeling”, he added, should not be restrained or captured but “after being fed and kindly treated... shall be suffered to depart whenever they desire it.”⁶³

Two government notices that followed on 19 August, however, pointed to Arthur’s increasing alarm about the current state of hostilities. Reiterating the recommendations of the Aborigines Committee, Arthur, in his first notice, commanded that “all settlers and others will strictly enjoin their servants cautiously to abstain from acts of aggression against these benighted beings, and that they will themselves personally endeavour to conciliate them wherever it may be practicable.” His second notice reminded the colonists that rewards would only be paid for those groups which were captured whilst “committing aggressions on the inhabitants of the settled districts” and where “every degree of humanity” and “all efforts for their conciliation” proved ineffective. Again,

⁶³Order number 160, Government Notices, *Hobart Town Gazette*, 19 August 1830.

Arthur entreated, intercourse with Aboriginal groups outside the settled districts was to be non-violent and non-coercive, those “inoffensive natives” from the remote districts to be treated with kindness and “permitted to depart whenever they desire it.” Arthur reiterated that he would prosecute anyone proven to have carried out “any *wanton* attack or aggression against the natives.”⁶⁴

The murder of Hooper, however, forced Arthur to the decision that he was loath to make. On 24 August an emergency public meeting was called in Jericho. The townsfolk pleaded with the governor to reconsider his stance. The memorialists wrote of the “inexpressible alarm of the consequences of a government notice no. 161 at a time when the aggressions of the Aborigines are becoming daily more and more systematic and numerous.” They could only conclude that

Your Excellency must be deceived respecting the real state of the colony or must labour under a mistake as respects [our] situation. In bringing in a few inimical blacks—a distinct people from those in the interior and who have not had any intercourse with the European settlers—is no criterion to judge of the character of the Aborigines generally as a people and the events of the last week in

⁶⁴Order number 161, Government Notices, *Hobart Town Gazette*, 20 August 1830.

this district must convince Your Excellency of the necessity of the most energetic measures as well for the protection of the colonists as for the subjugation of the Aborigines.

The Jericho residents hoped that "Your Excellency will adopt some measure to relieve the colonists from their present perilous condition."⁶⁵

In an attempt to placate these desperate colonists, Arthur published a third government notice. He explained that the "friendly disposition [which had been] slightly manifested by a tribe which had been hostile" had led him to the false hope that the same could be achieved with other hostile tribes. His anxiousness that the settlers should temper with humanity their actions against the Aborigines led him to publish the previous orders. Offering the colonists some latitude in their dealings against the most hostile Aboriginal groups, he explained that his previous orders were "not intended to relax in the most strenuous exertions to repel and to drive from the settled districts those natives who seize every occasion to perpetrate murders and to plunder and destroy the property of the inhabitants." Indeed, their conduct "proves that the utmost vigilance is necessary for the safety of every dwelling."⁶⁶

Arthur instructed the police magistrates and settlers to remain alert and

⁶⁵Jericho memorialists to Arthur, 24 August 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.599–601.

⁶⁶Government Notice, no.166, *Hobart Town Gazette*, 27 August 1830.

keep a close watch on their servants' quarters and to ensure that their arms were kept in good working order, and always available. He reiterated that the inoffensive tribes to the west and south west were still exempt from the force of martial law "but it is not expected, much less required, that the settlers are calmly to wait in their dwellings to sustain the repeated and continued attacks of the tribes, who are manifesting such a rancorous and barbarous disposition as has characterised their late proceedings. They are, by every possible means, to be captured, or driven beyond the settled districts."⁶⁷

The Executive Council supported Arthur. It described the Aboriginal hostilities as "acts of warfare" and warned that if decisive measures were not taken against the Aborigines

great numbers of [settlers] must either abandon their farms altogether, or they must suspend for an indefinite time all their labours & [sic] occupations, and with their families and servants keep a continual watch under Arms round their Dwellings. In either case their ruin is inevitable.

The Council declared that it was now "impossible...to rely upon any demonstrations [the Aborigines] may make of a friendly nature, and how absolutely necessary it is that the settled districts at least would be freed from

⁶⁷Minutes of the Executive Council, 27 August 1830, in Arthur to Murray, 20 November 1830, C.O. 280/25, PRO Reel 245, pp.396-404.

their presence.” Sadly, its members felt “little can be hoped from attempts to negotiate with, or to conciliate a people in so rude and savage a state as the Aboriginal natives of this island, who live in tribes independent of each other, and who appear to be without government of any kind...”

The Council concluded that “all endeavours to conciliate the Natives have failed” and advised that the

time is now arrived when it has become absolutely necessary that some vigorous effort upon a more extended scale than has hitherto been practicable should be made for expelling these miserable people forthwith from the settled districts... The Council hopes and believes that if a sufficient force can be thus collected, the expulsion of the Natives may be effected at the expense of little bloodshed, and even if it should cost more lives than the Council anticipates, it is a measure dictated not less by humanity than by necessity since it is calculated to bring to a decisive issue a state of warfare which, if much longer continued, the Council fears will become a War of Extermination.⁶⁸

The general consensus amongst the colonists was that Arthur should proceed with his proposed scheme. Benjamin Horn chaired a public meeting in

⁶⁸Minutes of the Executive Council, 27 August 1830, in Arthur to Murray, 20 November 1830, C.O. 280/25, PRO Reel 245, pp.396–404.

Hobart at the end of September. He lamented that hostilities were having an effect on the economic development of the colony and “[i]f therefore extermination is necessary, horrible as is the alternative, I do not see what other means of protection exists.” Alfred Stephen, speaking as a private citizen, rather than as the Solicitor-General, concurred. He noted that “the slaughter of the whites has been as indiscriminate as any which can be the result of the proposed operations—and I say, that as they have waged such a war upon the settlers you are bound to put them down.”⁶⁹

Anthony Fenn Kemp supported Arthur’s scheme which, in theory, could be bloodless. However he felt, as Arthur did, that the colonists had been the first aggressors and that hostilities may have been worsened by the poor conduct of the military on the island. Joseph Tice Gellibrand, one time Attorney General in Van Diemen’s Land, perceived that the campaign, itself, could be construed as “a war of extermination, for such I comprehend is the declared object of the present operations, and that in its progress we will be compelled to destroy the innocent and the guilty.” The distiller, James Hackett, wondered if more could not be done to attempt to conciliate the Aborigines. He thought it “a national disgrace. . . that there are not “six persons in the whole colony who are able to communicate with the blacks in their native tongue.” He wondered, “had we

⁶⁹ *Colonial Times*, 24 September 1830.

been a colony of Frenchmen how different a policy would have been adopted.” However, these were the sentiments of three settlers who, for a other reasons, were critical of Arthur and his colonial policies.⁷⁰

Arthur’s final counter-insurgency effort against the eastern tribes was a call to arms in the colony. On 22 September 1830 he gave notice that “the community [was] being called to act *en masse* on the 7th October next for the purpose of capturing those hostile tribes of the natives which are daily committing renewed atrocities upon the settlers.” The most hostile Oyster Bay and Big River bands were his focus. Arthur, nonetheless, remained committed to preserving the lives (and, to a degree, the lifestyles) of his Aboriginal wards. Seeking, “the least possible destruction of life,” the governor hoped to drive them from the extremities of the settled districts into the Tasman Peninsula which was “well suited for the purposes of savage life, abounding in game.”

There, guarded by troops at Eaglehawk neck, the remnant Aboriginal tribes of

⁷⁰Indeed, Arthur was dubbed by his detractors the “benevolent despot.” Their opposition to his Aboriginal policies were likely motivated by grievances they had earlier developed with the governor. Arthur had opposed a number of civil actions which, he feared, would compromise the effective administration of the penal institutions that he worked so hard to put in place. Three of Arthur’s most vocal opponents were Kemp, Hackett and Gellibrand (Gellibrand lost his position of Attorney-General at the hands of Arthur). In March 1827, these men and others came together in an organised attempt to out-manoeuvre Arthur. A public meeting was called at the courthouse, minutes were taken and a petition sent to London seeking representative government and trial by jury. The Colonial Office responded with a moderate resolution. The Act of 1828 was passed which allowed for greater representative government. However, trial by jury was restricted to civil cases. Arthur ultimately retained effective control over his convict colony; see M.C.I Levy, *Governor George Arthur: A Colonial Benevolent Despot* (Melbourne, 1953), *Colonial Times*, 24 September 1830; Robson, *A History of Tasmania*, pp.303–308.

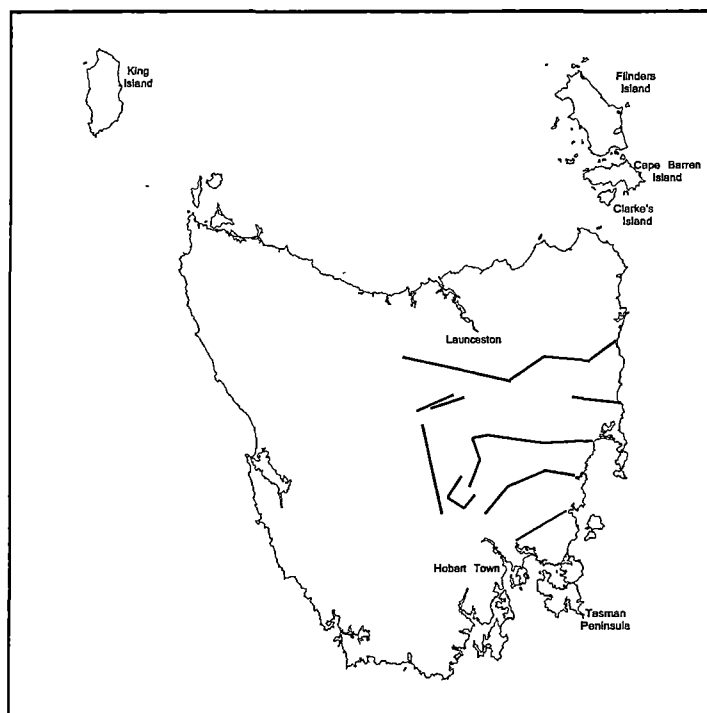


Figure 5.3:
Governor Arthur's "Black Line" Military Operations
Against the Aborigines, August–September 1830.

Van Diemen's Land could live free of threat from the settlers of the colony.⁷¹

This "solution"—leaving them to their natural life and pursuits in a contained and protected environment—was not dissimilar to what the United States government later attempted with removal of a number of southern Native American tribes to reserves established west of the Mississippi River—that natural landmark which defined the western frontier.

⁷¹Government Order Number 11, *Hobart Town Gazette*, 22 September 1830.

The Black Line was a three-phased operation composed of human cordons designed to drive the Aborigines towards the Tasman Peninsula. At the same time roving parties would scour the forests inside the Line, capturing any groups with whom they came into contact.⁷² The Black Line lasted from 3 October until 25 November 1830. Almost 2,200 civilian and military personnel were recruited for the task. 550 were troops from the 63rd, 57th and 17th Regiments and approximately 700 were convicts and nearly 1000 were free settlers who had volunteered to assist. Representing almost 10% of the population, this really was the *levee en masse* by which it came to be described. Contemporary historian, John West, records that the troops carried one thousand stand of arms, 30,000 rounds of ammunition and 300 pairs of handcuffs. In total, the operation cost the Colonial Officer approximately £30,000. The result was that two Aborigines were killed and another two injured. Official reports record the death of only one colonist. McMahon notes that the Black Line was “the largest warlike operation on the continent prior to the defence of northern Australia in 1942.” Melville compared the Black Line to the Spanish Peninsula War, describing it as “a great war in miniature.”⁷³

⁷²*Hobart Town Courier*, 25 September 1830, supplement; For an analysis of the Arthur's Black Line operation see J. McMahon, *The British Army and the Counter-Insurgency Campaigns* and J. Connor, “British Frontier Warfare Logistics and the ‘Black Line’, *Van Diemen's Land (Tasmania)*, 1830”, *War in History* (2002), pp.143–158.

⁷³McMahon; *The British Army and the Counter-Insurgency Campaign*, pp. 2 & 59; Ryan, *The Aboriginal Tasmanians*, p.112; West, *The History of Tasmania*, pp.293–300; A.G.L. Shaw (ed), *Van Diemen's Land: Copies of All Correspondence Between Lieutenant-Governor Arthur and His Majesty's Secretary of State for the Colonies, on the Subject of the*

The Black Line was designed to move south-west until each human cordon met and joined together to form a tight line of men stretching from Sorell to the mouth of the Sanspit River adjacent to Maria Island. From there the troops and civilians together would march towards the Tasman Peninsula. Though Arthur ordered troops along the Line to observe, but not to obstruct, the movements of the Aborigines, the roving parties were authorised to take prisoners. The troops on the Line were ordered to create as much noise and commotion as possible, firing blank bullets, lighting fires and shouting out to one another so that the Aborigines would be made aware of their presence and move forward accordingly. The use of blank ammunition was designed to harass and pressure the Aborigines (for they were not to know that the gunfire was harmless), whilst, at the same time, ensuring their safety. The roving parties, on the other hand, were ordered to clandestinely scour the scrub in front of the line capturing any Aborigines with whom they made contact.⁷⁴

Though the orders to the roving parties, too, were not to harm their captives, that they were authorised to use live ammunition indicates that Arthur

Military Operations Lately Carried on Against the Aboriginal Inhabitants of Van Diemen's Land (Hobart, 1971), p.ix; Nominal Return of Civilians in the Division under the command of Lieutenant Murray, 17th Regiment, 20 November 1830, CSO 1/324/7578, AOT Reel SLTX/AO/CS/117, no page numbers supplied; H. Hull., *Statistical Survey of Tasmania from the Years 1816 to 1865 inclusive* (Hobart, 1866), p.3; Melville, *The History of the Island of Van Diemen's Land*, p.109.

⁷⁴McMahon, *The British Army and the Counter Insurgency*, pp.67 & 81.

was prepared to take some risks with Aboriginal lives. The very different nature of the activities carried out by the cordon of men, as compared to the roving parties, demonstrates that Arthur sought to combine traditional British military tactics with guerrilla strategies in order to effect his objective. Indeed, it was only by utilising the latter that any prisoners were taken. On the evening of 24/25 October, 1830, Captain E.A. Walpole and his party captured a man and a boy. This was to be the only direct success to come out of this large and expensive operation. Walpole later described the events of the evening in his report to Arthur:

I stationed half my party at Captain Glover's hut where the natives are in the habit of appearing and with the remainder went on the tiers to reconnoiter when about five miles from the hut before mentioned about 10 o'clock p.m. I heard the natives hunting and on going closer saw their dogs. I watched them for four hours and on convincing myself that they were settled for the night I returned for the rest of my party and in the evening placed them within 300 yards of the natives where we watched until break of the day. . . and crept to one of the natives without being perceived by the inmates until I caught one by the leg; there were five men in the hut and the other four rushed out through the back. . . one however was caught

while jumping into the creek and two others shot...⁷⁵

As a means to drive the tribes of the east into the Tasman Peninsula the Black Line did not fulfil its objectives. With the clear vision of hindsight, West noted that “the success of this plan could never have been considered very promising.” Melville, a bitter critic of Arthur for a myriad of reasons, described it as “a master-piece of absurdity.” Aboriginal groups within the human cordon were not forced south-westward but managed to pass back through the line at night using the soldiers’ fires to guide the way. Their limited numbers, of which Arthur learned from Walpole’s captives, allowed them to avoid detection. On 26 November Arthur called the troops in, bringing an end to the Black Line operations.⁷⁶

Though criticised by a few for his actions, the Black Line was far from a complete failure. It led directly to Robinson’s successes and the “conciliation” of two of the most openly hostile tribes in the east. In the *Hobart Town Gazette* of 11 December Arthur published a government order thanking the inhabitants of Van Diemen’s Land for their diligent efforts. A group of prominent landowners responded with high praise and thanks of their own. This was the first time since he had stepped ashore in May 1824 that Arthur was able

⁷⁵Walpole to Arthur, 29 October 1830, CSO 1/324/7578, AOT Reel SLTX/AO/CS/117, no page numbers supplied.

⁷⁶West, *The History of Tasmania*, p.293 & Melville, *The History of the Island of Van Diemen’s Land*, p.99; Walpole to Arthur, 29 October 1830, CSO 1/324/7578, AOT Reel SLTX/AO/CS/117, no page numbers supplied.

to draw together in solidarity the majority of the colonists of his small colony. His only critics were the lawyer, Thomas Gregson, a landowner at Risdon and the distiller Hackett, both of whom voiced their disapproval of Arthur's failed scheme. During a second town meeting called at the conclusion of the Black Line Gregson likened the military operation to attempting to harpoon a whale from the summit of Mount Wellington. Hackett "regretted that the task had not fallen into abler hands."⁷⁷

Nonetheless, as a means of convincing both the settlers and the Aborigines that some sort of permanent peace pact needed to be concluded, the Black Line seemed to have had a decisive effect. Lyndall Ryan notes that "the Line achieved its objective in clearing the settled districts of the Aborigines." They were driven to spots within their various tribal lands where eventually Robinson "captured" them.⁷⁸ Reynolds argues that an effect of the Line was to persuade "the survivors of war to consider a negotiated settlement" for they were not to know that this would not be a continuing operation.⁷⁹ This would have been reinforced when a group of settlers at Oyster Bay carried out a similar scheme the following October.⁸⁰ To Plomley's mind the failure of the

⁷⁷*Hobart Town Gazette*, 11 December 1830; *Colonial Times*, 31 December 1830.

⁷⁸Ryan, *The Aboriginal Tasmanians*, p.112;

⁷⁹Reynolds, *Fate of a Free People*, p.51.

⁸⁰Gordon to Burnett, 19 October, Meredith to Burnett, 21 October, Fordyce to Burnett, 25 October, Aubin to Burnett & Meredith to Burnett, 27 October, Meredith to Burnett, 28 October, Smith to Burnett, 29 October, Francis to Burnett, 31 October, Arthur to Meredith, 20 November 1831, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.994-995,

Line was an advantage to the Aborigines

...because it made the idea of conciliation less objectionable to the settlers and therefore helped to promote the work that was really begun in March 1829 when Robinson made the first friendly contacts with the natives since the French explorers had visited them.⁸¹

Ultimately, though, Arthur's success against the eastern Aborigines may be attributed primarily to two factors. Firstly, his counter-insurgency forces used both traditional and guerrilla tactics to overpower the enemy. Secondly, the eastern bands were weakening both physically and psychologically. However, at that stage many colonists still feared that Aboriginal hostilities would continue in earnest, for it was not apparent that, for all intents and purposes, the eastern tribes had already lost the war.

1001-1002, 1015-1047.

⁸¹Plomley, *Friendly Mission*, p.32.

Chapter 6

Conciliation by the Olive Branch

Can we wonder . . . at the hatred they bear to the white inhabitants?

This enmity is not the effect of a moment. Like a fire burning underground, it has burst forth. This flame of Aboriginal resentment can and ought only to be extinguished by British benevolence. We should fly to their relief. We should make some atonement for the misery we have entailed upon the original proprietors of this land. . . .¹

When Arthur's use of force and coercion against the Aborigines appeared

¹G.A. Robinson quoted in Plomley, *Friendly Mission*, pp.202–203.

to be proving futile he turned to the approach he had been advocating since his arrival. Through compromise and the effecting of mutually satisfying arrangements for land sharing he hoped that he could convince the Aborigines of Van Diemen's Land to end their decade-long war with the colonists. He realised that this was possible only if he had the means by which to communicate with those with whom he wished to negotiate. Much attention has been paid to the efforts and achievements of European conciliator George Augustus Robinson, however, he was not the only person to play an important role. Aboriginal women from the eastern Bands facilitated initial contact with the band that remained. This chapter will discuss the efforts of these agents in returning peace to the colony.

For an agent to be effective, the individual had to have specific skills and experience that could facilitate communication between the Aborigines and the Colonial Government. This meant having a knowledge of both language and culture. As Arthur may well have been aware, from his time in British Honduras, the United States Congress had utilised such individuals in the late eighteenth century. As Prucha notes, north Americans were sent out to "reside among the Indians...[and]...civilise [them] by means of agriculture and domestic arts." In general terms they were employed "to impress upon

[the Indians] the government's desire for peace and justice."² This is what Arthur hoped his agents would also do.³

To be sure, Arthur's Aboriginal policies had always been focussed on this end. The military were entreated, wherever possible, to open "a conciliatory intercourse and arrangement with the tribes." Public notices and proclamations always called for colonists to "communicate" the wishes of the government to the Aborigines wherever possible. "Any natives who may surrender, or be captured," he informed the colonists, should then "be treated with humanity and tenderness." Arthur's offers of rewards were an attempt to encourage settlers to "effect a successful intercourse with any tribe..."⁴ However, the nature of Aboriginal-settler contact made it very difficult to effect such an intercourse. The use of sanctioned force against Aboriginal groups hindered attempts to develop a peaceful association. How Arthur's alternative schemes differed was that they allowed for contact under conditions that were not threatening or harassing, and also where the Aboriginal group in question could retain an element of control over its destiny. His first such scheme involved the employment of Aboriginal women as ambassadors for the Colonial

²Prucha, *The Great Father*, pp.160-163; Shaw, *Sir George Arthur, bart*, Chapters 1-3.

³Arthur to Cox, 13 October 1830, CSO 1/324/7578, AOT Reel SLTX/AO/CS/117, no page numbers supplied.

⁴Instructions to the Military Officers, 3 November 1828, in Arthur to Murray, 4 November 1828, *HRA*, III.7, p.635; Proclamation Separating the Aborigines from the White Inhabitants, 15 April 1828, in Arthur to Huskisson, 17 April 1828, p.182; Instructions from Brigade-Major to Captain Walpole, 30 September 1828, in Arthur to Murray, 15 April 1830, & Government Order, 25 February 1830, C.O. 280/24, PRO Reel 244.

Government.

6.1 Aboriginal Ambassadors

In March 1830 Arthur approved the release of a group of women from the “native asylum” attached to Robinson’s Hobart residence so that they could rejoin their people in the north east. The suggestion had first been made by Dr James Scott who conceived that

a party composed of 5 or 6 natives of New South Wales with a few of the natives (partly civilized) now in Hobart Town who could speak their language and persuade them to come in with an intelligent man to conduct them would be the means of bringing in all those now in the island.

When Richard Sterling, overseer of the asylum, proposed a similar plan in February 1830, Arthur put it to the Aborigines Committee.⁵

The Aborigines Committee supported the proposal and Arthur ordered that the women in the asylum “should be allowed to join their tribes on the north side of the island with a view of endeavouring to conciliate and point

⁵Scott to Aborigines Committee, 13 March 1830, “Answers Given by Settlers and Others to Certain Questions Submitted Together by the Aborigines Committee”, CSO 1/323/7578, AOT Reel SLTX/AO/CS/117, pp.315–317; Sterling to Aborigines Committee, 23 February 1830, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118, pp.97–98.

out to them the kind treatment they have experienced from the whites.” Like Macquarie, who had made varied attempts to conciliate the Aborigines of New South Wales, Arthur hoped the northern tribes would be convinced by this show of humanity to end their depredations against the settlers. Trinkets would be provided as a symbol of Arthur’s genuine desire to placate them. Sterling consulted the women and, naturally, found them more than willing to “return to their former mode of life and place of nativity.” He took great pains to explain to them that the

white men were solicitous to hoist the flag of peace, and to unite in brotherly Christianity with the blacks generally, not only themselves but any black coming to this asylum would be treated with every kindness and be provided with provisions and clothing, with which they promised to make their countrymen acquainted.⁶

It is not clear whether their briefly absconding from the asylum before preparations were complete was a result of miscommunication or a very keen willingness to be on their way.⁷

As mentioned, the women were members of the band that had been captured by Batman in September 1829. Batman had transferred them first to

⁶Arthur to Burnett, 4 & 5 March 1830, CSO 1/317/7578, Reel SLTX/AO/CS/115, pp.154–156.

⁷Sterling to Aborigines Committee, 23 February 1830, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118, pp.97–98.

Campbell Town, and from there they were sent to Oatlands to be inspected by Anstey and then onto Richmond, where they were housed in the jail. The women and children were later sent to Hobart. The young men whom Batman had captured joined Robinson on his expedition to Port Davey. With them were Umarrah and Black Tom, who had also been held at Richmond jail when not attached to Robertson's roving party.

The deaths of the majority of women and children at the asylum meant that from the original sixteen who had been housed there, only six women and three children were eventually released. Only three would reach Robinson. They were Kubmanner from the Stoney Creek tribe, Luggenemenener from Ben Lomond and Karnebutcher from the Campbell Town district. They were members of three of the most active guerrilla groups in the settled districts. Late in March, the asylum was closed and the women were taken to Launceston by Sterling. On 5 April they were returned to Batman.⁸

Batman decided to send the women out with his Aboriginal guides from Sydney, Pigeon and Crook.⁹ He instructed them to explain to their people "as much as possible the wishes and friendly feeling of the government

⁸Plomley, *Friendly Mission*, p.110; Robinson to Arthur, 20 November 1830, CSO 1/318/7578, AOT Reel SLTX/AO/CS/115, pp.43-44.

⁹Pigeon and Crook were later rewarded by the governor for their efforts. Arthur granted each of them 100 acres; see *Hobart Town Gazette*, 18 September 1830 & 25 September 1830.

towards them. . . .” The women he made “understand if any white people ill-treated them that the government would have them punished.” Batman also dispatched a number of parties to the surrounding properties to inform residents that the women were in the area, and to avoid contact with them. Armed with “passports” which Arthur hoped would give them free passage, Batman sent them on their way. A week later the Sydney guides returned alone, the women having absconded. Batman was nonplussed: “I am now at a loss to know what to think of this wretched race of people.”¹⁰

In the meantime the band of six who had avoided capture by Batman the previous September continued to attack settlements along the South Esk River. Early in November 1829 they robbed one of William Talbott’s servant huts. The following March they attacked Henry Gee’s hut at Piper’s River, and murdered his stockman, James Sprangle. Late in April they harassed a servant attached to Mr. Massey.¹¹

Meanwhile, now effectively free, the women dispatched by Batman separated into two groups. One group moved off to join their kin at Oyster Bay. The other was captured at Henry Gee’s on 15 May. Arthur Maynes, Gee’s servant, arrived at the police station in Launceston a few days later to collect

¹⁰Batman to Anstey, 12 & 15 April 1830, CSO 1/320/7578, AOT Reel SLTX/AO/CS/116, pp.182–183 & 192–193.

¹¹Batman to Anstey, 21 September 1829 & 12 April 1830, CSO 1/320/7578, AOT Reel SLTX/AO/CS/116, pp.182–183 & 146–147. *Hobart Town Gazette*, 26 September 1829, *Colonial Times*, 26 March 1830.

a reward for capturing one of the women and her child. The *Hobart Town Courier* reported that the women had arrived at Gee's "where they had no doubt gone to procure provisions, believing their brass passports would have protected them from violence."¹² Instead Maynes, Gee and a second convict servant named John Miles assaulted the women before killing two of them and their dogs.¹³

In all likelihood the assault was carried out in reprisal for the death of James Sprangle the previous March. However, Maynes, Miles and Gee may have attacked the women fearing that they themselves were about to be ambushed. Settlers in the district had been attacked before by a group who had used women as decoys. In December 1827 two women arrived at William Talbott's hut presumably on a reconnaissance mission. After determining that only two men were in the hut, the women retreated and a band of 150 rushed the hut. Had their notably unreliable muskets failed to fire on this occasion, Talbott's men would have been overwhelmed by their assailants.¹⁴

Nonetheless, Arthur felt little sympathy for Gee and his men this time and ordered that the incident be investigated and warrants were issued for

¹²The newspaper report was incorrect in this regard for Batman recorded in his diary that the women had discarded their passports shortly after they absconded from his guides; see A. Campbell, *John Batman and the Aborigines* (Malmsbury, 1987).

¹³*Hobart Town Courier*, 29 May 1830; Jones to Arthur, 22 May 1830, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118.

¹⁴*Hobart Town Courier*, 8 December 1827.

their arrest. When Maynes tried to collect his reward he was interrogated by Launceston Police Magistrate, William Lyttleton. Maynes claimed the women were armed and about to escape from the hut when he apprehended them. He was denied the reward to which he felt entitled and, indeed, was lucky to escape prosecution. Colonial Secretary, John Burnett noted sardonically that “the reward this man seems to me to merit is the small island at Macquarie Harbour.”¹⁵

Launceston Commandant Major Abbott refused to release the women back into Batman’s custody and it was only after Arthur personally intervened that they were once again returned to the roving party leader. The plan now was that Batman should “build a hut to the east of Ben Lomond. . . and there post his party secreting their arms and appearing about as little as possible. . . From this hut the women and Sydney Blacks were to make excursions for two or three days together lighting fires to attract the notice of the tribe and endeavouring to open a communication with it.” Mannalargenna’s son, Mungo, would be retrieved from Danvers to assist the women.¹⁶

¹⁵Deposition of Arthur Maynes, Launceston, 20 May 1830, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118, pp.136; Lyttleton to Burnett, 24 May 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.511–512; Batman to Anstey, 24 May 1830, CSO 1/320/7578, Reel SLTX/AO/CS/116, pp.195–197; Burnett to Mulgrave, 28 May 1830, CSO 1/317/7578, Reel SLTX/AO/CS/115, pp.167–168.

¹⁶Simpson to Burnett, 1 June 1830, CSO1/320/7578, AOT Reel SLTX/AO/CS/116, pp.74–76.

Contact was never made even though the band that had been at Oyster Bay had “again directed their movements into this quarter.” During August their fires were spotted at Break O’Day and Gideon’s Bottom. They harassed servants attached to Thomas Massey at Ben Lomond and to Joseph Bonny near Perth. Late in September they killed three men assigned to Major William Gray of Avoca. They plundered the hut of guns and blankets. By now Batman was convinced that only a fully coordinated operation such as the Black Line operation that Arthur was actually planning would have any success against the various bands active in the settled districts.¹⁷

The minimal military presence in the northern districts concerned some property owners. The *Launceston Advertiser* criticised Arthur for concentrating his efforts in the Buckinghamshire county, leaving the northern county defenceless against Aboriginal attacks. Cox, whose property, *Clarendon*, stood on the banks of the South Esk River, took matters into his own hands and sent parties to scour the bush to the north east of Ben Lomond. Arthur reprimanded him severely for his initiative.¹⁸

Arthur explained that the tribes in that district had not been nearly as hostile as those Oyster Bay and Big River bands to the south which the Black

¹⁷Batman to Burnett, 30 August 1830, CSO 1/316/7578; AOT Reel SLTX/AO/CS/114, pp.607–610; *Hobart Town Courier*, 2 October 1830.

¹⁸*Launceston Advertiser*, 25 October 1830; Cox to Arthur, 11 & 13 October 1830, CSO 1/324/7578, AOT Reel SLTX/AO/CS/117, no page numbers supplied.

Line was targeting: "it appears to me therefore extremely important first to attempt conciliation with them and as the period has not expired within it the women who were sent out by Mr. Batman had undertaken to bring in their tribe." Furthermore, Arthur was concerned that the presence of armed men might compromise Robinson's conciliatory work with the tribes in that region. Arthur hoped that the women and their people would eventually make contact with Robinson and, acting as liaisons and emissaries, bringing them together.¹⁹

Meanwhile, the Black Line was having its affects, though none for which Arthur had planned. Having moved back through the human cordon, on 16 October two women and nine men, including Mannalargenna, arrived at Kingston, exhausted and starving. They had attempted to head for Hobart to take shelter at the asylum there but the movements of the Black Line had forced them in a northerly direction.

Umarrah and his band had also retreated north where they made attacks along the Tamar, North Esk and South Esk Rivers.²⁰ Most likely convinced by the women that Batman would protect them, the group retreated to Kingston where they knew they would also be safe from Umarrah, as well as the Black

¹⁹Arthur to Cox, 13 October 1830, CSO 1/324/7578, AOT Reel SLTX/AO/CS/117, no page numbers supplied.

²⁰As will be discussed in Chapter 8 one of the most gruesome attacks was carried out on Captain Bartholemew Thomas and his overseer James Parker. Thomas was brother to Aborigines Committee chair and colonial treasurer Jocelyn Thomas.

Line volunteers. As a result of the pressure brought to bear by the armed and hostile colonists, instead of uniting against the colonists, Mannalargenna and Umarrah focussed their animosity on one another, and several members of each band had been killed in the resulting hostile confrontations. That Mannalargenna sought protection from Batman—the man who had killed eleven of his people—indicates something about the influence of the women, not to mention the strain of their current living conditions.²¹

Late in the evening of 22 October, Mannalargenna's group fled. They took with them knives and dogs, but left behind all of the food, blankets and clothing with which Batman had supplied them. They also left behind Mungo. Over the next week they plundered huts along the South Esk River from Major William Gray's property at Avoca to Talbott's property at Fingal. There, Talbott's men, Davis and MacDonald, managed to shoot two of the group. One was killed on the spot, but the other was pursued by MacDonald to the river. His gun misfiring the first time, one of the Aboriginal men turned and cried, "you white bugger, your piece no good." Upon firing again, MacDonald was more successful, and shot the man dead. The rest of the band fled towards the coast.²²

²¹Gray to Arthur, 17, 19 & 23 October 1830, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118, pp.690–700.

²²Gray to Burnett, 1 & 11 November 1830; Batman to Frankland, 18 November 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.714–717 & 724–744; *Hobart Town Courier*, 13 November 1830; *Launceston Advertiser*, 15 November 1830.

The eastern bands were now divided into three groups, each with members from the midlands and east coast tribes. Two were led by Mannalargenna and Umarrah and the third by the Big River chiefs Montpeilliatter and Tongerlongter. Montpeilliatter and Tongerlongter headed to the mountains behind the Ouse River. Umarrah remained to the north of Launceston and Mannalargenna moved to George River. Throughout November members of Mannalargenna's band gradually made contact with Robinson. They had good reason for "coming in" for the young men taken from Richmond jail the previous March and now attached to Robinson's expedition party were Mannalargenna's tribesmen. Of the seventy-four Aborigines that Robinson would transfer to Swan Island at the end of the month, only four were women and three were those whom Arthur had released from the asylum, Kubmanner, Luggenemenener and Karnebutcher. The other one was an old sealing woman, Peacock.²³

6.2 George Augustus Robinson

In the event conciliation was to derive not just from the efforts of Kubmanner, Luggenemenener and Karnebutcher, but also from those of George Augustus Robinson. On 4 March 1829 an advertisement appeared in the *Hobart Town*

²³Ryan, *The Aboriginal Tasmanians*, p.112; Robinson to Arthur, 20 November 1830, CSO 1/318/7578, AOT Reel SLTX/AO/CS/115, pp.216–230.

Gazette and the *Hobart Town Courier*. The notice read:

In furtherance of the Lieutenant Governor's anxious desire to ameliorate the condition of the Aboriginal inhabitants of this territory, His Excellency will allow a salary of fifty pounds per annum, together with rations, to a steady person of good character, who can be well recommended, who will take an interest in effecting an intercourse with this unfortunate race, and reside upon Bruné Island, taking charge of the provisions supplied for the use of the Natives of that place.²⁴

This was the first time that Arthur had instigated his much-contemplated plan to establish an Aboriginal reserve. Arthur received nine applications, but the one sent in by Robinson caught the governor's attention and Robinson was offered the position.

Robinson's story is that of a lower class British subject hoping, like many others, to better his lot in the colonies. He was a remarkable, self-educated evangelist whose occupation as a bricklayer afforded him little opportunity to rise beyond the working classes. Though his mechanical skills were highly desirable in a burgeoning colony, Robinson sought a more prominent social status. He saw the position of "store keeper" as his opportunity to advance.

²⁴*Hobart Town Gazette, Hobart Town Courier*, 7 March 1829.

However, while he achieved great success in his various roles as Aboriginal “protector” and “conciliator,” he was never able to win favour with his European contemporaries (a fact that advocates and critics, alike, agree upon).²⁵

Historians variously vilify and praise Robinson. Focusing on his character, historian, Karl von Stieglitz, describes Robinson thus: “small, conceited and pompous, pretending to a classical education which he did not possess, he alienated people with his bumptious manner and assumption of superior intelligence.”²⁶ Modern historian, Cassandra Pybus portrays him as “an uneducated artisan, with no recognizable position” in Van Diemen’s Land society.²⁷ Windschuttle paints him as a man guided solely by the desire to become wealthy at the hands of a desperate colonial government.²⁸ Vivienne Rae-Ellis, who condemns Robinson as “a liar and a cheat, a man of little honour”, summarily dismisses those achievements lauded by the likes of historians Brian Plomley and Henry Reynolds. “Robinson’s true achievement is the admirable record of Aboriginal life to be found in his travel journals. By contrast,” Rae-Ellis writes, “his reputation as the friend of the Aborigine was a creation of

²⁵see C. Pybus, “History as Myth: G.A Robinson and the Tasmanian Aborigines”, *Overland*, no.111 (1988), pp.48–49 & N.J.B. Plomley’s G.A. Robinson entry in *Australian Dictionary of Biography*, 2, pp.385–387.

²⁶K.R. von Steiglitz, *A History of Oatlands and Jericho* (Launceston, 1860), p.19.

²⁷Pybus, “History as Myth”, p.48.

²⁸Windschuttle, *The Fabrication of Aboriginal History*, Chapter 7.



Figure 6.1:
Gauci, M., Ackermann & Co's *G.A. Robinson Esq., Chief Protector of the
Australasian Aborigines and the pacificator of the Aborigines of Van
Diemen's Land*, c.1850. Source: Allport Library and Museum of Fine Arts,
State Library of Tasmania; image taken from URL:
<http://images.statelibrary.tas.gov.au>.

Robinson's imagination, designed solely to advance his own careers."²⁹

Plomley and Reynolds, on the other hand, view Robinson very differently. Plomley describes "the friend of the Tasmanian aborigines" as a "hard-working and public-spirited man" who never lost sight of the concept that "all men are born equal but suffer from inequality of opportunity." Quoting extracts from the manuscript of a book Robinson never completed, Plomley expands upon this theme: "The rights of the original inhabitants," wrote Robinson, "were never thought of. Might overcame right and the original possessors of the soil became, not free men, but slaves under the force of war..."³⁰ Drawing from examples throughout Robinson's long history with the Aborigines in Van Diemen's Land and beyond, Reynolds characterises him as the "best known humanitarian in the Australian colonies" who genuinely believed that the "Aborigines were the legitimate owners of the soil."³¹

There is no doubt that Robinson was a very arrogant man who sought to be as wealthy as the colonial government would make him. However, that he remained so active with the Aborigines and so vocal about their land rights, often to the disdain of the very people whose acceptance he was seeking, and even after the government had made him rich, indicates that Robinson was guided by motivations other than merely financial.

²⁹V. Rae-Ellis, *Black Robinson: Protector of Aborigines* (Melbourne, 1988), p.xix & 82.

³⁰Plomley, *Friendly Mission*, pp.11, 14, 52 & 936.

³¹Reynolds, *This Whispering in our Hearts*, p.47.

Robinson's evangelical bent quickly won him favour with the governor and allowed him to begin his unique career in Van Diemen's Land. That Robinson was an active Christian whose stalwart faith guided him through life, being of the firm belief that the Aborigines must be civilised and Christianised, impressed the like-minded Governor considerably. Robinson's commitment to the Aborigines, he later noted, stemmed from the fact that "the welfare of this unfortunate race will ever be a paramount object in my mind."³² His application reflected this:

Having observed in the *Courier*... that it is your Excellency's anxious desire to ameliorate the condition of the aboriginal inhabitants of this territory and... feeling a strong desire to devote myself to the above cause and believing the plan which Your Excellency had devised to be the only one whereby this unfortunate race can be ameliorated—that as the degraded Hottentot³³ has been raised in

³²Plomley, *Friendly Mission*, p.89.

³³The Hottentots were a pastoral people of southern Africa who, along with Cape slaves and other native groups, represented the labouring classes in colonial South Africa. The Hottentots lived in miserable conditions for they were the lowest paid labour group in the colony. They could not receive a competitive price for their labour for a pass system kept them confined to specific districts. If they were found outside their districts they were punished as vagabonds. Unlike the slave classes, they were often so impoverished that they became indebted to their employers who would hold their children accountable for the debt. Legally, too, they held a liminal position in society. Unlike the slave classes, they were not protected by masters, and had little chance of obtaining a favourable hearing before the courts because of their race. In the late 1820s Governor Sir Richard Bourke — later to become governor of New South Wales — reformed the pass laws so as to allow the Hottentots greater rights as free persons of colour; see: H. King, *Richard Bourke*; H. King, "Richard Bourke and His Two Colonial Administrations: a comparative study of Cape Colony and

the scale of being—and the inhabitants of the Societies Islands are made an industrious and intelligent race, so likewise by the same exertions may the inhabitants of this territory be instructed with these impressions I beg to offer myself for the situation. . . I wish to devote my self entirely to these people. . .³⁴

Though Robinson was somewhat misguided about how to best advance the Aborigines' cause, at this stage he was the only hope they had, for he was in the position to facilitate communication between them and the Colonial Government. His position effectively evolved into that of an agent to the Aborigines.³⁵

New South Wales," *Royal Australian Historical Society Journal*, 49.5 (1964), pp.360-375; 'Richard Bourke' entry in *Australian Dictionary of Biography*.

³⁴One may recall here the thoughts of Lord Monboddo who theorised that it was the the "destiny of man" to "cultivate those aspects of his nature which distinguish him from the animal and vegetable creations" so as to "attain a state as close as possible to that of the 'divine intelligences'. Robinson's mission, it seems, might realise in practice those theories which Monboddo, and others, had made popular; see Dixon, *Course of Empire*, pp.17-18; Robinson to Arthur, 16 March 1828, CSO 1/321/7578, AOT Reel SLTX/AO/CS/116, pp.30-32.

³⁵Government agents were also later employed in other Australian colonies to manage racial conflicts. Towards the end of the 1880s increased Aboriginal resistance to settlement around Queensland's Atherton Tablelands began to concern the Tinaroo Progress Association. The answer was found in a constable and tracker by the name of Hansen who was transferred to Atherton in order to deal "with the Black question without using severe repressive measures." Hansen trekked through the Tablelands' rainforest with an Aboriginal assistant who acted as interpreter and guide. He soon discovered that the locals were plundering settlers' homes because they were literally starving. Hansen requested that the government provide them with rations and then directed the group to where they could procure them. The settlers, too, supplied liberal amounts of flour, sugar, tea, beef, tobacco and sweet potatoes. With Hansen's intervention other groups "came in" and were provide for by the government and local settlers; see N. Loos, *Invasion and Resistance: Aboriginal-European Relations on the North Queensland Frontier* (Canberra, 1982), pp.88-117.

Though the notion of sending a government agent to live amongst Aborigines had been contemplated already, Robinson was the first to be employed for such a task. Jorgen Jorgenson, the roving party leader, had elucidated his proposals for just such a scheme in a lengthy letter sent to Arthur in February 1828. He advised that “we must seek [the Aborigines] in their forests, we must accustom them to behold us, and converse with us without restraint.” Likely referring to one of the ochre mines in the territory of the North tribe, Jorgenson suggested a reserve be established within the Van Diemen’s Land Company grant for it “is a grand place of rendezvous for the natives.” Jorgenson considered the location ideal also because between it and the settled districts lay the Western Tiers, which would serve to “check on all the movements of the natives towards the inhabited and cultivated parts of the island.” Like the reserve on Bruny Island it, too, would be separated from the settled regions of the colony. Jorgensen described his plan:

In this very place I would propose to construct a strong and compact hut: one superior, and five other individuals, to reside in this dwelling. The superior should be a man of singular humanity and penetration, and guided by those nobler considerations which are not common to ordinary minds. . . . The white men should be taught to traverse the country without endeavouring too early to promote

any intercourse with the blacks: go to and fro seemingly inattentive to what was passing around them; avoid all offensive conduct, and if attempts were made to attack them, they should retreat and not if attempts were made to attack them; avoid all offensive conduct, and if attempts were made to attack them, they should retreat and not discharge a shot till it was clearly demonstrable that no other means were left to escape. . . . [E]very thing should be tried to soothe the natives, and to convince them that from *this* party they could have nothing to fear. . . . Reciprocal kindnesses would produce reciprocal good-will, and gradually some intercourse would be established; when once established the principal object would be attained, all the rest would be speedily, and we should see our black brethren hold out the olive branch to our view.³⁶

It must be remembered, too, that Police Magistrate, James Simpson, had outlined a similar plan when instructing Batman on how best to make contact with the Ben Lomond band in June 1830. However, as will be recalled, Batman's female guides absconded before he was able to implement it.

Jorgenson acknowledged that

the plan may by some be deemed extravagant and inconsistent. . . but

³⁶Plomley, *Jorgen Jorgenson and the Aborigines*, pp.35–36.

after all, of the numerous schemes which have been advanced relative to the natives, is there a single one which could be carried into execution with the slightest probability of success?³⁷

Arthur would later come to rely on the success of this one to put a final end to war.

6.2.1 Store Keeper & Protector

On 29 April 1829 Robinson arrived at Missionary Bay on Bruny Island, where he marked out 500 acres for an Aboriginal reserve. Over the next few months he supervised the construction of his “village”. He spent a great deal of time learning the customs and language of the Bruny Island people. He found them flexible and adaptable, though learning anything of the dead was difficult, for he discovered it was taboo to speak of them.³⁸

³⁷Plomley, *Jorgen Jorgenson and the Aborigines*, p.36.

³⁸Knowing this, it is possible to gain some sense of the rancour which the Aborigines felt for the settlers. In September the previous year the settler, Robertson, was surrounded in his hut at the South Esk River by a group of twenty Aborigines. For seven hours they called out using “the most approbacious language and threats” and called “upon a man who was murdered by the Aborigines about six months before.” In November the stock-keeper, James Stanton, was violently beaten by a group who “during [that] time... continued calling on the dead man by name and laughing about it.” This was a taboo which had endured amongst tribes in other Australian colonies as well; see Simpson to Burnett, 4 September 1828 & Williams to Burnett, 24 November 1828, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.155–156 & 196–198; see also H. Ling Roth, *The Aborigines of Tasmania* (Hobart, 1968), pp.61–63.

Robinson translated words from English into the Bruny Island vocabulary³⁹ and carried out religious instructions in the local language. Though the translations were rough, Robinson knew that it was vital that he was able to communicate with the Bruny Islanders in their own tongue so he could gain their trust. More importantly, even a working knowledge of the language allowed him to act as a liaison between the Aborigines, with whom he was residing, and the colonial government, by whom he was employed.

The importance of the interpreter in colonial-Aboriginal relations cannot be overstated. In north America interpreters were vital because they were often the only link between the Native American tribes and the frontier settlers. However the great shortage of such skilled individuals meant that their talents were in high demand and the skills they developed allowed them to vie for high-ranking positions in the Indian Office. They needed to be highly skilled because, as historian Yasuhide Kawashima notes, “[o]nly those who were thoroughly familiar with the customs and traditions, as well as the languages, of both cultures were able to translate accurately and effectively.” The variety of languages spoken by the numerous tribes, additionally, meant interpreters usually had to be multi-lingual. Moreover, the job of interpreter carried added

³⁹Though Robinson always planned on writing a book about the Tasmanian Aborigines and was to include a chapter on their language the only written record of it is scattered words recorded throughout his journals; see for example Plomley, *Friendly Mission*, p.61 where he records words translated from English from a sermon preached to the Bruny Islanders.

responsibilities because these “forest diplomats,” as they came to be known, “...were actually field representatives of the colonies in their dealings with the Indians. They were required not only to translate one language to another but simultaneously to serve as messengers and diplomatic agents to the Indian country, often for extended periods of time.”⁴⁰ In time, Robinson would come to act in this capacity as best he could.

However, Robinson was not the sole bearer of these responsibilities. He was aided greatly by his mission guides and, indeed, they played the role of diplomat and emissary far more effectively than Robinson. Indeed, in the United States the majority of interpreters were native American. It made sense to employ indigenous guides for they would have knowledge and experience about those with whom they were dealing, and could more easily earn their trust. Those who joined Robinson were particularly valuable for not only were they familiar with the groups to whom they were travelling, but most of them had previously had dealings with settler groups and were, therefore, more able to understand the motivations that lay behind much of Robinson’s behaviour. Consequently, both Robinson and his Aboriginal guides, like the north eastern women, would come to act very much as the “forest diplomats”

⁴⁰Y. Kawashima, “Forest Diplomats: the Role of Interpreters in Indian-White Relations on the Early American Frontier,” *American Indian Quarterly* (1989), pp.1-14.

of the American experience and literature.⁴¹

As an agent to the Aborigines and a Christian, Robinson felt it his duty to stop the frequent visits of the Bruny Island women with the local sealers and whalers. On several occasions he sent them letters “reprobating their conduct in the severest manner for suffering the men in their employ to cohabit with the aboriginal females at Adventure Bay.”⁴² He found such wanton sexual contact reprehensible. “The conduct of these parties” he wrote, “in harbouring a plurality of aboriginal females who were arriving fast to a state of comparative civilisation, making them subservient to their own carnal appetites, is too aggravated to be passed over with impunity.”⁴³

However, the southern coastal bands had long been associated with these European groups. They had been a part of the southern whaling and sealing activities from before permanent European settlement. Robinson’s most

⁴¹Kawashima, “Forest Diplomats”, pp.3-5; Reynolds points to a tradition of employing Aboriginal guides for both exploration and political negotiation that evolved in other Australian colonies later in the century: “The professional guides came from the ‘settled’ districts and were usually permanent members of the exploring parties in question. . . Their expertise derived both from ancient Aboriginal traditions and from experience gained in contact with Europeans. . . The professional guides retained important aspects of traditional bushcraft—they could track, hunt, find water—but their skills had been generalised in such a way that they could be utilised in any type of country, often very different from their original homelands which had nurtured the expertise in the first place. They were also linguists with a number of dialects at their command and were well versed in the protocol of Aboriginal diplomacy. . . Added to these attributes were skills learnt from the Europeans—a working knowledge of English [and] familiarity with white man’s weapons which often developed into marksmanship of a high order;” see H. Reynolds, *With the White People* (Ringwood, 1990), pp.18–19.

⁴²Plomley, *Friendly Mission*, p.79.

⁴³Plomley, *Friendly Mission*, pp.72 & 79.

faithful guide, Trugernanna, had been involved with them since childhood.

Though three family members had been violently attacked and killed by whalers, and her sister kidnapped, until Robinson removed her from them, Trugernanna remained active amongst the sealing and whaling communities based around Adventure Bay. Such was her knowledge of the European culture that she became one of Robinson's most important guides. She certainly became one of his most intimate associates.⁴⁴

Disease and a high mortality rate created havoc at the establishment. From the outset Robinson watched many of those whom he was trying to nurture and protect die from chest infections. Whole families fell victim, sometimes dying within days of each other. By September 1829 twenty-two of the thirty-six Bruny Islanders under Robinson's care were dead.⁴⁵

Disease epidemics amongst Aboriginal groups were not confined to Van Diemen's Land. Smallpox had decimated Aboriginal communities throughout New South Wales. As early as 1790 Governor Phillip observed the devastating affect it was having. He estimated that half of the Aboriginal population of Botany Bay had fallen victim to it.⁴⁶

⁴⁴Ryan, *The Aboriginal Tasmanians*, p.126; Reynolds, *Fate of a Free People*, pp.139–43.

⁴⁵Plomley, *Friendly Mission*, p.77.

⁴⁶Phillip to Sydney, 13 February 1790, *HRA*, I.1, p.159.



Figure 6.2:
Benjamin Duterrau's *Truggernana*, a native of the southern part of V.D.
Land & wife to Woureddy, was attach'd to the mission in 1829, 1835, Source:
Allport Library and Museum of Fine Arts; image taken from:
<http://images.statelibrary.tas.gov.au>.

Disease was one of the first and most destructive legacies endowed to Aboriginal groups by European contact, and in Van Diemen's Land it had a far greater effect on Aboriginal attrition rates than war or the loss of women. From the time of the French explorations contact was intimate enough for viral and bacterial infections to be transmitted. As Reynolds has noted, Robinson and Wybalenna catechist, Robert Clark, both of whom had witnessed the decline and death of numerous Aborigines in their care, had discovered how lengthy and destructive this legacy of disease had really been. Clark had been told by his Aboriginal patients that "entire tribes of natives had been swept off... [by] a sudden attack of disease which was general among the entire population previous to the arrival of the English." As Robinson travelled throughout Van Diemen's Land he discovered numerous instances of tribes which had long been extinct.⁴⁷ Permanent settlement served merely to intensify this deathly trend. Sexually transmitted diseases which left many Aboriginal women infertile, moreover, had the additional affect of decreasing the number of children born to subsequent generations.

Not all diseases were life-threatening. Skin conditions that caused ulceration and itching, ultimately leaving its victims scarred by pockmarks, grew increasingly common as contact with Europeans spread. By 1819 Governor

⁴⁷Reynolds, *Fate of a Free People*, pp.184–185; Plomley (ed.), *Friendly Mission*; see for example, pp. 179, 225, n.7, 226, n.35, 388, 469, n.240, 889; Robinson to Burnett, 6 August 1831, CSO 1/318, Reel SLTX/AO/CS/115, pp.45–51.

Sorell realised that Aboriginal groups in the vicinity of Hobart required medical attention. A temporary hospital was established at Fisk's Mill and the Government Surgeon, Edward Luttrell, treated individuals for dysentery and "cutaneous" disorders, "to which they are more or less liable." In 1829, Arthur's private secretary, William Parramore, in a letter home wrote how the Aborigines were "covered in leprosy." Henry Widowson commented on the "most loathsome ulcerated sores" which he observed the Aborigines to have suffered. During his mission to Port Davey Robinson chronicled the discomfort that these disorders inflicted on the Aborigines: "I have seen these poor creatures in the greatest torment and scratching themselves as if they would tear the flesh, the blood trickling down their naked bodies." Robinson's empathy only deepened when he, himself, fell victim to a "cutaneous infection" after sharing his bed with his mission guides and their dogs. Such was his distress at the itch and pain from the infections that at one point he recorded in his journal: "Would sooner face a thousand hostile natives than have this horrid infection."⁴⁸ One wonders whether the presence of such unsightly skin conditions had an affect, even subconsciously, on those who so fervently sought the Aborigines' expulsion from the island.

⁴⁸Sorell to Luttrell, 7 December 1819, *HRA*, III.2, p.750; W. Parramore, *The Parramore Letters...* (Epping, 1993), p.60; H. Widowson, *Present State of Van Diemen's Land...* (London, 1829), p.192; Plomley, *Friendly Mission*, pp. 141 & 964-967.

Still enthusiastic, despite the various difficulties he continued to face, Robinson reported his progress to Arthur early in June. He felt it important that children be separated from their parents and transferred orphan children to the prisoners' hut where he tutored them almost exclusively in English. To Arthur he wrote: they "appear to be destined by providence as a foundations upon which the superstructure of Your Excellency's benevolence is hereafter to be erected. . . rousing them from that torpid inactivity which they have so long slumbered."⁴⁹ Their separation from the adults would also have helped to limit their exposure to infection.

A group of nine Port Davey people visited the mission early in July. Finding sickness and death they quickly departed, but not before a number fell ill. Nonetheless, the visit encouraged Robinson to further consider an idea he had raised with Arthur about the possibility of leading an expedition to the west coast. Having learnt a little of their language and having earned their trust, Robinson would lead a group along the west coast, making contact with the various groups there, for "it is only by such an undertaking" he wrote to Arthur "that Your Excellency's humane intentions to the aborigines can possibly be made known."⁵⁰

Robinson was aware that the south eastern Aborigines were desperate to

⁴⁹Plomley, *Friendly Mission*, p.62.

⁵⁰Plomley, *Friendly Mission*, pp.62-63.

leave the place where disease and “dire mortality” was so prominent. Their way of limiting the spread of disease was to isolate the sick. Those who fell ill were left to die or recover on their own and the place where the illness appeared was abandoned.⁵¹ The Bruny Island mission, consequently, would have been a horror scene for them. Robinson would have come to understand that the only way he could continue to build a relationship with these people was to abandon the mission and move off with them.

Arthur encouraged Robinson to embark on the expedition which he hoped would “effect an amicable understanding with the aborigines in that quarter, and through them, with the tribes in the interior. . .”.⁵² He wrote to Robinson requesting that the men and boys from the band whom Batman had captured and sent to Richmond be transferred to Bruny Island. Robinson resisted, worried that the addition of new, possibly hostile, personalities to his group would threaten the positive dynamics that had been established between himself and the Bruny Island people.

Robinson spent December and January making arrangements for the expedition. Included in his preparations was the purchasing of trinkets to distribute amongst the Aborigines. He also wrote to the Aborigines Committee suggesting that it provide him with a number of dogs for his Aboriginal guides. On

⁵¹Plomley, *Friendly Mission*, p.65.

⁵²Plomley, *Friendly Mission*, p.89.

Christmas Eve, Robinson visited Government House where he spoke with the governor about distributing his picture boards during his travels. The six convicts selected to accompany Robinson were Alexander McGeary, Alexander McKay, Samuel Hopkins, John Tunncliffe, John Simpson and William Stansfield. On 31 January 1830 Robinson gathered together his party for chapel service one last time before heading off to Port Davey. His “congregation” of twenty-nine included thirteen Aboriginal guides.⁵³

Nine of his guides would remain with Robinson throughout the entire expedition providing him with vital assistance on his overland march along the west coast. There were three women: Trugernanna, Dray, Pagerly, and six men: Woorredy, Umarrah, Kickerterpoller, Trepanner, Parwareretar and Robert. Woorrady, Trugernanna and Pagerly were Bruny Island natives while Dray was from the Port Davey area. This meant that each would be invaluable as trackers and guides, having an intimate knowledge of the west coast and its people. Indeed, Dray would be the link between Robinson and her people in that region. Umarrah, Kickerterpoller (the Aboriginal name to which Black Tom had reverted), Trepanner, Parwareter and Robert were valuable additions to the group for they all had previous associations with Europeans, having spent extended periods of time with different colonists. That they were

⁵³Plomley, *Friendly Mission*, pp.92, 95–96.

from the northern and eastern tribes was an additional benefit for these were regions to which the mission members would eventually head.⁵⁴

Such was the importance of this expedition that Arthur sought advice from the Aborigines Committee about the idea of “suspending, during the period of Mr. Robinson’s mission, the proclamations of martial law, and whether simultaneous attempts of a similar nature would probably be attended with success in different parts of the island.”⁵⁵

The Committee replied that its members were “unanimously of opinion that the operations of martial law should be suspended during the period of Mr. Robinson’s peaceful mission...Your Committee respectfully and most earnestly recommend that all the armed roving parties shall be called in until the success or otherwise of Mr. Robinson’s mission shall have been ascertained.”⁵⁶ However, a drastic increase in the number of Aboriginal attacks during February⁵⁷ may have convinced Arthur to reassess this option because martial law was never suspended. Instead Arthur published several government orders again entreating the colonists to persevere in their attempts to conciliate the Aborigines. While Robinson continued his expedition, Arthur

⁵⁴see Plomley, *Friendly Mission*, Section I.2 (The Port Davey Mission).

⁵⁵Aborigines Committee to Parramore, 30 January 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.396–397.

⁵⁶Aborigines Committee to Burnett, 2 February 1830, CSO 1/319/7578, Reel SLTX/AO/CS/116, pp.2–6.

⁵⁷From nine in January to thirty in February 1830; see Plomley, *Aboriginal/Settler Clash*, p.26.



Figure 6.3:
Benjamin Duterrau's *Woureddy, a Wild Native of Brunei [sic.] Island one of
Mr Robinson's most faithful attendants attach'd to the mission in 1829, 1835,*
Source: Allport Library and Museum of Fine Arts, State Library of
Tasmania; image taken from: <http://images.statelibrary.tas.gov.au>.

hoped that he could, with persuasion and the use of managed force, contain hostilities in the settled districts.

Robinson's appointment and activities in the colony over the next few years were unique in several ways. This was the first time that a reserve had been established. It was the first time that a colonial government representative lived with an Aboriginal group as an intermediary between the colonial government and the Aborigines; and it was the first time that anyone had gained an understanding of their various cultural traditions and habits. Moreover, this experiment was unique because of the attitudes that guided Robinson. While he was adamant that the Aborigines should be raised along the scale of humanity by being converted to Christianity, he was sure also that they had been the true victims in this territorial war. Most significantly, and in contrast to official Imperial policy, Robinson believed that, indeed, this was Aboriginal land upon which they all trod and that the colonisers of Van Diemen's Land had a responsibility to acknowledge this. Something of Robinson's feelings and thoughts can be gleaned from a passage in his unfinished manuscript.

Had the founders of the colony acted wisely—leaving justice out of the question—done unto these poor people as they would have been done unto, treated them as fellow creatures and as fellow subjects, all would have been well and this dire calamity would

not have happened. But they had acted otherwise and had treated them not only with harshness, indifference and neglect but with the grossest injustice; and this unfortunately had been the leading principle in founding colonies, not only by the English but by every civilized nation on the face of the globe. It was the rule and not the exception... The rights of the original inhabitants were never thought of. Might overcame right and the original possessors of the soil became, not free men, but slaves under the force of war...⁵⁸

6.2.2 An Alternate Path to Peace

When Robinson set out on his mission to Port Davey he headed away from the epicentre of Aboriginal-settler hostilities that were daily worsening. He went west instead of east because the aim of this initial mission was to establish a context for later peace negotiations between those warring Aboriginal groups of the midlands and east and the Colonial Government. His initial objective was quite simple. His immediate goal was to

arrive at a correct estimate of the numerical strength of the aboriginal population and to become acquainted with their moral and political character so as to facilitate the means of conferring with

⁵⁸Plomley, *Friendly Mission*, p.52.

them and making known throughout the whole of their districts to the tribes severally the humane and benevolent intention of the Lieutenant Governor towards them.

His longer term vision was that this expedition would be

the forerunner of some future operation either as regard the tranquillizing of the aborigines generally or their entire removal from the island, conceiving at the same time that no permanent measures could be well carried into effect until a thorough knowledge of the original inhabitants had been obtained, a groundwork which had hitherto remained so long enveloped in obscurity.⁵⁹

By heading west Robinson could make contact with those groups least affected by settlement. Later, should these contacts be successful and as he moved closer to the settled districts, he might build on these successes to also establish positive relations with the more hostile tribes of the midlands. As the reputations of several eastern bands worsened it seems likely that neither Robinson nor his guides desired going directly to them. That members of Robinson's group were from the Port Davey region was, presumably, also a factor motivating Robinson to head west instead of east.

⁵⁹Plomley, *Friendly Mission*, p.224.

Robinson's strategy during this preliminary mission, then, was to combine fact-finding and strategic manoeuvring to effect lasting peace. During the early stages of his journey he would learn as much as possible about the culture and society of the western tribes, also providing them with the opportunity to determine his intentions, and through him, the intentions of the colonial government. He would become familiar with the dialects of his mission guides so that he could later negotiate with the more hostile groups to whom they would eventually venture. All of this was made achievable as Robinson's bush skills developed while he learned to track, forage for food and generally survive as a gatherer-nomad, with, eventually, much increased physical stamina.

On 1 February 1830 Robinson set off by boat from Hobart with a party of twenty nine. Over the next eight months they travelled more than a thousand miles,⁶⁰ via the coast, from Recherche Bay to Launceston. Robinson suffered severe itch, sometimes agonising pain, occasionally was left lost and abandoned, and once woke to find his trousers on fire, but the expedition continued because he kept his objectives clear in his mind.

Landing at Recherche Bay, he began his overland journey on foot two days later. Robinson realised what a formidable task he was undertaking and that

⁶⁰Robinson to Arthur, 29 July 1830, CSO 1/318/7578, Reel SLTX/AO/CS/115, pp10–25.

he was forging ahead into new frontiers and unknown territory (both politically and geographically). While a penal settlement had been established at Macquarie Harbour the wilderness around the penitentiary had not been explored or surveyed (indeed, Port Macquarie was chosen as the site for a prison because of its isolation in the impenetrable wilderness). As such, with over 450 kilometres of wilderness lying between Recherche Bay and Port Macquarie, Robinson was taking on an immense challenge and was, for all intents and purposes, placing his life in his party's hands. However, he remained confident, believing that his Aboriginal associates "would not allow me to want."⁶¹

Progress was slow at first as the party followed native tracks through dense, very wet, mosquito-infested rainforest. Moreover, problems making contact with two supply boats meant that Robinson often found himself short of provisions. During his journey around the southernmost part of the coastline he found no evidence that tribes were still inhabiting the region. Their numbers had been diminished by European diseases and inter-tribal hostilities.⁶²

On 16 March 1830, almost six weeks after they had set out, Robinson spotted his first "smoke". It had been made by a Ninene band. Robinson sent a number of his guides after the band and that evening the guides returned to

⁶¹Robinson to Arthur, 29 July 1830, CSO 1/318/7578, Reel SLTX/AO/CS/115, pp.10-25; Plomley, *Friendly Mission*, p.114.

⁶²Plomley, *Friendly Mission*, p.277.

report that they had made contact. They told Robinson that they had “made the Port Davey people understand the nature of [Robinson’s] mission to them, and said the Port Davey natives was anxious I should come to them in the morning.” The following morning Robinson went to the group and “seated myself amongst them and gave them biscuit and also distributed amongst them beads, ribbons etc.” When the menfolk eventually joined the group he “[d]istributed ribbons, buttons, knives, looking glasses etc with which they were highly pleased.”⁶³

During his travels north Robinson came into contact with more Port Davey bands and each time distributed amongst them small gifts of food and trinkets. In time he came to realise that the presence of his convict assistants as well as the guns he had brought with him, caused more harm than good. Consequently he discarded the arms and made sure that the convicts remained at a distance from the party. Robinson also realised that his female guides were far more skilled negotiators and so he always employed them to make first contact. Trugernanna, he found, was his most loyal and talented escort.

Robinson discovered force was completely ineffective in this setting. He could not make the local bands with whom he had come into contact remain with him involuntarily any more than he could force his guides to stay at his

⁶³Plomley, *Friendly Mission*, pp.131–133.

side. So Robinson changed his strategy, allowing his party the freedom to come and go as they pleased. When Umarrah, one of his most important guides, decamped, Robinson, expecting to reunite with him later in the expedition, focussed on the bonds that they had forged. "The conduct of Umarrah up to the time of his leaving the Expedition", Robinson reported to Arthur, "is beyond any praise I can bestow."⁶⁴

This man and... [Parwareretar and Trepanner] that has [sic] gone with him, were my only companions for near three weeks... the whole of which time they evinced a disposition to render me every affection in their power. Each of them carrying a knapsack, constructing my break wind at night etc. and although we had to subsist nearly the whole time on a little wheat meal I never heard them complain. Indeed the whole of the aborigines accompanying the expedition have rendered essential service to the undertaking and far exceed any encomium that I can bestow upon them.⁶⁵

It was not until word came of Umarrah's campaign of plunder and pillage in the settled districts during Robinson's time with the sealers that the conciliator realised how important it was to have Umarrah close by and allied with him. The Stoney Creek chief proved to be a formidable guerrilla leader in the north.

⁶⁴Robinson to Arthur, 29 July 1830, CSO 1/318/7578, Reel SLTX/AO/CS/115, p.21.

⁶⁵Robinson to Arthur, 27 July 1830, CSO 1/318/7578, Reel SLTX/AO/CS/115, p.21.

Robinson continued north along the coast making brief contact with new groups, recording party size and membership, distributing gifts and then moving off again. While he felt assured that his guides were growing ever more loyal he did recognise what a formidable task he had assumed. He understood a little of what he must overcome in order to gain the confidence of those with whom he was seeking contact:

O! God, what has filled these poor unoffending people with such dire apprehensions! Can I imagine for a moment that the white man, my fellow man, has murdered their countrymen, their kindred and their friends, has violated their daughters, and has forcibly taken away their children under the pretext of taking care of them? Yes, it is only too true. Regardless of all laws, human or divine, they have imbued their hands in the blood of these poor unoffending people.⁶⁶

Members of the Aborigines Committee concurred. Some felt that the convict stock keepers, those "lawless and desperate characters" of the colony were the instigators of hostilities. The Committee called on the colonists to remember "those rights of ordinary compassion to which, as human beings, and as the

⁶⁶Plomley, *Friendly Mission*, p.155.

original occupants of the soil, these defenceless and ignorant people were justly entitled.”⁶⁷

In June Robinson met with Joseph Fossey, a Van Diemen’s Land Company surveyor and spent the next four days touring the Company’s Woolnorth property. There he learnt of the hostilities between local Aboriginal groups and the Company shepherds. He vowed that “...if I could ascertain any unlawful violence was used against them and I could procure evidence, I [would be] determined to bring the delinquent before a judicial court.”⁶⁸

Robinson spent the last weeks of June and the first weeks of July moving throughout the islands off the north west coast. His aim was to meet with the island tribes and any sealers who had taken up residence with Aboriginal women on the islands or along the coast. Robinson was eager to make his presence known, though dubious about the reception he would receive. His preconceived ideas about their moral characteristics clouded his judgement. He considered “it would be the greatest act of humanity to take them [the Aboriginal women] out of the hands of their enemies [the sealers]” and noted in his journal that “I am anxious to proceed towards the more settled districts and these first steps can only be viewed as preparatory, though more has been

⁶⁷Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.437.

⁶⁸Plomley, *Friendly Mission*, p.176.

accomplished than I could positively have anticipated.” At this stage Robinson had planned to go to the Big River tribe first and then later to head to the sealers in the Furneaux group. Arthur’s Black Line operations, however, led him to change his plans and so he set sail for the islands.⁶⁹

On his way to Emu Bay at the end of June Robinson spent a few days at Circular Head with Edward Curr. There he had met three north western Aborigines: brothers from the Pairrehehoinne band of Robbins Island, Tunneminnerwate (Peevay) and Pendowtewer, and a young woman from the Peerapper band of West Point, Narrucer. Though he had been reluctant to remove anyone from their territories, news of Arthur’s offers of rewards led Robinson to send his boat back to Robbins Island to collect the three: Pendowtewer, Narrucer and Peevay.⁷⁰ Pendowtewer and Narrucer were sent to Launceston but Robinson attached Peevay to his expedition party.⁷¹

Robinson arrived at Emu Bay on 28 July where he stayed with the storekeeper before leaving to meet the Captain George Robson, superintendent of the Van Diemen’s Land Company establishments at Hampshire and Surrey

⁶⁹Plomley, *Friendly Mission*, pp. 180 & 319.

⁷⁰Plomley considers this the beginning of the “commercialisation” of Robinson’s mission, for he put aside strategies for conciliation and amelioration in consideration of monetary reward; see Plomley, *Friendly Mission*, p.235, fn.132.

⁷¹For further discussion on the role that Peevay played in Robinson’s mission see Ian McFarlane’s unpublished PhD thesis, *Aboriginal Society in North West Tasmania: Dispossession and Genocide*, University of Tasmania, 2002, especially Chapter 5.

Hills. Robinson spent his time at Emu Bay reading and responding to correspondence. One of the letters he sent out was a preliminary report to Arthur describing his experiences to date. "In prosecuting the objects of my mission I have endeavoured," he wrote,

1st: to effect reconciliation. I have endeavoured to impress upon the minds of the Aborigines your Excellency's anxious desire to ameliorate their condition.

2nd: [I] have endeavoured to check that hostile feeling so apparent on the part of the whites against the blacks by assuring them that any outrages committed upon the Aborigines will meet with your Excellency's displeasure.

In the course of my enquiring I find that (in most instances) the whites have been the aggressors and some cruel misfortunes have been committed.⁷²

In a letter to his patron, Reverend William Bedford, he wondered:

Had this attempt been made some few years ago I have not hesitation in saying that ere this a most perfect system might have been established and our communication kept up with every aboriginal throughout the island. At present I am of the opinion that

⁷²Robinson to Arthur, 29 July 1830, CSO 1/318/7578, Reel SLTX/AO/CS/115, pp.10–25.

all those aboriginal natives inhabiting the settled districts should be removed, for although tranquillity on the part of the aborigines be restored, yet such is the character of the men who are employed in the interior in shepherding, that at every opportunity fresh outrages would be perpetrated and the poor defenceless aborigines would be goaded on again to retaliate...⁷³

While Arthur was organising his military campaign in Hobart, Robinson left Emu Bay intending to head for the Great Western Tiers. On his travels through the Hampshire Hills, the Surrey Hills, St. Valentine's Peak and Middlesex Plains, Robinson detected his first signs of the true nature of colonial relations in the interior. Aboriginal-settler relations were anything but amicable in the country to the north of Cradle Mountain. The Van Diemen's Land Company had alienated much Aboriginal land and the influx of convict servants and graziers, as well as the ever-present sealers, created tension and hostility between settler and Aboriginal groups. Robinson was particularly concerned for his safety because he was entering territory where the notable female guerrilla leader, Walyer, who had been dubbed the "Amazon", had led particularly brutal assaults on settlers and convicts. Walyer had developed a reputation in the north amongst European and Aboriginal groups alike. Loyal

⁷³Plomley, *Friendly Mission*, p.235, fn.132.

to no-one, she had led raids against both groups. Robinson would later capture her and remove her to Swan Island but in the meantime she found refuge with the sealers with whom she had found refuge. Such was Walyer's wrath and so deep was her desperation that, according to Robinson, "she was not only to be dreaded by the whites, numbers of whom had been massacred by her, but she was a terror to all the natives she came in contact with. . . ." ⁷⁴ Robinson was, thus, equally as nervous about the dangers he faced from hostile Aboriginal groups, as he was from the men of the Van Diemen's Land Company. However, despite his concern about Walyer and her band, his empathy lay with her and her people. Robinson reflected in his journal.

Their wrongs are handed down from generation to generation. How then can we wonder at their committing outrages upon the white inhabitants? Who is there to avenge their wrongs? The children have witnessed the massacre of their parents and their relations carried away into captivity by these merciless invaders, their country has been taken from them and the kangaroo, their chief subsistence, have been slaughtered wholesale for the sake of paltry lucre. Can we wonder then at the hatred they bear to the white inhabitants?

⁷⁴Plomley, *Friendly Mission*, pp.295-297.

This enmity is not the effect of a moment. Like a fire burning underground, it has burst forth. This flame of Aboriginal resentment can and ought only to be extinguished by British benevolence. We should fly to their relief. We should make some atonement for the misery we have entailed upon the original proprietors of this land... The most wanton cruelties have been practised upon them and who is there to whom they can make their grievance known?

Till lately no steps was taken to ameliorate their condition.”⁷⁵

On 2 October 1830, Robinson arrived at Launceston, his first mission completed. By then he had already decided to undertake an expedition to the sealers residing in the Bass Strait Islands. He soon learned that the Black Line was about to begin “and that there was nothing more for me to do, that they was now going to catch all the natives by driving them to Tasman’s Peninsula.”⁷⁶ Less than a week later Robinson began preparations for his next journey. With the aid of Mannalargenna and his kinswomen, Kumbanner, Karnebutcher and Luggenemenener, whom Robinson would shortly meet, there was every reason that the next expedition would prove successful.

⁷⁵Plomley, *Friendly Mission*, pp.202–203.

⁷⁶Plomley, *Friendly Mission*, p.224.

Chapter 7

Robinson and the Bass Strait Sealers

...before his Honour could concur in the advice of the rest of the Council, he wished it to be ascertained whether some treaty could not be made with these people...¹

From King Island, off the north west coast of Van Diemen's Land, across to the Furneaux group in the east the islands of the Bass Strait were the seasonal billets of gangs of men who were landed on the islands to hunt seals for their fur and oil during the early decades of the nineteenth century. Comprised

¹Chief Justice John Lewes Pedder quoted in Minutes of Executive Council, 23 February 1831, in Arthur to Murray, 4 April 1831, CO 280.28, PRO Reel 247, pp.436-437.

of British, American, French and Russian operations, sealing at this time was very much an international interest. Eventually the islands became permanent homes for some. As the region and the industry attracted convict absconders and others seeking to remove themselves from control by the colonial institutions in Van Diemen's Land and New South Wales, small island communities evolved. When the seal population began to decline these men, with their Aboriginal partners, turned to mutton-birding to maintain a livelihood.² By the time George Augustus Robinson arrived in the islands the Bass Strait community had subsisted for almost three decades. As he soon discovered, it was the relations that the sealers had developed with the Aborigines of the north and east coasts which allowed the community to endure.

An examination of Robinson and the Bass Strait sealing community reveals the paradox that was the Bass Strait Islands. These islands ultimately proved to be both a prison and a refuge for the various Aboriginal groups who found themselves there. The government-sanctioned reserves, though designed to protect and nurture the Aborigines—albeit as future Christians—ultimately came to be prisons for them. Conversely, those Aboriginal women

²T. Jetson, "An Island of Contentment? A History of Preservation Island", *Tasmanian Historical Research Association, Papers and Proceedings*, 43.1, 1996, pp.29–46; N.J.B. Plomley, *The Sealers of Bass Strait and the Cape Barren Island Community* (Hobart, 1990); S. Murray-Smith, "'Beyond the Pale': The Islander Community of Bass Strait in the Nineteenth Century", *Tasmanian Historical Research Association, Papers and Proceedings*, 20.4 (1973), pp.167–200.

who were often taken from their tribes by the sealers and removed to the islands and kept as prisoners and chattels eventually assumed the role of overseers of a burgeoning Aboriginal community and culture. To place in context how these paradoxes came to exist, this chapter will consider Robinson's efforts with the surviving north-eastern groups, his time with the Bass Strait sealers, and Lieutenant-Governor George Arthur's seemingly incongruous dealings with each.

§

During September and October 1830, with the Black Line in progress, Robinson focussed his efforts on those bands still in the north. Though Arthur clung to the idea of an Aboriginal reserve in Van Diemen's Land proper, he nevertheless supported Robinson's efforts to investigate possible sites in the Bass Strait islands because he realised that the removal of the Aborigines from the colony was becoming inevitable. While Arthur was reluctantly pondering the reality of Aboriginal exile, in the United States, President Andrew Jackson was making historic strides towards dispossessing five south eastern Native American nations. Winning the presidency in November 1828 on a campaign focusing on this end, Jackson was able to convince Congress to quickly pass removal legislation and soon afterwards the "Five Civilized Tribes"—the

Cherokee, Chickasaw, Choctaw, Creek and Seminole—found themselves facing exile on reserves in what later would become the state of Oklahoma. For the Cherokee nation what would result would be the exodus of 6,000 of their people from Georgia and Arkansas in a journey which came to be known as the “Trail of Tears.”³

The difference between the removal of the native American tribes and the removal of the Aborigines of Van Diemen’s Land came down to choice. The native American tribes had the choice to remain on their traditional lands. If they chose to stay they would be treated as American citizens. They would not receive the special benefits and protection that those who moved to the reserves were promised. If they wanted to remain on their traditional lands they would be required to purchase them from the state, because once the removal bill was passed the lands became the property of the state.

On the other hand, for the Aborigines of Van Diemen’s Land, there was no such opportunity to choose to stay. For all intents and purposes, they were enemies of the state. Though Arthur, like Jackson, had espoused a protectionist policy, in reality he could not protect the Aborigines from the activities of the outlying colonists any more than he could protect the colonists from the activities of the Aborigines. Moreover, even if Arthur was able to put an

³Prucha, *The Great Father*, p.207; W. McLoughlin, *Cherokee Renascence in the New Republic* (Princeton, 1986).

end to the hostilities, the Aborigines still would not have the ability to sustain their traditional livelihoods. There simply was not enough space for pastoral and hunter/gather industries to coexist. Thus, with almost no opportunity for Aboriginal incorporation into colonial industries, there remained no choice but to accept removal.

A second major difference between what happened in north America and what happened in Van Diemen's Land was the size of the reserves created and the size of the populations being removed to them. Tens of thousands of Cherokee went to Oklahoma where their reservation covered hundreds of thousands of acres. As a result, they were able to preserve their culture. The Aborigines who were removed to Flinders Island faced a very different fate. Flinders Island was a scant 1,400 square kilometres in size. The population never exceeded 123 Aborigines and those who did survive the onslaught of disease were in no position to attempt to adapt their traditions and customs to their new lifestyles. Their lives and lifestyles were rigidly controlled by their European overseers who actively discouraged the Aborigines from partaking of their customs and traditions. Moreover, even if the Flinders Island Aborigines could adapt their traditions, there was no new generation to carry on their culture. None of the babies born to the reserve Aborigines survived beyond

childhood.⁴ As such, the future of the Aboriginal culture of Van Diemen's Land fell to the sealing communities who inhabited the islands surrounding Flinders Island.

7.1 Robinson and the Northeastern Tribes

At the beginning of October 1830 Arthur sent Robinson off "with boats, presents for the natives and whatever you may judge necessary to further the object of your expedition."⁵ The next twelve months would prove a great challenge. Though Robinson would find the Oyster Bay and Stoney Creek Tribes cooperative, locating a suitable site for a reserve was a different matter altogether. He would have to move the mission to several different locations before he found one he thought suitable for the long-term accommodation of the Aborigines. However, his greatest difficulties would come from the sealers who effectively resisted Robinson's attempts to remove their women and break up their communities. Robinson was often nonplussed by Arthur's ambiguous attitude to this issue.

Robinson and his party set out from Launceston for Cape Portland on 8 October 1830. They travelled overland while two vessels sailed along the coast carrying their supplies. At the Cape, Robinson established a base camp from

⁴Ryan, *The Aboriginal Tasmanians*, pp.182–194.

⁵Frankland to Robinson, 7 October 1830, in Plomley, *Friendly Mission*, p.435, fn.6.

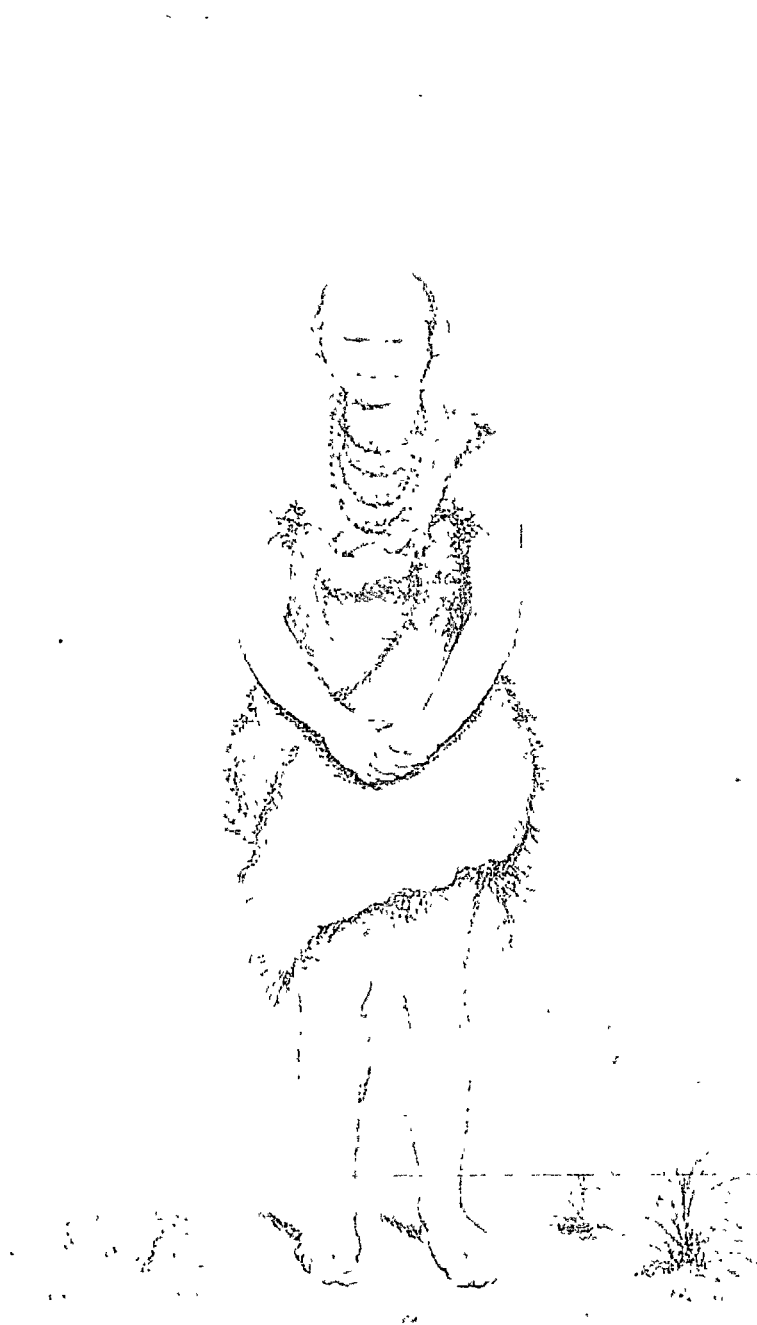


Figure 7.1:
Benjamin Duttereau's *Tanleboueyer*, a Native of the District of Oyster Bay
and the Wife of Manalargena was Attach'd to the Mission in 1830, 1830,
Source: Allport Library and Museum of Fine Arts, State Library of
Tasmania; image taken from <http://images.statelibrary.tas.gov.au>.

where he travelled to the various islands and along the north east coastline. Robinson took with him Kickerterpoller, Pagerly, Peevay, Timmy, Trugernanna and Worraddy. In addition, two sealing women, Jumbo (Bulyer) and Sall (Tanleboneyer), joined him at Launceston. At the command of Launceston Police Magistrate, William Thomas Lyttleton, Bulyer and Tanleboneyer had been taken from the islands by James Parish prior to Robinson's arrival.⁶ On 1 November 1830 Robinson made contact with Mannalargenna, accompanied by Karnebutcher and Kubmanner, near Eddystone Point. He presented the chief "with a few baubles" and in response he "saluted me with a kiss—probably he had heard the white people kiss."⁷

Though Mannalargenna welcomed contact with Robinson and though his band had every reason to remain with the mission party, Robinson was still fearful that they would abandon him. "[I] now disclosed to them in ample terms," he wrote,

the whole purport of my visit, made known the military plans that were in operation against them and the desire of the government to benefit their condition. I then described to them the nature

⁶One of the vessels was commanded by Captain John Welsh. In August 1830 Arthur published a government notice acknowledging that both Welsh and Robinson "have succeeded in opening a friendly intercourse" with the Aborigines. Welsh was superintendent of vessels at Launceston and most of his dealings with the northern Aborigines were as a result of this employment; see Plomley *Friendly Mission*, pp. 246, 436, fn.6; Government Notice 160, 19 August 1830, *Hobart Town Gazette*.

⁷Plomley, *Friendly Mission*, pp.260–263.

and formation of the Line... and further informed them that the mighty enemy who were at that time engaged in capturing their countrymen to the southward would shortly appear in formidable array in front of their own territory... I then made known to them my intention of visiting the islands in the straits and the determination of the local government to emancipate the female aborigines who were kept there in a state of subjugation by the sealers... I proposed to them to accompany me to Swan Island as a place of security and to remain there whilst I repaired to the islands referred.⁸

Robinson noted that "in reply to this preamble they complained in bitter terms of the injuries to which they and their progenitors had been exposed through the medium of the whites, and seemed to fully appreciate the sympathy I expressed on their behalf." He was confident that he had the full support of Mannalargenna and his group.⁹

During this expedition Robinson collected a total of fifty-eight Aborigines from the islands and the east coast. Some had been captured by settlers and roving parties, but the majority were women retrieved from the sealers.

⁸Robinson to Burnett, 24 February 1831, CSO 1/318/7578, Reel SLTX/AO/CS/115; see also Plomley, *Friendly Mission*, pp.438–9, fn.44.

⁹Robinson to Burnett, 24 February 1831, CSO 1/318/7578, Reel SLTX/AO/CS/115; see also Plomley, *Friendly Mission*, pp.438–9, fn.44.

Later, six of the women were returned to the sealers. Apart from the taking of Peevay, Pendowtewer and Narrucer from Robbins Island the previous July, this was the first instance where Robinson actually took Aboriginal groups into custody. Ryan considers that Robinson's mission to the sealers was the point where he changed from "conciliator to captor."¹⁰

Mannalargenna was certainly the most important individual to join Robinson's mission to this point. As an eastern chief he could prove pivotal in negotiating with the sealers. He had been associated with them since boyhood. He was familiar with European ways and, as a tribal elder, he held the respect and reverence of his people. Mannalargenna's alliance with Robinson was vital for, as Ryan notes, his was the first group Robinson had met where the members had been active against the settlers.¹¹

Robinson found that most of the north eastern groups with whom he came into contact were eager to join him. Moreover, his own guides seemed willing to accept the terms he offered them for peace and security. Ryan argues that this was the case because a mutual dependence had developed between them.¹² However, the ease with which Robinson was able to make contact and negotiate with new groups was also facilitated by the fact that most of the Aborigines he now met had kinship ties with one or more of his guides. If

¹⁰Plomley, *Friendly Mission*, pp.355-6; Ryan, *The Aboriginal Tasmanians*, p.145.

¹¹Gray to Arthur, 23 October 1830, CSO 1/316/7578; AOT Reel SLTX/AO/CS/114, pp.691-695; Ryan, *The Aboriginal Tasmanians*, p.149.

¹²Ryan, *The Aboriginal Tasmanians*, p.159.



Figure 7.2:
Thomas Bock's *Mannalargenna, a Chief of the Eastern Coast of Van
Diemen's Land*, 1831, Source: National Library of Australia;
image taken from <http://nla.gov.au/nla.pic-an6428961>.

they were not related by blood, they at least were bound by traditional tribal associations.

On 15 November the rest of Mannalargenna's band joined Robinson's party on Swan Island. Luggenemenener was with them. This group had separated from Mannalargenna shortly after leaving Batman's Ben Lomond residence. Recognising Kickerterpoller, Luggenemenener convinced her companions to join Robinson's guides and return to Swan Island.¹³

A week later Robinson returned to the coast leaving his convict servant, James Parish, to travel to the sealers to collect more women. Parish made two trips to the islands in December, during which time he collected eleven more women. Robinson now focussed on capturing Umarrah.¹⁴ Arthur encouraged Robinson's efforts, noting his "pleasure at [Robinson] procuring the

¹³The six were all from the north east: Luggenemenener (Ben Lomond), Terlanderreenener (Ben Lomond), Trueermarmarmenener (Ben Lomond), Pundooternoonnenner (Ben Lomond), Woreterlettelnenne (Piper's River) and Tillarbunner (Piper's River).

¹⁴Ryan notes that at the commencement of the mission there remained only four groups in the east: Walyer's remnant band was at Port Sorell—though the "Amazon", herself, had returned to the sealers; the Big River people were at Fingal Bay; and Umarrah led one of the two groups who were moving throughout the George Town district. Now that Mannalargenna was with Robinson, Umarrah's was the only band still unaccounted for in the north east. During this time Umarrah had murdered servants belonging to James Scott, Major William Gray, Captain Robert Stewart, the settler James Gildas, as well as Bartholemew Thomas and his servant James Parker. The eleven women included Pollerrelberner (Juded), Pollerwotteltelerrunne (Margaret) and her child, Tarenootairrer (Tibb), Weybermueninner (Tekartee), Woreterpyeerternanne (Jock), Wottecowwidyer (Wot), Nickerumpowwerter (Little Mary), Nollawollaker (Little Kit), Plownneme (Pangem), Tarrenorerer (Walyer, later named Mary Ann) and Woretermoteteyer (Bung); see Plomley, *Friendly Mission* p.479; Ryan, *The Aboriginal Tasmanians*, p.150; Lyttleton to Burnett, 18 October 1830; Gray to Burnett, 19, 23, 24 October 1830, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.690–715.

natives” and “satisfaction at the intrepidity and the discretion which [he] had evinced...”¹⁵

Robinson decided in early December that he would return to Hobart to discuss with Arthur the details of his plans for a permanent Aboriginal establishment in the islands. He met with the governor on 19 January 1831. This was the first opportunity since the conclusion of the Black Line that Arthur and Robinson had to discuss his expedition. Now that military force against the Aborigines had taken its course Arthur was ready to put his full weight behind Robinson’s conciliatory mission. A government notice dated 19 February 1831 proclaimed

The Lieutenant-Governor, having had under consideration the report of the Aborigines Committee of the 4th instant, detailing the proceedings of Mr. G.A. Robinson, on his Conciliatory Mission to the Aborigines, with a view of opening an amicable intercourse and friendly communications with the whole of the black population of this island, feels great pleasure in notifying, by public order, that Mr. Robinson has, in the opinion of the Committee, accomplished in a great measure the objects of his missions, *and that in so doing*

¹⁵Burnett to Robinson, 23 November 1830, CSO 1/321/7578, AOT Reel SLTX/AO/CS/114, pp.123–124; see also Plomley, *Friendly Mission*, pp.289 & 441, fn.71.

he has manifested the most daring intrepidity, persevering zeal, and strenuous exertion... The success which has already attended the conciliatory measures adopted by Mr. Robinson in his intercourse with the Aboriginal natives will, it is most sincerely hoped by the Lieutenant-Governor, be the means of inducing other inhabitants to embark in the same useful cause, and it will always afford his Excellency great pleasure to reward with equal liberality and exertions which may prove as beneficial to the community, and the Aboriginal Natives themselves.¹⁶

Robinson was rewarded with an increase in salary to £250 per year, a bonus of £100 and a grant of 2,560 acres of land.¹⁷

Having convinced the Aborigines Committee that Gun Carriage Island would be the most suitable site for a mission, Robinson transferred seven Aborigines who were in custody in Hobart to Swan Island. On 16 March the entire Swan Island camp, consisting now of fifty-one Aborigines, including four who had been transferred from Launceston and a sickly child who had been handed over by a group of sealers, were shipped to Preservation Island. They would remain there until the resident sealers of Gun Carriage Island had departed.¹⁸

¹⁶ *Hobart Town Gazette*, 19 February 1831.

¹⁷ *Hobart Town Gazette*, 19 February 1831; Plomley, *Friendly Mission*, p.319 & 451.

¹⁸ Four of the seventeen were Robinson's guides who had accompanied him from the east

The Executive Council, whose members included Lieutenant Colonel Patrick Logan, Secretary Burnett, Governor Arthur and Chief Justice Pedder, met in February 1831. The members were satisfied that Robinson's mission was proceeding well. Robinson had assured them that he was confident of the possibility of "effecting the voluntary removal of the entire black population, by holding out to them the inducements of food, clothing, and protection of the government from the aggressions of sealers and bushrangers." This promise of protection, the Council felt, could only be fulfilled if the reserve was some distance from the mainland. Robinson agitated strongly for this measure. He did

not think the natives could now be induced to retire altogether from the settled districts and occupy the unlocated parts of the island, or that a negotiation [sic] to that effect could now be accomplished through their chiefs; nor could the natives be restrained from attacking the white people, or be bound to confine their excursions to the unsettled parts of the island, even if arrangements were made by the government through their chiefs to secure them in such situations from the encroachments of the settlers and stock-keepers. If their chiefs were to promise to conform to such arrangements, and

coast: Woorady, Trugernanna, Kickerterpoller and Pagerly; see Plomley, *Friendly Mission* pp.317-319 & 324.

to engage themselves to prevent further aggressions on the part of their tribes, he does not think the promises would be attended to by the tribes, as the chiefs have not sufficient power over them to enforce obedience.¹⁹

Robinson's recommendation for Gun Carriage Island was accepted, it being eleven leagues²⁰ from the coast. A vessel made available to supply provisions and guard the island would further ensure the settlement's safety and isolation. In the colony, existing tribes would be gathered up and transferred to the reserve. Settlers in the interior would be protected by "small armed parties...stationed in the most remote stock-huts, but...the roving parties should be discontinued."²¹

Significantly the only recorded opposition in the Council to this proposal came from the colony's chief legal officer, Chief Justice John Lewes Pedder. He felt that more should be done before the Aborigines were exiled permanently.

Contrary to Robinson who felt that the islands could provide completely for

¹⁹Minutes of Executive Council, 23 February 1831 in Arthur to Murray, 4 April 1831, CO 280/28, PRO Reel 247, pp.427, 430-431.

²⁰55 kilometres.

²¹Minutes of Executive Council, 23 February 1831, in Arthur to Murray, 4 April 1831, CO 280/28, PRO Reel 247, p.428; In 1826 Captain John Welsh, superintendent of marine at Launceston, made a similar suggestion regarding the establishment of a penal settlement on Cape Barren Island. In an inquiry into the sealing industry, Welsh thought that Van Diemen's Land and the islands of the Bass Strait could be better protected by manning Cape Barren Island with a small force of soldiers, an assortment of "the most depraved convicts" and arming it with a "small armed vessel"; see L. Murray, *An Account of the Whaling and Sealing Industries of Van Diemen's land to 1850*, unpublished Honours Thesis, University of Tasmania, 1972.

the Aborigines, Pedder worried that they would be despondent. “[H]owever carefully these people might be supplied with food”, he lamented



Figure 7.3:
Chief Justice John Lewes Pedder, *Source:* Archives Office of Tasmania,
30/280; image taken from <http://www.foundingdocs.gov.au>.

they would soon begin to pine away when they found their situation one of hopeless imprisonment, within bounds so narrow as necessarily to deprive them of those habits and customs which are

the charms of their savage life.²²

“He meant”, the Executive Council recorded in its minutes, “their known love of change of place, their periodical distant migrations, their expeditions in search of game, and their unbounded liberty of which they have hitherto been in the enjoyment.”²³

Pedder believed that Robinson had, in effect, demonstrated that “more could be attainable” and

before his Honour could concur in the advice of the rest of the Council, he wished it to be ascertained whether some treaty could not be made with these people, by which their chiefs should engage for their tribes not to pass certain lines of demarkations which might be agreed upon, and that it should be proposed to them to allow an European agent to reside with or accompany each tribe.²⁴

Pedder “thought such agents would most materially contribute to maintain any amicable engagement of this sort which might be concluded... [S]uch agents would serve the double purpose of protecting the natives on the one hand, and

²²Minutes of Executive Council, 23 February 1831 in Arthur to Murray, 4 April 1831, CO 280.28, PRO Reel 247, pp.436–437.

²³Minutes of Executive Council, 23 February 1831 in Arthur to Murray, 4 April 1831, CO 280.28, PRO Reel 247, pp.436–437.

²⁴Minutes of Executive Council, 23 February 1831, in Arthur to Murray, 4 April 1831, CO 280.28, PRO Reel 247, pp.436–437.

of checking any disposition towards hostility on their part on the other. . . .”²⁵

Pedder’s position was remarkable for he was the only colonial chief justice in Australia to propose that a treaty be negotiated with an Aboriginal group. To be sure, his knowledge of the Aboriginal situation in Van Diemen’s Land was solid. Pedder played an integral role in the shaping of legal precedent as it applied to Aboriginal issues in Van Diemen’s Land. He heard several cases involving Aborigines both as victims and as defendants (indeed, his very first case in Van Diemen’s Land involved the slaying of an Aboriginal man) and his membership on the Executive and Legislative Councils meant that he was privy to every decision Arthur made regarding Aboriginal policy.²⁶

Arthur, nonetheless, had reluctantly come to the conclusion that there was “no hope of establishing any permanent good understanding” with the Aborigines who maintained a presence in the settled districts. To Murray, he finally admitted that exile—his earlier categorical rejection of such a solution notwithstanding²⁷—was now the only answer, for he could not ensure their

²⁵Minutes of Executive Council, 23 February 1831, in Arthur to Murray, 4 April 1831, CO 280.28, PRO Reel 247, pp.436–437.

²⁶J.M. Bennett, *Sir John Pedder: First Chief Justice of Tasmania* (Hobart, 1977); P.A. Howell, Pedder entry, D. Pike (ed.), *Australian Dictionary of Biography*, v. 2 (Melbourne, 1967), pp.319–320; Decisions of the Nineteenth Century Tasmanian Superior Courts, Division of Law, Macquarie University and the School of History and Classics, University of Tasmania, <http://www.law.mq.edu.au>.

²⁷One will recall his despatch of January 10 1828 to Colonial Secretary Goderich in which he expressed his grave concerns that his Aboriginal wards “would be exasperated to the last degree to be banished altogether from their favourite haunts;” see Arthur to Goderich, 10 January 1828, *HRA*, III.7, p.27; Arthur to Murray, 12 September 1829, *HRA Resumed Series* III.8, pp.607–609.

safety against certain groups of settlers. He did not feel that the Aborigines could be induced to remain within the prescribed limits of a reserve. Moreover, he felt that though the "respectable class of settlers" would observe the terms of a treaty, their "servants, runaway convicts, stock keepers and all that class of character, who, being free by servitude, are under no special control" would most likely not. To this end, he finally felt forced to support the plan for an off-shore reserve, "for even if they should pine away," he lamented,

in the manner the Chief Justice apprehends, it is better that they should meet with the death in that way whilst every act of kindness is manifested towards them, than that they should fall a sacrifice to the inevitable consequences of their continued acts of outrage upon the white inhabitants.²⁸

The irony was that the Aborigines who did survive were those who were living in the communities that the colonial government had shunned. Wybaleena, the reserve on Flinders Island where Robinson's Aborigines would eventually be accommodated, came to be in essence a prison for them. They found themselves in exile, the vague promises made to them about their returning to their homelands never being honoured. In response, they forged new lives, as Reynolds describes with "adaptability and resourcefulness" and were able to

²⁸Arthur to Murray, 4 April 1831, CO 280/28, PRO Reel 247, pp.423-424.

maintain their Aboriginal identity and remain politically active and passionate.²⁹ Nonetheless, as more and more of their people succumbed to respiratory disease, death and despondency remained a central theme of life on the reserve. Moreover, it quickly became apparent to the Aborigines that they would never again return to their homelands. Wybaleena, thus, ultimately proved to be a prison for many of the Aborigines of Van Diemen's Land who found themselves exiled there.

The Aborigines who remained attached to the sealing community, on the other hand, survived and prospered. Because they had the opportunity to adapt their traditional customs in ways that gave their lives meaning, the Aboriginal sealers, though their lifestyles were far from easy, did not suffer the despondency of their Flinders Island kin. Moreover because the majority of them were women there was the opportunity for subsequent generations to carry on their legacies. These women and their progeny eventually assumed the role of custodians over a new Aboriginal society and culture in the Bass Strait islands. As a consequence the sealing communities of the Bass Strait islands eventually became the refuge for the Tasmanian Aborigines that neither Flinders Island nor Van Diemen's Land would ever be.

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²⁹H. Reynolds, *Fate of a Free People*, p.189.

With the fate of the eastern tribes thus cemented, the Executive Council reconvened in March 1831 to discuss long term options for the Aborigines of Van Diemen's Land. As Robinson's reports to the governor's office continued to chronicle his successes with the Aborigines, the council surmised that ambassadorial excursions to the tribes of the west coast would undoubtedly prove effective. The plan was for a negotiated agreement for their removal. Ambassadors to the Aborigines could, the Council suggested,

confer with the hostile tribes, and explain the humane and kind disposition of the government towards them, with the assistance of such natives as may be depended upon, and, if possible, negotiate with their chiefs either to proceed to the establishment, or to bind themselves to commit no further outrage on the condition of receiving food and clothing, and protection from all aggression.³⁰

The Council concluded that the

time for negotiation [sic] is peculiarly favourable, because it is evident that the mobs who were so lately encompassed on the occasion of the general expedition have been exceedingly alarmed, and have not since committed any outrages; it is therefore highly probable

³⁰Minutes of Executive Council, 14 March 1831 in Arthur to Murray, 4 April 1831, CO 280.28, PRO Reel 247, p.444.

that they may be more favourably disposed for conciliation than heretofore.³¹

7.2 Robinson and the Sealers

Robinson's conviction that the sealing community must be dismantled was guided by a number of motivations. Plomley argues that Robinson was driven by the realisation that "the activities of the sealers were the most important cause of ill-feeling against the whites in the northern part of the island."³² However, both Arthur and Robinson had other reasons for wanting to disperse the sealers.

For Arthur, the existence of sealing communities in the Bass Strait was disturbing because, in the words of scholar Stephen Murray-Smith, its members "displayed a determined genius in evading the imperatives of a higher authority in any form." As the chief executive of a convict colony, concerned to effect order and humanity, it was "an affront...that a no man's land existed, and even more that it was a place of resort for those who wished to live beyond the pale."³³ The sealers did, indeed, live beyond the pale. They did not live the

³¹Minutes of Executive Council, 14 March 1831 in Arthur to Murray, 4 April 1831, CO 280/28, PRO Reel 247, p.445.

³²Plomley, *Friendly Mission*, p.436, fn.6.

³³S. Murray-Smith, "Beyond the Pale: The Islander Community of Bass Strait in the Nineteenth Century", *THRA Papers and Proceedings*, 20.4 (1973), pp.168 & 171-2.

structured, Christian lives of cultured English citizens. They lived in a harsh environment and they were dependent on industries that were unsustainable over the long term. In choosing to isolate themselves, they relinquished access to the support that being a member of a colonial society presupposed, when their industries began to decline. Physically, too, their lives were difficult and dangerous. They lived on small, windswept islands often isolated for months on end, relying on ships passing through for many of their provisions. Their interaction with Aboriginal bands and their atrocities against the women exemplified the brutality that came to define their lives. Abhorrent as this was, what was more abhorrent to those observing the sealing fraternity from the colonies was the fact that much of the same brutality was carried out by the likes of convicts and other settlers within the confines of the colony itself, and there seemed little anybody could do to prevent such behaviour. As such, as historian Tim Jetson points out, the “sealers [became] a convenient scapegoat for a society eager to shed its frontier image.”³⁴

For Robinson, the existence of the sealing community was deplorable for more personal reasons. This was a group that undermined his authority and threatened the tenuous control he had established over the Aboriginal bands along the north and east coasts. As justification for seeking to disband the

³⁴T. Jetson, “An Island of Contentment? A History of Preservation Island”, p.35.

fraternity, he highlighted the wretched treatment by the sealers of the Aboriginal women whom he sought to emancipate from a state of slavery. In the introduction to his never-completed book Robinson wrote,

[t]hence it became apparent that they were an indolent and an iniquitous people who were occupying the land of the crown and were carrying on a sort of slave trade which reflected the highest odium on themselves as men who aspired to the name of Christians and further tended to subvert the best devised measures of the Colonial Government on behalf of the unprotected aborigines.³⁵

Robinson's depiction of the Aboriginal women as victims highlights not only an underlying agenda to present himself as a saviour of sorts but also his naivety about the nature of their relations with the Bass Strait sealers. Certainly there were women living with the sealers who had been removed from their people and kept in the islands against their will. However, there were others, as Robinson soon learned, who chose to stay even when offered the opportunity to rejoin their kin.³⁶

This would come to haunt him when faced with the sealer James Munro

³⁵Plomley, *Friendly Mission*, pp. 279 & 431, fn.1.

³⁶see Memo on Condition of Native Women in the Straits, circa 1830, Bedford Papers, 1823-1843, MLA76, CY Reel 1768; Plomley, *Friendly Mission*, p.297; Evidence of James Kelly in Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.421.

who utilised his deeper, more intimate knowledge of the northern and eastern Aborigines of Van Diemen's Land to outwit Robinson. Munro had developed knowledge of the Aborigines of Van Diemen's Land before they fell into crisis. He knew them when they were not being hunted and harassed and, as such, unlike Robinson, he would have come to know not only the complexity of their traditional culture and society, but the intricacies of their political and diplomatic customs. His relations with them developed, as Ryan notes, to the point where they became mutually dependent on one another.³⁷ As such, he knew the Aborigines not as passive recipients of the goodwill of a condescending, patronising overseer, but as engaging, adaptable participants in a cross-cultural relationship. Moreover, Munro's relations with the various women with whom he cohabited over many years were necessarily much more intimate than those that Robinson had formed with his mission guides. As their role as cultural custodians in what would become very much a matriarchal community developed, Munro would have understood that, though the initial decision to have them join the sealing community might not have been theirs, later, when Robinson gave them the option to leave their island homes, the choice of whether to go or stay certainly was.

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³⁷Ryan, *The Aboriginal Tasmanians*, p.67.

Though Robinson's convict servant, Parish, had been the one sent to the islands to collect women from the sealers, Robinson realised that he would have to eventually seek an audience with them himself and so on 9 November 1830, he set out to for the islands. Robinson took the sealing woman, Jumbo, with him. Parish had removed Jumbo from the sealer, James Munro before Robinson's arrival in the islands. Munro was one of the three sealers Robinson would shortly meet with. The other two were Charley Peterson and his namesake, George Robinson. Though old and frail, Munro proved a formidable adversary for Robinson. Charley Peterson, on Gun Carriage Island, and George Robinson, on Woody Island were also elderly men. George Robinson was a sailor who had settled in the islands around the beginning of the century. Both had Aboriginal women living with them.³⁸

During several visits during October and November, G.A. Robinson informed the sealers that the colonial government had instructed him to remove the women but, aware of their age and infirmity, he allowed one woman, Ploor-ernelle, and her child, to remain with the sealer, Robinson, on Woody Island. Robinson removed Mannalargenna's sister, Toogernuppertootenner. The two women attached to Charley Peterson, Smoker (Tencotemanener) and Isaac (Woreterlokekoteyer), appeared eager to join Robinson. Neither Peterson nor

³⁸Plomley, *Friendly Mission*, p.268-74 & 1014-15, ; R.M. Fowler, *The Furneaux Group, Bass Strait, A History* (Canberra, 1980), p.190; H. O'May, *Sealers of the Bass Strait* (Hobart, 1959), p.20; Jetson, "An Island of Contentment?", pp.29-46.

Robinson attempted to stop the conciliator from taking their women. However, Munro and the sealer, Edward Mansell, were not so willing to concede to Robinson's demands and took active steps to thwart his efforts.³⁹

When Robinson arrived in the islands he found a community permanently based there. The sealing community was relatively self-sufficient, drawing its livelihood at this stage from sealing and later from mutton-birding. Its members had built homes and established gardens and had developed their own style of law and order. A chain of command had evolved. Munro maintained considerable status amongst the menfolk. Possessing "considerable influence over the other black women", Mother Brown (Pleenperrenner), wife to John Smith, appeared to be the matriarch of the islands. Nevertheless, despite the island community being well-established, Robinson, believing that he had Arthur's full support to do so, felt confident that he could and should dismantle it.⁴⁰

Robinson was always concerned about his lack of command over the sealing community and so petitioned the governor for greater authority in the islands. He was thus sworn in as a Special Constable there and early in March 1831 Arthur sent him specific instructions on how to conduct himself with the

³⁹Plomley, *Friendly Mission*, pp.245-74.

⁴⁰Plomley, *Friendly Mission*, p.270-272, 285, & 333-334.

sealers. Robinson was instructed to investigate the nature of the island communities, removing to Swan Island any women who did not specifically consent to remain. The governor informed him that if he met with resistance he would be “justified in using *force* to accomplish the object,” though the Governor remained adamant that if the women “are not disposed to accompany you, you are not to interfere any further.”⁴¹

Robinson returned to the islands on 19 March with notices for the sealers. The residents of the Furneaux group were ordered to quit the islands and to “deliver up” those Aboriginal women currently residing with them. Robinson threatened that failure to do so would have legal repercussions.⁴²

Up to this time the sealers had passively resisted him by hiding their women and avoiding contact, but once Robinson appeared to have the colonial government’s sanction to remove them, the sealers took decided measures to redress the situation. On 21 March 1831 Munro and Mansell left for Hobart to expedite the process. They sent a petition to Arthur requesting that Munro be

⁴¹Burnett to Robinson, 3 March 1831, CSO 1/318/7578, Reel SLTX/AO/CS/115; Plomley, *Friendly Mission*, pp 449–50, fn 114.

⁴²Robinson’s notice to the sealers read: “All persons sealers and others will hereby take notice that it is the determination of His Majesty’s Colonial Government not to permit any residence upon or resort to any of the islands in these straits unless by express written licence to be obtained for this purpose. . . All persons therefore sealers and others residing upon or resorting to any of the islands are warned by me to quit those islands which are solely the property of the Crown. . . Such persons therefore who are found residing upon or resorting to any of those islands after this notice are trespassers and will be expelled accordingly.” Robinson to Burnett, 24 February 1831, CSO 1/318/7578, Reel SLTX/AO/CS/115; see also Plomley, *Friendly Mission*, pp. 449, fn.114; 452, fn.132.

allowed to remain on Preservation Island and that Bet Smith (Merunnertat-teyenne) be returned to her husband, Thomas Beedon. Arthur requested that John Montagu, Clerk of the Legislative Council, meet with Munro.

On 29 April 1831 Munro presented his case to Montagu. Munro admitted that he was not supportive of Robinson's scheme to remove the Aboriginal women from the sealers to a reserve on Gun Carriage Island. He argued that the island was not a suitable site for such an establishment. He considered that it would be too difficult to access and too small for a permanent settlement to be built there. He worried that the Aborigines would become sickly and suffer "either from the confinement of the island or from fretting..."⁴³

However, if there were no alternatives, Munro suggested a possible solution would be to give the mission residents access to Cape Barren Island also. He argued that, having a circumference of eighty or ninety miles, the island would be large enough for the Aborigines to maintain traditional lifestyles. He advised that "if they could be allowed to roam about and hunt on that island and return to the Establishment on Gun Carriage Island as they pleased, without the fear of being taken away...they would be happy and contented." Indeed, Munro conjectured that in time "they would be more happy than being left in Van Diemen's Land." Munro also argued that it would be "impolitic"

⁴³Statement made to the Clerk of the Councils of April 1831, by Mr Munro of Preservation Island, 29 April 1831, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118, pp.210-212.

to simply remove the women from the sealers. He maintained that most would not leave of their own accord because of the length of time that they had lived in the islands. He thought it a better idea to allow them to remain and to employ them as agents to the western bands, for they “might induce whole tribes to accompany them to the Establishment.” He suggested, too, that if the sealers were allowed to stay in the islands they would most likely volunteer their services in capturing the last of the west coast tribes. Without the assistance of both the Aboriginal women and the sealers, he asserted, further attempts by Robinson to bring in the western tribes would, in all likelihood, prove futile.⁴⁴ Arthur ordered the Aboriginal women released back to the sealers.⁴⁵

Not for the first time, Arthur found himself in a difficult position. In accepting Munro’s petition, he necessarily angered and frustrated Robinson. However, though Munro lived amongst an underclass abhorred by the colonial authorities, Arthur found him to have “always conducted himself with propriety.” Munro had been transported to Sydney in 1799 where he served a seven year sentence before being freed by servitude in 1806. Munro had been a sealer in the straits since the early 1820s and throughout his time there had had several women attached to his household. Dubbed, “King of the Eastern Straits” the sealer had developed a reputation for his “cool judgement and

⁴⁴Statement made to the Clerk of the Councils of April 1831, by Mr Munro of Preservation Island, 29 April 1831, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118, pp.210–212

⁴⁵Plomley, *Friendly Mission*, pp.457–60, fn.166.

natural stability.” By the time of his visit to Montagu he had established a lifestyle not completely deplorable to the authorities. He was settled on Preservation Island and raised crops and livestock which he traded with ships passing through. Plomley notes that as a young man Munro had been known to be forceful and brutal with Aboriginal women, though by the time Robinson met him he was an elderly man who was, by his own admission, only “looking for contentment.”⁴⁶

When he determined that it was necessary to seek an audience with the governor, Munro proved to be a consummate diplomat. He appealed to Arthur’s humanitarian and evangelical nature, noting that while Jumbo lived with him, he had taught her to read and instilled in her the Christian faith. Though she had no children by him, she raised two orphaned children under his care, one of whom he had brought with him to Hobart Town. Munro had the child recite scripture to Montagu.⁴⁷ All of this would have affirmed for Arthur that the sealing community was not all barbarity and savagery. Furthermore, he would have been aware that without the sealers’ support, the future of an Aboriginal establishment in the islands—indeed a future of any kind for the Aboriginal people of Van Diemen’s Land—was under threat. When a despatch arrived

⁴⁶Plomley, *Friendly Mission*, pp.1014.

⁴⁷Statement made to the Clerk of the Councils of April 1831, by Mr Munro of Preservation Island, 29 April 1831, CSO 1/330/7578, AOT Reel SLTX/AO/CS/118, pp.210–212; see also Plomley, *Friendly Mission*, pp.457–60, fn.166.

from Secretary of State Murray in May rebuking Arthur for the "...indelible stain upon the character of the British Government" which the Aboriginal crisis "could not fail to leave..." the governor was only more inclined to find a solution. The timeliness of Munro's solution, in light of Murray's admonishment, presented Arthur with the opportunity to allay the colonial secretary's fears. That it undermined Robinson's position with the sealers was ultimately of secondary importance to the governor.⁴⁸

Arthur, thus, reprimanded Robinson for the way he had handled himself with the sealers. He noted that Robinson had "removed the native women very contrary to their wish from the sealers and to their very great distress." He warned that "[o]f all things you must avoid distressing the feelings of these women or it is impossible you can expect they will co-operate or afford any assistance." Arthur then repeated Munro's proposals:

Constable Monroe represents that if the sealers who have long been living with the native women and have children by them are still permitted to live with them, that they will readily co-operate in any expeditions of a friendly nature, and there seem to be reason to conclude that the natives will hold intercourse with the sealers more readily than any other persons.

⁴⁸Plomley, *Friendly Mission*, pp.457–60, fn.166; Murray to Arthur, 5 November 1830, CO 408/7, PRO Reel 290, pp.80–81.

Arthur instructed Robinson to return Bet Smith to Beedon. He was at pains to convince Robinson of the absolute necessity of gaining the sealers' support: "For while the women remain distressed," he maintained,

it is impossible to anticipate that either the women, or the sealers, will make themselves useful in endeavouring to tranquillize any of the hostile tribes, or will induce them to migrate to the asylum provided for them on Gun Carriage Island.⁴⁹

Arthur advised Robinson that it "is obvious that this arrangement will require a great deal of discretion on your part, and much forbearance." He noted, though, that "the object [is] to temporise with the natives and to conciliate them by any and all possible means." Arthur instructed Robinson to make known to the sealers that "if they are successful the Government will confer rewards upon them and make such regulations for the protection of their occupation in the straits as will be conducive to their future comfort and benefit." As to Robinson, he commanded the conciliator to "endeavour, at once, to engage their services in proceeding to the main to co-operate with you in producing a friendly feeling on the part of the hostile tribes."⁵⁰

Munro had won this round and Robinson was intensely aggrieved at being undermined by the sealer's efforts. Robinson did not feel that, given his

⁴⁹Plomley, *Friendly Mission*, pp.457–60, fn.166.

⁵⁰Plomley, *Friendly Mission*, pp.457–60, fn.166.

reputation, Munro was deserving of such consideration by Arthur. He felt the sealers could not be trusted and he certainly did not think it appropriate to return the women to their "state of drudgery and bondage."⁵¹

However, realising that he needed to remain diplomatic, in his reply to Arthur he stated that the Government's ability to conciliate the Aborigines

seems in a great measure to depend upon the assistance that would be derived from those females who have been initiated with civilised habits and who are therefore fully sensible of the superior comforts concomitant thereupon. . . the idea which generally prevails [is] that the sealers are more accessible to the aborigines than any other class of white people. . .⁵²

On 6 June Robinson met again with a group of sealers. To Arthur he reported that

I held to such who promised to take an active part in promoting the benevolent views of government an expectation of meeting with sure and proportionate rewards, as a further inducement for the sealers to act energetically on the enterprise they are about to be engaged in. I allowed them the principle of their native women, in

⁵¹Plomley, *Friendly Mission*, pp.457–60, fn.166.

⁵²Plomley, *Friendly Mission*, pp.457–60, fn.166.

doing which I found it expedient to use much finesse in order to
cope with the different characters of these peculiar people. . .

Smoker, Isaac, Jude, Margaret, Mother Brown and Bet Smith were returned to the sealers Munro, Beedon, Maynard and Anderson.⁵³

That Arthur gave an assurance that the sealers could remain in the islands with their women-folk indicated a political judgement as to the importance of the sealers' support. It was a difficult concession for Arthur to make given that he was effectively condoning the existence of a community whose members represented the antithesis of his evangelical ideals. However, it more tellingly demonstrated his struggles with an ambivalence towards the Aborigines that he found himself developing. However, the rebuff from Murray served to reinforce Arthur's fundamental desire to ensure, in any way possible, a means by which the Aboriginal people of Van Diemen's Land could survive. That their survival was taking precedence over their cultural prosperity was a conclusion that Arthur was quickly moving towards, though loath to accept.

Ironically, though, by allowing the sealers to remain in the islands, Arthur had, inadvertently, facilitated the survival of an Aboriginal culture in Van Diemen's Land. Patterns of interaction between sealers and Aboriginal groups developed to the point where the sealing fraternity became incorporated into

⁵³Plomley, *Friendly Mission*, pp 457-60, fn.166.

the political economy of the various coastal Aboriginal bands. On a personal level, the development of relationships between Aboriginal women and individual sealers meant that many of the latter were also incorporated in the kinship systems of the various bands.⁵⁴

Even though violence and force were features of sealer-Aboriginal contact, and this contact eventually led to the break down of the social and political organisation of the northern tribes, the two groups did manage to establish relations based on a mutual dependence which would see the community endure. Aboriginal groups, and specifically Aboriginal women, quickly became involved in the sealing industry. The women were sought for sexual liaisons as well as for their skills as sealers, fishers, divers and mutton-birders. On land they were also accomplished small-game hunters. Their inclusion in the sealing industry, consequently, helped it to remain viable even though, as early as 1810, it was in decline. The contribution of their manual labour, as well as their sexual and reproductive services, meant that the sealing communities, if not sealing itself, would survive. Indeed, so lucrative was the industry to both New South Wales and Van Diemen's Land early on, and so vital were the women to its continuation that some historians maintain that their inclusion contributed directly to the development of the fledgling economies of both

⁵⁴see K.M. Bowden, *Captain James Kelly of Hobart Town* (Melbourne, 1964); J. S. Cumpston, *Kangaroo Island, 1800-1836* (Canberra, 1970), pp.7-12.

colonies.⁵⁵

Early twentieth century ethnologist Norman Tindale dates the beginning of what would become the new Tasmanian Aboriginal community from 1815. At this time there were twenty-three people who lived permanently on various islands of the Furneaux group. There were nine European sealers, nine Aboriginal women from Van Diemen's Land, four Aboriginal women from mainland tribes and one Maori woman.⁵⁶ By 1847 this number had grown to fifty individuals living as members of thirteen families. By 1890 the community had expanded to 110, the majority of whom were children.⁵⁷

The various families lived on Gun Carriage, Woody, Clark, Long, Tin Kettle, Cape Barren, Preservation and Hunter Islands. In keeping with the traditional Aboriginal lifestyle, however, they were a mobile community who moved throughout the islands as the mutton-birding seasons dictated. Ryan notes that the Bass Strait islanders observed public and private seasons. During the public season families would congregate together to celebrate the end of the mutton-birding season. During the private season they would separate into

⁵⁵see Ryan, *The Aboriginal Tasmanians*, Chapter 3; V. Matson-Green & T. Harper, "Palawa Women: Carrying the Burdens and Finding the Solutions", *Aboriginal Workers*, 69 (1995), pp. 65-67.

⁵⁶N. Tindale, "Growth of a People: Formation and Development of a Hybrid Aboriginal and White Stock on the Island of the Bass Strait, Tasmania, 1815-1949" (Launceston, 1953), p.4.

⁵⁷Ryan, *The Aboriginal Tasmanians*, p.222 & 230.

family units and return to their various island residences.⁵⁸ The lives of the Bass Strait islands reflected the incorporation of both Aboriginal and European traditions. This was a community who focused on the Aboriginal ethics of cooperation and reciprocity in order to survive and prosper. Mutton-birding was a difficult and laborious occupation. It required the involvement of every community member. Moreover, because there were only a few rookeries the whole community needed access to the birds and their eggs without fear of trespass. This was not an occupation that would allow for exclusivity and competition amongst the families.

The Bass Strait community also drew on European knowledge and experience to survive. When dealing with the colonial government and its officials, as Munro's meeting with Montagu exemplified, the most politically savvy were recruited to represent the community. When threatened by groups such as missionaries, land speculators and the government itself, the community would turn to those members who had the greatest experience dealing with colonial authorities—usually the European men.⁵⁹

§

Robinson, who proved the most serious threat to the sealers, was not going

⁵⁸Ryan, *The Aboriginal Tasmanians*, p.225.

⁵⁹Ryan, *The Aboriginal Tasmanians*, p.228–229.

to concede to them so easily. He, thus, played down Arthur's proposals to co-operate with them and because neither Robinson nor the sealers were, in reality, prepared to compromise with one another, Munro's suggestions were never acted upon. Instead, Robinson's continuing arrogant and superior attitude further alienated the sealers, while their own disingenuousness served to justify Robinson's position.

The failure of Robinson's diplomacy in his mission to the sealers is revealing. While his relationship with the Aborigines continued to develop, with the sealers he was never able to breach the gap. Regardless that Robinson had a real opportunity to utilise a kinship network which had been three decades in the making, his own notions failed him. Ultimately the issue was that Robinson was always the outsider. He was a representative of a colonial regime which this community sought to shun. Moreover, his preconceived ideas about the sealers and their activities set him further at odds with the community.

Robinson found his time with the sealers his greatest challenge because he was dealing with a community that was vulnerable and therefore aggressively protective of its land and people. The Bass Strait community had evolved as an off-shoot of a colonial system within which its members had no place. As such, it could enjoy none of the colony's protective devices, such as a government-sanctioned legal system. The efforts of Munro and his associates,

thus, were focused on securing the future of a small, isolated community that could not survive without its people and its territory.

To this end, as with the Aboriginal-settler clash, the struggle between the sealers and Robinson, too, was focussed on land and resource access. The bloody clashes that characterised Van Diemen's Land race relations for two decades were the result of competition for the land. The land had social, economic, political and spiritual significance for both societies. Neither could endure without it. Modern historian, Shayne Breen, holds that for the indigenous societies of Van Diemen's Land especially,

[c]ontrol of the land enabled them to maintain control of their own destiny. Control of the land enabled them to be empowered as a society, to survive and prosper in their own place, to be vital and co-operative with their neighbours. Dispossession largely destroyed the Aboriginal capacity for self-determination. . . ⁶⁰

Robinson's presence in the islands represented the same threat to the sealers. While he eventually reached a tacit, though tenuous, land sharing agreement with the sealers, in Van Diemen's Land proper, as Arthur had so reluctantly come to accept, no such arrangement could be established. To this end,

⁶⁰S. Breen, *Place Power and Social Law*, Unpublished PhD thesis, University of Tasmania (Hobart, 1998), p.19.

the next expedition—to the Big River people—would be focused on convincing this group to voluntarily relinquish something that was at the heart of their identity. Consequently, negotiating for their removal would prove a challenge of a higher order.

Chapter 8

The Conciliation

The chiefs assigned as a reason for their outrages upon the white inhabitants that they and their forefathers had been cruelly abused, that their country had been taken from them and their wives and daughters violated and taken away, and that they had experienced a multitude of wrongs from a variety of sources. They were willing however to accept the offers of the government and they placed themselves under my protection accordingly.¹

While the Executive Council discussed options for the future of Van Diemen's Land's Aboriginal population, Robinson spent the months of March to June 1831 organising the administrative details of running an isolated reserve on

¹G.A. Robinson quoted in N.J.B.Plomley, *Friendly Mission: The Tasmanian Journals and Papers of George Augustus Robinson, 1829-1834* (Hobart, 1966), p.571.

Gun Carriage Island. The future of the establishment appeared bleak from the start, and before long its inmates became disillusioned. The mortality rate rose quickly and boredom and despair set in.² The island had a shortage of fresh water and its unsheltered harbour made it difficult for supply boats to land. By July it seemed inevitable that an alternative location would need to be found.³ Arthur approved Robinson's proposal to survey Flinders Island. However, still retaining the idea of a mainland reserve, he also suggested that Robinson might also consider George Town as a location for an establishment.⁴

Robinson sent his convict servants to investigate Flinders Island while he returned to Eddystone Point to resume his search for Umarrah. Accompanying him were Kickerterpoller, Pagerly, Worraddy and Trugernanna. Robinson was comforted by the fact that "all my people are sanguine as to my ultimate success in conferring with the natives and I myself feel much confidence."⁵

²By June 1831 twelve reserve inmates had died, mostly from lung complaints. (Plomley, *Friendly Mission*, p.461, fn 171).

³Maria Island, which housed a convict penitentiary, was also briefly considered by the Aborigines Committee as a site for an Aboriginal establishment. However, this option was discarded primarily because the island was too close to the coast and the Committee feared that as the Aborigines began to pine away they would seek their escape from the island; see Report of Aborigines Committee, 28 September 1831, CSO 1/319/7578, Reel SLTX/AO/CS/116, pp.70–79. Moreover, though not raised as an issue, escape would have been further motivated by the fact that the island was in Oyster Bay country and, therefore, very familiar to many of those who would be housed there.

⁴Burnett to Robinson, 25 June 1831 in Plomley, *Friendly Mission*, p.467, fn.232; n.b. all direct references to the expedition to the Big River People for this chapter, where specific page numbers are not supplied may be found in Plomley, *Friendly Mission*, pp.481–586.

⁵Plomley, *Friendly Mission*, p.366.

Though he travelled throughout the region from George Town to the east coast, and found evidence of Umarrah's presence, Robinson failed to locate the chief. This disturbed him as the re-attachment of Umarrah to the group would have meant linkage with the last of the northern groups still active in the settled districts. Though its location might change, still he would have a permanent Aboriginal reserve established somewhere in the Bass Strait islands, with most, if not all, the sealing women safely accommodated there. Most importantly one of Van Diemen's Land's most dangerous guerrilla leaders would be in his custody.

8.1 Robinson the Negotiator

On 1 August 1831, Robinson returned to Swan Island from where he travelled to Cape Portland. Mannalargenna was retrieved from Gun Carriage Island to help track the Stoney Creek chief. Robinson also wanted to begin negotiations with his most senior guides so that when he finally made contact with Umarrah, he had a network of support already established.

Despite his trepidation about meeting Umarrah, Mannalargenna was eager to join Robinson for the reserve had become a place of despair. Robinson was receptive: "I anticipate very favourable results and trust in God I may

be able to establish that intercourse whereby a friendly communication may be opened and maintained throughout the whole Aboriginal population.”⁶ Robinson was careful to receive an assurance from Mannalargenna that he would not abscond. On 6 August he explained his plans to the chief.

When the Executive Council met the previous March its members formulated a number of recommendations for Robinson. The Council advised that any Aborigines in custody in Hobart, Launceston and on Swan Island were to be transferred to a more permanent establishment on a different island in the Bass Strait. It proposed that “an embassy should again be sent to the tribes inhabiting the Western country, and . . . blankets and food should be given them.” The Council, though, “entertained no hope of establishing any permanent good understanding” with the eastern tribes.⁷ Thus, Robinson’s charge was

to confer with the hostile tribes, and explain the humane and kind disposition of the government towards them, with the assistance of such natives as may be depended upon, and, if possible, negotiate [sic] with their chiefs either to proceed to the establishment, or to bind themselves to commit no further outrage on the condition of

⁶Plomley, *Friendly Mission*, p.394.

⁷Minutes of Executive Council, 14 March 1831 in Arthur to Murray, 4 April 1831, CO 280/28, PRO Reel 247, pp.440–445.

receiving food and clothing, and protection from all aggression.⁸

Robinson misrepresented the intention of the Executive Committee's recommendations and instead,

informed [Mannalargenna] in the presence of Kickerterpoller that I was commissioned by the Governor to inform them that, if the natives would desist from their wonted outrages upon the whites, they would be allowed to remain in their respective districts and would have flour, tea and sugar, clothes &c given them; that a good white man would dwell with them who would take care of them and would not allow any bad white man to shoot them, and he would go with them about the bush like myself and they could hunt.

Mannalargenna was, obviously, "much delighted" and in the style of north American treaty-making customs the chief ratified the agreement with gifts of swans' eggs.⁹

Negotiating was a continuing process between Robinson and his guides. Mannalargenna had his own set of conditions to which Robinson realised he must agree. Mannalargenna and Kickerterpoller stated that they would only

⁸Minutes of Executive Council, 14 March 1831 in Arthur to Murray, 4 April 1831, CO 280/28, PRO Reel 247, p.444.

⁹Plomley, *Friendly Mission*, p.394.

assist Robinson if their country-woman, Tencotehermanener (Smoker), was retrieved from the sealers. This placed Robinson in a precarious position for Smoker had been sent back to the sealer John Riddle after Munro had petitioned Arthur for her return. Robinson's guides, however,

took the opportunity on this as on other occasions to remind me that I had deceived them in allowing the sealers to take away the women again, and wanted to know why [they] were not put in gaol for killing the natives.¹⁰

By now, both Mannalargenna and Kickerterpoller had come to know Robinson well. They understood the hierarchical nature of colonial government but thought themselves equal to the governor whom they insisted they must meet. Furthermore, they recognised the recurring imperfections of the justice system and sought to challenge them. Able to produce witnesses to the murder of an Aboriginal man, they demanded that the sealers Edward Mansell, John Riddle, Thomas Tucker and Jack Williams be tried for murder. Robinson promised that he would arrange a meeting with Arthur to discuss, at least, the possibility of retrieving Smoker.

On the afternoon of 29 August 1831 near Noland Bay, Mannalargenna emerged from the bush leading a party of about fifteen, including Umarrah.

¹⁰Plomley, *Friendly Mission*, p.403.

The group comprised survivors from the Stoney Creek, Port Dalrymple and Oyster Bay Tribes. Three others remained in the bush but would soon join Robinson's party. Umarrah had been separated from Robinson for fifteen months and the conciliator was greatly relieved to have him rejoin the mission guides. The Big River bands who were now in the lakes region of the midlands were the only guerrilla groups left.¹¹

Robinson and Umarrah were wary of one another. Umarrah made sure that he justified his absence to the Conciliator. Robinson was acutely aware that he must work hard to keep Umarrah as an ally. Now that Robinson had attached to his mission two of the most influential Aboriginal leaders on the island he needed to remain diplomatically astute. Robinson listened carefully to their concerns, knowing that he represented their only voice in a hostile colony. They complained to him "of the outrages which [have] been committed upon them and their progenitors, and in bitter terms complain of their women having been stole[n] from them, and how white man would like black man to steal white woman[?]"¹²

Aware of the shifting political dynamics within the group now that Umarrah was present, and desperate to keep the group satisfied, Robinson hastily

¹¹Plomley, *Friendly Mission*, p.415; Ryan, *The Aboriginal Tasmanians*, p.155.

¹²Plomley, *Friendly Mission*, p 415; Ryan, *The Aboriginal Tasmanians*, p.155.

made a second promise. "I made known to them the wish of the government: that if they would not spear white men they might remain and hunt..." Robinson gave Umarrah and his new associates presents of beads, buttons and blankets as inducements to remain with him. Umarrah and Mannalargenna reciprocated with gifts of kangaroo and possum meat. At the same time there was a power struggle ensuing between Umarrah and Mannalargenna. When one chief presented a gift to Robinson, the other hastily matched it with a more impressive one. Relations between the two had always been tenuous and now they were involved in a contest to win Robinson's favour. For them, Robinson represented their only opportunity to emerge from their war with the settlers with any semblance of a future.¹³

Robinson decided to make his way back to base camp to rendezvous with his boat. While Umarrah's people were to be shipped to the islands, Robinson's guides, Mannalargenna, Umarrah, Woorady, Pagerly, Trugernanna, Kickert-erpoller, Sall, Timmy from Cape Portland and Peevay, were to head south towards the midlands and Big River country. Now that Robinson had negotiated an agreement with his guides, and had reunited with Umarrah, he felt this part of his mission was complete: "my mind is comparatively at ease now I have succeeded and the people are with me."¹⁴ His next challenge was the

¹³Plomley, *Friendly Mission*, p.415; Ryan, *The Aboriginal Tasmanians*, p.155.

¹⁴Plomley, *Friendly Mission*, p.421.

conciliation of the Big River people.

8.2 The Launceston Conference

Early in September Arthur learnt that an Aboriginal band had gruesomely murdered Captain Bartholomew Thomas, brother to Aborigines Committee chair and colonial treasurer, Jocelyn Thomas, and Captain Thomas' overseer James Parker. Thomas and Parker were killed near Thomas' property at North Down by a band made up of Big River, Oyster Bay and Port Sorell tribe members. After giving the band tea and bread, Thomas and Parker had gone with a few of them to attempt to meet with the rest of their party. Shortly afterwards a number of the group turned on the men, attacking them and clubbing them with their own guns, and then spearing them until they were dead. Upon discovering Thomas and Parker missing, Thomas' wife sent a number of other servants out to search for the men. Two weeks later the bodies were found badly mutilated and decomposing.¹⁵

Jocelyn Thomas later requested that Robinson collect all the information he could regarding the activities of "these wretched savages, to whom every kindness was shewed." Robinson later discovered (and concealed) the fact that

¹⁵Correspondence to Colonial Secretary, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.948-986.

Umarrah had been attached to the band that had slain Thomas and Parker, though he had not been with them when the actual murders took place.¹⁶

The slayings of Thomas and Parker received much publicity and stirred up resentment amongst many colonists who had long advocated for removal of the Aborigines. A subsequent inquest into the murders found that they had been

treacherously murdered by the three black natives now in custody, aided and assisted by the residue of the tribe to which they had belonged known by the name of the Big River Tribe, during the most friendly intercourse whilst endeavouring to carry into effect the conciliatory measures recommended by the government.¹⁷

Despite the outrage manifested throughout the colony by the murders, Arthur did not put the Aborigines on trial, but instead sent them to the temporary Aboriginal reserve on Gun Carriage Island. Windschuttle argues that reasons for not prosecuting the offenders were not “due to any non-legal conciliatory policy but because all the evidence against them had come from

¹⁶Umarrah, it will be recalled, rejoined Robinson on 29 August 1830. Thomas and Parker were not killed until 1 September; see Correspondence to Colonial Secretary, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, pp.948–986; Plomley, *Friendly Mission*, pp.423, 426, 429, 455, 471, 476, 511, 551–2.

¹⁷Verdict of Inquisition into the Deaths of Captain Thomas and His Overseer, James Parker in Correspondence to Colonial Secretary, CSO 1/316/7578, AOT Reel SLTX/AO/CS/114, p.986.

native witnesses and it was not possible in the Van Diemen's Land courts to use their testimony. "Cases of this kind," Windschuttle maintains, "would have failed in court under the prevailing rules of evidence."¹⁸

However, legal issues surrounding rules of evidence were the least of the Governor's worries. Arthur was concerned to bring a conclusive end to war and at this point little would have been achieved from what would be the very public prosecution and inevitable hanging of those put on trial for the murders. The colonists would be placated but the Aborigines had already been handed a death sentence with their impending exile. Moreover, though Robinson was confident that he would finally make contact with the Big River and Oyster Bay tribes, at this stage they were still at large. With members of these tribes amongst those who had killed Thomas and Parker, Arthur would have been concerned to avoid antagonising them. To this end, supported by an Aborigines Committee report subsequent to the murders in which Chairman Thomas did not call for the prosecution of his brother's murderers, Arthur maintained his conciliatory stance and sought nothing more than the immediate removal of those accused of the deaths of Thomas and Parker.

Nonetheless, the murders constituted the final blow for the governor who was growing increasingly defeated by the seeming futility of his conciliatory

¹⁸Windschuttle, *The Fabrication of Aboriginal History*, p.220.

efforts. Not only had the attacks been gruesome and apparently unprovoked, the victims were two colonists who were sure they had established the precise style of relationship that Arthur and the Aborigines Committee had encouraged of the colonists. However, chastened by his utter lack of success in using force to achieve his goals, instead of assuming the role of a military man, the governor turned to his evangelical principles to find a solution. Arthur decided that there was nothing else to do but to meet Robinson and the mission guides in person to consider "the present situation of the Colony with reference to the continued outrages of the Aborigines. . . and their attacks upon defenceless persons in various parts of the Colony."¹⁹ Batman, who had helped coordinate the efforts of the women who Arthur had released from the Hobart asylum in March 1830, was also asked to attend.²⁰

Informed that Arthur had set out for Launceston to have an audience with Mannalargenna and his people, Robinson's party made its way to meet him. That Arthur went to Launceston to meet personally with Robinson and his guides demonstrates the importance the governor now placed in negotiating with the Aborigines a peace accord which both sides could and would honour. Plomley argues that ever-expanding settlement, combined with the spread of disease were two other factors involved in Robinson's success in conciliating

¹⁹ Arthur to Goderich, 25 October 1831, CO 280/30, PRO Reel, 248, p.175-.

²⁰ Arthur to Burnett, 12 October 1831, CSO 1/317/7578, Reel SLTX/AO/CS/115, pp.471-480.

the Aborigines.²¹ However, the significance of a process of peace negotiations that now involved Arthur personally cannot be overstated.

Arthur headed north from Hobart, Batman west from his property at Ben Lomond, and Robinson south from the coast to Launceston where Arthur, Batman, Robinson and the mission Aborigines met over two days on 6 and 7 October. Most of what was discussed pertained merely to the logistics of co-ordinating Robinson's travels. However, such was Arthur's distress at the murders of Thomas and Parker that the governor was prepared to consider any reasonable arrangement which would ensure an end to hostilities. Consequently, several significant determinations came from the meeting that demonstrated the necessity that Arthur now felt that Robinson's mission succeed. However, it was clear that Arthur (if not Robinson) still clung to the idea that the Aborigines may, in some manner, be accommodated in Van Diemen's Land.

Arthur reported in the minutes of the meeting the details of what had been discussed. He noted that Robinson felt "unabated confidence in the ultimate success of inducing the hostile Natives to place themselves under his protection in the asylum provided for them in the Straits." As will be recalled, an Aboriginal "asylum" had been established at Robinson's residence

²¹Plomley, *Friendly Mission*, pp.421 & 481.

in Hobart. It had been created as a temporary measure, implemented until a more permanent solution to the Aboriginal-settler problems could be found. That Robinson and Arthur referred to the establishment in the Bass Strait Islands as an “asylum”, which by definition was supposed to be “a secure place of refuge, shelter, or retreat”²² underscores the dilemma that Arthur was facing. He wanted desperately to protect the Aborigines but he also knew that in removing them there was a real possibility that he would be facilitating their demise. In referring to the Bass Strait reserve as an ‘asylum’, Arthur seems to be suggesting that there lingered a hope that the Aborigines could possibly be returned to Van Diemen’s Land some time in the future.

Other points of discussion also indicated Arthur’s continued hope that there may be some way to accommodate at least some of the Aborigines in Robinson’s care in the colony. Arthur approved what for all intents and purposes constituted a reserve near Campbell Town for the mission Aborigines—“a kind of home for ‘Manna Langanna’, ‘Eumarrah’ and the rest of the Natives who form Mr Robinson’s party, and whom he considers perfectly conciliated”. Arthur ordered huts erected and food and clothing supplied from the commissariat. The governor also agreed that Mannalargenna’s daughter would be retrieved from John Riddle and transferred to Campbell Town to join the

²²<http://dictionary.oed.com/> (cited October 2005).

chief.²³ This was clearly a victory for Mannalargenna. He had successfully negotiated with Arthur, through the agency of Robinson, and the governor had acquiesced. Furthermore, though Arthur had agreed to establish a temporary reserve in Campbell Town for reasons of convenience, nevertheless for the chief this meant that he would be back in familiar country.

The agreements that Arthur had reached with the mission guides would have later implications for Robinson's success with the Big River and Oyster Bay tribes. When Robinson's guides finally made contact with the tribes they negotiated the terms of their surrender based not only on pledges made by Robinson and Arthur, but also the history that they had with them. Thus, when Arthur fulfilled his promise to retrieve Mannalargenna's daughter from the sealers, the mission Aborigines would have assumed that he would fulfil his other promise to establish a reserve for them at Campbell Town. To the Aborigines already in exile, there was scant evidence that they would remain in the islands permanently. Reserves established on Swan and Gun Carriage Islands several months earlier, as well as the early one on Bruny Island, had all been quickly abandoned. The mission guides may well have reasoned that once the Big River and Oyster Bay tribes had been brought in, the reserve on Flinders Island reserve would be moved to Campbell Town.

²³Arthur to Burnett, 12 October 1831, CSO 1/317/7578, Reel SLTX/AO/CS/115, pp.471-480.

Consequently, as Reynolds argues, when negotiations with the Big River and Oyster Bay tribes finally occurred, it seems likely that they would have been agreeing to their temporary removal to Flinders Island, rather than ceding permanent title to their lands.²⁴ Thus, for the Oyster Bay, Big River and mission Aborigines the verbal treaty²⁵ that Reynolds maintains was later made on the banks of Lake Echo was, indeed, merely the conclusion of negotiations with Mannalargenna that Robinson had begun in August and that Arthur had continued in Launceston a month later.

8.3 The Search for the Big River Tribe

At the conclusion of Arthur's visit to Launceston, Robinson's party set off for Campbell Town from where they would journey into the heart of Big River country in search of the elusive resident tribe. Attached to the group were Richard, or Black Dick, who had lived with James Brumby at Norfolk Plains, Woolayterpineyer, sister to a Big River member and future wife to Umarrah (Woolayterpineyer had been captured in the settled districts and housed in the Launceston prison before her release to Robinson), and Lacklay, or Little Jemmy. The expedition would prove arduous for everyone involved. Robinson

²⁴Reynolds, *Fate of a Free People*, pp.152–6.

²⁵Reynolds, *Fate of a Free People*, p.199; see below for a discussion of Reynolds' argument that what was concluded with the Big River and Oyster Bay tribes was a verbal treaty.

realised the significance of the expedition and drew from it a new motivation: “knowing the weight of responsibility that rests upon me I am resolved to allow no circumstance to hinder or obstruct me in my labour”.²⁶

Robinson and his guides maintained a cohesive working relationship because, as Ryan notes, they had become mutually dependent on one another. Robinson’s guides needed him because he was their only shield against the many hostile colonists and military in the region. They had told him numerous stories about raids carried out on Aboriginal groups, convincing Robinson that he was, indeed, in enemy country. Robinson, similarly, needed his guides to direct him through their country, to track the Big River and Oyster Bay people and to supply native foods when European provisions were out of reach. Most importantly, they were his link to his quarry. They would track, make contact, and broker a deal with the Big River people. Robinson would not even be present until negotiations were complete and the Big River people had agreed to “come in.” Robinson made sure he was surrounded by his allies. There were thirteen guides attached to the expedition, as well as seven convict servants, plus Robinson and his son, George. That almost matched the total number of Big River people for whom his party was searching.²⁷

Having met with Arthur in Launceston, Mannalargenna, Umarrah and the

²⁶Plomley, *Friendly Mission*, p.486.

²⁷Ryan, *The Aboriginal Tasmanians*, p.154.

other mission guides would have realised that, indeed, Robinson's position in the colony was nowhere near as significant as the man they had gone to see. After the mission had arrived in Launceston, Robinson had gone to meet Arthur as he approached "the entrance of the town", the governor's arrival had been heralded by the firing of guns, and an entourage was sure to have accompanied the chief executive of the colony. All of these displays of reverence would have indicated to the Aborigines that, indeed, Arthur was the individual who would ultimately determine their fate. As such, it is very probable that they realised that any promises made by Robinson would only be acted upon with Arthur's approval. Robinson, however, was not so naive as to allow his guides to assume control over the mission and worked to ensure that they would not collude against him.

He employed Mannalargenna and Woolayterpineyer as his principal guides. As their tribes faced increasing dispossession, Mannalargenna and the Big River people had become intensely antagonistic towards one another. Mannalargenna clearly considered the Big River people as the enemy. Woolaytopinneyer was a Big River woman, now betrothed to Umarrah. Her kinship ties, as well as her alliance with Umarrah, combined to set Woolaytopinneyer and Mannalargenna at odds with one another. Moreover, that Umarrah was

such a leading figure amongst his people meant that, by default, he also assumed a central role in the mission. The three guides would effectively check one another's behaviour.

The mission members were not passive recipients of Robinson's orders. They employed their own strategies to attempt to manipulate both Robinson and one other. The women sought to curry Robinson's favour. On several occasions Woolaytopinneyer guided him to spots where the Big River tribe had concealed stolen weapons and ammunition, hoping that this would please him. Sall brought him presents of native bread.

Umarrah also sought to impress Robinson. He told the conciliator, you "must tell the Governor Umarrah was a good man and how he would find [all of] the natives." Umarrah had become adept at manipulating those Europeans with whom he was variously involved. Both Arthur and Robinson were aware that he was responsible for the deaths of a number of settlers, and Robinson was aware that he had been closely associated with the group that had slain Thomas and Parker, yet he nevertheless avoided the harsh hand of European law by making himself indispensable to the government when needed. During this mission he established himself as Robinson's ally. He charmed Robinson while, at the same time, manipulating the other guides for his own ends. Mannalargenna, on the other hand, used different tactics. He was belligerent

and antagonistic, making threats to try to control the expedition members.²⁸

Despite the power struggles between Robinson and his guides, he consulted them on all the decisions he made, knowing that they had a superior knowledge not only of the country through which they were travelling but also the people they were seeking to find. As Robinson moved west, they became more anxious. They were moving into hostile territory and were afraid, not only of the settlers, but also of the Big River people themselves. Robinson, himself, felt some of this fear, as he worried that his party would be mistaken for those he was tracking.

In early November Robinson's party headed for Lake Echo where they spotted smoke from Big River fires. Robinson tried to usher them onward but they hesitated. Two days later Robinson sent Kickerterpoller and Umarrah to lead the party out in quest of their quarry. Robinson was extremely apprehensive. "I long to know the result of their mission with the Lairmairrener [Big River] nation" he noted, "and earnestly pray God they may have got them and succeed in bringing them to me. I long to be with them and know not how to act."²⁹

They returned to report their failure. Robinson was not surprised, confessing, "I did not expect they would succeed, as there appeared a great want

²⁸Plomley, *Friendly Mission*, p.491; Ryan, *The Aboriginal Tasmanians*, p.158.

²⁹Plomley, *Friendly Mission*, p.517.

of perseverance among them.” Robinson’s party spent the next two months following the group at a distance. The Big River people let the expedition guides know their whereabouts but avoided contact until they felt ready to join Robinson’s party.³⁰

As the end drew near, the expedition party became increasingly anxious. Robinson was fully cognisant of the significance not only of this mission but of the entire Aboriginal-settler experience to date: “I reflected on the precarious nature of my mission, the peculiar character of the people I was in quest, the dire consternation they had infused into the minds of the settlers; all the wrongs done to the blacks were alternately engaging my thoughts.”³¹

Anxiety and stress began to manifest itself towards the end of November. Umarrah and Mannalargenna began quarrelling with one another. It was only with the greatest diligence that Robinson managed to stop Umarrah from absconding. Though Mannalargenna was vital to the mission, he had become unreliable. Umarrah and Woolaytopinneyer, Robinson realised, were his only dependable sources of information. Mannalargenna was now useful only as a guide, and no longer as an agent. He would be obliging in the forceful capture of the Big River people if they resisted, but could not be employed to negotiate their voluntary surrender.

³⁰Plomley, *Friendly Mission*, p.517.

³¹Plomley, *Friendly Mission*, p.526.

A letter from the Colonial Secretary received by Robinson on 26 December 1831 served to increase tensions amongst Robinson's group. The Governor was eager that Robinson complete this mission as soon as possible and reprimanded him for not doing so more quickly: "His Excellency is exceedingly anxious that you should fall in with the [Big River] tribe, and it appears to him very extraordinary that the aborigines who accompany you experience so great a difficulty in leading you to their haunt"³² Robinson related Arthur's sentiments to his guides in the hope that they would become more diligent. Mannalargenna offered to proceed alone with just the men in the party. Robinson refused, knowing that they would be more likely to abscond, but if they were genuine and made contact, Woolaytopinneyer, in particular, would need to be there to negotiate with her kin.

"Not a moment was now to be lost," wrote Robinson on 28 December. His guides had spotted the Big River people at Bashan's Plains and Robinson's servant, Joseph Platt, fired his gun to inform the rest of the party. The consequences of Robinson's words and actions did not matter now to him. He was desperate to end this expedition and ushered his people on with a promise he would not keep: "I urged them on and told them the Governor only wanted me to get to the Big River tribe and then our troubles would be over, we

³²Burnett to Robinson, 23 November 1831 in Plomley, *Friendly Mission*, p.583, note 89.

should not have to go after any more and they could hunt” and to this he noted, “the people evinced eagerness to go after the natives, which shewed (if such a circumstance was necessary) their sincerity to their duty.”³³

Over the next two days the mission guides tracked the Big River people to Lake Echo. On 30 December Robinson sent out Woorady, Kickerterpoller, Umarrah, Timmy, Lacklay and Woolaytopinneyer to a fire about two miles to the west, giving “them all the counsel I was able.” Mannalargenna stayed with Robinson. Robinson followed his six guides at a distance and shortly afterwards Umarrah returned confirming that they had spotted Big River fires. Woolaytopinneyer had recognised her brother’s foot prints. Robinson decided to set out for the group the next morning. Again he reminded his guides “the Governor only wanted me to get to the natives and then we had done.”³⁴

At sunrise on New Year’s Eve 1831, Robinson sent out a party of seven to again search for the Big River people. They made contact with their quarry north west of Lake Echo. They were the remnants of the Big River and Oyster Bay tribes and consisted of sixteen men, nine women, one child and over one hundred dogs. They were led by the chiefs Tongerlongerter and Montpeilliatter. Robinson described the events of those few days in his official report to Arthur of 25 January 1832:

³³Plomley, *Friendly Mission*, p.567.

³⁴Plomley, *Friendly Mission*, p.569.

Having encouraged my aboriginal companions. . . part of them having promised to act faithfully towards me and to abide by whatever instructions I might give them, I was naturally lead to hope that the time would soon arrive when this arduous and harassing undertaking would be terminated. . . I succeeded on the 31 December in effecting a friendly communication with those sanguinary tribe[s].³⁵

When Robinson first sighted the group he was unsure how negotiations with his guides had progressed. The “warlike attitude” of the Big River and Oyster Bay people worried him until he saw some of his own party with them. However, when the Big River women “lifted up their hands three times” demonstrating “the signal of peace” and “the blacks rushed towards each other”, Robinson was assured that all was well.³⁶

Robinson approached those whom he assumed were the chiefs “and shook hands with them.” He “then explained in aborigines’ dialect the purport of my visit amongst them. I invited them to sit down and gave them some refreshments and selected a few trinkets as presents which they received with much delight.”³⁷

Before ushering them from their lands for the last time, Robinson spent time with the Big River people, learning something of their plight:

³⁵Plomley, *Friendly Mission*, pp.570–71.

³⁶Plomley, *Jorgen Jorgenson and the Aborigines of Van Diemen’s Land*, p.113.

³⁷Plomley, *Friendly Mission*, p.570.

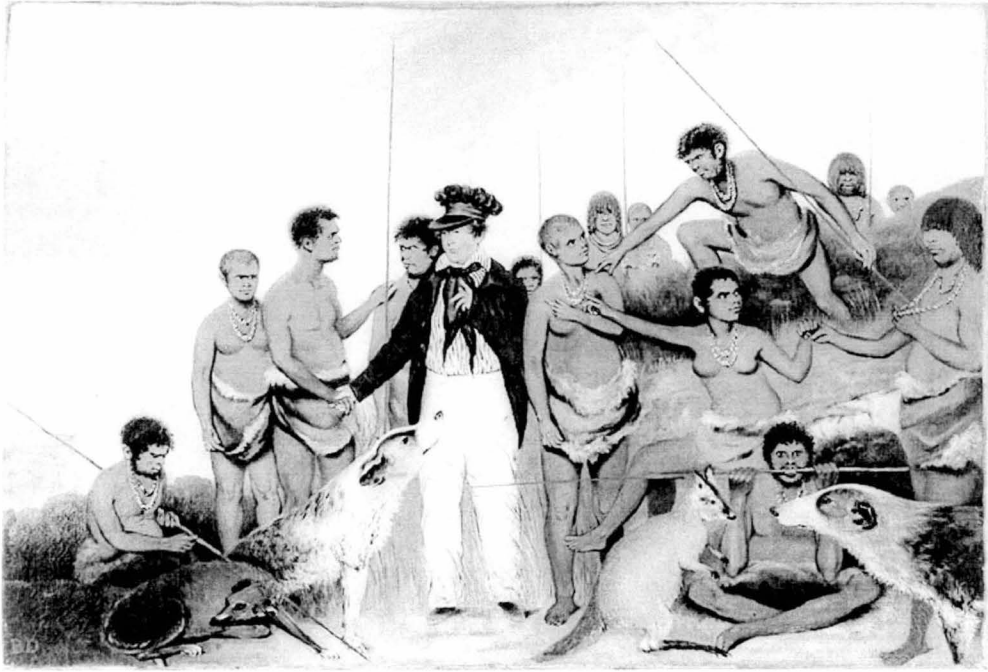


Figure 8.1:
Benjamin Duterrau's *The Conciliation*, Source: Tasmanian Museum and Art Gallery; image taken from URL: <http://www.foundingdocs.gov.au>.

The chiefs assigned as a reason for their outrages upon the white inhabitants that they and their forefathers had been cruelly abused, that their country had been taken from them and their wives and daughters violated and taken away, and that they had experienced a multitude of wrongs from a variety of sources. They were willing however to accept the offers of the government and they placed themselves under my protection accordingly.³⁸

³⁸Plomley, *Friendly Mission*, p.571.

Reynolds argues that what occurred between Robinson, his mission guides and the Big River and Oyster Bay people on the banks of Lake Echo that fateful January day constituted a verbal treaty. He points to a modern Canadian court case, *Regina v. Sioui*³⁹ to establish the context in which he maintains the Tasmanian treaty should be considered.⁴⁰

In 1990 the Sioui tribe were charged with violating certain regulations of the *Parks Act* of 1977.⁴¹ The tribe's defence rested on the claim that they were exempt from these regulations because they were "practising certain ancestral customs and religious rights" which been confirmed by the terms of a treaty their people had negotiated with a British brigadier in 1760. The case became focused on whether or not a treaty had, in fact, been concluded. As Reynolds quotes, in finding for the Sioui the Supreme Court of Canada held that

[i]n determining whether or not a particular document is a treaty, a liberal and generous attitude, heedful of historical fact, must be employed. If, then, a valid treaty is found to exist, that treaty must in turn be given a just, broad and liberal construction.⁴²

The court pointed to two key determinants of whether or not a document is a treaty: capacity and authority. Did the Indian tribe have the capacity to

³⁹ *Regina v. Sioui*, 70 DLR (4th), 427; 1990.

⁴⁰ Reynolds, *Fate of a Free People*, p.199.

⁴¹ *Parks Act*, R.S.Q. 1977, c.P-9. referenced in *Regina v. Sioui*.

⁴² *Regina v. Sioui*, 70 DLR (4th), 427; 1990.

negotiate a treaty, and did they have reason to believe that those with whom they were treating were authorised, as representatives of the British Crown, to conclude a treaty with them? In the case of the Canadian tribe the court found that both conditions existed and, as such, found for the Sioui.⁴³

Both of these conditions also existed in Van Diemen's Land. There were individuals present at the "conciliation" who clearly had the authority to negotiate on behalf of their people. Though the tribes were a conglomerate of dispossessed bands, the newly formed bands retained their hierarchical structure. Mannalargenna, Tongerlongerter and Montpeillatter, thus, retained their authority as tribal elders and chiefs as well as their capacity to negotiate on behalf of their people.

The Aborigines also had every reason to believe that those with whom they were negotiating held the appropriate authority. After Mannalargenna had been granted an interview with Arthur he would have had no doubt that Robinson held the appropriate authority to act on the governor's behalf. Moreover, the importance of the negotiations was verified by the length of time it took to finalise them. The Lake Echo meeting was merely the conclusion of negotiations that had begun six months earlier when Robinson had discussed his directives from the Executive Council with Mannalargenna. A month later

⁴³ *Regina v. Sioui*, 70 DLR (4th), 427; 1990.

Arthur made Mannalargenna similar offers. For the mission guides, the goal of the Lake Echo meeting would have been to convince the Big River and Oyster Bay tribes to agree to a compact, the details of which they had already been confirmed.

In the case of negotiations between Robinson and the Tasmanian Aborigines capacity and authority, thus, were plainly apparent. However, the fundamental difference between the Lake Echo meeting and the Sioui treaty was, as Reynolds points out, that the Lake Echo negotiations were never committed to paper.⁴⁴ By this time, the importance that such written documentation had come to have, meant that the Crown would never have acknowledged, let alone ratified, a verbal treaty. On the other hand, for a people such as the Aborigines of Van Diemen's Land whose history and culture was based on oral traditions, the only kind of treaty would have been a verbal one.

§

Robinson proceeded to Bothwell from where he sent word to Government House of his success. On their journey to Hobart the Big River chief, Montpelillatter, sent off a number of women to collect some guns that were concealed in a hollow tree trunk. One of the muskets belonged to Captain Thomas. Robinson suggested that Montpelillatter should present the weapons to the governor

⁴⁴Reynolds, *Fate of a Free People*, p.199.

as a gesture of his commitment to future peace. Robinson then promised the chief a conference with the governor who, Robinson assured him, “will be sure to redress all their grievances.”⁴⁵

The arrival of Robinson and his entourage was reported by all of the colonial newspapers in Van Diemen’s Land. The *Colonial Times* wrote, “a more grotesque appearance we have seldom witnessed, than the arrival of these natives. . . These men, it is said, were bent upon spearing His Excellency, provided he did not grant them the redress they were seeking.”⁴⁶ The *Hobart Town Courier* reported that

they walked very leisurely along the road, followed by a large pack of dogs, and were received by the inhabitants on their entry into town with the most lively curiosity and delight. Soon after their arrival they walked up to the Government house, and were introduced to His Excellency. . . They are delighted at the idea of proceeding to Great Island, where they will enjoy peace and plenty uninterrupted. . . The manner in which these natives were conciliated is no less remarkable than it is creditable to Mr. Robinson.⁴⁷

On 21 January 1832, in a public notice Arthur announced that

⁴⁵Plomley, *Friendly Mission*, pp.570-574.

⁴⁶*Colonial Times*, 11 January 1832.

⁴⁷*Hobart Town Courier*, 14 February 1832.

Mr. G.A. Robinson, having rendered a very important service to the whole community, in conciliating and bringing into Hobart-town, the Oyster Bay and Big River Tribes, The Lieutenant Governor has directed the great satisfaction he feels at Mr. Robinson's success to be thus publicly expressed.⁴⁸

The celebrations that ensued on the lawns of Government House were a novelty for the Hobart residents and Aborigines alike. It is instructive that rather than be treated as open enemies, the Big River and Oyster Bay tribes were welcomed and their presence celebrated. Though they, and their now-dead kin, had held the colony at bay for eight years, still they were allowed to move through the streets of Hobart free of an armed entourage. Rather than feeling the full force of the prison island's military and police presence, the Big River and Oyster Bay tribes were welcomed into Hobart Town by the curious townsfolk.

On 14 February 1832, the *Hobart Town Courier* reported that the Big River people were "delighted at the idea of proceeding to Great Island, where they will enjoy peace and plenty uninterrupted"⁴⁹ Though the prevailing attitude amongst the colonists was that the expatriation of the Tasmanian Aborigines

⁴⁸*Hobart Town Gazette*, 21 January 1832.

⁴⁹*Hobart Town Courier*, 14 February 1832.

may have in fact been “an act of mercy”⁵⁰ both Robinson and Arthur regretted deeply this pyrrhic victory.

Wasting no time writing to London to report Robinson’s success, Arthur urged the Colonial Office to learn from the mistakes made in Van Diemen’s Land. “As the [new] Colony of Western Australia,” he wrote,

must be exposed to all the evils which have befallen Van Diemen’s Land from the opposition of the Aborigines...I submit to your Lordship that one of the very first measures adopted in that Colony should be to establish a friendly understanding which should be consistently persevered in spite of any outrages the Natives may commit...⁵¹

What did Arthur mean by “friendly understanding”? In light of statements he would lately make about treaties, he might have been implying that something akin to a treaty with the Western Australian Aborigines should be attempted. More likely, though, he was suggesting simply that efforts be made at the very beginning of colonisation to ensure that the Aborigines understand the affects and to secure their approval of plans for settlement. Arthur had come to realise how important it was that the Aborigines have a true comprehension not only of the colonial government’s intentions towards them, but

⁵⁰West, *The History of Tasmania*, p.310.

⁵¹Arthur to Goderich, 7 January 1832, PRO Reel 250, CO 280/33, p.9–11.

their own role in effecting cooperative and equitable arrangements for land and resource sharing.

The whole Aboriginal crisis and, even more so its eventual solution, weighed heavily on Arthur's mind for years to come. The Governor was finally forced to admit that Murray's predictions had been accurate. The crisis would leave a stain on the history of Van Diemen's Land. Arthur's unprecedented statements about the need for treaties with other Aboriginal groups reflected this regret. Indeed, two years later he lamented that,

undoubtedly, being reduced to the necessity of driving a simple but warlike, and, as it now appears, noble minded race, from their native hunting grounds, is a measure in itself so distressing, that I am willing to make almost any prudent sacrifice that may tend to compensate for the injuries that government is unwillingly and unavoidably the instrument of inflicting.⁵²

John Batman's later ultimately abortive treaty, concluded with the Duttegalla Aborigines of Port Phillip in June 1835, seems to have been an attempt to make the prudent sacrifice that Arthur would never have the opportunity to.

⁵²Arthur to Hay, 24 September 1832, CO 280/35, PRO Reel 252; Arthur to Goderich, 6 April 1833, CO 280/41, PRO Reel 254; Arthur to Spring-Rice, 27 January 1835, CO 280/55, PRO Reel 262.

Chapter 9

The Batman Treaty

...[T]he object of my visit was to purchase from them a tract of their country....¹

In December 1834, three years after his Launceston meeting with Governor Arthur, G.A. Robinson and the mission guides, John Batman invited John Helder Wedge, Anthony Cottrell, Henry Arthur and William Jardine Sams to join his family on a three day excursion to watch the sunrise from the summit of Ben Lomond. It was during this expedition that Batman proposed to the group his plan to settle Port Phillip as a sheep-grazing district. Batman formed a cooperative with these men to finance the scheme. Other influential colonists were also invited to take part. One of the most prominent was J.T.

¹Batman to Arthur, 25 June 1835, in Arthur to Spring-Rice, 4 July 1835, CO 280/58, PRO Reel 264, p.35.

Gellibrand who was asked to create the group's constitution. A letter from Batman to Gellibrand the following May indicated that Batman planned to take possession of land in the Port Phillip district through "a treaty with the natives for the purpose of obtaining a tract of land..."² This would be the first and only time in Australia's history that a treaty of any sort with an Aboriginal group had or would be attempted. The significance of Batman's activities at Port Phillip lay in the motivations behind negotiating the treaty, which reflected the impact that had been made by the Aboriginal crisis in Van Diemen's Land.

John Batman was not the only person to contemplate the move across the Bass Strait. As land in Van Diemen's Land became scarce, interest in the Port Phillip district increased. There, squatters were moving beyond the settlements to take up Crown land to raise sheep and cattle. Port Phillip caught the eye of some Vandemonians with just these ambitions. Batman's eagerness to set sail was fuelled partly by the activities of others with similar schemes in mind. The Hentys had already settled at Portland Bay where they had established a whaling station. Indeed, John Helder Wedge worried that Henty's plans would infringe on those of the Association's and wrote to Arthur in September 1834, "warning" the governor that the family was planning to

²C. Billot, *John Batman: The Story of John Batman and the Founding of Melbourne* (Melbourne, 1979), p.73; A. Campbell, *John Batman and the Aborigines* (North Fitzroy, 1987), pp.65-66.



Figure 9.1:

John Batman: free settler, roving party leader and treaty-maker; *Source:* image taken from <http://www.eps.vic.edu.au/history/john%20batman.htm>.

obtain large tracts of land “under the pretence of a treaty with the Aborigines. . . .” Wedge wrote that “if the speculation now on foot prevail, large tracts of the most valuable country will get into the hands of a few individuals, and remain unimproved wastes, occupied by a few herdsmen and shepherds” (the very designs which the Vandemonian association was contemplating).³ John

³The Hentys were the first “squatters” to take up land in the district. They settled at Portland Bay before official approval was given by the Crown. Eager to establish themselves, they were prepared to settle as squatters, hoping that the colonial government of New South Wales would eventually grant or sell them the land; see M. Bassett, *The Hentys: An Australian Colonial Tapestry*, [Melbourne, 1962], p.291–292; M. Bassett, “Governor Arthur and

Pascoe Fawkner, the Launceston pressman, was Batman's other immediate rival.⁴

9.1 The Port Phillip Association

Originally known as the "Geelong and Dutigalla Association" the Port Phillip

Association members were essentially wealthy squatters who had all held no-

table positions in the colonial government of Van Diemen's Land. Gellibrand

the Opposite Coast", *Tasmanian Historical Research Association, Papers and Proceedings*, 2.5 (1953), pp.83–94; Wedge to Arthur, 18 September 1834 in Bassett, "Governor Arthur and the Opposite Coast"; A. Campbell, *John Batman and the Aborigines* (Malmsbury, 1987), p.65.

⁴Fawkner sought to settle in the Port Phillip district because of the difficulties he had faced in Van Diemen's Land. He seemed to attract trouble and his anti-establishment attitudes often found him at odds with authority. As owner and editor of the Launceston Advertiser it was almost inevitable that he would clash with Arthur, as earlier the Governor openly and actively opposed a free press in his convict colony. When Batman set off from Launceston early in May 1835 Fawkner had already purchased the schooner *Enterprise* and was awaiting its arrival from Sydney. Its delay, however, allowed Batman to depart before Fawkner. Fawkner asked Batman if some of his servants could travel with him, but Batman refused. Fawkner then sought a passage with the *Sally Anne* which was heading for the Hentys at Portland Bay but insurance restrictions forced the captain from diverting his route. The *Enterprise* finally arrived and set sail on 27 July 1835. Fawkner found himself again delayed by administrative obligations and was landed at George Town. The crew, however, proceeded to Western Port, Fawkner's original destination, but found the location unsatisfactory. They moved off to Port Phillip and surveyed the banks of the Yarra River. They decided on a site above the falls, thirteen kilometres upstream, which today is the central business district of Melbourne. The pressman and his family finally set sail for Port Phillip on 25 September 1835. Three weeks after their arrival Fawkner had completed the building of a sod hut. Over the next few months, while the Port Phillip Association set about establishing their sheep pastures, Fawkner made plans for creating the site for a future settlement; see A. Campbell, *John Batman and the Aborigines*, p.68; C. Billot, "The Founder of Melbourne: Was it Batman or Fawkner?", *Royal Historical Society of Victoria*, 55.3 (1984), p.14; A.G.L. Shaw, *A History of the Port Phillip District: Victoria Before Separation* (Melbourne, 1996), p.55–56.

had been the Attorney-General until he was dismissed under a cloud of controversy in 1826.⁵ Sams had been the Launceston Sheriff. Wedge was the Assistant-Surveyor. James Simpson was Police Magistrate at Campbell Town. Henry Arthur was the governor's nephew and Collector and Landing Surveyor for the Customs. Thomas Bannister was a Justice of the Peace and had been the Private Secretary to Arthur. John Thomas Collicot was the Post Master General. Anthony Cottrell was a constable and Poundkeeper and had led a roving party. Such was Batman's eagerness to establish himself that he had made his first visit to Port Phillip before the Association was even fully established. Indeed it was only after his return that Gellibrand drew up the Association's constitution.

The Port Phillip Association was a land speculation company whose formation, its members hoped, would help legitimise their somewhat questionable land claims. The Association came into being on 29 June 1835. Over the next year it planned to ship 1000 sheep from Van Diemen's Land to Port Phillip. Batman and Wedge, along with their servants, would superintend the

⁵Gellibrand, who had been a lawyer in London before emigrating to Van Diemen's Land, was appointed in 1823 as the first Attorney-General. He was dismissed for alleged misconduct. Shaw questions whether his dismissal was justified, though he does argue that, despite his "ability and legal acumen" his appointment was unfortunate given his lack of "judgement and commonsense"; see entry for Gellibrand in *ADB*, A.G.L. Shaw, "Some Officials in Early Van Diemen's Land", *THRA Papers and Proceedings*, 14.4 (April 1967), pp.131-132; T. Bezzant, "South Arm with Particular Reference to the Gellibrand Family" in *The Knopwood Historical Lectures: A Pioneer History of the Derwent's South Eastern Shore* (Hobart, 1988), p.81; J. Bonwick, *John Batman: the Founder of Victoria*, C. Billot, *John Batman and the Founding of Melbourne*.

scheme until each member could finalise his business in Van Diemen's Land and move to Port Phillip. Swanston, Gellibrand and Simpson were voted the Association's trustees.⁶

Something was known of the Port Phillip district and its surrounds before Batman set sail, for in 1803 Colonel David Collins had stopped there briefly in his search of the southern ocean for a suitable site for a penal settlement.⁷ Collins named the site where he settled "Sorrento" and he and his *Lady Nelson* passengers remained there for three months before abandoning it. A lack of water, a poor timber supply, and a dangerous harbour forced Collins to continue his search for a suitable site for a permanent settlement. The Derwent River would be his next port of call.⁸

Shortly before Collins abandoned Sorrento a group of twenty convicts escaped. Twelve were recaptured, one was shot and the rest were lost. William Buckley was the only one left behind who survived. He lived for the next thirty-two years with the Wathaurung bands of Port Phillip. Buckley made his reappearance shortly after Batman returned to Van Diemen's Land. Batman had left behind seven Sydney Aborigines and three servants to begin erecting huts and building sheep enclosures, as well as to keep secure their

⁶Shaw, *A History of the Port Phillip District*, p.50-51.

⁷Later in 1824 the explorers Hamilton Hume and William Hovell also led expeditions in the region.

⁸Shaw, *A History of the Port Phillip District*, pp.12-15 & 33-37.

newly acquired land holdings. On 6 July 1835 Buckley approached one of Batman's party. His imposing height and unsavoury appearance added to the men's shock when he approached them. Alexander Sutherland found him

naked except but for a rug of kangaroo skins thrown round his shoulders and over his hairy chest; behind him his hair fell in long unkempt masses, and in front a widespread beard was tossed in brown tangles. His bushy eyebrows overhung the shadows wherein there glanced a pair of small, suspicious eyes; his forehead, low and brown with exposure, and his turned up nose were both marked deeply with the scars of small-pox.⁹

Wedge later described him as "a most awfully savage-looking fellow."¹⁰

9.2 The Port Phillip Settlement and the Batman Treaty

Batman arrived at Port Phillip on 29 May 1835, and immediately began his search for local Aboriginal groups. He spent several days exploring the area

⁹J. Bonwick, *The Wild White Man and the Blacks of Victoria* (Melbourne, 1863), pp.1–16.

¹⁰J. Bonwick, *The Wild White Man and the Blacks of Victoria* (Melbourne, 1863), pp.1–16; Shaw, *A History of the Port Phillip District*, p.55; H. Anderson, "The Prudent Pardon: Batman's Party at Indented Head, 1835", *Victorian Historical Journal*, 47.3 (1976), pp. 231–8.

before he made contact with a band. Finding their camp recently vacated, he left gifts behind to demonstrate his good intentions towards them, and then set off after the band. Realising that they must have observed the arrival of his ship and fled, he tracked them at a distance, giving them time to grow used to his presence. Eventually he came into contact with a group of women and children who possibly had been left behind to observe Batman and to act as liaisons for their band. Batman sent his Sydney guides forward to speak with the women. Apparently they were able to communicate enough through signals and mimes to convince the women to allow Batman to escort them back to their camp. As was the European custom, upon arrival he presented them with “blankets, tomahawks, knives, scissors, looking glasses, and... affixed round the necks of each woman and child a necklace.” Batman then returned to his vessel and allowed the women to make their way back to their people.¹¹

Evidently aware of local protocol which called for Batman to then keep his distance from the group, the explorer spent the next five days surveying the land and he “abstained from intruding upon them, leaving the interview I had had with the women to have it’s full effect upon the tribes before I visited them again.” On the seventh day, Batman set out to again make contact with

¹¹Batman to Arthur, 25 June 1835, in Arthur to Spring-Rice, 4 July 1835, C.O. 280/58, PRO Reel 264.

the resident tribe and came across a man with his wife and three children: "To this distinguished royal chieftain of the prairies", he wrote in his journal, "I gave one pair of blankets, handkerchiefs, beads, and three pocket knives. . . ." ¹² Batman assumed that, though from a different tribe, this group had already learnt of him. The man escorted the explorer to where he would make contact with a group of men who, he understood, were the chiefs of several local tribes. ¹³

Like Robinson's guides on the shores of Lake Echo, Batman's Sydney guides began preliminary negotiations with the group, leaving Batman to wait at a distance until the time was appropriate for him to join the proceedings. His guides attempted to explain the object of Batman's visit and his intentions towards them. He then joined the group and those he assumed to be the chiefs indicated that he should escort them to their camp where they would join the women and children. This, Batman interpreted as "the strongest demonstration of peace and confidence." He was then introduced to the rest of the tribe which numbered fifty-five. He stayed with them that night and throughout the next morning. During that time he

fully explained to them that *the object of my visit was to purchase*

¹² *The Settlement of John Batman in Port Phillip from His Own Journal* (Melbourne, 1856), p.19.

¹³ *The Settlement of John Batman in Port Phillip from His Own Journal*.

*from them a tract of their country*¹⁴. . . I also explained my wish to protect them in every way, to employ them the same as my own natives, and also to clothe and feed them, and I also proposed to pay them an annual tribute in necessaries, as a compensation for the enjoyment of the land. The chiefs appeared most fully to comprehend my proposals, and much delighted with the prospect of having me to live amongst them. I then explained [to] them the boundaries of the land I wished to purchase. . . On the next day the chiefs proceeded with me to the boundaries, and they marked with their own native marks the trees which were at the corners of the boundaries, and they also gave me their own private mark, which is kept sacred by them. . . After the boundaries had been thus marked and described, I filled up, as accurately as I could define it, the land agreed to be purchased by me from the chiefs, and the deed when thus filled up was most carefully read over and explained to them by the two interpreters, so that they most fully comprehended it's purport and effect. I then filled up two others parts of the deed, so as to make it in triplicate, and the three principal chiefs and five of the subordinate chiefs, then executed each of the deeds, each part

¹⁴ Author's emphasis; the full historical significance of Batman's recognition of a the Aborigines' proprietary right to the land is discussed below.

being separately read over, and they each delivered to us a piece of the soil for the purpose of putting me in possession thereof, and understanding that it was a form by which they delivered to me the tract of land.¹⁵

Batman noted that the chiefs “insisted upon my receiving from them two native cloaks and several baskets made by the women, and also some of their implements of defence. . . .”¹⁶

Batman, in fact, concluded two treaties—the “Melbourne” treaty and the “Geelong” treaty. The former was for 500,000 acres, which covered the greater-Melbourne area as well as the western arm of Port Phillip, including what is now the city of Geelong. The latter was for 100,000 acres, which covered the Bellarine Peninsula, then known as Indented Head. A master-copy of each deed had been drawn up by Gellibrand prior to Batman’s departing and copies made by Batman’s servant, William Todd, at Indented Head.¹⁷

The treaties were designed around the simple feudal system of land transfer called feoffment. Drafts describing the transaction were prepared with space left for the names of the purchaser and the vendors, a description of the land

¹⁵Batman to Arthur, 25 June 1835, in Arthur to Spring-Rice, 4 July 1835, CO 280/58, PRO Reel 264, p.35–36.

¹⁶Batman to Arthur, 25 June 1835, in Arthur to Spring-Rice, 4 July 1835, CO 280/58, PRO Reel 264, p.35–36 & 39.

¹⁷R. Harcourt, “The Batman Treaties”, *Victorian Historical Journal*, 62.3 (1991), p.85; Shaw, *A History of the Port Phillip District*, p.47.

being transferred, and the form and quantity of goods being offered as payment. The purchaser was the Port Phillip Association. The vendors were the three principal chiefs, three brothers all by the name of Jagajaga, and the chiefs of the Dutigalla tribe of the greater-Port Phillip district: Bungaree, Yanyan, Moowhip and Momuarmallar. Payment consisted of large quantities of clothing, bedding, kitchen-ware, tools, and food. These they would continue to supply to the local tribes on an annual basis.

The land being transferred included “all that tract of country situate and being at Port Phillip running from the branch of the river at the top of the port about seven miles from the mouth of the river forty miles north east and from thence west forty miles across Indmoo Downs or plains from thence south-south-west across Mount Vilumanata to Geelong Harbour and containing about five hundred thousand more or less acres. . . .” As part of the transfer process one of the Aborigines with whom Batman was negotiating gave him a handful of soil, for under the feoffment system of land transfer the transaction was not complete until something from the land, which symbolised the entire commodity being purchased, was physically handed from the vendor to the purchaser. The following day Batman, as he noted in a letter to Arthur, toured the boundaries of his 600,000 acre claim and marked the corner limits

of his newly-acquired holdings.¹⁸

The location of the actual site where the treaty was signed, on the banks of a river which the speculator named “Batman Creek”, remains unclear. It is difficult to trace Batman’s movements for a map of his journey, drawn up by Wedge only after his return to Van Diemen’s Land, is not to scale, does not correctly identify all of the geographical features of the area and does not always follow Batman’s description of his journey as detailed in his journal. Several scholars have studied Batman’s journal and the contemporary maps drawn up by Wedge and a number of different possible locations have been determined. James Bonwick claims that Batman’s Creek was actually Merri Creek. James Blackburn and Henry Gyles Turner argue that the treaty was signed on the banks of the Plenty River, about three miles north of the junction of the Plenty and Yarra Rivers. J. Stuart Duncan places Batman in Thomastown. Alistair Campbell can only conclude that Batman made his famous transaction on the banks of the Darebin Creek near Norris Bank Reserve.¹⁹

¹⁸Campbell, *John Batman and the Aborigines*, p.99; Treaty between John Batman and the Port Phillip chiefs, 6 June 1835 in Arthur to Spring Rice, 4 July 1835, C.O. 280/58, PRO Reel 264.

¹⁹Campbell, “Discovering Batman’s Port Phillip Exploration”, *Victorian Historical Journal*, 62.3/4 (1991/1992), p.98–106; J. S. Duncan, “John Batman’s Walkabout”, *Royal Historical Society of Victoria Journal*, 57.2 (1986), pp.1–12.

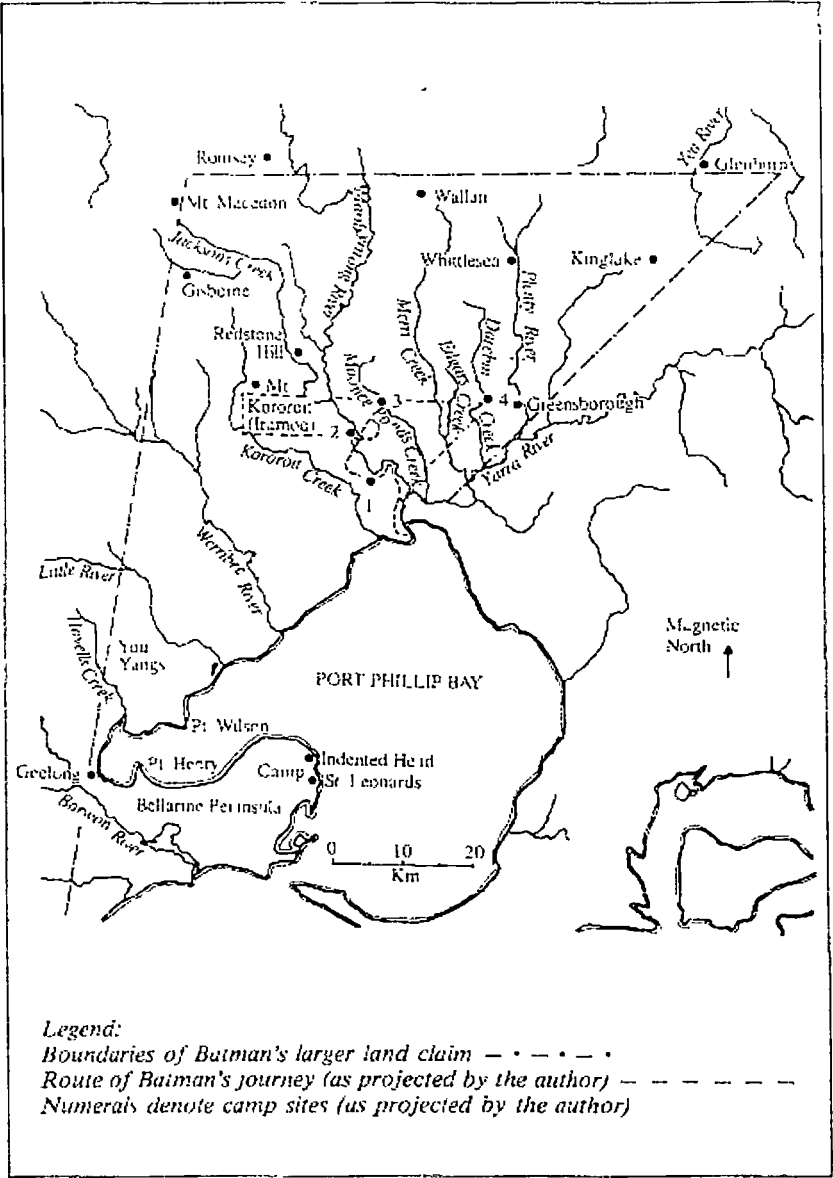


Figure 9.2:
The boundaries of Batman's 600,000 acre purchase from the Port Phillip Duttigalla tribes; *Source:* A. Campbell, "Discovering John Batman's Port Phillip Exploration", *Victorian Historical Journal*, 62.3 (1991/1992), p.100.

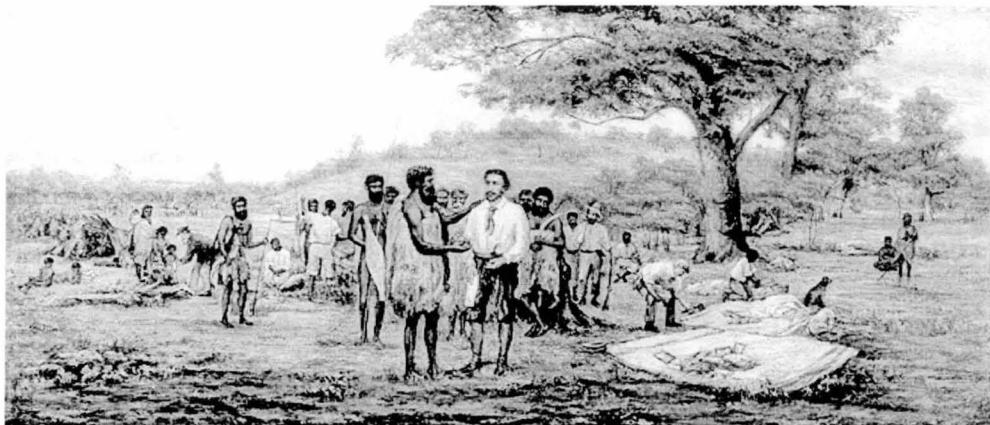


Figure 9.3:

J.W. Burt's depiction of Batman concluding his treaty with the Duttigalla Aborigines. *Source:* State Library of Victoria La Trobe Picture Collection; image taken from: <http://www.foundingdocs.gov.au>.

9.3 Official Responses to the Batman Treaty

Once Batman returned to Van Diemen's Land he wrote to Governor Arthur with the details of his recent activities. He explained some possible implications of the treaty for the colonial government. He noted that his previous experience with Aboriginal groups had led him to believe that there was "a favourable opportunity of opening a direct friendly intercourse with the tribes in the neighbourhood of Port Phillip." Batman felt that as a native of the colony of New South Wales he had a special association with the Aborigines. He was careful to add that

by obtaining from them a grant of a portion of that territory upon

equitable principles, not only might the resources of this colony be considerably extended, but the object of civilization be established, and which, in process of time, would lead to the civilization of a large portion of the Aborigines of that extensive territory.²⁰

Arthur was quick to respond. He seemed highly pleased with Batman's efforts, perceiving that "justice and humanity alike require as a preliminary in the occupation of every new country." Arthur, nevertheless, was hesitant to acknowledge that Batman now held a legitimate right to the 600,000 acres in question. About to be recalled from Van Diemen's Land, Arthur was careful to appear to his superiors in London completely proprietorial in all of his official activities. Consequently, he noted—regrettably, for he had long hoped to have Port Phillip established as an annexed colony of Van Diemen's Land—that the district was outside the jurisdiction of his government, Collins having claimed it for New South Wales in 1803. "His Excellency," wrote Colonial Secretary, John Montagu

would, therefore, only observe that the recognition of the rights supposed to have been acquired by the treaty into which you have entered with the natives, would appear to be a departure from

²⁰Batman to Arthur, 25 June 1835 in Arthur to Spring Rice, 4 July 1835, C.O. 280/58, PRO Reel 264.

the principle upon which a parliamentary sanction, without reference to the Aborigines, has been given to the settlement of South Australia, as part of the possession of the Crown.²¹

On 26 August 1835 governor of New South Wales, Sir Richard Bourke, published a proclamation officially declaring Batman's treaty null and void. The land, he proclaimed, though unsettled, still lay within the limits of British sovereignty and, as such, a treaty with the Aborigines could not be considered legitimate. Therefore,

all persons who shall be found in possession of any such land . . . without the licence or authority of His Majesty's Government . . . will be considered as trespassers, and liable to be dealt with in a like manner as other intruders upon the vacant lands of the Crown within the said colony.²²

Montagu sent a letter to Batman personally explaining the government's position. He repeated the message of the proclamation, though he did reiterate Arthur's approval of "the regard expressed for the welfare of the aboriginal natives . . ." ²³

²¹Montagu to Batman, 3 July 1835, *Historical Records of Victoria*, 1 (Melbourne, 1981), pp.10–11.

²²Proclamation by Governor Bourke, 26 August 1835, *HRVic*, p.13.

²³Montagu to Batman, 3 July 1835, *HRVic*, p.10–11.

Bourke's failure to sanction Batman's treaty must be placed in context. His dealings with the indigenous peoples of South Africa demonstrated his genuine interest, albeit a patriarchal one, in promoting their welfare. Upon his appointment as Governor of New South Wales in 1831, his interest turned to the Australian Aborigines. Indeed, in his first despatch to Arthur from Sydney he wrote:

I shall be glad to learn that the native tribes are in a greater state of tranquillity than has lately prevailed. The management of those people has I fear become a matter of great difficulty, and is likely to increase as more of the land is granted to settlers from foreign parts, unless some regular allotments can be made to the tribes in which they would be satisfied.²⁴

However, that Bourke vetoed Batman's treaty reflected his obligation to uphold and effect Imperial policy rather than an opposition to the spirit of the treaty itself.

A despatch from the newly appointed Secretary of State, Lord Glenelg, the following April stated clearly the Crown's position. Glenelg began: "I approve of the course which you have hitherto pursued on this subject, and especially of your Proclamation maintaining the rights of the Crown to the

²⁴Bourke to Arthur, 17 December 1831, in Arthur to Horwick, 19 January 1832, C.O. 280/33, PRO Reel 250.

soil on which these new settlements have been effected.” Indeed, Glenelg was deeply concerned that Britain’s colonial dominions be protected against the threat posed by activities such as those of the Port Phillip Association:

Although many circumstances have contributed to render me anxious that the Aborigines should be placed under a zealous and effective protection, and that their rights should be studiously defended, I yet believe that we should consult very ill for the real welfare of that helpless and unfortunate race by recognising in them any right to alienate to private adventurers the land of the colony. It is indeed enough to observe that such a concession would subvert the foundation on which all proprietary rights in New South Wales at present, rest, and defeat a large part of the most important regulations of the local government.²⁵

Henry Reynolds maintains that the issue of the legitimacy of the Batman treaty arose directly from a precedent established by the Royal Proclamation of 1763. “The critical legal point in question”, Reynolds argues, “was not whether the Aborigines had anything to negotiate with but the long-established principle that only the Crown could extinguish native title.”²⁶ Simply put, Batman,

²⁵Glenelg to Bourke, 18 April 1836, *Historical Records of Australia*, I.18, p.379.

²⁶H. Reynolds, “Native Title and Historical Tradition”, B. Attwood (ed), *In the Age of Mabo: History, Aborigines and Australia* (St. Leonards, 1996), p.29.

as a private citizen, had not been authorised by the Crown to treat with the Duttigalla people. As will be recalled, Chief Justice John Marshall had addressed this very question in *Johnson v. McIntosh* in 1823 and found that only the Federal Government held the right to dispose of Native American lands. Reynolds holds that in Port Phillip the same was true. “The government’s rejection of the treaty”, Reynolds thus holds,

was strictly in accord with the law of the period. It did not turn on the question of whether the Aborigines had any form of native title. It wasn’t a question of the ability of the Port Phillip clans to *sell their land* but rather the inability of Batman to *purchase it* when confronted with the Crown’s exclusive right of pre-emption.²⁷

Batman, however, still had Arthur’s sympathies and though his treaty held no weight with the government, his interest in the Port Phillip district led Arthur and Bourke to consider options for managing the inevitable settlement of the region. Arthur forwarded Batman’s letter to the Colonial Office. He reiterated that the Port Phillip Association’s claim was not valid for the reasons he had detailed to Batman. Arthur noted, moreover, that even if the colonial government had failed to take possession of the district, the political organisation of the Duttigalla tribes made questionable their claims to it:

²⁷Reynolds, *The Law of the Land*, pp.127–128.

It appears also, from a comparison of the descriptions given by Messrs Howell, and Hume, and from Mr. Batman, that they had met with several tribes in the same district who distinguished it by different names, a circumstance which would render the original ownership doubtful, even were it true in contemplation of law, that a migratory savage tribe, consisting of from perhaps 30 or 40 individuals, roaming over an almost unlimited extent of country, could acquire such a property in the soil as to be able to convey it so effectually as to confer to the purchasers any right of possession which would be recognised in our courts of law.²⁸

Nonetheless, this did not preclude the settlement of the district within the guidelines of law and government regulations. To placate Batman, Arthur thought that a “liberal grant of land” might be appropriate.²⁹ Ever-growing interest in the district led Arthur to perceive that there was some urgency in making clear the position of the colonial government regarding jurisdiction over the land. The Hentys had their whaling station at Portland Bay; the Fawkners were erecting buildings at Port Phillip; and the Port Phillip Association had already invested thousands of pounds in preliminary plans to transport sheep to the district. This all added to Arthur’s concern that the colonial government

²⁸Arthur to Spring Rice, 4 July 1835, *HRVic*, pp.11-12.

²⁹Arthur to Spring Rice, 4 July 1835, *HRVic*, pp.11-12.

should act quickly to develop a policy regarding the occupation of the Port Phillip district.

Bourke concurred. Now that the colonial government was unable to check the flow of emigration, it was forced to act. To Bourke's mind, the challenge for the government lay in turning "to the best advantage a state of things which it cannot interdict."³⁰ There were several reasons for establishing government in Port Phillip. Law and order needed to be established so as to control the activities of the settlers. Moreover, the revenue which was sure to flow from new enterprises and industries would be advantageous both for the colonial and Imperial governments. The main obstacle was that Port Phillip was so far distant from Sydney.³¹

With regard to Batman and the Port Phillip Association, Bourke felt that their removal from Port Phillip would achieve little. Bourke realised that the Port Phillip Association had already incurred considerable expense and would resist attempts to be ousted from the district. Therefore, it would be more reasonable to establish conditions under which the Association would take up its sheep runs. Bourke felt that the land, instead, should be surveyed and marked so that Batman and others could legitimately and legally purchase the land from the Crown. The "gradual introduction of the various institutions of

³⁰Bourke to Glenelg, 10 October 1835, *HRVic*, p.15-19.

³¹Bourke to Glenelg, 10 October 1835, *HRVic*, p.15-19.

society," Bourke perceived could then naturally occur.³²

Bourke's attitude was influenced by other issues which were running parallel to the Aboriginal question. The activities of the land speculators at Port Phillip were part of a much larger phenomenon of settlement. While the powers-that-be in London fervently sought to concentrate settlement, the seeming boundlessness of the land's bounty beyond the frontiers began to draw the colonists away from the coastal settlements into the interior. These lands were, the colonial authorities continued to point out, still Crown lands, and therefore those who settled (and developed) them were, at best, temporary residents, protected by no tenure system; and at worst trespassers who could be legally removed. This group came to be known as "squatters."³³ By the time Port Phillip came to be settled the squatter movement had begun in earnest.³⁴

³²Bourke to Glenelg, 10 October 1835, *HRVic*, p.15-19.

³³The term "squatter" had Vandemonian origins. It came from the activities of ticket-of-leave convicts who took up runs stocked with sheep "probably acquired by the most exceptional means"; see Government Order, *Hobart Town Gazette*, 15 March 1828

³⁴The inequality of the colonial class system also encouraged squatter activity: "The lower classes objecting to the feudalistic structure that had emerged," writes modern historian Michael Roe, "simply placed themselves on small holdings, sometimes legally by purchase or lease, but usually without any man's permission. Precisely the same argument that appealed to the larger stockholders applied on a small scale to these men. Land was there for the taking, and the Government could not remove everybody!" Squatters felt they had a clear justification for their actions, argues Roe, "[u]ntil squatters drove forth their sheep, the land had been entirely unproductive; this new movement introduced civilization and converted the wilderness into wealth." Indeed, the settler, John Cotton, went so far as to claim that "[t]hose persons who first reclaimed the land from a state of barrenness, the persons who first turned the forest land to their own use, have surely a far better title to the soil than the Queen of England, or any other body." While this flew in the face of claims of possible Aboriginal rights to the land, it held to the fundamental tenet by which

The colonial government quickly found that it could not, in reality, check the outward movement of this new landed group. As a result, it could only attempt to control squatter activities. During the 1830s and 1840s Bourke and his successor Sir George Gipps introduced several schemes to try to keep a check on settlement. Licensing systems were introduced to both regulate and procure income from settlement, as well as to deal with the increasingly problematic issue of worsening Aboriginal-settler hostilities. So when Bourke heard of Batman's arrival at Port Phillip, he was faced with both the squatting issue as it applied to this newest settlement, as well as the Aboriginal question,

the Australian colonies had been claimed in the first instance, that it was a "...a desert or uninhabited land." Though the colonial government would never accept the extremity of Cotton's claims, it could easily embrace those of the early squatters, as expressed by Roe. The evolution of the nature of the squatting fraternity also aided its eventual legal sanction. At its inception squatters comprised the lowest antipodean classes. According to historian Stephen Roberts, they were viewed as "the chief menace to legitimate settlement." They were "regular camp-followers of any movement that had pastoral expansion as its goal. They harassed the stock-owners and conspired with their servants, they rendered property and at times even life uncertain..." Coming mainly from convict stock they were viewed with the utmost opprobrium. However as the more respectable classes of settler came to recognise that there was wealth to be had from these vast and bountiful lands, and themselves took up sheep runs beyond the frontier, attitudes towards the squatting movement began to change. From the mid-1830s the word "squatter" came to have more positive connotations and "with a somewhat startling rapidity, the word, from symbolizing the dregs of the populace, came to denote the respectable and enterprising settlers who had extended their activities from the freehold lands to the wider fields beyond, and sent their stock out into the Government 'bush'." Consequently, in 1835, the likes of Batman and Fawkner, both of whom were convict progeny, as well as the more respectable Henty family, were held in a degree of esteem, despite the fact that they were, for all intents and purposes, trespassing on Crown lands; see S. Roberts, *The Squatting Age in Australia, 1835-1847* (Melbourne, 1975); M. Roe, *Quest for Authority in Eastern Australia, 1835-1851* (Melbourne, 1965), p.61; J. Cotton, "The Correspondence of John Cotton" in Roe, *Quest for Authority*, p.61; J. Stephen, Opinion *re* validity of statute 20 George II, c.xix, in Bathurst to Brisbane, 7 October 1822, *HRA*, IV.1, pp.412-417.

upon which Batman had added a new dimension.³⁵

9.4 Popular Responses to the Batman Treaty

While Batman and his colleagues received a generally positive response from the governments of New South Wales and Van Diemen's Land, the colonial press in Van Diemen's Land was ambivalent about Batman's activities. Bemused, the *Cornwall Chronicle* described Batman as the "Tasmanian Penn."³⁶ Dr. James Ross, editor of the *Hobart Town Courier*, a liberal minded settler who had enjoyed a positive experience with the Tasmanian Aborigines, seemed generally supportive of Batman's activities at Port Phillip. His editorial comments noted that the measures to bring the district "into a productive state" were to be applauded. He also thought it wise that Batman made a "compact" with the Aborigines whom he believed were "the original owners of the soil." Indeed, Ross proclaimed: "Happy had it been for Van Diemen's Land if the same step had been taken with the aborigines of it on its first settlement by the English." Ross perceived that one positive effect would be that the colonial government was now obliged to carry out active measures to protect and conciliate the Aborigines in that district.

³⁵Shaw, *A History of the Port Phillip District*; Roberts, *The Squatting Age in Australia*, pp.69-92.

³⁶*Cornwall Chronicle*, 13 June 1835; This is in reference to the Quaker, William Penn. See Chapter 2 for a discussion of Penn's amicable relations with the Delaware Tribe.

Ross ended the editorial on a humorous note, facetiously claiming to have, himself, negotiated a similar treaty with the Bruny Island chief, Woorredy. Fawcner's paper, the *Launceston Advertiser*, published a copy of the editorial several weeks later. "A nod... is as good as a wink to a blind horse..." Ross wrote,

and we are happy to say, that we yesterday took advantage of the hint (seeing those large sums of money which our kind contemporaries are every week giving us, is never yet forthcoming), and did ourselves the pleasure to wait upon the aboriginal chief Woureddy when the following conversation and arrangement took place between us:—

'Good morning, Mr. Woureddy, I hope I have the honour to see your Majesty in good health?'

The powerful chief gave his reply with an assenting smile.

'You are King, I believe, of all the western part of this island and hold possession from your noble ancestors of those fertile tracts of 600,000 acres more or less, lately visited by Mr. G.A. Robinson and Mr. Surveyor Sharland?'

A significant nod.

'Now that you are going to Flinders Island and Port Phillip with

Mr. Robinson and the rest of your friends and relations you will have no objection to sell me your full right and title to that portion of your dominions?’

A significant nod.

‘I do not expect you to name your price, as you are not yet quite perfect in the English language, but I will name it for you. Here is a basket of Brown’s River potatoes, a roll of tobacco, 6 pipes, a blanket, a dozen loaves of bread and a dead kangaroo—are you content?’

(I thought I could not lose much at this price, though the land I believe is not very rich, and rather out of the way—neither did I wish to impose upon the King—I mean King Woureddy—by offering him any thing less.) His Majesty, like Jupiter or Olympus, again nodded, and the whole of the western country, tiers, plains, rivers, gum trees and all, fell into my possession, and I hereby give Mr. Roadknight, Sir John Owen, Mr. Edward Lord, wild cattle and all, due notice to decamp, as all trespassers from this time forth will be proceeded against according to law. I then proceeded to have the conveyance, duly drawn up in triplicate, on which Woureddy with proper regal and pomp and dignity, shaking a portion of the

grease and red ochre out of his pendant locks, impressed it first with the palm of his hand and afterwards with his foot. I then hastily gathered up the parchment, which I thus ratified under his sable Majesty's naked hand and foot, to be registered at Mr. Beamont's office.³⁷

Not everyone was so supportive of Batman's activities. The *Colonial Times* published an editorial from "J.J." (possibly Jorgen Jorgenson) who listed a number of objections to the scheme. The author worried that something akin to the sealing or early squatting fraternities could develop which "would be injurious to the best interest of the British people and colonists." The writer conjectured that it would form a

depot, exempt from the control of government as a receptacle for runaway convicts and all other desperate characters, who would flock to Port Phillip, endangering the peace and property of the colonists, becoming buccaneers and forming themselves into bands of robbers on land without means of restraining their depredations.

The author was also concerned that the Port Phillip Association would take advantage of the opportunity to establish a monopoly in the district which would be "injurious to the interests of any community" for it would "give a

³⁷ *Hobart Town Courier*, 26 June 1835 (reprinted in *Launceston Advertiser*, 2 July 1835).

wrong channel to the supply of labour, and lay the foundation of a hateful oligarchy.”

As for the Aborigines, the editorialist thought Batman’s claim illegitimate because “the chiefs of a small Aboriginal tribe cannot by any natural right, inherent in himself, dispose of land, which, in justice and fairness, ought to be handed down to the posterity of such tribe...” Moreover, he contended, even if the chief had been sanctioned by his tribe to dispose of the land, his sovereign claim to it was still questionable. This was the case, he argued, because

it has been recognised by the universal consent of all civilized nations that the earliest discoverers of a region exercise the right of proprietorship over it, provided such region is found in state of nature, uncultivated and unproductive, and of scarcely any utility either to the Aborigines or their fellow creatures...Hence the claims, on the part of Great Britain, on the sovereignty of her Australian Provinces are just.³⁸

This was the view that justified the manner by which New South Wales and Van Diemen’s Land had been colonised. As will be recalled, Colonial Office legal counsellor, James Stephen, articulated the official position of the British Government to its claims on New Holland a decade and a half earlier when he wrote that “the colony was acquired neither by conquest nor cession, but by

³⁸ *Cornwall Chronicle*, 13 June 1835; *Colonial Times*, 21 & 28 July 1835.

the mere occupation of a desert or uninhabited land.”³⁹ However, as Reynolds purports, with the settlement of Port Phillip, the tide of legal opinion had begun to turn. Though, at settlement, Britain had secured sovereignty over the land, still, explains Reynolds,

the rights of the Crown as against Batman rested not on the doctrine of *terra nullius* but on its rights of pre-emption of the native title. . . . The land remained in the possession of the Aborigines by right of prior occupation up until the time that the Crown chose to exercise its exclusive right to extinguish the native title.⁴⁰

No longer did legal opinion support the notion that a necessary condition of colonisation was the complete abolishment of Aboriginal rights to the land.

9.5 The Authenticity of the Batman Treaty

In his publication, *John Batman and the Aborigines*, historian Alistair Campbell points to various reasons why the Batman treaty, regardless of its political legitimacy, was fraudulent. Campbell lists a number of practical issues he has with Batman’s description of what happened. He argues that it would have been impossible to traverse the boundaries of the 600,000 acres in question

³⁹J. Stephen, Opinion *re* validity of statute 20 George II, c.xix, in Bathurst to Brisbane, 7 October 1822, pp.412–417.

⁴⁰Reynolds, *The Law of the Land*, pp.130–131.

in the short time suggested by Batman so that each corner could be marked. Furthermore the negotiation of the Geelong deed was not finalised with the symbolic passing over of a handful of soil, Campbell holds, and so the second deed was not complete, and therefore was invalid. A full description of the land purchased was not entered on either deed, and so again, they were not complete and therefore, not valid. As for the chiefs' 'X', marked to represent their signatures, Campbell maintains that they had to have been entered by someone else for it was "inconceivable that Batman could have persuaded eight unrehearsed Aborigines in a few hours to have drawn the marks with the neatness and penmanship shown in the documents." Moreover he holds, that the documents which remained free of smudges or other marks indicates that the deeds could not have been handled under the conditions described by Batman for such damage would have been unavoidable.⁴¹

Campbell also argues that the tribes with whom Batman negotiated did not have the authority to sell the lands in question because they were the dominion of at least five tribes, not the two that Batman recorded in the treaty deeds. Moreover, according to Wedge the Port Phillip tribes did not have chiefs and so none of those present at the negotiations had the authority to act on behalf of their clans.⁴²

⁴¹Campbell, *John Batman and the Aborigines*, p.105-6; Shaw, *A History of the Port Phillip District*, p.47.

⁴²Campbell, *John Batman and the Aborigines*, pp.101 & 106.

Others dispute this second point. Diane Barwick has mapped the various nineteenth century Victorian clans and their heads and has identified that five of the eight treaty signatories were chiefs of Melbourne clans. Moreover, she explains,

a clan-head had effective authority within his own group and was considered its rightful representative in external affairs. All clan-heads were men of distinguished achievement; certain of them were so eminent that their wishes were obeyed by all clans comprising a *-(w)urrung* [common linguistic group] and their religious authority was acknowledged far beyond the region.⁴³

Campbell also argues that language differences between the Port Phillip and Sydney Aborigines meant that the two groups could not effectively communicate with each other. The Port Phillip clans would not have understood what Batman and his guides were proposing. Batman could not even learn the correct names of the three brothers with whom he was negotiating the Melbourne deed.⁴⁴

Nonetheless, it is indisputable that negotiations, however disparate their

⁴³D. Barwick, "Mapping the Past: an Atlas of Victorian Clans, 1835-1904", *Aboriginal History* 8.2, 1984, pp.107-108.

⁴⁴Campbell, *John Batman and the Aborigines*, p.106.

interpretation, were carried out. Barwick thus suggests how the Victorian Aborigines' may well have interpreted the events of 6 June 1835. "John Batman's 1835 'treaties' with the leaders of the clans near Melbourne" she explains, "are an example of how permission for temporary access was granted in a ritual exchange of gifts and formal presentation of tokens (soil, plants, water food) symbolising the owners' hospitality."⁴⁵

Historian Richard Broome, likewise, maintains that for the Victorian Aborigines (the Kulin) the negotiations with Batman would, indeed, have been authentic:

Certainly the communications of ideas would have been difficult between the parties despite the presence of Batman's Aboriginal guides from Sydney. Certainly the Kulin had no notion of land sales and would have rejected such an idea if they did understand the European's desires....[However] Batman's overtures, complete with Aboriginal negotiators, gifts and conciliatory gestures, fitted into Aboriginal conceptions of negotiations. While they may appear to us as victims of a poor deal, in their terms they were landowners who it seems freely chose to give a small band of strangers access to land in exchange for some tempting items....⁴⁶

⁴⁵D. Barwick, "Mapping the Past", p.107.

⁴⁶R. Broome, "Victoria", Ann McGrath (ed), *Contested Ground: Australian Aborigines*

Ultimately, though, for Bourke and Arthur the authenticity of Batman's deeds was moot because their immediate concern was to ensure that settlement, having now begun, progressed with an element of law and order. To this end, Batman and his associates were not forced to defend the legitimacy of the treaty deeds but were focused more on presenting their claims in a manner which would be accepted by the New South Wales and Van Diemen's Land governors.

To help justify the legitimacy of their land claims the Port Phillip Association, thus, noted that its primary aim in purchasing land from Port Phillip Aborigines was to form "an extensive pastoral establishment" there. The land surpassed all of Batman's hopes. "I never could have imagined it possible that so fine a country existed on the face of the globe", he wrote, "gentle hills, plains, and downs, on which 5,000 sheep might have been allowed to feed with little trouble to the shepherd." In his journal he wrote of the land surrounding the Yarra River: "this will be the place for a village." He detailed the plans of the Port Phillip Association in a letter to Arthur, noting that its officials expected to export at least 20,000 breeding ewes from Van Diemen's Land which would be managed by "married men of good character." The settlement would also have attached to it a man of the cloth who would preserve "due order and

Under the British Crown (St Leonards, 1995), p.126.

morality".⁴⁷

However, it seemed that Batman's true intentions were never to establish a village or town. Indeed, he gave his servant Gumm a "written authority to warn off all persons found trespassing on the land I had purchased from the natives." Moreover, his efforts to drive from the district Fawkner's family and servants demonstrated further that he wished his Association to have exclusive access to the land. While this may have aggrieved Fawkner, a positive result for the Aborigines was, as Shaw notes, that for a short time at least while settler numbers remained limited, a check was kept on frontier violence. Regardless of these results, Batman was aware (made so, some say, by the politically-astute Gellibrand) that efforts to demonstrate that he wished to establish a settlement would help strengthen his cause with the colonial government.⁴⁸

Batman's activities with the Aborigines, it has been argued, were also carried out to promote his commercial ambitions. A.G.L. Shaw asks: were the Port Phillip Association members "only trying to gain support from the humanitarian lobby in Britain by covering their commercial plans with a philanthropic cloak?" However, Batman's activities at Port Phillip and the language he used in his correspondence with the colonial government demonstrates that,

⁴⁷Batman to Arthur, 25 June 1835, p.39; *The Settlement of John Batman in Port Phillip from his own Journal*, p.14; Shaw, *A History of the Port Phillip District*, p.47.

⁴⁸*The Settlement of John Batman in Port Phillip from his own Journal*, pp.22-23; C. Billot., "The Founder of Melbourne: Was it Batman or Fawkner?", pp.10-21; Shaw, *A History of the Port Phillip District*, p.47.

far from being guided solely by selfish interests, he held to some quite unique views for his time. Though the humanitarian movement had strong advocates in London and the various colonial governments, much opinion towards the Aborigines in the mid-1830s still relegated them to a position where they required the protection of a paternalistic colonial power who had full rights to the lands upon which they had settled. Batman's treaty, which questioned both of these views, and which had at its core a recognition of Aboriginal land rights, therefore placed him well beyond even the most liberal minded advocate.

Moreover, in his correspondence with Arthur, Batman admitted that he thought the Duttigalla people to be "the real owners of the soil." He stated that "my object has not been possession and expulsion, or what is worse, extermination, but, possession and civilization..."⁴⁹ This was extraordinary given that every phase of settlement throughout the Australian colonies had been guided by the principle that the European settlers had the legal and moral right to the land. The efforts and activities of the squatters merely reinforced this tenet. Furthermore, that implicit in the settlement of Van Diemen's Land was that the whole island had become a British possession which necessarily, though tacitly, led to the expulsion (and almost, at times, extermination) of its

⁴⁹Batman to Arthur, 25 June 1835, in Arthur to Spring Rice, 4 July 1835, C.O. 280/58, PRO Reel 264, p.37; Shaw, *A History of the Port Phillip District*, p.47.

Aboriginal peoples—a process with which Batman was intimately involved—rendered even more remarkable Batman's claims. Consequently, Batman's treaty with the Port Phillip Aborigines effectively denied that there existed no sovereign powers on the Australian continent. As such, it contradicted every principle by which colonialism had evolved.

However, while the motivations behind and implications of Batman's treaty may remain a source of debate, what is clear is that Batman had established the context for the peaceful settlement of the Port Phillip district (in the earliest days at least). He reported that his men had fed and clothed up to one hundred natives at a time and had supplied them with rations on a daily basis. When food stocks ran low the Aborigines reciprocated, supplying Batman's people with native fruits and vegetables. Batman perceived that the "habits of industry" in which the Aborigines had been occupied demonstrated that "if no unforeseen obstacles occur, a gradual system of civilisation will obtain." Batman also recognised the great benefit that Buckley's presence offered. He was able to explain "to the several chiefs our motives and intentions in settling amongst them and the consequences which might arise from any aggression on their part." He also explained that any ill-treatment on the part of white men towards them, if reported to the heads of the establishment, would meet with its proper punishment. They apparently understood, and "promised

conformity.”⁵⁰

Such was Batman’s confidence that his treaty had set the stage for peaceful race relations to follow that in a letter to Montagu in November 1835, he avowed that

[i]n fact, however sanguine I may previously have been as to the complete success of the undertaking, I feel now infinite reason to be much more so; and doubt not but the settlement now formed will be useful, not only to all immediately concerned, but to the mother country as well as to this colony.⁵¹

Gellibrand reiterated this message in a letter to Arthur the following April. “I am firmly impressed,” he wrote, “with the opinion that the foundation may be laid at Port Phillip for spreading the truths of Christianity through the whole continent of New Holland.” Gellibrand was confident that the civilisation and Christianisation of the locals were attainable.⁵²

Wedge was also convinced that if some specific measures were introduced which aimed to protect and placate the Aborigines then amicable relations could be maintained. His dealings with several Aboriginal groups led him to

⁵⁰Batman to Arthur, 23 October 1835, *HRVic*, pp.33–34.

⁵¹Batman to Montagu, 30 November 1835, *HRVic*, pp.35–36.

⁵²Gellibrand to Arthur, 13 April 1836, *HRVic*, p.24.

develop some surprisingly modern views. He would hold to these views long after relations had deteriorated. Five years after initial settlement Wedge wrote to Lord Russell with a strategy for how best to conciliate the Aborigines of Port Phillip. Wedge conceived that the scheme could be funded from “a portion of the money realized by the sale of Crown lands” which he felt was more than equitable for “the natives have an undoubted claim upon the land. . . .” This was later recommended as policy during the settlement of Swan River in Western Australia.⁵³

Though the Port Phillip Association’s efforts with the Duttigalla Aborigines have been perceived by some as political manoeuvring designed to impress the colonial government, they may not have been completely disingenuous. Though Batman had a complex and not always conciliatory history with the Aborigines still he had come to know more about them than most. Wedge, too, as a surveyor in Van Diemen’s Land, had taken a keen interest in them and

⁵³Wedge outlined a specific plan for the civilisation of the Port Phillip locals. He thought that settlers might be induced to conciliate and befriend the locals if land was offered in exchange for the domestication of those individuals upon whose land they resided. Following Arthur’s lead, he recommended the establishment of reserves which would offer the Aboriginal groups a place of safe retreat where they could access food and other provisions. The offering of gifts would symbolise the colonists’ continuing good will. Their civilisation could be promoted through education. The young could be placed in school and the adults encouraged to grow fruit and vegetables. This they could then trade with one another. Superintendents could be placed on the reserves to act as overseers and protectors. Many of these same schemes had been proposed by the authors of a Select Committee Report published in June 1837. The Committee’s recommendations followed those suggestions that Arthur had proposed for the protection of Aboriginal groups in the new colonies of South Australia and Western Australia; see Wedge to Russell, 18 January 1840, *HRA*, I.10, pp.487–489; Report from the Select Committee on Aborigines (British Settlements) (Britain, 1837), p.83.

had demonstrated his knowledge of their society and culture. Both had had various dealings with different groups during their time in Van Diemen's Land. Consequently, at the very least, Batman and Wedge seemed to know enough to quickly become acquainted with the Duttigalla people. They would certainly have been aware, having lived through the Aboriginal crisis in Van Diemen's Land, that had the Duttigalla people turned hostile, they could potentially prove to be very formidable opponents to settlement.

Marie Fels places the activities of Batman, as the guiding spirit behind the Port Phillip Association, into broader perspective, arguing that Batman should be given credit for his activities amongst the Victorian Aborigines, and in particular for his efforts in negotiating a treaty with them. "From the perspective of Aboriginal/European relationships," she argues,

it doesn't matter that [Batman] was there illegally; nor does it matter that he had no authority to enter into such an arrangement; nor that his map is unintelligible in terms of boundaries and distances, nor that he falsified his written account. Nor even do his pious stated intentions matter. The simple fact is that whether by accident or cultural sensitivity, he made an agreement with the six clan heads who had the right and the authority to speak for

the land, and they kept to their word.⁵⁴

Thus, though race relations did not always remain so amicable, Batman's early efforts had some uniquely positive consequences. Indeed, Fels makes the bold claim that Batman's "treaty was the single most important fact in the relatively peaceful land grabs of Port Phillip district." She notes that "the fundamental principle of Aboriginal society was the principle of reciprocity," that keeping one's word was the natural state of affairs, and that Batman (and Fawcner) abided by these social mores long enough for personal, friendly and mutually satisfying relations to develop.⁵⁵

Fels observes that there were no killings during the first year of settlement partly because, she perceives, the Duttigalla people were paid the respect that their status afforded them. But more importantly, though the British authorities did not recognise the treaty, because the Aborigines did "there was virtually no trouble within the area covered by the terms of the treaty." The treaty was a rental deed which Batman and his colleagues honoured. In short, she argues, "the second time around the Vandemonians found themselves in a contact situation, they got it right. The harsh Tasmanian experience led directly to the initially calm encounter at Port Phillip."⁵⁶

⁵⁴M. Fels, "Congruencies and Contradictions in Aboriginal-European Relations in Van Diemen's Land and Port Phillip", *Bulletin for the Centre for Tasmanian Historical Studies*, 3.2 (1991/92), p.74.

⁵⁵Fels, "Congruencies and Contradictions...", p.75.

⁵⁶Fels, "Congruencies and Contradictions...", p.75.

Certainly, the peaceful race relations that immediately followed the settlement of Port Phillip were hardly different in character from what had occurred in New South Wales and Van Diemen's Land. Likewise, the increase in racial conflict and hostilities reflected the growth and spread of European settlement. Nevertheless, there were two fundamental differences between the settlement of Port Phillip and the settlements of New South Wales and Van Diemen's Land. The first difference was that the European settlers were able to immediately communicate with the Aborigines through the agency of William Buckley.

From the outset William Buckley proved invaluable as a liaison between the Aboriginal and European groups. In the words of Batman, "... he has been the medium of successfully establishing between us and the natives an understanding, which, without his assistance, could never have been effected to the extent it has been."⁵⁷ Though his lowly tribal status meant that he had little leverage when it came to negotiating the terms of the treaty, his services as an interpreter proved essential to the squatters to whom he was able to provide information regarding the native inhabitants. So vital was Buckley to Batman's success with the Aborigines of Port Phillip that Wedge, who eventually became friendly with Buckley, petitioned Arthur to pardon him, for "I have

⁵⁷Batman to Montagu, 30 November 1835, P. Jones (ed), *Historical Records of Victoria, Foundation Series*, 1 (Melbourne, 1981), p.21.

no hesitation in saying that through him there is every probability of making permanent the friendly intercourse that was commenced by Mr. Batman. . . .” Though Arthur was unsure of the legal implications of his decision he, nevertheless, issued the pardon being “guided by a sense of the extreme importance of avoiding any collision between the natives and the Europeans.”⁵⁸

The second difference was that Batman and his men understood what the Aborigines would require of them, if they were to remain on their lands and were willing to fulfil their commitment to sharing the land and its resources. Batman and his entourage not only had a good knowledge of Aboriginal society and culture, but more importantly had a keen understanding of what could occur if the place of the Aborigines in a new European settlement was not properly considered. Having, as Fels notes, experienced the harsh reality of race relations gone bad, Batman and his fellow settlers took great pains to develop amicable relations with the Aborigines. Evidence of how quickly and successfully Batman was able to establish just such relations with the Port Phillip Aborigines soon emerged. Barely five months after Batman had concluded his treaties he was able to report that relations between his men and the local tribes at the various settlements he had established were “progressing in a way beyond my most sanguine expectations.”⁵⁹ When his men

⁵⁸Anderson, “The Prudent Pardon. . .”, pp.231–8.

⁵⁹Batman to Montagu, 30 November 1835, *HRVic, Foundation Series*, p.21.

at the Indented Head station exhausted their rations, the local tribe fed them until new stocks arrived. At the Melbourne settlement, Batman was able to report that relations between his men and the locals were equally as satisfying.⁶⁰ Ultimately, though, Batman was able to control neither the spread of settlement, nor the nature of race relations because others, who were not part of his initial “colony” began to arrive. Consequently, nothing would come of his early successes and the treaties he had negotiated with the Aborigines of Port Phillip.

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If the settlement of Port Phillip and the consequences of Batman’s treaty with the Duttigalla people are viewed as an epilogue to the Tasmanian story, as Fels maintains, the Vandemonians involved certainly seemed to have applied some lessons learnt from their experiences on the opposite shore. But what of the treaty itself? In hindsight, it is clear that the New South Wales government would never have recognised a treaty between the Aborigines and a private group of land speculators. As to an official treaty, negotiated on behalf of and later ratified by the colonial government, despite the fact that legal opinion might not have held Port Phillip to be *terra nullius*, nevertheless the Colonial Office stopped short of considering negotiating with the Aboriginal groups of

⁶⁰Batman to Montagu, 30 November 1835, *HRVic, Foundation Series*, pp.20–21.

the region as though they were sovereign nations.

But for the Port Phillip Association members (and others who followed) the treaty, legitimate or otherwise, was a means by which initial settlement could proceed relatively smoothly. To be sure, Batman could have simply set up camp as the Hentys had at Portland Bay and he may or may not have encountered trouble with the local tribes. As the squatting movement gained political momentum Batman and his associates would have probably acquired legal title to the lands upon which they now resided, especially given that Arthur supported their venture. One way or another there seemed good reason to believe that the efforts of the Port Phillip Association would bear fruit. To this end, that Batman went to the effort and expense to either negotiate, or create the illusion of negotiating a treaty with the Duttigalla people, demonstrates that more than mere commercial ambition motivated him and his associates. A mindset was beginning to develop which recognised that the indigenous peoples of Australia might just deserve the recognition that they had rights to those lands which the early colonists sought so desperately to possess themselves.

Across the Tasman Sea, the Maori of New Zealand had always enjoyed just such recognition and five years later the Treaty of Waitangi was negotiated. The difference between the Australian and New Zealand treaties was that the

latter was formulated by, and had the sanction of, the British government. It was a document designed to establish guidelines for race relations between all British settlers and all Maori tribes, not just one group of land speculators and the tribes in the district over which they had designs. Most importantly, the Treaty of Waitangi, unlike the Batman Treaty, secured the right of pre-emption for the British government, thus ensuring that the British government maintained control over activities and developments in the newly established colony, especially as they related to relations with the Maori.

Chapter 10

The Treaty of Waitangi: An Australian Legacy?

Every effort... ought to be made to come to an understanding with the natives... before operations are commenced by the emigrants, otherwise some cause of offence may unfortunately arise not less detrimental to the interest of the latter than subversive of the future goodwill, without which it will be impossible to prevent long continued warfare...¹

On 5 February 1840, five years after Batman's treaty with the Duttigalla Tribes of Port Phillip, the newly installed Consul and Lieutenant Governor to New Zealand, William Hobson, negotiated the Treaty of Waitangi with the

¹Arthur to Spring-Rice, 27 January 1835, CO 280/55. PRO Reel 262, p.60.

northern chiefs of New Zealand. The treaty represented the change in attitude that had been evolving over the past decade towards native land rights in the Pacific. Most who knew anything of the Maori acknowledged that they were “advanced” enough to be able to claim rights to their lands and territories. Yet London’s decision to annex New Zealand by way of a treaty still demonstrated that much progress had been made. The unrelenting efforts of a select few in New South Wales and London—humanitarians to the last—had finally met with results. In the years since the removal of the Tasmanian Aborigines the humanitarian movement had shifted its focus from the slavery question to issues relating to the treatment of native groups in other parts of the British empire. With New Zealand not yet colonised and missionaries already working amongst Maori groups there, a few influential activists realised that here was a chance for the Colonial Office make some significant policy changes. This could be one colony where the successful accommodation and conciliation of the native tribes might be achieved.

There were a number of factors that led the Colonial Office to determine that Britain needed to establish an official presence in New Zealand. Edward Gibbon Wakefield was hard at work with his colonisation schemes.² He had already established a settlement in South Australia, and he had publicly declared

²See P. Temple, *A Sort of Conscience: The Wakefields* (Auckland, 2003).

that New Zealand was his next goal. There was a slight concern, too, about French interest in New Zealand.³ Moreover, as contact between Pakeha⁴ and Maori groups increased, those who had already become involved with Maori groups—namely British missionaries—grew increasingly concerned about the nature of the contact. Pressure from missionary organisations both in New Zealand and Britain finally forced the Colonial Office to intervene. The primary question for Whitehall was how to establish a system of law and order in New Zealand *without* jeopardising Maori land rights.

This chapter will consider the efforts of a number of British officials and ecclesiastics—most of whom had been involved in or affected by the crisis in Van Diemen's Land—who were ultimately able to influence official Colonial Office thinking enough to convince policy-makers that the only means to ensure that Maori rights were protected was through the treaty-making process.

Though the Treaty of Waitangi offered the opportunity for race relations in New Zealand to evolve upon principles of fairness, justice and mutually consensual land-sharing practises, ultimately it did not become the panacea

³Baron C de Thierry to Bathurst, 2 December 1823, *Historical Records of New Zealand*, v.1, pp.614–618; Bourke to Glenelg, 9 September 1837 in Stephen to Backhouse, 12 December 1838, Correspondence with the Secretary of State Relative to New Zealand, British Parliamentary Papers, 3, p.9.

⁴The word 'Pakeha', whose origins date to before 1815, is a Maori term referring to a "white" person from England visiting or settling in New Zealand. It has been adapted in modern times to describe fair-skinned, non-Maori New Zealanders; see J. Ranford, 'Pakeha', *Its Origin and Meaning*, URL: <http://maorinews.com>, referenced October 2005.

for race relations that Governor George Arthur had hoped an Australian treaty might. This was the case because, as with the Batman treaty, the Treaty of Waitangi was, as modern philosopher, Robert Goodin describes, “deeply flawed both substantively and procedurally”.⁵

Modern historians have highlighted a number of issues that plagued the Treaty of Waitangi from its very inception. Most fundamentally, as historian, Claudia Orange argues, the meaning of the Treaty was hardly clear for the Maori. Orange maintains that, indeed, “[i]t is scarcely possible to speak of a single Maori understanding; there was a variety of understandings”.⁶

Issues of translation were the primary issue. Those who interpreted and rewrote the Maori version of the treaty, missionaries Henry Williams and his son Edward, were not trained translators. With little time to complete their task and lacking the knowledge of the Maori language that was required, they subsequently recast and simplified the original English text. This led to confusion and misunderstanding as specific English words and concepts were replaced with general Maori terms that did not necessarily convey the true meaning of the English text. For example, as Orange notes, Article Two of the treaty confirms full and exclusive Maori possession of their lands. In the Maori text, the word “rangatiratanga”, which translates to “chieftainship” or

⁵R. Goodin, “Waitangi Tales”, *Australasian Journal of Philosophy*, 78.3 (2000), p.312.

⁶C. Orange, *The Treaty of Waitangi* (Wellington, 1987), p.4.

Maori sovereignty, is used to describe these rights. In using this word, Orange explains, the Maori might have been led to perceive that “their sovereign rights were actually being confirmed in return for a limited concession of power.”⁷

Moreover, the Maori version of the treaty did not emphasise certain key issues required for the Maori to truly comprehend what they were signing. As Orange argues, in the Maori translation of Article Three in which “Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects” too little emphasis was given to the fact that, ultimately, the British government sought to secure absolute sovereignty over the whole of New Zealand.⁸

As a result, many Maori believed they were signing a document that established a type of joint citizenship.⁹ They believed that British subjects would be governed separately and that the Maori and Pakeha would coexist as two polities. Indeed, Hobson’s initial plan was to separate the Maori and Pakeha, establishing law and order within the British enclaves, and protecting the Maori tribes from incursions into their territories. Historian, Paul Moon, thus, maintains that “any serious historian would shudder at claims that the Maori knew they were ceding the right to govern the country in perpetuity, to

⁷Orange, *The Treaty of Waitangi*, pp.41–42.

⁸Orange, *The Treaty of Waitangi*, pp.43.

⁹P. Moon, “Three Historical Interpretations of the Treaty of Waitangi (1840)”, *The Electronic Journal of Australian and New Zealand History*, [http://www.jcu.edu.au/aff/jostpru/newcastle/moon.htm] (1999), p.24.

the Crown.”¹⁰

Another serious issue was authority. Moon argues that the Maori chiefs did not have the authority to cede their lands to the British. The chiefs did not own the territories over which they presided. The lands were the dominion of the tribe as a whole, with individuals accorded access based on their place in the hierarchy of the tribe. In order to cede sovereignty of their territories each chief would have to secure the approval of every member of his tribe. So even if the chiefs fully comprehended the terms of the treaty and agreed to its terms, they were in no position to sign away the rights to lands over which they, as individuals, did not hold sovereignty.¹¹

Procedurally, too, there were flaws. As the pressure to secure the signatures of the many hundreds of Maori chiefs intensified, Hobson turned to a policy of gifts-for-signatures and the missionaries were sent to out with “such presents as may be required. . . and placed at your disposal.”¹² More significantly, when in May 1841, New Zealand was proclaimed an independent British colony and the Crown officially assumed full sovereignty over New Zealand, no attempt at securing a Maori mandate for such an extension of sovereignty was sought and not a single Maori signature was collected.¹³

¹⁰P. Moon, “Three Historical Interpretations of the Treaty of Waitangi (1840)”, p.24.

¹¹P. Moon, “Three Historical Interpretations of the Treaty of Waitangi (1840)”, p.16.

¹²Hobson to Williams, 23 March 1840, quoted in Moon, “Three Historical Interpretations of the Treaty of Waitangi (1840)”, p.12.

¹³Moon, “Three Historical Interpretations of the Treaty of Waitangi (1840)”, p.6.

Despite all the issues that plagued and continue to plague the Treaty of Waitangi, it nevertheless offered something that the Aborigines of Australia never had. The “spirit” of the treaty, if not the treaty itself, established a context by which Maori and Pakeha could define themselves. In the words of Orange,

when the ambiguities of the agreement became apparent and doubts about its legal status arose, it would be this ‘spirit’ of the treaty that would sustain a sense of Maori expectation and Pakeha obligation that treaty promises should be kept.¹⁴

10.1 George Arthur

In *Fate of a Free People*, Henry Reynolds argues that “[Governor George] Arthur’s earnest advocacy of the need for treaties was probably an important influence on the decision of the Colonial Office to negotiate the Treaty of Waitangi with the Maori chiefs in 1840 as a prelude to the settlement of New Zealand.”¹⁵ At the end of the Aboriginal crisis in Van Diemen’s Land Arthur made it a priority to work to ensure that other Australian colonies did not suffer the same fate that his did. Just one week after the remnants of the Big

¹⁴Orange, *The Treaty of Waitangi*, p.59.

¹⁵H. Reynolds, *Fate of a Free People*, p.122.

River and Oyster Bay bands had been removed to Flinders Island he wrote to the Secretary of State, Viscount Goderich, to attempt to impress upon him the gravity of his concerns. He stated that in the new colony of Swan River in Western Australia a concerted effort to “establish a friendly understanding [with the] natives” needed to be attempted. He advised that agents—who must develop a good understanding of their languages and customs—should be sent to reside amongst the local tribes to act as liaisons between the colonial government and the Aborigines. Most importantly, Arthur declared,

the utmost care should be taken to make them presents (the most trifling will satisfy them) for whatever land is taken possession of by the British Settlers, for as each tribe claims some portion of Territory which they consider peculiarly their own, they should be in some formal manner satisfied for bartering it away, a negotiation which they perfectly comprehend.

He admitted that “had this system been early adopted in Van Diemens Land, many deplorable consequences, I have no doubt, would have been averted.”¹⁶

Arthur’s regret was deep and enduring. In September 1832, he wrote to James Stephen’s predecessor, Permanent Undersecretary Robert Hay. Arthur had heard of Wakefield’s plans for settling South Australia and was concerned

¹⁶Arthur to Goderich, 7 January 1832, CO 280/33, PRO Reel 250, pp.9–12.

that too little attention had been given to potential consequences for future race relations there. He knew that to be effective, policies had to be in place before settlement commenced. He lamented that in his own colony the formal negotiation of a compact of peace with the Aborigines had not been attempted. “It was a fatal error in the first settlement of Van Diemens Land”, he admitted, “that a treaty was not entered into with the natives, of which savages well comprehend the nature.” Again he pointed to the need to offer “compensation for the territory they surrendered and—no matter how trifling...” for he realised that

had adequate laws been from *the very first*, introduced, and *enforced* for their protection, His Majestys Government would have acquired a valuable possession, without the injurious consequences which have followed our occupation, and which must ever remain a stain upon the colonisation of Van Diemens Land.¹⁷

In January 1835 the governor, again, felt the need to prod the Colonial Office to consider something akin to a treaty in the Australian colonies. The first settlers were about to arrive in South Australia and he was concerned that unregulated settlement would have calamitous results. In a letter to Goderich’s successor, Spring Rice, he wrote,

¹⁷ Arthur to Hay, 24 September 1832, CO 280/35, PRO Reel 250, pp.226–32.

[e]very effort ought to be made to come to an understanding with the natives of Southern Australia before operations are commenced by the emigrants, otherwise some cause of offence may unfortunately arise not less detrimental to the interest of the latter than subversive of the future goodwill, without which it will be impossible to prevent long continued warfare. . . .¹⁸

Arthur reiterated his regret:

On the first occupation of [Van Diemen's Land] it was a great oversight that a treaty was not, at that time made with the natives, and such compensation given to the chiefs as they would have deemed a fair equivalent for what they surrendered; a mere trifle would have satisfied them, and that feeling of injustice which I am persuaded they always have entertained, would have had no existence.¹⁹

Shortly before departing for Upper Canada where he would begin an appointment as Lieutenant-Governor, Arthur made one last plea to his superiors. In a letter to now Secretary of State, Lord Glenelg, he admitted that a number of decisions he had made regarding the management of Aboriginal-settler relations during the early part of his tenure in Van Diemen's Land had been

¹⁸ Arthur to Spring-Rice, 27 January 1835, CO 280/55, PRO Reel 262, pp.56–63.

¹⁹ Arthur to Spring-Rice, 27 January 1835, CO 280/55, PRO Reel 262, pp.56–63.

based on poor advice and his own failure to fully consider the long-term consequences of his decisions. “On the first occupancy of Van Diemen’s Land”, he wrote in July 1837,

a very injudicious course of proceeding was followed towards the natives and I deeply lament to acknowledge that being incapable of forming any opinion of my own based upon experience and being perplexed with the adverse opinions of others I fell into some very wrong notions in the early part of my government from which very injurious consequences resulted.²⁰

Arthur’s words did not fall on deaf ears. He had an interested audience in London. There were a number of staunch humanitarians operating in the Colonial Office at the time who welcomed his suggestions—any suggestions—that might improve the lot of the native peoples in the British colonies. The Colonial Office listened carefully to what Arthur had to say and sought his advice on the management of race relations in the Australian colonies. His suggestions put forward to various Colonial Office officials were perused and acted upon. Glenelg sent copies of the governor’s despatches to the South Australian commissioners. Arthur’s correspondence was also submitted to Thomas

²⁰ Arthur to Glenelg, 22 July 1837, CO 280/84, PRO Reel 282, pp.265–71.

Fowell Buxton who in 1836 who headed what would prove to be a very influential select committee established to consider the plight of Britain's native wards—the Select Committee on Aborigines (British Settlements).²¹ When considering the treaty question, the select committee scrutinised Arthur's letters to the Colonial Office.²²

While Arthur was never able to convince the Colonial Office to negotiate treaties in the Australian colonies, suggestions he had made that contained elements of the treaty-making tradition were, nonetheless, readily received. When Arthur proposed to Glenelg the idea of employing Aboriginal protectors—whose role was akin to Indian agents of north America—in the mainland colonies, the Secretary of State acted on it.²³

To be sure, Arthur's efforts alone might never have been enough to challenge the very solid principle that Australia was "a desert or uninhabited

²¹The findings of this committee will be discussed below.

²²All of Arthur's correspondence with the Secretaries of State concerning Aboriginal policy were published by the House of Commons (Paper 259) in 1831 [A.G.L. Shaw later published these as *Van Diemen's Land: Copies of All Correspondence Between Lieutenant-Governor Arthur and His Majesty's Secretary of State for the Colonies, on the Subject of the Military Operations Lately Carried on Against the Aboriginal Inhabitants of Van Diemen's Land* (Hobart, 1971)]; Arthur's letter to the Colonial Office in January 1835 was forwarded to the South Australian Colonization Commission who, as will be discussed, were urged to consider very seriously the Aboriginal issue before the new colony was settled. The removal of the Aborigines of Van Diemen's Land was also discussed in the 1836/1837 Select Committee Report on Aborigines (British Settlements). A series of letters of correspondence between Arthur and the Colonial Office were also published in an appendix, Arthur's call for a treaty to be negotiated in South Australia being the first; [Report From the Select Committee on Aborigines (British Settlements) (with Minutes of Evidence, Appendix and Index), BPP, 7.538, 1836 and Report From the Select Committee on Aborigines (British Settlements), BPP, 7.425, 1837].

²³This will be discussed in detail below.

land.”²⁴ Moreover, the circumstantial evidence at best provides a tenuous link between Arthur’s legacy with the Aborigines of Van Diemen’s Land and the Colonial Office’s decision to negotiate the Treaty of Waitangi. Nevertheless, Arthur’s was yet another voice joining to the growing number of voices calling for the use of treaties and treaty-making traditions as devices for recognising native land rights in the Pacific.

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Arthur’s pleas to the Colonial Office highlight an apparent contradiction in how he managed the various crises which he faced during his terms in Van Diemen’s Land and Upper Canada. As discussed, the bushrangers of Van Diemen’s Land felt the full force of his authority and he did not hesitate to put to death anyone found to be a member of a bushranging gang. Arthur imposed similarly severe policies in Upper Canada. Arriving in March 1838 to take up the appointment of Lieutenant-Governor, he was immediately faced with the task of dealing with the prisoners arrested during an ill-conceived and ultimately abortive rebellion against the Canadian government that preceded his arrival. Though the rebellion was over almost before it began, Arthur

²⁴J. Stephen, Opinion *re* validity of statute 20 George II, c.xix, in Bathurst to Brisbane, 7 October 1822, *HRA*, IV.1, pp.412–417; Glenelg to Gipps, 31 January 1838, *HRA*, I.19, pp.252–255; H. Reynolds, *Law of the Land*, pp.107–110; H. Reynolds, *This Whispering in Our Hearts* (St Leonards, 1998), pp.47–60.

nevertheless felt that he must quash “this most unparalleled, wicked conspiracy.”²⁵ Consequently, less than a month after his arrival he had two of the rebel leaders, Samuel Lount and Peter Matthews, put to death. When others continued in their wake, carrying out raids along the Canadian-United States border, Arthur also advocated their executions. Many others who took part in the insurrections were transported to Van Diemen’s Land.²⁶

Arthur’s responses to the Aboriginal crisis in Van Diemen’s Land, on the other hand, as discussed, were tempered with a surprising level of mercy and tolerance. Arthur’s biographer, Phillip Buckner, gives a convincing reason for why Arthur acted so differently with the Aborigines. “Like many evangelicals”, Buckner explains, “[Arthur] was extremely conservative in his political and social views. But he also embraced the evangelical commitment to the doctrine of ‘imperial trusteeship’.”²⁷ Thus, Arthur saw himself as a guardian over his native subjects. He felt it was his responsibility to protect their rights, and this often meant treating them with much greater compassion and charity. On the other hand, those Europeans who found themselves on the wrong side of the law faced a much harsher, more obdurate governor whose political and social conservatism did not allow for his sympathies to extend to their own plight.

²⁵P. Buckner, George Arthur entry in *Dictionary of Canadian Biography*, III (Toronto, 1966–), p.27.

²⁶P. Buckner, George Arthur entry in *Dictionary of Canadian Biography*, pp.26–31.

²⁷P. Buckner, George Arthur entry in *Dictionary of Canadian Biography*, pp.28.

10.2 Bishop William Broughton

As the official representative of the church in the Australian colonies and a self-appointed advocate for the disadvantaged, William Grant Broughton, was a powerful voice for the Aborigines of the Australian colonies. Broughton assumed the position of Archdeacon of New South Wales on 16 September 1829, replacing Thomas Scott. In 1836 he was consecrated Bishop of Australia. Broughton's impressive achievements as a clergyman and scholar in Britain helped secure his career in the Australian colonies. He was a King's scholar at The King's School in Canterbury between 1798 and 1803 and later attended Pembroke Hall at Cambridge where he completed a Bachelors degree in 1818 and a Masters degree five years later. At the conclusion of his Bachelors degree Broughton entered the priesthood but continued to research and publish. His academic efforts won him the praise of a number of prominent dignitaries and eventually the patronage of the Duke and Duchess of Wellington.²⁸

Upon beginning his tenure in New South Wales Broughton declared that his focus in his new role would be on promoting the moral and religious advancement of convicts, frontier settlers and Aborigines.²⁹ On three occasions,

²⁸V. Parsons, William Grant Broughton entry, D. Pike (ed.), *Austrahan Dictionary of Biography*, 1 (Melbourne, 1966), pp.158–164; G. P. Shaw, *Patriarch and Patriot: William Grant Broughton, Colonial Statesman and Ecclesiastic* (Melbourne, 1978); *Hobart Town Courier*; 24 April 1830, *Colonial Times*, 16 April 1830.

²⁹V. Parsons, William Grant Broughton entry, *ADB*, pp.158–164; G. P. Shaw, *Patriarch and Patriot: William Grant Broughton, Colonial Statesman and Ecclesiastic*; *Hobart Town*

he was given the opportunity to promote the Aboriginal cause in a significant way.

When Broughton arrived in New South Wales the Aborigines of both Australian colonies were in a desperate state. Aboriginal-settler hostilities continued unabated in Van Diemen's Land and in New South Wales alcohol, disease and frontier violence threatened the Aborigines' very existence. Broughton, thus, made the Aboriginal question a priority.³⁰

Almost immediately he set out to visit the outlying settlements that fell under his jurisdiction. In April 1830 he arrived in Van Diemen's Land—the outermost settlement in his diocese. In a sermon he gave at St. David's church in Hobart he addressed the general state of the Aborigines in the Australian colonies. He regretted that after nearly half a century of contact they remained in their “original benighted and degraded state”, that, indeed, “our settlement in their country has even deteriorated [their] condition of existence”. “Shall we look on and see them perish”, he asked the congregation, “without so much as an effort at their preservation?”³¹

Realising the opportunity that Broughton's visit offered him, Governor
Courier, 24 April 1830, *Colonial Times*, 16 April 1830.

³⁰V. Parsons, William Grant Broughton entry, Australian Dictionary of Biography, pp.158–164; G. P. Shaw, *Patriarch and Patriot: William Grant Broughton, Colonial Statesman and Ecclesiastic*; *Hobart Town Courier*, 24 April 1830, *Colonial Times*, 16 April 1830.

³¹*Colonial Times*, 16 April 1830; *Hobart Town Courier*, 24 April 1830.

Arthur asked the clergyman to chair a committee to consider the Aboriginal crisis that Van Diemen's Land was facing. Broughton agreed and the committee began its investigations. After taking evidence from a variety of prominent settlers, the committee retired to compile its findings and to give its recommendations. As discussed in Chapter 5, what was reflected in its report was that the colony was in the midst of war and strong measures needed to be taken to put an end to hostilities. The recommendations focused on establishing a system whereby the rights of both Aborigines and colonists could be protected. They also reflected the need to better organise the military operations of the colonial government so that hostilities could be quickly brought to an end.³²

In developing questions for his witnesses, Broughton was looking to form a detailed description of how and why hostilities had developed into war and the means by which to end it. He was not necessarily trying to appraise how enlightened the colonists of Van Diemen's Land were, though a number made reference to the fact that for the Aborigines, if not the colonists, at its core the Aboriginal crisis was a struggle for land rights. Isaac Sherwin believed "the natives wished to have their lands to themselves." Roderic O'Connor stated that "the natives are as tenacious of their hunting grounds as settlers are of

³²Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, pp.396–508.

their farms. . . .”³³

For the most part, though, Broughton did not receive answers that would have propelled him to believe that the majority of his witnesses considered that the Aborigines held territorial rights over those districts in which they were carrying out their depredations. Broughton’s report, nevertheless, reflected the evangelical view that the rights of the Aborigines, however limited, must not be forgotten. To be sure, the Archdeacon saw the Aborigines as savages who must be civilised and Christianised. He concluded that the Aborigines had a “wanton and savage spirit inherent in them, impelling them to mischief and cruelty. . . .”³⁴ However, like Arthur, he understood the root causes of the Aborigines’ outrage.

It would indeed appear that there prevail[s] too general a forgetfulness of those rights of ordinary compassion to which, as human beings, and as the original occupants of the soil, these defenceless and ignorant people were justly entitled—They were sacrificed, in many instances, to momentary caprice or anger, as if the life of a Savage had been unworthy of the slightest consideration; and they sustained the most unjustifiable treatment in defending themselves

³³Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, pp.408 & 431.

³⁴Report of the Aborigines Committee, 19 March 1830, in Arthur to Murray, 15 April 1830, CO 280/24, PRO Reel 244, p.440.

against outrages which it was not to be expected that any race of Men should submit to without resistance, or endure without imbibing a spirit of hatred and revenge.³⁵

Broughton, again like Arthur, realised what was owed to the Aborigines. "The debt which [the colonists] have incurred in taking possession of this country they would willingly acquit themselves of by every justifiable degree of forbearance and moderation towards the native inhabitants. . . ."³⁶

Broughton's opportunity to influence Aboriginal policy did not end there. In 1835 he had the chance to present evidence on the Australian Aborigines to a House of Commons select committee in London.³⁷ Fortunate timing found Broughton in London as the committee was gathering to take evidence. The clergyman was eager to present his views to the commissioners. He felt that the Aborigines were in such a state of "degradation" that their cause seemed hopeless. "While, as the contagion on European intercourse has extended itself among them", he lamented, "they gradually lose the better properties of their own character, they appear in exchange to acquire none but the most objectionable and degrading of ours." Missionaries in New South Wales, Broughton

³⁵Report of the Aborigines Committee, 19 March 1830, p.437.

³⁶Report of the Aborigines Committee, 19 March 1830, p.452.

³⁷The findings of this select committee will be discussed below.

reported, felt their efforts to bring religion and “civilization” to their Aboriginal wards had been futile. Broughton did not think that the problem was that the Aborigines were unable to learn or adapt to a European society—rather there was little incentive to do so. The cultural divide was just too great.³⁸

Broughton repeated to the committee what he had preached to his Hobart congregation: “we look on and see them perish without so much as an effort for their preservation.” Again, he thought that much was owed them. “Natural and much more Christian equity points out that, as in the occupation of their soil we are partakers of their worldly things, so in justice should they be of our spiritual.” Ultimately, the problem was, Broughton realised, that the Aborigines had been dispossessed of their lands—lands to which they clearly felt a proprietorial entitlement, but more importantly, lands whose access was vital to their well-being.³⁹

In 1838 Broughton was, again, asked to chair a committee to enquire into Aboriginal policy, this time closer to home. Glenelg had directed the Australian governors to implement Arthur’s Aboriginal protectorate scheme and the Legislative Council of New South Wales met in August 1838 to consider the charge. Glenelg had written to New South Wales Governor, Richard Bourke, to

³⁸Report from the Select Committee on Aborigines (British Settlements), 1837, p.11.

³⁹Report from the Select Committee on Aborigines (British Settlements), Minutes of Evidence, 1837, pp.13–24.

direct that protectors be employed throughout the Port Phillip and Spencer's Gulf region. At the behest of Arthur who was now residing in London and in almost daily contact with Whitehall,⁴⁰ Glenelg had also suggested that the Aborigines now on Flinders Island be relocated to a mainland reserve to be employed as Robinson's guides. Bourke asked Broughton to determine how appropriate the implementation of this second policy would be.⁴¹

Witnesses brought before the committee painted a very bleak picture of the fate of the Aborigines and the role of colonists in their demise. Robert Scott of Glendon on the Hunter River thought the problem lay with the Aborigines' lawlessness. Reverend William Cowper blamed the lawlessness of the frontier colonists. When questioned on the issue of the "improvement" of the Aborigines, a number of the witnesses detailed instances where individuals whom they assumed were "civilised" had reverted to their traditional habits. Lieutenant Richard Sadlier who oversaw the Male Orphan School in Liverpool worried that Aboriginal groups "... within the pale of white population must, within a very few years, be utterly destroyed, if the most prompt measures are not taken."⁴²

The majority of the witnesses, thus, supported the proposal to employ

⁴⁰ Arthur to Glenelg, 1837 correspondence, CO 280/84, PRO Reel 282.

⁴¹ Report from the Committee on the Aborigines Question, with Minutes of Evidence. New South Wales Legislative Council, votes and proceedings (October 1838), pp.1-2.

⁴² Report from the Committee on the Aborigines Question, pp.16, 52, 55 & 60.

Aboriginal Protectors in the various Australian colonies.⁴³ Reverend Lancelot Threlkheld even made an astute suggestion about what role the Protector should play: "I consider a Protector as a legal advocate to watch over the rights and interests of the natives, and to protect them from aggression."⁴⁴ Only Sadlier, however, recognised that along with protective measures should also come the acknowledgement of Aboriginal land rights:

[W]e claim them as our subjects, and bring them under the administration of our laws; therefore, as our subjects, they ought to have protection. . . as we deprive them of their lands and means of subsistence, in justice we ought to remunerate them. . . "⁴⁵

Ultimately, Broughton recommended against the transfer of the Tasmanians. From his time in Van Diemen's Land, he was patently aware that a number of the Aborigines now residing on Flinders Island were the same individuals who had carried out some of the most barbarous and violent acts that the colony had suffered. Though Robinson painted a picture of the Tasmanians now conciliated, civilised and Christianised,⁴⁶ still Broughton balked at the idea of removing them from Flinders Island. He concluded that it was very possible that the presence of the Tasmanian Aborigines would manifest

⁴³Report from the Committee on the Aborigines Question, pp.4, 22, 28, 31, 54, & 60.

⁴⁴Report from the Committee on the Aborigines Question, p.22.

⁴⁵Report from the Committee on the Aborigines Question, p.31.

⁴⁶Report from the Committee on the Aborigines Question, pp.1–15.

in the Aborigines of New South Wales “the same fierce and hostile deportment towards the settlers here, as those in Van Diemen’s Land were with so much difficulty released from.”⁴⁷ Broughton did not offer a recommendation on the question of Aboriginal Protectors because Glenelg had not given Bourke the authority to veto the scheme. The evidence presented by Broughton’s witnesses, nonetheless, gave credence to the plan and ultimately, G.A. Robinson found himself employed in the task.

While Broughton’s views of native land rights were not as fervent as Arthur’s, and though he did not play a direct role in the decision to negotiate the Treaty of Waitangi, he certainly painted a lamentable picture of the results of native land rights being ignored in the Australian colonies. Broughton’s was a clear and powerful message. Britain’s neglect of these rights could well lead to the extinction of the very people it was attempting to protect. The method by which New Zealand would be colonised, some around him realised, needed to be considered with this lesson in mind.

10.3 Reverend Samuel Marsden

Variouslly dubbed the “Flogging Pastor,” the “Saint Augustine of New Zealand” and a “pioneer of Empire”, Reverend Samuel Marsden was an active and prominent figure in early colonial affairs in both New South Wales and New

⁴⁷Report from the Committee on the Aborigines Question, p.ii.

Zealand. Marsden arrived in New South Wales in March 1794 to assume the position of assistant chaplain of New South Wales. He settled in Parramatta where he established a farm on his one hundred acre grant. In 1795 he was appointed a magistrate and superintendent of government affairs. Marsden's evangelical bent lead him to accept the position of local agent for the London Missionary Society's Pacific operations in 1804. His frustrations in his dealings with the convicts and Aborigines of Parramatta, lead him to turn his attention to missionary work in the Pacific.⁴⁸

Marsden went to London in 1807 where he put to the Church Missionary Society a proposal for establishing a mission in New Zealand. The Society supported him and two years later he and the missionary William Hall returned to Sydney in preparation for their journey to New Zealand. After a delay of several years Marsden, Hall and Thomas Kendall (who had gone to New South Wales later) set sail for New Zealand. On 10 June 1814 Marsden and the missionaries arrived in the Bay of Islands to find a small settlement already established for them by two Maori chiefs who had lived with Marsden in Sydney for a time. The arrival of the missionaries marked the beginning of

⁴⁸J. Belich, *Making Peoples: A History of the New Zealanders, From Polynesian Settlement to the End of the Nineteenth Century* (Ringwood, 1996) p.134; J. R. Elder, *Letters and Journals of Samuel Marsden*, pp.17–43; G. S. Parsonson, Samuel Marsden entry in *Dictionary of New Zealand Biography*, updated 4 April 2003; URL: <http://www.dnzb.govt.nz>, cited October 2005.

the permanent European settlement of New Zealand.⁴⁹



Figure 10.1:
Samuel Marsden, 1765 - 1838; *Source:* image taken from: Dictionary of New Zealand Biography, URL: <http://www.dnzb.govt.nz/dnzb/default.asp>.

Over the next two decades seven more mission stations were established (three by Wesleyan and Catholic missionary organisations), a printing press was constructed and fifty schools built. Out of these schools came fifteen hundred students who were taught agricultural and animal husbandry skills as well as English. The missionaries also translated the Bible into the local dialects. The various missionary groups reported great success in taking their Christianity to the Maori. Marsden was able to report to his superiors that the permanent presence of the missions in the islands had a very positive impact

⁴⁹G. S. Parsonson, Samuel Marsden entry; Elder, *Letters and Journals of Samuel Marsden, 1765–1838*, pp.17–43.

on Maori adaptation to and adoption of European culture.⁵⁰

To be sure, when Marsden arrived in New Zealand Maori-Pakeha relations were already well established. Over the course of 130 years between 1642 and 1772 the coast of New Zealand had been explored by the Dutch, the British and the French, though regular contact with the Maori did not occur until the end of the eighteenth century. The early explorers viewed the Maori very differently from Australian Aborigines. The Maori proved themselves to be aggressive warriors. Their cannibalistic rituals furthered their fierce reputations. Those who did welcome the explorers, demonstrated an interest in their European visitors. Many of the explorers observed villages and farms dotted along the New Zealand coastline and from this they perceived that the Maori had attained a higher level of “civilisation” than their counterparts in other regions of the Pacific.⁵¹

Regular European contact with the Maori began in the 1790s when seals, whales and flax (hemp) were discovered. Very quickly, trading relationships developed. A frontier exchange economy developed naturally as Pakeha and Maori traded in a variety of goods and services including guns, timber, flax, pigs, potatoes and sexual services. Contact did not end there. Many Maori

⁵⁰Belich, *Making Peoples*, especially pp. 117–203 & Elder, *Letters and Journals of Samuel Marsden*.

⁵¹see Belich, *Making Peoples*, especially pp. 117–203 & Elder, *Letters and Journals of Samuel Marsden* for a thorough analysis of the history of Pakeha-Maori relations.

men joined the sealing and whaling vessels, whose motley crews included adventure-seekers, runaway convicts, and native peoples from other areas of the Pacific. A few intrepid individuals found their way into the homes and hearts of influential citizens in New South Wales and London (including Marsden). These Maori took their knowledge and experience of European culture and society back with them to New Zealand where they used it to further develop Pakeha-Maori ties. This sporadic and temporary contact had given the Maori time to incorporate elements of European culture into their own without being overwhelmed by it. Hall's and Kendall's presence proved to be just one more point of contact for the Maori.⁵²

Despite the fact that the Maori had adopted some key habits of their "civilised" European counterparts, and that they had developed generally amicable and peaceful relations with the Pakeha which had endured long enough to support the creation of a solid frontier trading economy, there still prevailed the view amongst most missionaries that the Maori were for the most part a warlike, godless and lawless people. Europeans who recorded their experiences in New Zealand did not hesitate to note the racial and tribal hostilities that they encountered. Not comprehending that intertribal rivalry, often resulting in warfare, was a natural part of the hierarchy of Maori culture, British

⁵²Belich, *Making Peoples*, pp.156-164.

Resident, James Busby, spoke of the “frontier chaos” that existed in New Zealand. The introduction and booming trade of muskets and ammunition served merely to support the duration and intensity of these hostilities, which eventually resulted in extended intertribal hostilities amongst tribes of the North Island that came to be known as the Musket wars which lasted through the 1820s and into the 1830s and took the lives of thousands of Maori.⁵³

Pakeha-Maori hostility, however, was very different in nature. When it occurred, though often intense, it was always short-lived. Collaboration, rather than competition, guided race relations. It was the trade in sex and guns that caused the missionaries to perceive chaos. That they could not stem the tide of these trades of “sin” left them bitterly frustrated at their lack of control. Officials in the Australian colonies and in London, thus, received a picture of a land whose people needed “saving”—both from themselves and from derelict Pakeha. Ideally, what the missionary societies thus sought was to establish a political theocracy where they could control the nature and extent of Pakeha-Maori contact.⁵⁴

Marsden’s vision was to “civilise” the Maori first and then later concentrate on their “Christianisation”. He discovered quickly that he had a solid base

⁵³Belich, *Making Peoples*, pp.156–164.

⁵⁴Belich, *Making Peoples*, pp.127–178; Elder, *Letters and Journals of Samuel Marsden*, p.503.

from which to begin. The Maori were skilled agriculturalists, shrewd traders and open to contact with the European culture. They were also a people who had a clear sense of territorial rights. Indeed, Marsden realised, the only thing stopping the Maori from rising “above their present unpolished situation” was the lack of appropriate “tools of agriculture”. In order to better their lot the Maori needed more advanced technology. “If means are adopted to furnish them with [iron]”, Marsden conjectured,

then, indeed, their country will soon supply them with all the necessary conveniences and comforts enjoyed in civil society, and as their comforts increase so will their wants stimulate their industry and lay a solid foundation not only for their civilization and mental improvement in the civil arts but also for the introduction of Christianity.⁵⁵

The introduction of Christianity also came easily.

Regardless that the Maori appeared godless and lawless, Marsden never questioned that they retained sovereignty over their territories. Though his goal was to raise their level of “civilisation”, he assumed that their territorial rights were indisputable. Indeed, when he wished to establish a second mission station in February 1815 Marsden purchased land from the nephews of the late

⁵⁵Elder, *Letters and Journals of Samuel Marsden*, pp.130 & 166.

chief Tippahee “who were the proprietors of the ground who the Europeans at present possess.” On 24 February, in the presence of chiefs from the Rangheehoo district, for the price of 12 axes, Samuel Marsden signed a deed of sale to purchase 200 acres of land from the tribe. “Ahoodee O Gunna”, Marsden wrote in his journal, “one of the chiefs of whom I had purchased the land, publicly declared that the land was no longer theirs, but the sole property of the white people and was tabooed for their use.”⁵⁶

Marsden’s efforts did not go unnoticed in official circles. As a colonial official in New South Wales he had a close association with the various governors under whom he served and through them a voice in London. Indeed, a selection of his correspondence with the London Missionary Society was presented to Thomas Fowell Buxton’s 1837 select committee and was printed in the final report. His description of the violence between Maori and Pakeha groups had a strong impact on the commissioners who, in their report to Parliament, declared that “it is incumbent upon this nation to provide against the repetition of outrages so destructive to the natives and so discreditable to the British name.”⁵⁷

By 1830 it had become clear to Marsden that an official British presence was required in New Zealand. His missionaries had been unable to stem the

⁵⁶Elder, *Letters and Journals of Samuel Marsden*, p.123.

⁵⁷Report from the Select Committee on Aborigines (British Settlements), 1837, p.16.

tide of contact between Pakeha traders and the Maori and he felt forced to raise his concerns with New South Wales Governor, Ralph Darling. "Your Excellency," he wrote,

is aware there is not legal authority—civil, military, or naval—to restrain the bad conduct of the masters and crews of those ships which put into the harbours of New Zealand, nor to notice their crimes, however, great; and from the great quantity of arms, powder, and ammunition now in the possession of the natives, there is much reason to apprehend that they will at some period redress their own wrongs by force of arms if no remedy is provided to do them justice.⁵⁸

Finding himself in a newly emerging political environment in which some of the most powerful members of Parliament were advocating for the acknowledgement and protection of native rights, Marsden seized the opportunity to agitate for the British government to take a position with regard to New Zealand. Marsden suggested that a military presence, in the form of a warship, be stationed in the islands. He also recommended that a Crown official should be sent to New Zealand to "notice the misconduct of the Europeans. . . ." Darling forwarded Marsden's letter to Goderich, informing him that he intended to act upon Marsden's advice and despatch a government representative to

⁵⁸Marsden to Darling, 2 August 1830, *HRNZ*, 1, pp.705-8; Darling to Goderich; 13 April 1831, *HRA*, I.16, pp.234-241.

New Zealand.⁵⁹ He appointed James Busby to the position.

10.4 James Busby

James Busby was born in Edinburgh in 1801 and moved to New South Wales with his father and step-mother in 1824. Busby was granted 2000 acres along the Hunter River. He was briefly employed at the Male Orphan School in New South Wales. However, his true passion was viticulture and he published several books and pamphlets on the practise and art of grape-growing and wine-making. In March 1833 James Busby left for New Zealand to begin his term as British Resident.⁶⁰ Busby would be instrumental in paving the way for the eventual negotiation of a treaty. While the Resident had no legal position with either the British or the Maori populations of New Zealand, it was hoped that he could work to “conciliate the good-will of the native chiefs, and establish upon a permanent basis the good understanding and confidence which it is important to the interests of Great Britain and of this colony to perpetuate. . . .”

Working closely with the various missions there, it was hoped that Busby could help “civilise” the Maori through “the establishment of some system of jurisprudence among them.”⁶¹

⁵⁹Marsden to Darling, 2 August 1830, *HRNZ*, 1, pp.705–8; Darling to Goderich; 13 April 1831, *HRA*, 16, pp.234–241.

⁶⁰J. Davidson, James Busby entry in D. Pike (ed), *ADB*, 1, pp.186–187.

⁶¹Bourke to Busby, 13 April 1833 and J. Stephen to J. Backhouse, 12 December 1838,

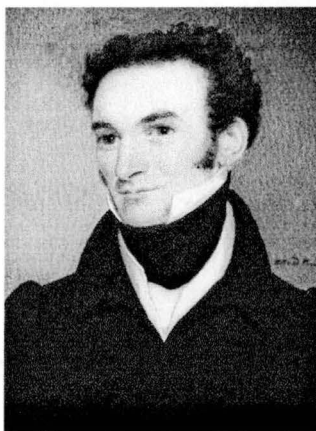


Figure 10.2:

James Busby. *Source*: Alexander Turnbull Library, National Library of New Zealand, picture reference: HC-651 ; image taken from: Dictionary of New Zealand Biography, URL: <http://www.dnzb.govt.nz/dnzb>

Busby would never be able to achieve his full potential as Resident. His powers were too limited and imprecise for him to have any real authority amongst either the Pakeha or Maori. Under the command of New South Wales Governor, Richard Bourke, who, for a variety of reasons resented him, Busby's efforts were stonewalled at every turn. Nonetheless, Busby was able to effect some change, establishing himself as an effective mediator and conciliator between Maori and Pakeha. His greatest successes, however, were creating a Maori flag and facilitating the formalisation of their independence and sovereignty.⁶²

Correspondence with the Secretary of State Relative to New Zealand, BPP, 2, pp.3–4.

⁶²Orange, *The Treaty of Waitangi*, p.14.

On 20 March 1834, at the behest of Busby, twenty-five northern chiefs gathered on the Resident's front lawn to select a design for the flag. The flag was later officially recognised by the Colonial Office on behalf of the Crown, and instructions were sent to the Commissioners of the Admiralty to register the design so that it would be identifiable to British Naval forces in foreign ports.⁶³

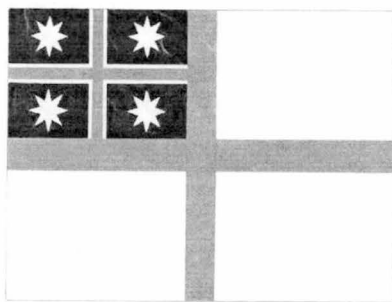


Figure 10.3:
The flag of the United Tribes of New Zealand, 1834; *Source:* image taken
from: <http://www.mch.govt.nz/nzflag/history/united-flag2.html>.

The following year, on 28 October 1835, with two English missionaries and two English traders as witnesses, thirty-five northern chiefs gathered, again at Waitangi, to ratify a “Declaration of the Independence of New Zealand.” The declaration, which Busby had drafted in response to what appeared to be French interest in the region, specified that

⁶³Bourke to Stanley, and Aberdeen to Bourke, *HRA*, I.17, p.412 & 608–609.

[a]ll sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of government to be exercised within the said territory, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in congress assembled.⁶⁴

Busby certified that the document was authentic and sent it to the Colonial Office attached to a despatch detailing the proceedings. On 17 August 1835, Goderich approved the declaration.⁶⁵

Two years later Busby made his case for this recognition to be made official. “Whatever acts approaching to acts of sovereignty or government have been exercised in the country,” he wrote to Governor Bourke,

have been exercised by these chiefs in their individual capacity as relates to their own people and in their collective capacity as relates to their negotiations with the British Government, the only Government with which the chiefs or people of New Zealand have

⁶⁴Report of the House of Lords Committee of 1838, BPP, pp.179, 245–6 in Elder, *Letters and Journals of Samuel Marsden, 1765–1838*, pp.510–512.

⁶⁵Church Missionary Register, 1834, p.553; New South Wales Government Gazette of 1835, pp.580–.

had any relations of a diplomatic character.⁶⁶

As to the Declaration of Independence, Busby asserted that

the Articles of Confederation having centralized the powers of sovereignty exercised both *de jure* and *de facto* by the several chiefs, and having established and declared the basis of a constitution of government founded upon the union of those powers of the state as declared by its constitution of government founded upon the union of those powers, I cannot, I think, greatly err in assuming that the congress of chiefs, the depositing of the powers of the state as declared by its constitution, is competent to become a party to a treaty with a foreign power.⁶⁷

Historian John Ross argues that Busby pressured the Bay of Island chiefs to sign the Declaration of Independence for purely personal reasons. In 1823 the French naval officer, Baron de Theiry, had purchased land from a Maori group and was considering establishing a French out-station in New Zealand. de Theiry returned to New Zealand in October 1835 intent on taking possession of his purchase. Alarmed, Busby immediately gathered the local chiefs and

⁶⁶Busby to Bourke, 16 June 1837 in Correspondence with the Secretary of State Relative to New Zealand, p.8

⁶⁷Busby to Bourke, 16 June 1837 in Correspondence with the Secretary of State Relative to New Zealand, p.8.

convinced them to officially proclaim themselves as a congress of the “United Tribes of New Zealand.”⁶⁸

Ross argues that de Thierry’s threat was not nearly as serious as the Resident suggested and that Busby’s later inaction verifies this. Busby failed to enact legislation to ratify the terms of the Declaration and, even though he did collect signatures from eighteen more chiefs over the next three years, Busby made no attempt to obtain signatures from any southern tribes. Indeed, when de Thierry settled on the west coast of the North Island in Hokianga, Busby paid little attention to the Frenchman’s activities finding that “there was not much ground for apprehension of any serious mischief.”⁶⁹

So why did Busby act, as Ross describes, “so curiously out of character”?⁷⁰ Ross argues that the answer lies with the appointment of Thomas McDonnell, a timber dealer and land speculator in the Hokianga district, as Additional Resident in August 1835. Ross maintains that Busby resented McDonnell and his activities amongst British settlers in the Hokianga district. Busby felt that McDonnell had overstepped the bounds of his authority when, with the aid of local Hokianga chiefs, he enacted a law prohibiting the importation or

⁶⁸J. Ross, “Busby and the Declaration of Independence”, *The New Zealand Journal of History* 14.1 (1980), pp.83–84; de Thierry to Bathurst, 2 December 1823, *Historical Records of New Zealand*, v.1, pp.614–618; Bourke to Glenelg, 9 September 1837 in Stephen to Backhouse, 12 December 1838, *Correspondence with the Secretary of State Relative to New Zealand*, p.9.

⁶⁹J. Ross, “Busby and the Declaration of Independence”, pp.83–86.

⁷⁰J. Ross, “Busby and the Declaration of Independence”, p.86.

sale of liquor in that district.⁷¹ Feeling his own authority threatened, Busby pushed for a Maori Declaration of Independence which would thus nullify the liquor laws and undermined McDonnell's position amongst the Hokianga chiefs. Consequently, "far from being the inspired document Busby claimed it to be or even an instrument to deter Thierry", Ross further argues that

the Declaration of Independence was merely a measure, hastily conceived and executed, to circumvent McDonnell and his Honkianga liquor law on the grounds that it did not derive from the authority of the assembled chiefs; a weapon, in brief, in what had become a ridiculous vendetta with McDonnell.⁷²

Nonetheless, despite the reasons why Busby went to the effort to have a Declaration of Independence created, Normanby's instructions to Captain Hobson two years later, directing him to take possession of New Zealand, clearly demonstrate that the British Government acknowledged the Maori flag and Declaration of Independence as legitimate. The northern Maori, Normanby stated, "whose title to the soil and to the sovereignty of New Zealand is indisputable... has been solemnly recognized by the British Government."⁷³

Thus, regardless of the motivation behind his hasty actions, Busby played a

⁷¹Ross, "Busby and the Declaration of Independence", p.87.

⁷²Ross, "Busby and the Declaration of Independence", p.88.

⁷³Normanby to Hobson, 14 August 1839 in *Correspondence with the Secretary of State Relative to New Zealand*, pp.37.

pivotal role in facilitating the eventual negotiation of the Treaty of Waitangi.

10.5 The Humanitarians

By the end of the eighteenth century the movement to end slavery had gained momentum throughout Britain and Europe. Supported by Britain's Prime Minister, William Pitt, the influential parliamentarian and humanitarian, William Wilberforce, led the way in agitating for legislative change. The year that the First Fleet arrived in Botany Bay, the Privy Council established a Committee for the Abolition of Slavery. Wilberforce's efforts early on were frustrated by powerful parliamentarians who agitated as diligently to maintain and support the slave trade. A series of abolition bills presented to Parliament failed. A decade after the abolition movement had begun the slave trade still prospered. Each year 50,000 slaves were being shipped to the Americas and by 1806 the number of slaves in the British empire had actually increased by twenty-five percent.⁷⁴

Wilberforce did not relent. The early years of the nineteenth century saw a new mood emerging in the British parliament—a mood that was sympathetic to the abolitionists' ambitions. In 1804 Wilberforce presented a bill—his

⁷⁴H. Thomas, *The Slave Trade: The History of the Atlantic Slave Trade: 1440–1870* (London, 1997), pp. 448–556.

fourth—to the House of Commons and this time it passed. By 1806 economic as well as moral arguments emerged in support of abolition because the slave market had been saturated. 1807, thus, saw the passing into law of an abolition bill that outlawed the trading of slaves throughout the British empire.⁷⁵



Figure 10.4:
William Wilberforce, humanitarian and anti-slavery activist; *Source:* image taken from URL: <http://www.wmcarey.edu/carey/portraits/wilberforce.jpg>.

By the mid-1820s many in the humanitarian movement had come to realise that improving slaves' conditions was not enough. Real justice, they felt, could not be realised until the institution was abolished altogether. In 1833 the anti-slavery movement finally achieved success when the House of Commons passed a motion emancipating all British slaves. A year later slavery in the British

⁷⁵Thomas, *The Slave Trade: The History of the Atlantic Slave Trade: 1440–1870*, pp. 448–556.

colonies was illegal. This was to be a posthumous victory for Wilberforce who had died in 1821. Leadership of the anti-slavery movement devolved to Thomas Fowell Buxton.⁷⁶



Figure 10.5:
Thomas Fowell Buxton, *Source*: image taken from URL:
www.anti-slaverysociety.addr.com/campaigns.htm.

Thomas Fowell Buxton was a notable philanthropist, humanitarian and parliamentarian. A stalwart member of the Church Missionary Society (he had converted to an evangelical faith as an adult and married into a Quaker family), Buxton concerned himself with three issues during his adult life: slavery, prison reform, and the treatment of native groups. While focussing on

⁷⁶R. Blackburn, *The Overthrow of Colonial Slavery, 1776-1848* (London, 1988), Chapters 4 & 8; G. M. Trevelyan, *British History in the Nineteenth Century and After (1782-1919)* (London, 1983), pp.252-253; J.S. Watson, *The Reign of George III, 1706-1815* (Oxford, 1960), pp.440-441; William Wilberforce entry in L. Stephen & S. Lee (eds.), *The Dictionary of National Biography* (London, 1917), pp.208-216.

the plight of slaves, it had become apparent to Buxton that the deleterious effects of British colonisation activities on native groups throughout the colonies had been ignored for too long. Though colonial governors had always been instructed to protect and preserve the native groups for whom they were responsible, the reality was that it had been tacitly accepted that Aboriginal groups throughout the British empire would inevitably fall sacrifice to the activities that followed settlement and economic development. By 1834 Buxton realised that the Aboriginal question needed to be comprehensively examined. Native land rights, he quickly concluded, were at the core of the issue: “What have we Christians done for them?” he wrote in a meditation,

[w]e have usurped their lands, kidnapped, enslaved, and murdered themselves. The greatest of their crimes is that they sometimes trespass into the lands of their forefathers; and the very greatest of their misfortunes is that they have ever become acquainted with Christians.⁷⁷

In a letter to his friend and colleague Reverend Dr John Phillip, then superintendent of the London Missionary Society and the man who had, in fact, agitated for Buxton to act on the native question, Buxton explained his concern. “In order to do justice” he wrote, “we must admit...that the natives

⁷⁷C. Buxton (ed.), *Memoirs of Sir Thomas Fowell Buxton, bart* (London, 1855), p.301.

have a right to their own lands. . .” Buxton needed to know two things: “what encroachments we have made on their property[?]” and “what are the most judicious modes of securing to them some portion of their own land, and giving them an equivalent for their losses and sufferings. . . [?]” After agitating for an official examination of the issue, Buxton was given the responsibility of heading a parliamentary committee to enquire into the matter. One of his charges was to determine how the home government could better “secure to [native groups] the due observance of justice and the protection of their rights.” He released his report to the House of Commons in two parts in 1836 and 1837. His findings, not surprisingly, had a profound effect on the formulation of native policy in the colonies thereafter.⁷⁸

The Colonial Office was particularly interested in the committee’s findings. At an official level, the report’s recommendations would have a direct effect on native policy-making in the future. More significantly, it was released at a time when the Colonial Office had appointed a number of new recruits. Many senior officials in the Colonial Office were individuals dedicated to seeing the objectives of the humanitarian movement effected.

Lord Glenelg (Charles Grant) was the Secretary of State for the Colonies

⁷⁸Buxton (ed.), *Memoirs of Sir Thomas Fowell Buxton, bart*, p.301; Report from the Select Committee on Aborigines (British Settlements), 1837, p.3; A.F. Walls, “Buxton, Thomas Fowell, 1786 to 1844, Evangelical”, *International Bulletin of Missionary Research*, 15.2, 1991, pp.74–78.

for most of the latter half of the 1830s. During his tenure he worked vigorously towards implementing more effective protectionist native policies in the colonies. His successor, the liberal minded, often politically contentious Marquis of Normanby (Constantine Henry Phipps) continued Glenelg's work to ensure the effecting of the Treaty of Waitangi.⁷⁹



Figure 10.6:

G.F. Watt's *Sir James Stephen*, 1863; Source: Leslie Stephen's, *The Life of Sir James Fitzjames Stephen, Bart., K.C.S.I.: a Judge of the High Court of Justice*; image taken from <http://www.heritage.nf.ca/society/>.

James Stephen came to be arguably the most influential public servant to serve in the Colonial Office in the nineteenth century. He assumed the position of Permanent Undersecretary to the Colonial Office in 1836 and quickly became a guiding force in colonial policy-making. He was a deeply religious man whose career was guided by his devotion to evangelical and humanitarian causes.

Stephen dedicated his career to aiding the plight of underprivileged British

⁷⁹Charles Grant (Lord Glenelg) and Constantine Henry Phipps (Marquis of Normanby) entries, L. Stephen & S. Lee (eds.), *Dictionary of National Biography* (London, 1917).

subjects and especially native groups. He worked to end slavery in the British colonies and then, after the institution was abolished, he worked to ensure that the new laws protecting ex-slaves were implemented and upheld. Appointed as the permanent legal advisor in 1825, Stephen's tenure in the Colonial Office approximated that of Arthur's in Van Diemen's Land and it was a close and supportive relationship that the two shared.⁸⁰

In the antipodean colonies, the most prominent British humanitarian and government official was Governor Arthur. A self-confessed "perfect Wilberforce as to slavery" he was active and dedicated to the movement's causes. Like Stephen, his evangelical faith, combined with an interest in the welfare of slaves and native groups, established during his time as Superintendent of Honduras from 1812 to 1823, led him to take a personal interest in slaves and Aborigines.⁸¹

⁸⁰Stephen, who was a personal friend of Governor Arthur, took an interest in Arthur's management of the affairs of Van Diemen's Land. Stephen supported Arthur's bid to separate Van Diemen's Land from New South Wales; and gave the governor his full support on the issue of limiting free press in a convict colony. When Arthur feared that he would be recalled midway through his tenure in Van Diemen's Land, it was Stephen who set his mind at ease. It was Stephen to whom the often harried governor turned when he needed personal support; see Shaw *Sir George Arthur, bart*, Chapters 4, 5 & 6; for more general discussions of Stephen's activities see James Stephen entry, L. Stephen & S. Lee (eds.), *Dictionary of National Biography* (London, 1917); P. Knaplund, "Mr. Oversecretary Stephen", *The Journal of Modern History*, 1.1 (1929), pp.40–66; H. T. Manning, "Who Ran the British Empire, 1830–1850?", *Journal of British Studies*, 5.1 (1965), pp. 88–121; *The Journal of Modern History*, 13.1 (1941), pp.19–35; P. Knaplund, *James Stephen and the British Colonial System, 1813–1847* (Madison, 1953), P. Knaplund, "Sir James Stephen: The Friend of the Negroes", *Journal of Negro History*, 35.4 (1950), pp.368–407.

⁸¹During his time in Van Diemen's Land, however, Arthur was not directly concerned with the slavery issue. Issues regarding slavery as they might have related to convicts as unpaid labourers was an issue of controversy for some. Nonetheless, Arthur did not struggle

10.6 Buxton's Select Committee on Aborigines

Buxton released the final report from the Select Committee on Aborigines (British Settlements) to the House of Commons on 26 June 1837. The committee had been charged with determining

...what measures ought to be adopted with regard to the native inhabitants of countries where British settlements are made, and to the neighbouring tribes, in order to secure to them the due observance of justice and the protection of their rights...⁸²

This was the first comprehensive investigation of its kind to be carried out by the British parliament since Australia had been settled by Britain. Its findings had a lasting impact on many areas of colonial administration and politics and some important policy changes followed as a result. Most significantly the report gave an official voice to the view that indigenous groups

with it for he believed that one's incarceration was a reflection of a temporary lapse in judgement rather than a reflection of one's character. Arthur felt that every man or woman who was a convict was merely moving through a process of social restitution where they were paying dues for their offences against the Crown and could ultimately return to society rehabilitated. For Arthur, the humanitarian, the important issue was the calamitous impact of settlement on the Aborigines (as individuals, if not as a society). To this end, he invested a great deal of energy attempting to protect the rights of his native wards. (For a discussion of Arthur's life from his time in British Honduras through to his governorship of Upper Canada see A.G.L. Shaw's, *Sir George Arthur, bart*).

⁸²Report From the Select Committee on Aborigines (British Settlements), 1837, p.3.

had rights to the lands upon which they resided.

From the outset Buxton's committee admitted the failure of the British government to consider the situation it had created not only for the native peoples in its colonies, but also those settlers to whom these new lands were being opened. It determined that many British laws regarding colonisation were contradictory and fraught with injustice, that

while Acts of Parliament have laid down the general principles of equity, other and conflicting Acts have been framed, disposing of lands without any reference to the possessors and actual occupants, and without making any reserve of the proceeds of the property of the natives for their benefit. [T]he intercourse of Europeans in general without any exception in favour of the subjects of Great Britain, had been... a source of many calamities to uncivilised nations....

Quoting Bishop Broughton directly, the committee lamented that the Aborigines of Australia had suffered most acutely: "They do not so much retire as decay... they appear to wear out, and gradually to decay: they diminish in numbers; they appear actually to vanish from the face of the earth." This was the case because, as the committee reported,

[t]oo often their territory has been usurped; their property seized;

their numbers diminished; their character debased; the spread of civilization impeded. European vices and diseases have been introduced amongst them, and they have been familiarized with the use of our most potent instruments for the subtle or the violent destruction of human life, viz, brandy and gunpowder.⁸³

The commissioners concluded that

[i]t might be presumed that the natives inhabitants of any land have an incontrovertible right to their own soil: a plain and sacred right, however, which seems not to have been understood. Europeans have entered their borders uninvited, and, when there, have not only acted as if they were undoubted lords of the soil, but have punished the natives as aggressors if they have evinced a disposition to live in their own country.

If they have been found upon their own property, they have been treated as thieves and robbers. They are driven back into the interior as if they were dogs or kangaroos.⁸⁴

The committee concluded that the Australian Aborigines were the “most degraded of the human race” and that, indeed, “. . . intercourse with Europeans

⁸³Report from the Select Committee on Aborigines (British Settlements), 1836, pp. 1, 4, 5, 10 & 11.

⁸⁴Report from the Select Committee on Aborigines (British Settlements), 1837, p.6.

has cast over their original debasement a yet deeper shade of wretchedness.” The committee reflected on Bishop Broughton’s evidence. Like Commissioner Bigge who, twelve years earlier, had concluded that the “black population will undergo a gradual diminution in proportion to the advances of the white population into the interior”, Broughton lamented that the utter debasement of his Aboriginal wards had led to the situation where, “it does not appear that the territorial rights of the natives were considered, and very little care has since been taken to protect them from the violence or the contamination of the dregs of our countrymen.” Indeed,

so entirely destitute are they even of the rudest forms of civil polity, that their claims, whether as sovereigns or proprietors of the soil, have been utterly disregarded. The land has been taken from them without the assertion of any other title than that of superior numbers...⁸⁵

Having been presented with a vivid picture of race relations in New South Wales and Van Diemen’s Land, the committee concluded that it had been a wise decision by Governor Arthur to remove the Aborigines of Van Diemen’s Land from the island. Evidence presented to the committee reflected that

⁸⁵J. T. Bigge, *Report on Agriculture and Trade in New South Wales* (London, 1823), p.83; *Report from the Select Committee on Aborigines (British Settlements)*, 1837, pp. 10–11 & 82.

the Aborigines appeared to be content with their lot on Flinders Island. The colonists were certainly relieved that hostilities had come to an end. The select committee recommended that voluntary removal, such as Arthur had effected, should, where appropriate, be undertaken in other colonies. Nonetheless, the commissioners deeply regretted that the events predicted by Sir George Murray when he spoke of the possible extinction of the Aboriginal people and the “indelible stain upon the British Government” that it would leave, was a very real possibility.⁸⁶

Ultimately, the Buxton committee concluded that in other British territories a “system of dealing with the rights of natives” needed to be implemented.”⁸⁷ The committee outlined the variety of relationships that had formed between colonial governments and native groups: from independent self-sufficient indigenous groups operating alongside British colonists, to groups that allowed themselves to be protected by Great Britain but who continued to effect their own laws and customs, to those groups who had become completely dependant upon, managed by and vulnerable to a colonial government.⁸⁸ The committee’s recommendations reflected the patriarchal position that the Crown had assumed since the beginning of its colonising days.

⁸⁶Report from the Select Committee on Aborigines (British Settlements), 1837, p.14.

⁸⁷Report from the Select Committee on Aborigines (British Settlements), 1837, p.75.

⁸⁸Report from the Select Committee on Aborigines (British Settlements), 1837, p.76.

Though indigenous land rights were acknowledged, the commissioners resisted the idea that native groups could and should be considered independent sovereign nations akin to other European powers. At best they were more like Chief Justice Marshall's "domestic dependent nations."⁸⁹ As such, the committee staunchly opposed the utilisation of treaties. Though many witnesses brought before the committee were in favour of the use of treaties, the commissioners still concluded that they were not an effective tool to manage race relations. They considered that, rather than being "securities for peace," treaties had evolved into devices used to apologise for past wrongs. Treaties had become mechanisms by which foreign powers could continue to justify their mistreatment of indigenous groups. "As often as the resentment or the cupidity of the more powerful body may be excited," the committee wrote, "a ready pretext for complaint will be found in the ambiguity of the language in which their agreements must be drawn up, and in the superior sagacity which the Europeans will exercise in framing, in interpreting, and in evading them." The committee, thus, recommended that the official status quo be maintained; that policies based on the Christianization and civilization of indigenous groups be continued. The eventual integration of Aboriginal groups into the European societies in the colonies, rather than their separation from

⁸⁹see Chapter 2 for a discussion of the Marshall trilogy and 'domestic dependent nations'.

them, thus remained the aim.⁹⁰

The resolution of the current problems, the committee therefore maintained, lay in the adoption of more precise protectionist policies. If the civil and human rights of indigenous groups could be protected, and their physical well-being maintained, then more long term successes could be realised.⁹¹

⁹⁰Report from the Select Committee on Aborigines (British Settlements), 1837, p.80.

⁹¹Very soon after the Buxton's report was released to the colonial governments, New South Wales governor, George Gipps, found himself acting upon the latest directive from Secretary Glenelg. Britain's native wards, Glenelg articulated, are "subjects of the Queen, and as within Her Majesty's allegiance". Their right to be protected by the colonial government, he proclaimed, was "derive[d] the highest possible claim from the sovereignty which has been assumed over the whole of their ancient possessions". The colonial governors in the Australian colonies, however, was still operating within the bounds of the legal reality, established in 1788 and reiterated by Stephen, in 1820 that "...the colony was acquired neither by conquest or cession, but by the mere occupation of a desert or uninhabited land." While Gipps' focus was on the former, it was the within the pale of the latter which many colonial settlers still acted. To this end, the massacre of a group of Aborigines at Myall Creek, 350 miles north of Sydney, and the colonial government's response to it, reflected that while much had changed, much still remained very much the same.

On the evening of Sunday 10 June 1838, in retaliation for the spearing of their cattle, eleven stockman from the Myall Creek area rounded up and killed a group of twenty-eight Aborigines camped on the property of Henry Dangar. The stockmen later returned to the site and burned the bodies. William Hobbs, superintendent at Dangar's station, reported the incident to Dangar who passed on the details to authorities in Sydney. At the end of June a magistrate was dispatched to Myall Creek to investigate the case. Eleven of the twelve men known to be involved were located, arrested and taken to Sydney. On 15 November they were tried for the murders of six of the twenty-eight massacred. Though a number of witnesses testified against the stockmen, providing specific evidence about the events surrounding the massacre, the jury, nonetheless, found that insufficient evidence existed to determine guilt and the accused were acquitted. The Attorney-General immediately arraigned seven of the eleven accused and brought further charges against them. On 27 November, they were tried for the murder of three of the Aboriginal children not named in the previous suit. Though the stock keepers were represented by prominent attorneys and though the description of the children was vague, this time the jury found for the prosecution. So controversial was the finding that memorialists—including the judge who presided over the first case—sent a petition to Gipps pleading for clemency for the prisoners. The colonial government stood its ground. The verdict was upheld by the unanimous decision of three other Supreme Court judges. The Executive Council concurred and the death sentence was imposed. On 18 December 1838 the seven men were hanged. Gipp's handling of the case met with "unqualified approbation" from the Colonial Office now headed by the Marquis of Normanby, the man who would usher in the Treaty of Waitangi; see Bourke to Arthur,

The select committee consequently supported the establishment of Arthur's Aboriginal protectorates in all colonies. Protectors, the committee recommended, should be employed to educate their wards, prosecute crimes by and against them and generally act as a support for the Aboriginal groups with whom they worked.⁹²

10.7 Private Enterprise and Colonisation

Having heard of the failure of an ill-planned land bartering scheme implemented at Swan River in Western Australia,⁹³ Edward Gibbon Wakefield initiated a "scientific" plan in 1830 to establish a private colony in what is now the State of South Australia. His idea was to make lands available, at a fixed price, to British citizens who were interested in emigrating to the Australian

17 December 1831, in Arthur to Horwick, 19 January 1832, C.O. 280/33, PRO Reel 250; J. Stephen, "Validity of Statute, 20 George II, c.19, in the Colony", *HRA*, IV.1, p.414; Glenelg to Bourke, 26 July 1837, Correspondence Relating to the Massacre of Various Aborigines and to the Trial of their Murders, British Parliamentary Papers, 1839 (526), XXXIV, p.3.

⁹²Report from the Select Committee on Aborigines (British Settlements), 1837, pp. 83–85.

⁹³In 1826 a group of 800 English emigrants led by Captain James Stirling settled on the west coast of Australia on what was then known as Swan River. The English emigrants had been attracted to the new colony by reports of its beauty as well as by a land settlement scheme that promised them great wealth and prosperity. The plan involved bartering goods for land. The scheme promised that for every £3 worth property taken to the new colony 40 acres of land would be granted. However, it failed miserably. By 1830 the Swan River settlement had attracted only 1000 settlers. The land was barren and neither crops nor livestock could survive. Labourers taken out as "assets" often abandoned their masters; the livestock wandered off; those who were able to return to England, did so. Wakefield used the disaster as a lesson in what not to do; see P. Borroughs, *Britain and Australia, 1831–1855: A Study in Imperial Relations and Crown Lands Administration* (Oxford, 1967), p.169.

colonies. The infrastructure of colony, Wakefield determined, could be developed with the funds provided by the sale of lands and by importing low-cost labour from the British working classes.⁹⁴



Figure 10.7:

Edward Gibbon Wakefield; *Source*: Alexander Turnbull Library, National Library of New Zealand, picture reference: A-042-02 ; image taken from: Dictionary of New Zealand Biography, URL: <http://www.dnzb.govt.nz/dnzb>

When he was released from Newgate Prison in 1830, after serving a sentence for abducting an heiress,⁹⁵ Wakefield formed the National Colonisation Society and was the force behind the founding of the South Australian Association.

⁹⁴G. Tregarthen, *Australasia: New South Wales, Tasmania, Western Australia, South Australia, Victoria, Queensland, New Zealand* (London, 1895), pp.276–285; see E.G. Wakefield, *A Letter from Sydney, the Principal Town of Australasia: & Other Writings on Colonization by Edward Gibbon Wakefield* (London, 1929). This was a series of letters sent to London's *Morning Chronicle* by an anonymous author later identified as Wakefield. Though he claims to have written the letters from Sydney, in fact he wrote the fictitious letters while he was incarcerated.

⁹⁵Wakefield convinced a school girl to elope with him to Europe. However, because she was still a minor the marriage was considered unlawful and was annulled by an act of parliament. Wakefield was charged with abducting a minor; see P. Temple, *A Sort of Conscience: The Wakefields*, Chapter 12.

Wakefield's goal was to systematically colonise South Australia (beginning at Spencer's Gulf) with British immigrants who, with their cheap imported labour, would purchase lands in the new colony and settle there. Land prices would be set high enough to attract a class of investors beyond the speculator and squatter. The revenues produced would fund the administration of the new settlement. Wakefield felt that for the colony to be successful it essentially needed to be free of interference by the British government. In May 1831 a proposal to settle Spencer's Gulf was presented to the Colonial Office.⁹⁶

Not willing to sanction the creation of a pseudo-republic by private enterprise in a British colony, the Colonial Office repeatedly vetoed proposals received from the South Australian Association. Wakefield persevered and over the next few years continued to present to successive Colonial Secretaries revisions of the scheme. Finally in April 1834 Lord Stanley gave the association approval to settle lands in the Spencer's Gulf region. Though, in the words of Wakefield biographer, Phillip Temple, "[m]any suspected it was a get-rich-quick plan for its promoters",⁹⁷ still the South Australia Bill was quickly pushed through both the House of Lords and the House of Commons and received royal assent in August 1834. The *South Australian Act* of 1834

⁹⁶M Fairburn, Edward Gibbon Wakefield entry in Dictionary of New Zealand Biography, updated 7 July 2005, URL: <http://www.dnzb.govt.nz/>, cited October 2005; P. Temple, *A Sort of Conscience: The Wakefields*.

⁹⁷P. Temple, *A Sort of Conscience: The Wakefields*, p.157.

which followed was essentially a blueprint by which the new colony would be established and run. The cost of founding the colony would be borne by a semi-independent body of commissioners, but political control would be remain with a colonial governor whose officials who would be appointed by the Crown. The first settlers arrived in Spencer's Gulf to take up their holdings in 1836.⁹⁸

A central concern of the Colonial Office was that Aboriginal groups were protected. Statesmen including Buxton, Stephen, and Secretaries of State, Spring Rice and Glenelg, all feared that the rights of the Aborigines would be compromised by the desires of the land-hungry. James Stephen wondered how the boundaries of the new colony would be established "with any due regard to the rights of the present Proprietors of the Soil or rulers of the country."⁹⁹ Buxton's committee noted that the *South Australia Act* had failed to consider the rights of the native peoples of the new colony and that the South Australian legislation had completely failed to make "reference to the possessors and actual occupants" of the region. Before his resignation, Spring Rice, an avid Buxton supporter, wrote to the commissioners instructing them to take

⁹⁸P. Burroughs, *Britain and Australia 1831-1855* (Oxford, 1967), pp.167-184; P. Bloomfield, *Edward Gibbon Wakefield: Builder of the British Commonwealth* (London, 1961), pp.119-143; D. Jaensch (ed.), *The Flinders History of South Australia* (Adelaide, 1986), pp.11-12; P. Temple, *A Sort of Conscience: The Wakefields*; E.G. Wakefield, *A Letter from Sydney, the Principal Town of Australasia*.

⁹⁹Stephen memo in Torrens to Grey, December 1835 correspondence quoted in Reynolds, *Law of the Land*, p.106.

possession of only those lands which were not occupied by Aboriginal groups. Though reference to the protection of Aboriginal rights did not appear in the *South Australia Act* of 1834, the Letters Patent of February 1836 declared that nothing in the laws of South Australia “shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any lands therein now actually occupied or enjoyed by such natives.”¹⁰⁰

The South Australian commissioners replied that they had a scheme for “securing to the natives their proprietary rights to the soil, wherever such right may be found to exist.” Paying lip service to the Colonial Office’s instructions, the commissioners reported that they planned to purchase lands from those groups who were found to be in possession of any regions that were to be settled by Wakefield’s immigrants. To further ameliorate the Colonial Office, the commissioners also announced that they planned to set aside twenty percent of the proceeds from the sale of lands to fund schemes to protect and promote the welfare of the Aborigines. The proposal—essentially a smokescreen to appease Whitehall until South Australia was settled—was never implemented. Wakefield and his men had little interest in compromising their profits in an attempt to protect Aboriginal land rights. Indeed in a letter to Glenelg, Robert

¹⁰⁰Report from the Select Committee on Aborigines (British Settlements), 1837, p. 12; H. Reynolds, *The Law of the Land*, pp.103–107, *Letters Patent Establishing the Province of South Australia*, 19 February 1836, State Records of South Australia, GRG 2/64.

Torrens, chairman of the Colonization Commission for South Australia, at one point argued against the need to consider native land rights at all because colonial precedent had established that the Aborigines of Australia were not at “that stage of social improvement in which a proprietary right to the soil exists.”¹⁰¹

Aboriginal-settler hostility inevitably followed as settlement spread and race relations on the frontier remained unchecked. Despite the appointment of Aboriginal protectors in 1838 to “protect...[the Aborigines]...enjoyment of proprietary rights to such lands as may be occupied by them in any special manner” the scheme’s authors could not report success.¹⁰²

By 1836 Wakefield had turned his attention to New Zealand, considering it to be “the fittest in the world for colonisation...the most beautiful country with the finest climate, and the most productive soil.” Wakefield had a number of challenges facing him. The Colonial Office had been overhauled and accountability amongst colonial government officials in the colonies increased considerably. Buxton’s recommendations, moreover, made clear how native

¹⁰¹N. Love, “Edward Gibbon Wakefield: A Maori Perspective” in *Edward Gibbon Wakefield and the Colonial Dream: A Reconsideration* (Wellington, 1997), pp.3-10; J. Martin, “The Foundation of South Australia” in D. Jaensch (ed.), *The Flinders History of South Australia* (Adelaide, 1986), pp.11-12; H. Reynolds, *The Law of the Land*, pp.106; C.D. Rowley, *The Destruction of Aboriginal Society* (Ringwood, 1978), pp.74-85.

¹⁰²This will be discussed in more detail below.

groups were to be treated and with this ringing in the ears of the decision-makers to whom Wakefield was appealing, this was something that the entrepreneur knew he must heed if he was to succeed in his latest venture.¹⁰³

However, Wakefield was much better prepared this time. The members of his New Zealand Association—the organisation that would prepare the way for the settlement of New Zealand—“comprise[d] a more influential body than that which founded South Australia.” Moreover, he took into account that he must accommodate not just the Colonial Office but, more importantly, the Maori whom he recognised were “not savages, but a people capable of civilization.”¹⁰⁴

In March 1839, Standish Motte, a representative of the New Zealand Colonization Company, of which Wakefield was a member, wrote to the Secretary of State—now the Marquis of Normanby—asking for the Colonial Office to sanction and support its plans to establish a new colony in New Zealand. Motte informed Normanby that the company had received Glenelg’s approval and was now waiting on a bill to be passed before Parliament. Motte relayed that the company had a vessel ready to sail and that land had already been purchased from a number of Maori groups in New Zealand. Over the next

¹⁰³N. Love, “Edward Gibbon Wakefield: A Maori Perspective”, pp.3–10.

¹⁰⁴E.G. Wakefield quoted in P. Temple, *A Sort of Conscience: The Wakefields*, p.190.

month communication passed between the Colonial Office and the company and on several occasions representatives for each met. Each time the company asked for London's sanction and each time the Colonial Office refused.¹⁰⁵

On 1 May, hearing that a company ship was about to set sail, Normanby wrote a strongly worded communication to one of the directors, William Hutt, making very clear the Colonial Office's position. Normanby stated that His Majesty's government in no way sanctioned the proceedings and that London would not acknowledge "proprietary titles to land" purchased from or granted by Maori groups. Any such purchases would be annulled once New Zealand came under British sovereignty and title to all lands acquired thus would become Crown land. The ship set sail anyway.¹⁰⁶

Ultimately, however, the resistance of the Colonial Office to seemingly every plan and proposal presented by Wakefield or his associates finally took its toll. Wakefield withdrew his support of the New Zealand Association and its plans for settling a new colony in lieu of a more promising future with his political patron, Lord Durham, in Canada.¹⁰⁷

¹⁰⁵Motte to Normanby, 4 March 1839, Correspondence with the Secretary of State Relative to New Zealand, BPP, London, 1840, pp.20–21.

¹⁰⁶Henry Labouchere to William Hutt, 1 May 1839, Correspondence with the Secretary of State Relative to New Zealand, BPP, London, 1840, pp.27–28.

¹⁰⁷P. Temple, *A Sort of Conscience: The Wakefields*, p.207–208.

Though Wakefield's difficulties with the Colonial Office reflect an interesting story of the struggle between private and public colonizing interests at the time,¹⁰⁸ what is more significant is the attitudinal changes of both the company members and the Colonial Office towards the native land rights. Both tacitly recognised that the acquisition of land in New Zealand must follow a process that acknowledged native title. In its instructions to Colonel Wakefield, the New Zealand Land Company clearly stated the need to conduct "negotiations for the purchase of lands in Cook's Strait." The company recognised that Maori groups, through their dealings with the missionaries, had come to understand the systems and procedures involved in land transfer agreements. The company was also careful to instruct Wakefield

that you should, on every occasion, treat... [the Maori]... with the most entire frankness, thoroughly explaining to them that you wish to purchase the land for the purpose of establishing a settlement of Englishmen there... Above all, you will be especially careful, that all the owners of any tract of land which you may purchase, shall be approving parties to the bargain, and that each of them receives his due share of the purchase-money.¹⁰⁹

¹⁰⁸For a study of private enterprise in the colonies see F. Broeze, "Private Enterprise and the Peopling of Australasia, 1831-50", *Australasian Economic History Review* (May 1992), pp. 8-32.

¹⁰⁹Instructions from the New Zealand Land Company to Colonel Wakefield, principal Agent of the Company, 29 April 1839, CO, 204/4.

10.8 Missionaries and Treaties

The missionary societies in London and the colonies had an enormous influence in colonial policy-making, especially as it related to the management of native peoples. Many who sat on Buxton's select committees were active and prominent in the various British missionary societies and the majority of its witnesses were or had been missionaries, themselves. To this end, the committee was predisposed to judge the Aboriginal question from an evangelical perspective. Both the members and their witnesses assumed the high value of Christianity and understood that native groups *must* be taught to be loyal Christians for their "civilization" to advance. Nonetheless, most assumed that natives groups had an intrinsic and incontrovertible right to their lands.

Three witnesses who were called to testify before the committee were Dandeson Coates, Reverend William Ellis and Reverend John Beecham—all active, highly ranked members of British missionary societies. Coates worked as an Anglican missionary for the Church Missionary Society during his prestigious career, and eventually became its first lay secretary. Ellis was a member of the London Missionary Society. Having worked in missions in South Africa and the South Pacific, he eventually earned the position of Chief Foreign Secretary. Beecham served as a general secretary for the Wesleyan Missionary Society.

His missionary efforts helped to create Wesleyan church societies in the Australian colonies. All three societies were also at work in New Zealand.¹¹⁰

Questioned together, Coates, Ellis and Beecham gave comprehensive testimony to the committee. Each strongly advocated native land rights. Ellis understood that the British government needed to recognise the “inalienable right to the soil they [native groups] inhabit.” Invoking the Lockean theory, he argued that these rights evolved from the fact that native groups did, in fact, cultivate the land, “and the productions of the soil. . . [were the] game or fruits and roots, on which they live. . . .” Beecham perceived that the lands in dispute “are theirs [native groups] by a prior right.” When asked, “[is] . . . the Committee to understand that it is your opinion. . . [t]hat we are bound to assume as an incontrovertible fact that they have an inalienable right to their own soil. . . [a]nd that it is nothing short of usurpation and robbery to take from them their soil and means of subsistence, without a fair and adequate compensation?” each answered with a resounding “yes.” Ellis and Beecham felt that the only way to ensure that history did not repeat itself was to negotiate treaties that formally recognised the independence and authority of

¹¹⁰Dandeson Coates entry, *Wellington Valley Project*, URL: http://www.newcastle.edu.au/group/amrhd/wvp/entities/br_c.htm; John Beecham entry, N. Harmon (ed.), *Encyclopedia of World Methodism* (Nashville, 1974); William Ellis entry, *The 1911 Edition Encyclopedia*, URL: <http://80.1911encyclopedia.org>. URLs referenced October 2005.

native peoples.¹¹¹

While it was easy enough to theorise about the notion of native land rights, it was the reaction of the Church Missionary Society to the Wakefieldian designs on New Zealand and the resulting British colonisation of the region, which revealed the extent to which the missionary societies were willing to work to protect these rights. Concerned with the potential harm that Wakefield's activities would have on both the rights of the Maori and the success that the missionaries in New Zealand had already achieved, the Church Missionary Society, led by Coates, lobbied the Colonial Office, and Glenelg in particular, to implement policies which would check these dangers.¹¹²

In two petitions to Glenelg in November and December 1837 the missionary society lobbied strongly against the systematic colonisation of New Zealand, be it led by the Wakefieldians or the British government. The first petition was sixty-eight pages long and included notes for the society's members as well as the outline of the society's objections to the New Zealand Association.

The second was a petition to the House of Commons similarly opposing the

¹¹¹Report from the Select Committee on Aborigines (British Settlements), 1836, pp.509–516.

¹¹²Notes for the Information of Those Members or The Deputation to Lord Glenelg, Respecting the New-Zealand Association, Who Have Not Attended the Meeting of the Committee on the Subject, 28 December 1837; The Principles, Objects and Plan of the New Zealand Association Examined in a Letter to the Right Hon. Lord Glenelg, Secretary of State for the Colonies, 27 November 1837; & To the Honourable The House of Commons of the United Kingdom of Great Britain and Ireland, in Parliament Assembled: The Humble Petition of the Committee of the Church Missionary Society for Africa and the East, 1837, CO 209/3, PRO Reel 1001, pp.134–146 & 176–197.

official colonization of New Zealand. Both were written by Dandeson Coates (Thomas Fowell Buxton was a member of the committee).¹¹³ The Society's primary objection to the New Zealand Company's plan was that it had the potential to compromise the "rights and interests of the Natives of New Zealand." Coates ended by pointing to the legacy of natives peoples—one that had been so clearly articulated in the Select Committee Report. "[R]esults similarly disastrous to the Natives of New Zealand," he wrote,

are to be anticipated from the colonization of that country, as have followed in all former instances; viz. injustice and wrong in acquiring territory; the loss of the independence and sovereignty of the Natives; and the degradation and extinction of the aboriginal race.¹¹⁴

The petitioners felt that the presence of thousands of new settlers brought in by the New Zealand Association might effect such a scenario because there

¹¹³all references in this section to the petitions of the Church Missionary Society are from the following sources: Notes for the Information of Those Members or The Deputation to Lord Glenelg, Respecting the New-Zealand Association, Who Have Not Attended the Meeting of the Committee on the Subject, 28 December 1837; The Principles, Objects and Plan of the New Zealand Association Examined in a Letter to the Right Hon. Lord Glenelg, Secretary of State for the Colonies, 27 November 1837; & To the Honourable The House of Commons of the United Kingdom of Great Britain and Ireland, in Parliament Assembled: The Humble Petition of the Committee of the Church Missionary Society for Africa and the East, 1837.

¹¹⁴Notes for the Information of Those Members or The Deputation to Lord Glenelg, Respecting the New-Zealand Association, Who Have Not Attended the Meeting of the Committee on the Subject, 28 December 1837; The Principles, Objects and Plan of the New Zealand Association Examined in a Letter to the Right Hon. Lord Glenelg, Secretary of State for the Colonies, 27 November 1837, p.145.

would be no government, nor any laws securing the rights of the Maori, which would hold these new settlers in check. Coates spoke of the problems relating to the association's plans to purchase lands from the Maori. He wondered if the company directors had ulterior motives for instructing its representatives to purchase Maori lands. Realising that their British citizenship meant little in these parts, Coates also wondered if the company realised that it had to secure rights to the lands by dealing directly with the Maori, a group whose sovereignty the missionary society was not sure the company acknowledged.

Moreover, the New Zealand Company had been very vague in its instructions about how much should be paid for those lands ceded. Coates thus had doubts about the equity of these transactions. He also perceived that Wakefield's land company had little real interest in ensuring that the Maori with whom they were dealing fully comprehended the consequences of their transactions. Coates was certain that the chiefs would not willingly surrender their lands, and ultimately their independence and sovereignty. To gain control of the land by potentially underhanded means, Coates argued, was "unjust and cruel." Finally, he pointed to difficulties that would arise from a private company gaining control over the region. He feared that such a scheme was simply too dangerous. These were precisely the issues that finally determined that Britain would colonise New Zealand.

The missionary society realised, though, that simply objecting to the colonizing schemes of a private company would achieve little. If the settlement of New Zealand by British subjects was inevitable then the Church Missionary Society had to offer suggestions for a compromise. The petitioners felt that the British government, if it could not put a stop to private enterprise in New Zealand, had to take decisive steps to ensure that the goals of settlement were “grounded in the recognition and maintenance of Native sovereignty.” Official British annexation of New Zealand was, thus, the preferred option.

Several suggestions were made regarding the details of such arrangements. The petitioners thought that a consular agent with magisterial powers needed to be appointed to manage relations between the Maori and the settlers. A native police force might also be established to protect Maori groups from these settlers. Moreover, ships of war could be stationed to protect the Maori from whalers and sealers. All of this, Coates wrote, was necessary for a single end: “*the recognition of the independence of the Native Authorities.*”¹¹⁵

¹¹⁵D. Coates, *The Principles, Objects and Plan of the New Zealand Association Examined in a Letter to the Right Hon. Lord Glenelg, Secretary of State for the Colonies*, 27 November 1837, p.32.

10.9 Maori Sovereignty Recognised

The Colonial Office felt pressure to act. Busby, with his lack of any real authority, had hardly been able to effect any kind of practical change. To this end, moves were made to establish a more permanent British presence in the New Zealand islands and to install a governor who had the power to institute laws and regulate Pakeha-Maori interaction. Native policies would be founded upon principles of justice and equity and, most importantly, the recognition of native land rights.¹¹⁶

The Colonial Office determined that New Zealand would be governed as a protectorate of New South Wales and Captain William Hobson would be appointed as the British Consul to New Zealand operating under the authority of Governor Bourke. James Stephen was charged with formulating Hobson's instructions for assuming British sovereignty over New Zealand. Before Hobson was presented with his instructions, Bourke sent a despatch to Glenelg with suggestions put forth by both Hobson and Busby regarding the nature of the Consul's appointment.¹¹⁷

¹¹⁶Henry Labouchere to William Hutt, 1 May 1839, Correspondence with the Secretary of State Relative to New Zealand, BPP, pp.27–28.

¹¹⁷T. Williams, "James Stephen and the British Intervention in New Zealand, 1838–40."

Busby had spoken of the terrible effects of firearms, venereal diseases, alcohol and tobacco—all British imports—which many felt had exacerbated conflict amongst Maori groups. He thought that in order to reverse the calamitous effects that current contact with Europeans was having, the British government needed to intervene in New Zealand. He was convinced that in order for intervention to be beneficial, the British needed to treat the Maori as a sovereign power.¹¹⁸

Consequently, by 1839 it had become clear in the Colonial Office that the only way for Britain to assume sovereignty over New Zealand was by way of a treaty. Governor Hobson knew that he would be settling amongst groups already acquainted with British institutions and systems and so could envision the successful negotiation of a treaty with them. Unlike Busby, though, he did not consider the Maori to be sufficiently advanced politically to be able to continue to exist as an independent nation. He thought them a very intelligent people but questioned their level of civilization. He did not think that the two societies could coexist. Rather, Hobson thought that the Maori were destined to become, in essence, wards of a British state in New Zealand (not unlike Marshall, “domestic dependant nations”). His ideas centred around those which Arthur had regretfully come to accept as inevitable in Van Diemen’s

¹¹⁸Busby to Colonial Secretary, 16 June 1837 in Bourke to Glenelg, 9 September 1837 in Correspondence with the Secretary of State Relative to New Zealand, BPP, pp.6–12.

Land—segregating the New Zealanders and colonists. He felt, then, that the most effective way to protect the Maori was to alienate all of New Zealand as a British possession and then to establish native reserves, within which limits the Maori's own laws would apply.¹¹⁹



Figure 10.8:

James Ingram McDonald's *William Hobson*, Source: Alexander Turnbull Library, National Library of New Zealand, picture reference: G-826-1 ; image taken from: Dictionary of New Zealand Biography, URL: <http://www.dnzb.govt.nz/dnzb>.

On 14 August 1839 Hobson was sent his orders from the Marquis of Normanby. Normanby addressed the issue of emigration to New Zealand. With more than 2000 British residents already settled on the north island and more on the way, Normanby noted that there was nothing to do but to establish law and order there. Normanby admitted that London had not been unaware that New Zealand had the potential to reap great wealth for Britain. “There

¹¹⁹Hobson to Bourke, 8 August 1837, in Correspondence with the Secretary of State Relative to New Zealand, BPP, pp.8-11.

is, probably, no part of the earth," he wrote, "in which colonization could be effected with a greater or surer prospect of national advantage." However, the Colonial Office was still cognisant of Buxton's select committee report recommendations and it was "with extreme reluctance" that it made its decision. "The increase of national wealth and power, promised by the acquisition of New Zealand", Normanby relayed,

would be a most inadequate compensation for the injury which must be inflicted on this kingdom itself by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government.¹²⁰

Ultimately it was realised that without intervention the same unfortunate fate would befall the Maori that befell various native groups in other parts of the British empire. Normanby emphasised to Hobson that the "principal object of your mission", thus, is to "mitigate and, if possible, to avert these disasters, and to rescue the emigrants themselves from the evils of a lawless state of society..." The British government had acknowledged Maori independence and sovereignty and so found itself bound to the "admission of their rights."

¹²⁰Normanby to Hobson, 14 August 1839, *HRNZ*, 1, 729–739.

Thus, the only way to proceed was to negotiate a treaty. So to Hobson, Normanby was careful to give specific instructions on how he must carry out his commission.¹²¹

10.10 Treaty of Waitangi

On 14 August 1839 Lord Normanby sent a despatch to William Hobson authorising him to “treat with the Aborigines of New Zealand for the recognition of Her Majesty’s sovereign authority over the whole or any parts of those islands which they may be willing to place under Her Majesty’s domain.”¹²² Though issues soon arose with how the treaty was presented and interpreted, Normanby’s instructions to Hobson reflected the spirit of fairness and equity upon which the treaty was premised.

Hobson was instructed that he must pay careful attention to how the negotiations would proceed, making every effort to communicate his intentions to the Maori so as to convince them of his good regard for them. He was not to use coercion but to employ “mildness, justice and perfect sincerity” with them. Normanby recommended that Hobson seek the assistance of the missionaries who had become familiar with the Maori character and language. Hobson was

¹²¹Normanby to Hobson, 14 August 1839, *HRNZ*, 1, 729–739.

¹²²Normanby to Hobson, 14 August 1839, *HRNZ*, 1, 729–739.

also to employ a protector. This individual would be appointed “to watch over the interests of the aborigines,” especially as regards their selling their lands.¹²³

Hobson was authorised to “appropriate [Maori] consent by presents or other pecuniary arrangements.” However, he was encouraged to keep his pecuniary arrangements to a mere trifle: “the price to be paid to the natives by the local government will bear an exceedingly small proportion to the price for which the same lands will be re-sold by the Government to the settlers.” Those lands exchanged, moreover, should only be the wastelands for which the Maori had little or no use. Normanby forbade Hobson to alienate lands which the Maori held valuable.¹²⁴

The consul was instructed that all of his dealings with the Maori must be in good faith; that he must “frankly and unreservedly explain to the natives, or their chiefs, the reasons which should urge them to acquiesce in the proposals you will make to them”. Moreover, “they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves.” Though ultimately Hobson failed to fulfil many of these directives, still it is instructive that such a list of orders was formulated for each of them reflected the advice offered by Arthur on how the Aborigines

¹²³Normanby to Hobson, 14 August 1839, *HRNZ*, 1, 729–739.

¹²⁴Normanby to Hobson, 14 August 1839, *HRNZ*, 1, 729–739.

of the Australian colonies should have been treated.¹²⁵

Little time was lost executing treaty negotiations. Hobson arrived at the Bay of Islands on 30 January 1840. Over the next few days he met with Archdeacon Henry Williams and James Busby. Together they scrutinised the treaty document, then Williams and his son translated it into Maori. So speedy was London's decision that until this point nobody outside the upper echelons of the Colonial Office knew that a treaty was even being considered. There had been much talk of the animosity between British officials and the New Zealand Land Company, but nothing said of Britain's plans to claim sovereignty over the region. Williams was, thus, taken aback at what he was being asked to present to his Maori associates.¹²⁶

On 5 February 1840 a large group of both Europeans and Maori gathered under a marquee erected in front of Busby's house to hear what Hobson had come to present to them. Williams read to an utterly silent crowd. Asking his audience to hold their questions until he was finished, he slowly and deliberately articulated each clause of the treaty. Williams ended by explaining that the treaty had the full support of the missionaries, that this was an "act of love towards them on the part of the [British] queen, who desired to secure to them their property, rights and privileges. . . [t]hat this treaty was as a fortress

¹²⁵Normanby to Hobson, 14 August 1839, *HRNZ*, 1, 729–739.

¹²⁶Normanby to Hobson, 14 August 1839, *HRNZ*, 1, 729–739.

for them against any foreign power which might desire to take possession of their country. . . .”¹²⁷

Responses from the audience varied. One Maori chief quickly and readily accepted what had been presented and asked to sign the treaty. Others, both European and Maori, had instant objections. Their concerns centred around the potential that the treaty would ultimately lead to Maori dispossession and disenfranchisement. Williams assured them that they would be protected as British subjects. He told them that he would meet with them again in three days to hear their decisions. Only twenty-four hours passed before the chiefs had made their decision. Hobson, Williams and Busby reassembled the chiefs and at 11:00 A.M. on 6 February 1840, under the same tent, the Maori chiefs of the Bay of Islands signed the Treaty of Waitangi. The next day, under the supervision of William Williams, the Archdeacon’s brother, a number of missionaries were discharged to take the treaty to the rest of the chiefs of the north and south islands. Over the next several months missionaries travelled to the rest of the tribes to collect their signatures. Though some were, at first, resistant, ultimately the majority accepted the terms of the treaty and signed it on behalf of their people. In all, more than 500 chiefs signed the Treaty of

¹²⁷Copies of Extracts of Correspondence relative to New Zealand (In continuation of the papers presented to the House of Commons, on the 14th April 1840, in pursuance of Address 8th April).

Waitangi.¹²⁸

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The final negotiation of the Treaty of Waitangi was a process that was both quick to happen and slow to happen. It did not take long for Britain to act on the decision to take possession of New Zealand through the treaty-making process. On the other hand, it took nearly half a century of contact for the British to officially acknowledge that the Maori were peoples who held native title to their lands.

It was the combined efforts of a number of agents, many of them hailing from the Australian colonies, that finally led to this realisation. Marsden had led the way in bringing New Zealand to the notice of the Colonial Office. His depiction of the lawlessness that prevailed there served to alarm those in power back in London. Busby's appointment did nothing to remedy the problems and his reports to Bourke merely reinforced Marsden's message. Broughton's predictions about the potential fate of the Aborigines of Australia, a race whose rights had been almost completely ignored, underscored the need to re-evaluate the long-term affects of colonisation schemes on the prosperity of native groups. He had demonstrated time and again just how terribly wrong it

¹²⁸Copies of Extracts of Correspondence relative to New Zealand (In continuation of the papers presented to the House of Commons, on the 14th April 1840, in pursuance of Address 8th April).

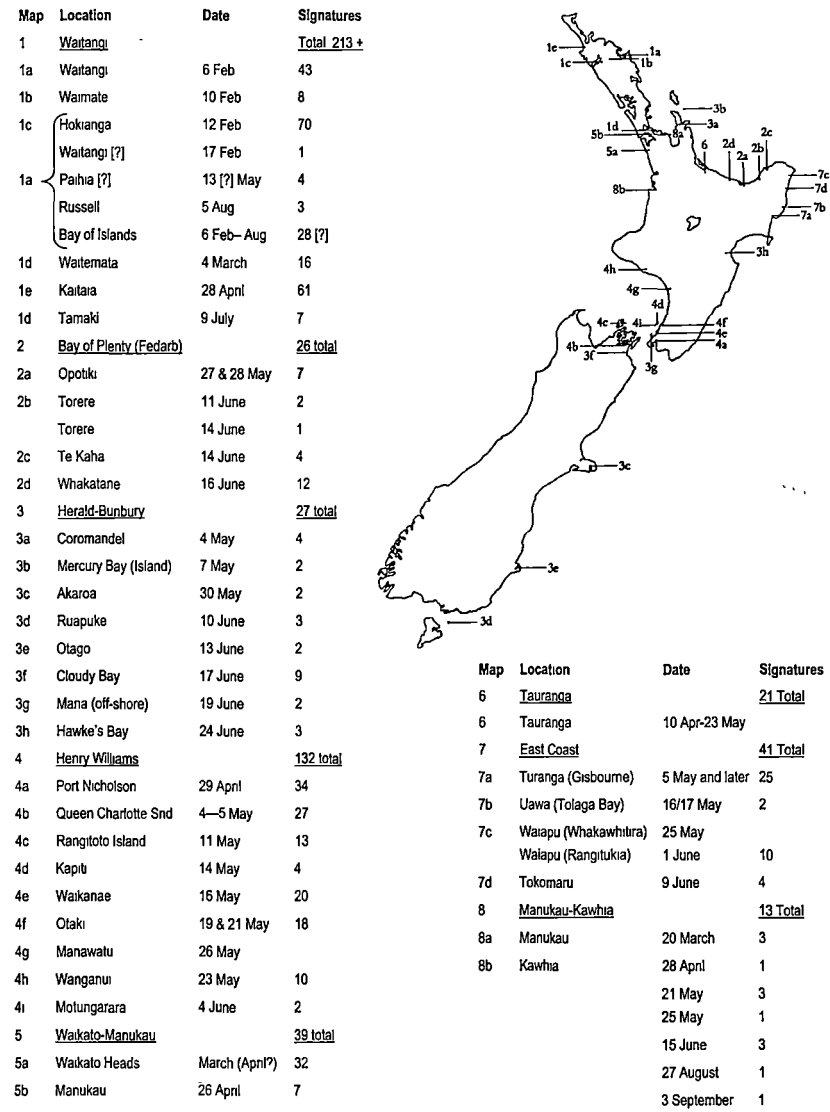


Figure 10.9:
Location of Maori Signatories to the Treaty of Waitangi
Source: Claudia Orange's *Treaty of Waitangi*.

had been to disregard the rights of the natives. Moreover, the Buxton report had, in effect, mandated that race relations in the colonies were managed with these rights in mind. Arthur's calls for native land rights to be acknowledged, thus, came at a time when Britain was willing to listen.

To be sure, New Zealand was a very different story from Australia. Missionary groups had been making great inroads with Maori groups in the north island and the Colonial Office was aware of just what economic opportunities New Zealand had to offer. Moreover, the Colonial Office was not willing to allow Wakefield to establish a pseudo-republic of British subjects in a land where British law were not in effect. Consequently, in hindsight, the decision to annex New Zealand was not surprising.

But what of Arthur's role in the Colonial Office decision to negotiate the Treaty of Waitangi? Certainly, his experiences in Van Diemen's Land had made a strong impression. His missives, thus, bore fruit, albeit in a land to which he had not referred in his written correspondence. Though there is scant evidence to suggest that he played a direct role in the decision to negotiate the Treaty of Waitangi, still everything he had advocated for in letters past was to be found in Hobson's instructions. More significantly, in light of the fact that Buxton had staunchly opposed the use treaties to manage race relations, that Colonial Office concluded that the only way to effectively protect and promote native land rights in New Zealand was by negotiating a treaty with the Maori, certainly indicates something of Arthur's influence.

Chapter 11

Conclusion

Too many factors precluded the negotiation of a *de jure* treaty between the colonial government and the Aborigines of Van Diemen's Land. Still, those involved in the crisis and its eventual conclusion were all focussed on reaching a mutually satisfying arrangement to end the conflict. Though the Aborigines themselves clearly understood that they were agreeing to a deal which, as Reynolds claims, was effectively a *de facto* peace treaty, it is too much to say, however, that Arthur or any of his representatives went so far as to consciously consider that they were entering into the treaty-making process with the Big River and Oyster Bay tribes.

Nonetheless, towards the end of the Aboriginal crisis the Lieutenant-Governor appears to have considered the notion of a treaty and in the end he deeply

regretted that he did not take it to its natural conclusion. Moreover, he seems to have been attempting to effect such an end without actually admitting on paper that he was doing so. Ultimately, though, Arthur would have never had officially acknowledged that the negotiations carried out on the shores of Lake Echo on that fateful January day constituted a treaty such a those which had been concluded so frequently in the north American colonies. Nonetheless, this does not mean that the Aborigines of Van Diemen's Land, as Reynolds argues, did not perceive that the negotiations were any less binding than those of the formally ratified treaties concluded in other parts of the British empire.

This was the case because Arthur had created the conditions and impetus for the negotiating of mutually satisfying land-sharing arrangements, which under other circumstances might have resulted in a treaty being concluded between the colonial government and what remained of the Aboriginal tribes of Van Diemen's Land. Indeed, Arthur's actions, if not his words, were those of someone who seemed to have been attempting to effect, even if subconsciously, something akin to a treaty-style settlement.

To be sure, Arthur's motivations came from without. In theory at least, British Imperial policy during the first half of the nineteenth century focussed

on protecting the Aborigines, promoting their traditional activities, and establishing good-will relations with them. Sir James Cook's orders as early as 1768, and later the colonial governors' instructions certainly indicates that the British Crown acknowledged that indigenous groups, at the very least, deserved protection as quasi-British subjects, if not sovereign polities.

Some practises that had become integral to the treaty-making tradition in other colonies and countries were also adopted in the Australian colonies, and specifically in Van Diemen's Land. Cook was told that he was to compensate the Aborigines with gifts of trinkets and the early explorers presented trinkets to coastal groups with whom they made contact. Arthur offered gifts to Aboriginal groups which visited Hobart town. Robinson, likewise, distributed tokens to various tribes during his expeditions throughout the island. Indeed, he was careful to conclude his negotiations with the Big River and Oyster Bay people by presenting them with trinkets and other gifts.

All Arthur's policies, though increasingly focussed on force to attempt to remove Aboriginal groups from their traditional homelands, were nonetheless aimed at establishing conditions based on land sharing arrangements thereafter. For Arthur, the separation and/or removal of the Aborigines was merely the initial step in a process which would facilitate the eventual incorporation

of two societies, albeit at the expense of the Aboriginal culture. Indeed, despite all the factors militating against a treaty, almost to the very end of the Aboriginal-settler crisis, Arthur remained committed to the possibility that something approximating a treaty could be concluded in Van Diemen's Land. All his Aboriginal policies—settled districts, reserves, roving parties, picture boards, martial law, the Black Line, and finally Robinson's "friendly missions"—were aimed at securing an Aboriginal peace through negotiation and compromise, two notions fundamental in the treaty-making process.

Robinson's activities in the wilderness of Van Diemen's Land most closely approximated how agents had been interacting with the various tribes of north America for several centuries. To be sure, Robinson played a direct role in the near-extirpation of the Aborigines of Van Diemen's Land, and certainly he was focussed on their cultural and social assimilation into British colonial society. However, neither he nor Arthur sought their extirpation.

Both eventually found that they could not, in reality, control the escalation of hostilities until Aboriginal and European groups were separated completely from one another. Thus, Arthur and Robinson both concluded that the only way to protect the Aborigines was to exile them. As such, Robinson's time in the Tasmanian wilderness, even though he acknowledged that the Aborigines were the real proprietors of the lands over which they wandered, was focussed

on their removal. It would be a process, however, that would be initiated only after Robinson had secured their consent.

Arguably, Robinson's greatest achievement was in identifying those in his mission party who had the skills and talent to help him realise his goals. A select few women stand out for their role as diplomats and conciliators. The efforts of the Bruny Island and Port Davey women, Trugernanna, Pagerly and Dray, have been discussed at length by both Reynolds and Ryan.¹ However, others played equally important roles. To be sure, the Bruny Island and Port Davey women were from generally peaceful and conciliatory tribes who accepted Robinson willingly.

On the other hand, Kubmanner, Luggenemenener and Karnebutcher—the three surviving women from the Hobart Town asylum whom Arthur had released back to their people in March 1830—were from those bands that had resisted settlement most fiercely. Yet they accepted Arthur's terms for peace and facilitated the eventual coming together of their kinsman, Mannalargenna, with Robinson—a man who in reality represented the enemy. The role that these women played was nothing less than remarkable. Though their people continued to be hunted, and they themselves fell victim to the violence of

¹see for example, Reynolds, *Fate of a Free People*, pp.139–146; L. Ryan, Aboriginal Women and Agency in the Process of Conquest: Some Recent Work, *Australian Feminist Studies*, 2 (1986), pp.35–43; L. Ryan, Indigenous Women as Agents: A comparison of the Lives of Three Indigenous Women Agents in Colonial Society, *58th ANZAAS Centenary Congress*, 190 (1988), pp.1–19.

the settlers, still they remained active proponents of peace and managed to convince their people to accept promises made by Arthur that they would be protected from further harm if they worked with the Government.

The little known Big River woman, Wooliterpineyer, also played a central role in facilitating her people's "coming in." As the only Big River native in Robinson's party she was probably the member most aware of the significance of this particular mission. She would have been told that Robinson's ultimate aim was to remove her people from their land, and even if she were acting on the premise that it would be a temporary removal, still she would have realised that the fate of every surviving member of her nation rested with her. Had the meeting on the shores of Lake Echo ended in violence and bloodshed, Wooliterpineyer would have been at least partially responsible for causing it to happen. Yet, this woman remained loyal to Robinson, so much so that he employed her as his lead guide during his expedition, relying on her to keep the peace while his mission guides negotiated with her kin.

As to Robinson's male guides, their roles cannot be underestimated. Black Tom, Umarrah and Mannalargenna had all been leaders of resistance guerrilla groups in the east. Once attached to Robinson they proved essential to his success. Their knowledge of both the English and Aboriginal languages proved invaluable during their time in the wilderness. Furthermore, that they were

willing to act as agents for the Colonial Government, demonstrated to others the positive aspects of “coming in.” This must have had an impact upon the Big River chiefs Montpeillatter and Tongerlongter.

Ultimately, thus, Robinson’s mission was successful, in terms of returning peace to the colony, if not in terms of the preservation of Aboriginal culture and society in Van Diemen’s Land, because what he and Arthur had created were the conditions for the development of a peace agreement that involved a mutual respect for the process of negotiation and compromise—precisely that upon which treaty-making practices in other parts of the world were based.

Arthur did not come to his conclusions about the need for a treaty alone. The advocacy of William Walker and later, that of Chief Justice Pedder, had made an impact. That less than a week after Robinson had brought in the Big River people, Arthur penned his first despatch about how Aboriginal policy in burgeoning mainland colonies should be formulated, indicates that the governor must have been contemplating the notion of a treaty even before contact had been made. Moreover, the ceremonies that followed on the lawns of Government House were not unlike those carried out in the north American colonies to conclude the treaty process. That many townsfolk attended the celebrations suggests that Arthur may not have been the only colonist with such thoughts on his mind.

What came after the end of the Aboriginal crisis in Van Diemen's Land illustrated how deep its impact had been both in Australia and Britain. That before establishing a settlement at Port Phillip four years later John Batman felt it necessary to negotiate a treaty with the Duttigalla people (legitimate or not in the minds of the Colonial powers-that-be), demonstrated how far attitudes towards the Aborigines had evolved. More significantly, as Marie Fels so clearly demonstrates, what resulted—in the early days, at least—in terms of cordial, reciprocal land sharing arrangements, showed that what Arthur had been suggesting actually worked, even if only in the short term.

While the effects of Batman's settlement scheme had an impact on the governments of New South Wales and Van Diemen's Land, Buxton's Select Committee brought about a change in attitudes concerning the management of native peoples that had a ripple effect that spread throughout the British Empire. To be sure, little in the way of major policy change was prescribed. The select committee recommended that colonial policy remain focused on the Christianisation and civilisation of the native groups. Moreover, Buxton had declared in no uncertain terms that the use of treaties as tools for settlement and racial integration had proven ineffective and even more detrimental to the preservation of native groups than the *ad hoc* methods used up to that time. What the report did do, however, that brought about a real change in the

management of native affairs was to force the Colonial Office to consider and develop plans for the colonisation of lands *before* settlement began. This is precisely how it approached the annexation of New Zealand.

To be sure, the decision by Whitehall to assume sovereignty of New Zealand came about as a result of external activities in the region that the Colonial Office sought to limit and control. As Marsden and his fellow missionaries spent more time in the North Island they came to see what was perceived to be the detrimental effects of continued contact with European sealers and whalers. However, what he also recognised was that the Maori were a people whose sovereign land rights could not be ignored.

Wakefield had also set his sights on New Zealand, purchasing lands from Maori chiefs and creating interest back in Britain amongst speculators looking for financial opportunities. As in the settlement of the Port Phillip districts, the Colonial Office felt forced to act. Unlike Port Phillip, however, rather than considering the colonisation of New Zealand primarily for its economic benefits (though there was a very real possibility that New Zealand could reap great economic rewards for Britain) the main issue for the Colonial Office was that the Maori were protected from lawless British subjects. The British annexation of New Zealand by means of a treaty with the Maori was thus negotiated. Unlike in the Australian colonies, however, there was no question

in the minds of those familiar with the Maori that they held a sovereign claim to their territories. The Maori were considered more civilised, more open to Christianity, and, in general, more able to socially and culturally assimilate to British ways. Consequently, Undersecretary Stephen's instructions to Hobson reflected that the Colonial Office had finally realised that New Zealand could be annexed only after sovereignty had been transferred from the Maori. Hobson could not simply claim New Zealand as a British colony based on principles of discovery and settlement. An official acknowledgement by Britain of native land rights in the Pacific had thus been finally made.

11.1 An Unexpected Epilogue

In his efforts to promote treaty-making in Western Australia and South Australia, George Arthur recommended that Lord Glenelg institute Aboriginal protectorates in the new colonies. Buxton's committee readily concurred and recommended that a protectorate system be created as quickly as possible. "The duties of the Protectors of the Aborigines of New Holland," the committee specified, "should consist first, in cultivating a personal knowledge of the natives, and a personal intercourse with them; and with that view these

officers should be expected to acquire an adequate familiarity with the native language.”² Arthur naturally recommended George Augustus Robinson to head the scheme. Having refused the protectorship in South Australia, in part because he considered the salary insufficient, Robinson later accepted the position of Chief Protector for the Port Phillip region.³

When Glenelg forwarded Buxton’s report to New South Wales governor, Sir George Gipps, he included with it instructions and guidelines for the protectors. Each protector was given provisions to supply to local tribes and his charge was to “watch over the rights and interests of the Natives, protect them, as far as his personal exertions and influence, from any encroachment on their property, and from acts of cruelty, of oppression or injustice, and faithfully represent their wants, wishes or grievances. . . .” During his time in the Port Phillip region in the late 1830s and early 1840s, Robinson became keenly aware of the affects of the pastoral leases on the dispossession of those whom he was charged with protecting. He prompted his superiors to acknowledge their land rights, stating that the “Aboriginal Natives have a right to a reasonable share in the soil of their Fatherland.” He thought it “just and reasonable [that] the Natives should have spots to call their own and land whereon to settle.”⁴

²Report from the Select Committee on Aborigines (British Settlements), 1836, p.83.

³N.J.B. Plomley, George August Robinson entry in A.G.L. Shaw & C.M.H. Clark (eds), *Australian Dictionary of Biography* (Melbourne, 1967), pp.385–387.

⁴Glenelg to Gipps, 31 January 1838, *HRA*, I.XIX, p.254; Robinson to Latrobe, 1 January 1849 in Fitzroy to Grey, 7 May 1849, PRO Reel 402, C.O. 201/413.

The Crown, however, continued to grant pastoral leases. Despite Colonial Office entreaties, scant attention was paid to the Aborigines' rights to access their lands and a decade later Secretary of State, Earl Grey, was forced to admit to New South Wales Governor Charles Fitzroy that "little progress appears to have been made towards any effectual improvement in the condition of the natives in your colony." Grey recommended that the protectorate system be abolished.⁵

What Grey and Robinson could not anticipate was that Grey's alternative proposal for Aboriginal-settler land sharing, based on an acknowledgement of their "mutual rights" to the land would, a century and a half later, be used as the basis for a High Court decision that would play a pivotal role and have a resounding impact on the legal debate over land rights.

On 23 December 1996 the High Court of Australia handed down its decision in *The Wik People v Queensland*.⁶ By a majority of four to three the High Court found that the issuing of pastoral leases did not necessarily extinguish native title to the same lands. The *Wik* decision evolved from one pivotal piece of historical evidence: a despatch from Grey to Fitzroy in 1848 outlining how Aboriginal access to lands leased by the Crown should be managed. Responding to the *Crown Lands Unauthorized Occupation Act* sent to him by

⁵Grey to Fitzroy, 11 February 1848 *HRA*, 1.XXVI, pp.223.

⁶*The Wik People v Queensland* (1996) 134 ALR 637 at 641; 63 FCR 45 at 454.

Gipps, Grey wrote to Governor Fitzroy explaining how Fitzroy should manage Aboriginal access to lands leased to pastoralists. "I think it essential," Grey wrote,

that it should be generally understood that leases granted... give the grantees only an exclusive right of pasturage for their cattle, and of cultivating such land as they may require within the large limits thus assigned to them, but that these leases are not intended to deprive the natives of their former right to hunt over these districts, or to wander over them in search of subsistence, in the manner to which they have been heretofore accustomed, from the spontaneous produce of the soil except over land actually cultivated or fenced in for that purpose.⁷

The High Court's decision was controversial and prompted heated political and legal debate. The Liberal Government responded with its "Ten Point Plan" and implemented legislation aimed at allowing compromise between pastoralists and Aboriginal tribes.⁸ However, of greater significance was that the decision demonstrated that the distant voices of Australia's colonial land rights advocates were still audible one hundred and fifty years later.

⁷Grey to Fitzroy, 11 February 1848, *HRA*, 1.XXVI, pp.225.

⁸F. Brennan, *The Wik Debate: Its Impact on Aborigines, Pastoralists and Miners* (Sydney, 1998); G. Edgerton, "Overcoming Uncertainty: Wik Peoples v. Queensland", *Melbourne Journal of Politics* (1998), pp.1–16.

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