

THE ASSIGNMENT SYSTEM

OF

CONVICT LABOUR

IN

VAN DIEMEN'S LAND

1824 - 1842

A thesis to be submitted for the  
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by

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LIST OF ABBREVIATIONS

Ass't B'd:	Assignment Board.
Col. Sec.:	Colonial Secretary.
C.S.O.:	Colonial Secretary's Office.
D.D.:	Duplicate despatch.
E.C.:	Executive Council.
L't Gov.:	Lieutenant Governor.
Pol. Mag.:	Police Magistrate.
Pol. Office:	Police Office.
P.S/C:	Principal Superintendent of Convicts.
S/C:	Superintendent of Convicts, Launceston.
V.D.L. Co.:	Van Diemen's Land Company.

## Introduction.

The object of this study is to consider the system of assigning convict labour as it was developed in Van Diemen's Land under Governor Arthur. It does not claim to investigate the influence of the system on the Van Diemen's Land economy, but rather it is concerned with the administration of the system and the interacting claims and interests of the three parties in response to whose needs, the assignment system was developed:- the colony, the British Government, and the convicts.

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In its first twenty years, 1803 to 1823, the colony of Van Diemen's Land was an unimportant off-shoot of the prison colony of New South Wales, politically and economically closely linked with the older settlement. Founded to forestall the French, settlement of the island extended in the south along the Derwent estuary and haphazardly overland towards the Northern



settlement which had begun on the coast and was spreading down the Tamar valley to Launceston. Climate, fertility of soil and undulating terrain rendered the country along this north-south axis of the island particularly suitable for white settlement.

The bulk of its population the first years was convict criminals transported for terms varying from seven years to life, providing an indifferent, but nevertheless useful labour force with which the early settlers were to develop the resources of the prison colony. The free population at first consisted almost entirely of administrative officials and soldiers to supervise the prisoners. By 1810 the population numbered 1321, (1) few of whom were free settlers, fewer still, immigrant farmers. More arrived at the end of the Napoleonic War, but not until the

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(1) R.M.Hartwell: The Economic Development of Van Diemen's Land, 1820-1850. (Melbourne University Press, 1954), p.67.

removal of the incompetent and irresponsible Colonel Davey, Governor from 1813 to 1817, did immigration make any great difference in the ranks of the free colonists. Even by 1819, those who had come to the colony numbered only 595<sup>(1)</sup> out of a total population of 4,270, about 2,000 others being still under sentence, and the rest chiefly ex-convict settlers. Thereafter free immigration increased tremendously, so that by 1824 the free population amounted to 5,000, perhaps half of whom had come to the colony free, on the approval of the Colonial Office.<sup>(2)</sup> These settlers were generally of lower middle-class origin, many of them intending to make their home permanently in the colony, others hoping to make enough money to enable them to return to a life of comfort in England.<sup>(3)</sup> Both Governor Arthur (1824-36) and Sir John Franklin, (1837-43) considered that "their flocks and their herds, and the daily accumulation of wealth" occupied their almost undivided attention.<sup>(4)</sup> Through force of circumstances, the conquering of their material environment was their first concern, so that it seemed as if "material gain had become all that mattered to them". Franklin considered that Van Diemen's Land was fast becoming a

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(1) ibid. p.68.

(2) Franklin to Glenelg, No. 9, 21/1/1839, enclosing a clergymen's report on Van Diemen's Land.

(3) R.B. Madgwick: Immigration into Eastern Australia, (London Longmans, 1937) p.52.

(4) Arthur to Glenelg, No. 38, 14/5/1835.

'money-making colony' with a shop-keeping standard of values". (1)

Cultural life was lacking, and until 1826 there was not even an independent newspaper in Hobart, but the practical virtues were not; the initiative, the hardiness and adaptability, the tenacity and courage, and the quickness in decision and improvization demanded by a life in the outback were characteristic of the early settlers, (2) exposed as they were to attacks from resentful natives, and the ravaging of bush-rangers.

For the raiding of absconded convicts became a serious menace soon after the death of the first Governor, Lieut. David Collins. Since there were no walls to their prison but the sea, and the colony depended on their labour for survival, (3) strict discipline had been kept among the prisoners at first. Shortage of provisions, however, had led the authorities to encourage kangaroo-hunting, which provided a training in bushcraft that the convicts were not slow to make use of when

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(1) K. Fitzpatrick: Sir John Franklin in Tasmania, 1837-1843

(Melbourne University Press, 1949) p.50, notes 7 and 8.

(2) ibid. pp 51-3.

(3) Evidence to Bigge Commission, 1820; J.Wade, H.R.A. iii, iii, 315.

discipline was relaxed during the military interregnum  
 between 1810 and 1812.<sup>(1)</sup> The military force was not adequate  
 to both supervise the convict gangs and undertake a campaign  
 against the hundred or so absconders in the bush, so that  
 looting of settlers' properties became a serious menace.  
 Macquarie, then Governor of New South Wales, attempted to  
 quell it by offering an amnesty to all but murderers who gave  
 themselves up within six months,<sup>(2)</sup> a move which gave licence  
 to all to ravage the colony until the date expired! Most did  
 give themselves up, but no attempt was made to deport them, so  
 that within a few days, most had again taken to the bush.  
 Colonel Davey, proclaimed Martial Law in 1815<sup>(3)</sup> in an attempt  
 to check the evil, and action from a subordinate that  
 Macquarie refused to tolerate,<sup>(4)</sup> He did allow an increase of  
 the convict police, and the offer of rewards to those who  
 apprehended absconders, but the force had little chance of  
 success as the bushrangers could move so quickly, and had so

(1) J. West: History of Tasmania (Launceston, Dowling, 1852)

Vol. ii, pp 129-30.

Bigge: Report of Commission Enquiry, No. 1 (1822-3) p.169.

H. R.A. iii, iii, pp 252, 273.

(2) H.R.A. i, viii, p. 264.

(3) West, op.cit. p.130.

H.R.A. iii, ii, 131: Davey to Macquarie 30/4/1815.

(4) H.R.A. iii, ii, p. 146.

many sympathetic informants among the expirée settlers. Not until Colonel Sorell took over the government in 1817 was any concerted effort made to break up the raiding parties. He promptly withdrew all the convicts assigned to the settlers in the interior as labourers, apprehended all settlers known to assist the bushrangers, limited the sale of gunpowder, and placed military detachments in all districts. This added protection encouraged settlers to remain on their properties instead of fleeing to the towns as before, and with the offer of generous rewards and mitigated sentences to the convicts, it took only six months for all the bushrangers to be rounded up. <sup>(1)</sup> After this success, the number of absconders dropped considerably, so that by 1820, <sup>(2)</sup> there was not a convict in the island who could not be accounted for, either as working in a gang on the public works in Government employ, in the service of settlers either as farm labourers, domestics, or as skilled employees of Hobart tradesmen.

With life and property so insecure, it was not surprising that the colonists' success was limited in the first decade of the colony. The natural resources of the island were rich, and the first attempts at agriculture and grazing though not extensive, gave encouragement. To obtain land was the first aim of all settlers, and at this early period accessible

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(1) H.R.A. iii, iv, 548-51.

(2) Evidence, op.cit., H.R.A. iii, iii, p. 252, 273.

pasture land and fertile river flats were easily come by.

The settlers who came before 1820 were able to obtain oblong blocks with river frontages and backlands extending into the hills.<sup>(1)</sup>

Land sale was not common, most obtaining their land on the quit-rent system, paying two shillings per hundred acres after ten years occupation.<sup>(2)</sup> Though there were small farms fringing Hobart and Launceston, in the main, the 57,000 acres granted before 1820 were held in large tracts by few people.

Mixed farming was the chief occupation, with the Commissariat store, which supplied the provisions for the convicts and administrative staff, the chief market. Surplus meat and wheat found a limited market at Sydney.<sup>(3)</sup>

Agriculture was unmethodical and rather backward however.

Fences were unknown; soil was worked intensively until exhausted; clearing was seldom complete; and the turning of unbroken land with the hoe, and later a plough and a few oxen was slow work.<sup>(4)</sup> Sheep were run solely for meat, without any attempt at scientific breeding to improve the strains. Until Sorell's time, most of the wool was thrown away! But after 1820, the demand by the Commissariat for wool for convicts'

(1) Hartwell, op.cit. p.54.

(2) Hartwell, op.cit. p.40.

(3) ibid. p.162.

(4) ibid. p.129.

clothing provided a market, and with New South Wales wool, was shipped to the English market soon after. The development of the fine wool industry was encouraged by Sorell, who imported three hundred merino rams from New South Wales in 1820, and from that date wool became the staple export, and by far the largest raiser of revenue. The island pastures were rich and free from the droughts which set back the mainland colonies almost every alternate year.

Sorell's governorship 1817 to 1824 was to see the first real development of the colony. Whaling and sealing began in the early twenties, adding adventure to colonial life as well as producing a substantial profit in oil which found a ready market in England and India.<sup>(1)</sup> The establishment of flour mills followed the development of the wheat industry,<sup>(2)</sup> and the increase of population, both free and bond. There were two mills in Hobart in 1820, one owned by the Government, but by 1822 there were seven mills in the island, all run by water power and mostly private owned. Distilling and brewing were other industries that developed early in the twenties. The successful growing of hops at New Norfolk, the increase in population, the desire to reduce the colonial expenditure on imported spirits, and the need to dispose of surplus grain,

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(1) W.D.Forsyth: Governor Arthur's Convict System, (London Longmans, 1835) p.31; and

Hartwell, op.cit. p.141.

(2) ibid. pp 147-8.

all encouraged the establishment of distilleries and breweries, so that by 1826, there were seven concerns, with a large capital backing.<sup>(1)</sup>

Due to the nature of the colony, ship-building was an early industry to develop, and in the twenties several small craft of from thirty to one hundred tons were built, at four centres in the island. Timber was suitable and plentiful, building was cheap, and workmanship was of a high standard. Trade, though one-sided until the development of the wool industry, was yet extensive for a small colony. Shipping in the Derwent hailed from India, Batavia, and the Isle of France, as well as Britain; the Cape of Good Hope, and Sydney, and brought the more exotic wares, such as tea, coffee, spices, spirits, soaps, clothes, and linen. Wattlebark and timber, obtained without much difficulty in the colony, and oil, potatoes, wheat and salted meat all found market at the Sydney settlement; some of the island's produce went as far as Mauritius and the Cape.<sup>(2)</sup> The merchants were the most important and by far the wealthiest colonists at this period, as a few houses had a complete trade monopoly, and charged three times as much as retailers in England. With the establishment of banks and insurance companies, and

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(1) ibid. pp 148-9;

Colonial Times, 16/6/1826.

(2) Hartwell, op.cit. p. 162.



the entry of English houses into the market for colonial produce, the merchants' activities were curtailed, and their profit percentage reduced.<sup>(1)</sup>

Incoming revenue bore no comparison with the expenditure of the colony, borne by the British Treasury, which throughout the history of Van Diemen's Land as a penal colony, provided a solid backing for the development of the island's industry and commerce. Local revenue did contribute towards the expenses of the civil administration, but it was not an extensive contribution until the thirties. The erection of public buildings was not advanced; only the essential Government buildings, such as the barracks, the court house, the Commissariat store, Government House, and a few others could be seen at Hobart and George Town, the chief centre in the north. The construction of roads and bridges had commenced under Sorell, and the establishment of Government schools and postal services owed their origin to him,<sup>(2)</sup> but not until the influx of immigrants and convicts in the early twenties had increased the demand for such public services, and the British Government was prepared to increase its expenditure on public works, was a church and school building programme begun on a large scale.

But by the end of Sorell's government, the colony was well-established. Resources were abundant; - the soil was

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(1) ibid. p.165.

(2) Giblin, op.cit. p.xxiii.

rich, pasture land was still plentiful, timber of fine quality, and whales and seals there for the taking. Exploration, though encouraged, had not extended far; the interior and the rich north west and north east were comparatively unknown. The colony's potential was encouraging: all that was needed were settlers to develop the resources, and capital backing, and both these factors flowed into the colony throughout the twenties, after the publication of a series of writings brought it to the attention of investors and adventurers at home. (1)

Unlike most colonies, labour was no problem. The English prisons provided all the labour the colony could use, and the supply continued to be sufficient for the available capital while transportation lasted.

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- (1) W.C.Wentworth: A Statistical, Historical, and Political Description of New South Wales, (London, 1819);
- Lt. C. Jeffreys: Van Diemen's Land (London, 1820);
- G.W.Evans: A Geographical, Historical and Topographical Description of Van Diemen's Land. (London, 1822);
- Godwin's Emigrants' Guide to Van Diemen's Land, (London, 1823);
- E. Curr: An Account of the Colony of Van Diemen's Land, (London, 1824);
- J.F.Bigge: Reports of Commissioner of Enquiry, (London, 1822-3).

Since this method of handling offenders provided the colony not only with labour, but also an administration and the capital outlay this entailed, by way of the Commissariat market, some consideration of the origins of the transportation policy is worthwhile.

Exile, the essence of transportation had been commonly used since Biblical times as a punishment for lesser offenders and political prisoners, who preferred to forfeit their country rather than lose their lives. Thinking that "their labour would be more beneficial than their vices pernicious"<sup>(1)</sup> Britain had exiled criminals to the North American colonies. But as the growth of commerce and communications with the colonies made their affairs familiar and, therefore, transportation to their shores less formidable, hard labour was added to the sentence. Prisoners were then entrusted to ships' captains, who undertook to land them in America in return for the right to assign them to settlers at a price which repaid the cost of the journey, usually about £20.<sup>(2)</sup> This gave the settlers an inviolable right to the services of the convicts for the whole term of their sentences. Britain renounced all responsibility, so that the convicts in fact became slaves.

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(1) West, op.cit. p.103.

(2) Coghlan, T.A.: Labour and Industry in Australia (Oxford University Press, 1918) pp 33-4.

The reason for the harshness of the law is to be found in the vindictive attitude to criminals. It was believed that crime sprang from an inherent desire to violate social ethics, and should, therefore, be appropriately purged.<sup>(1)</sup>

At the beginning of the nineteenth century, Britain had the harshest penal code in Europe, and even by 1837, after several modifications, there were still two hundred 'crimes' punishable by transportation. Policing was ineffective, until well into the nineteenth century, and to make up for the large number of crimes never caught, the penalties imposed on the offenders who were brought to trial were colossal, and out of all proportion to the crimes, for it was considered that fear of punishment was the best deterrent to crime. Many, therefore, were sent to the colonies for offences no worse than poaching, or defacing Government property,<sup>(2)</sup> but it is likely that a good percentage of these were confirmed criminals, perhaps caught at their most trivial offence.

On the gaining of American Independence, Franklin condemned the practice of "letting loose upon the New World the outcasts of the old", and with the loss of the American colonies in mind,

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(1) M. Clark: "The origins of the Convicts Transported to Eastern Australia, 1787-1852." Historical Studies May, 1956, p. 121.

(2) E. Scott: A Short History of Australia, (5th edition, Oxford University Press, 1928,) p. 53.

British ministers did not consider it politic to reward the loyalty of Canada with the stigma of convictism.

A penitentiary system was suggested as a substitute, but there were many objections. Detention for life was cruel, yet release of the worst offenders would be perilous to the community. However, it was the expense which overruled this idea. Transportation had none of these objections, but a new locality was needed and one where the Government need have no regard to the rights of a free population. Under these circumstances, the eastern coast of Australia was chosen as a suitable site, distant enough to ensure that few would return. Commercial and maritime advantages were also seen in the choice, but Pitt's cabinet had no ideas of Empire building when the First Fleet was sent to Botany Bay. Their decision was the cheapest solution to the problems presented by overcrowded hulks. To rid the parent state of an encumbrance with the least expense to the public was the only immediate object of the Government, and the Australian story in the first seventy years reflects this utilitarian attitude. The success of the British penal policy was to be the prime consideration; "for that the colony was established, for that it was maintained."<sup>(1)</sup> This was to determine the attitude of

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(1) Scott, op.cit. p.53.

the Colonial Office in London to the political, social and economic claims and interests of the colonies. This view was also to complicate the position of the colonial Governors, whose duty was both to serve British penal interests efficiently, and at the same time, advance the colonists' prosperity.

After the experience in America, it had been suggested that the new colony should develop into a self-supporting peasant farming community, composed of expirees, who would receive land grants and Government assistance.<sup>(1)</sup> But the early difficulties and a severe food shortage produced a more acceptable policy. To increase food production, Phillip found it expedient to assign convicts to the administrative officers, and soldiers with farms,<sup>(2)</sup> recommending that the scheme should be extended to encourage the immigration of farmers who would take convicts from the Government,<sup>(3)</sup> provide the constant supervision not possible on the properties of full-time officers,<sup>(4)</sup> and teach them farming skills.

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(1) Coghlan, op.cit. p.85.

(2) Phillip to Sydney, 28/9/1788; and Coghlan, op.cit. p.241.

(3) Phillip to Sydney, 13/2/1790 (H.R.A. i, ii, p.155)

(4) Phillip to Sydney, No.10, 30/10/1788. (H.R.A. i, ii, p. 45).

The British Government saw in this practice an economical way of implementing the punishment of transportation and so urged Phillip to dispose of as many convicts as possible in this way.<sup>(1)</sup> It was similar to the system which had proved of mutual advantage to Britain and the colonists in the early settlement of America. Settlers benefitted by the loan of labour while the British Treasury was relieved of the cost of supervision and, after the discontinuance of Government rations to servants in 1796, of the support of the convicts. The Colonial Governors favoured the scheme too, as it seemed that the training and good influence of the yeoman farmers who made up the majority of the settlers at this time, would make of the convict population, a useful peasantry when sentences expired. From a humanitarian point of view, it was a great advance on the earlier system. The convicts transported to Australia were assigned to the Governor, whose responsibility for them did not cease even when he re-assigned his "property in their services".<sup>(2)</sup> to the settlers who wanted their labour. He was bound to see they were well-treated prescribing the conditions of their employment, the manner in which they were to be fed and clothed, and rewarded if well-behaved. "Their labour was not a chattel which could be sold by one employer to another; it remained

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(1) Dundas to Phillip, No. 2, 10/1/1792. (H.R.A. i, ii, p.327).

(2) 5 Geo. 4 cap. 84.

the property of the Governor, and to him it would revert if  
 (1)  
 the conditions were not carried out."

Although devised to meet colonial difficulties, the system developed predominantly in response to British demands. When it was first realized how financially advantageous to Britain the system was, rations were offered with each convict assigned, as an incentive to settlers to relieve the Government of the cost of the superintendence and housing of more prisoners. (2) It soon became clear, however, that the colonists' need for labour was itself sufficient to keep up the demand and the inducement was abandoned. (3) With the regulations of Governor King in 1804, the assignment of servants became a definite contract between Government and settler, the one taking advantage of the other's demand for labour to add conditions to the informal agreement, to the benefit of Britain and the convicts concerned. Settlers were then required to enter a bond to keep their men at least one year, except in cases of ill-health or misconduct. (4) If the agreement was broken the settler had to pay one shilling per day of the unexpired term, so that the convict would not be a charge to the British Treasury. Supervision of servants was ensured in the same way.

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(1) Coghlan, op.cit. p.34.

(2) Dundas to Phillip, No. 2, 10/1/1792. (H.R.A. i, i, p.327).

(3) Portland to Hunter, No. 4, 11/8/1796. (H.R.A. i, i, p.579)

(4) New South Wales Order, 6/1/1804;

Coghlan, op.cit. p. 34.



The labour of the convicts was limited too. From 3 p.m. until sunset, they were permitted to work on their own behalf. In 1800 when labour was in short supply, an order had required servants to employ themselves during these hours with their own masters, <sup>(1)</sup> in preference to other persons. This overtime wage was now fixed at £10 p.a., the master also providing the regulation rations. An 1814 order required that these wages should be paid in cash and not goods, <sup>(2)</sup> as masters were apt to value the goods they had supplied in payment at several times their real cost.

Up till 1820, assignment proved a fairly satisfactory compromise between the colonial labour requirements, and the ends <sup>the</sup> British Government demanded. It certainly rid Britain of the unwanted anti-social element of the population, at a very small cost, and at this early stage it seemed frightening enough as a punishment to act as a deterrent to crime at home. The 12,000 miles journey meant for all but a few, permanent separation from home and family. With little else known about the colony but that it was on the other side of the world and peopled with black savages, transportation was a formidable prospect.

Nor was it any less profitable to the colonists. Provision of labour in the early stages of colonization was a start few other colonies had, and the labour was cheap besides.

(1) ibid. pp 54-5; and

N.S.W. Government Order, October, 1800.

(2) H.R.A. i, ix, p 645.

The convict, the object of the system did not fail to benefit either. In fact, contemporary evidence represented his condition, both in Van Diemen's Land and New South Wales as far superior to that of men employed at similar occupations in England.

- iii -

When Sorell arrived in Van Diemen's Land in 1817, the convicts in assigned service were very few, for the needs of the few free settlers then in the settlement were limited. Of the four hundred convicts at the Derwent, half were employed by the Government, seventy were assigned, ninety others were rationed on the store but were in the private service of Government officers, and the remaining forty had tickets of leave.

The first group contained the best and the worst of the prisoners on the island. The convicts with any ability such as bricklayers, blacksmiths, sawyers, carpenters and plasterers were always retained on the arrival of a convict transport and employed under the supervision of trained overseers erecting public buildings. The others in Government service had either been left after the settlers had taken the most likely looking

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(1)  
of the new arrivals, or were those undergoing sentences of hard labour in chains or a road-gang, for crimes committed in the colony. Until 1817 when two transports arrived direct from England, the New South Wales authorities selected all the men sent to Van Diemen's Land, (2) so it was not remarkable, while Macquarie's building programme absorbed all the valuable labour of that colony, that the newer settlement was given only the riff-raff from the Sydney punishment gangs, and very few with any real skill. (3)

The second group was made up of convicts whose support had been undertaken by settlers requiring labour, either as domestics or general servants in towns, or in various positions on their farms. (4) Applications for men were made to the Lieutenant Governor usually previous to the arrival of a transport, and if their requests were approved, they were called to attend the muster of the new arrivals on the morning of their landing. (5) As the Engineer reserved only the mechanics

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(1) H.R.A. iii, iii, p.231: Bell's Evidence to Bigge

Commission, 26/2/1820.

(2) Bigge: Report No. 1, p.19.

(3) H.R.A. iii, iii, p.237: Bell, Evidence to Bigge

Commission, 26/2/1820;

Coghlan, op.cit., vol. i, pp.173-7.

(4) Bell, Evidence to Bigge Commission, 26/2/1820:

H.R.A. iii, iii, p.231.

(5) Bell, Evidence to Bigge Commission, 26/2/1820:

H.R.A. iii, iii, p.231.

for Government use, the farm hands and general labourers.  
 (1) were available for service with settlers. If these were  
 unable to attend to select a servant, later applications  
 would be passed to the Engineer each week, and he supplied  
 (2) the type of man required from the public works.

The existence of the group of convicts "on their own hands" had arisen in the early days of settlement from the practice of allowing civil officers one or two men rationed by the Government for use on their farms, as part of their Government salary. Convict clerks, superintendents, and constables, as well as higher administrative officers all partook of this benefit, and the latter who held several offices concurrently received a large number of men. The Secretary of State had gradually reduced the number allowed, and the officers to whom they were given; and in 1817 Macquarie had thought to abolish the system entirely, but hesitated to do so thinking the colonial funds could not afford to pay the corresponding increase in salaries, (for men "on the store" (3) were supported by the British Treasury.).

(1) Bell, Evidence to Bigge Commission, 26/2/1820:

H.R.A. iii, iii, p.235.

(2) Bell, Evidence to Bigge Commission, 26/2/1820:

H.R.A. iii, iii, p.231;

Crowder, Evidence to Bigge Commission, 26/2/1820:

loc. cit. p.332.

(3) Marion Phillips: A Colonial Autocracy. (London, P.S.King, Orchard House, 1909) p.128-130.

Bathurst to Macquarie, No. 24, 3/2/1814.

In Van Diemen's Land the convicts comprising this class were mostly tradesmen such as tailors, shoemakers, weavers, bakers and tanners for whose services there was only a limited demand from the Government, and almost none from the general settlers, <sup>(1)</sup> very few of whom had properties extensive or prosperous enough to require the full-time services of any of these tradesmen. The officers receiving their services as part of their salary had little use for them either, but it was the accepted practice to hire them to master tailors, or other free tradesmen, or let them find suitable work themselves. The Government officer then took the rations due to the servants as well as a weekly payment of five shillings, or ten shillings if the man kept his own ration. <sup>(2)</sup> The men were subject to all the rules concerning assigned servants, were required to report for the muster weekly, and so were confined to one district, but otherwise they were almost free agents, subject to no supervision <sup>(3)</sup> throughout the week.

These were not the only men "on their own hands". Many settlers, particularly the poorer farmers, took convicts from the store at busy times of the year, and not being able to afford their support afterwards or return them to the Government, let them

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(1) Bell, Evidence to Bigge Commission, 26/2/1820: H.R.A. iii, iii, p. 235;

H.R.A. iii, iii, p.555.

(2) Bell, loc.cit.

Gordon, Evidence to Bigge Commission, 3/3/1820: H.R.A.iii, iii, p.248;

Lakeland, Evidence to Bigge Commission, 23/3/1820: loc.cit., p.323  
H.R.A. iii, iii, p.552.

(3) Bell, Evidence to Bigge Commission, 26/2/1820: loc.cit.

employ themselves as they could. (1) Anthony Fenn-Kemp, an ex-officer of the New South Wales Rum Corps, and leading figure in the rebellion against Bligh, at this time one of the most prosperous of the Hobart traders, claimed it was common for military officers to take assigned servants off the store with the sole purpose of hiring them out for a weekly (2) sum. Nor did the fact that this was equivalent to freeing the convicts impress the authorities. James Gordon, a magistrate and extensive land holder at Forcett, a little town which still bears the name of his property, even suggested that the weekly muster which acted as a check on their whereabouts, should be dispensed with in the case of these (3) men since it was obviously a nuisance to them! From an economic point of view, there were many advantages. A settler often found the man he had taken from Government totally useless for the work required of him. In this case, it was reasonable that he should employ himself in another (4) situation where his abilities were not lost to the public.

Towards the end of Macquarie's term, the number of convicts arriving so far exceeded the requirements of the settlers or the Government in New South Wales, and the

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(1) H.R.A. iii, iii, p.248.

(2) H.R.A. iii, iii, p.220.

(3) H.R.A. iii, iii, p.248.

(4) ibid.

accommodation available, that this practice of giving men their own time became more widespread. Those arriving who possessed a little money or property, were released on parole, paying the Government ten shillings weekly, so that in 1819, for every five assigned servants, there were two (1) men employed on this basis.

The men comprising the fourth class were those whose good behaviour and length of service in the colony, had earned them a ticket of leave, enabling them to employ themselves in any approved occupation in any district, entirely on their own account, though they were still subject to Police surveillance, and required to muster each week. (2)

Both Macquarie and Sorell were charged with abuse of their powers of granting this indulgence. In 1811 Macquarie had established the rule that three years' residence and good behaviour in the colony were the minimum requirements for ticket of leave applicants, (3) but within seven years he had remitted 710 sentences contrary to regulations. (4) Abuse of the system went to the opposite extreme also in New South Wales. Mechanics were in such demand that Public Works authorities

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(1) Coghlan, op.cit. Vol. i, p.63;

Phillips, op.cit. p.130.

(2) Humphrey, Evidence to Bigge Commission, 11 and 13/3/1820:

H.R.A. iii , iii, pp 276-7.

(3) Government and General Order, N.S.W., 22/6/1811.

(4) H.R.A. i, ix, p xiv.

were reluctant to recommend their best men for a ticket since this deprived them of their services. It was also claimed that tickets once granted were withdrawn for no other reason than that the Public Works needed the labour.<sup>(1)</sup> This practice became so notorious that new arrivals previously warned, concealed the fact that they were mechanics in order to avoid service with the Government.<sup>(2)</sup>

The charges of foul play brought against Sorell, were made by Anthony Fenn Kemp, resentful of his dismissal from the magistracy for slandering the Governor.<sup>(3)</sup> Sorell had abandoned Macquarie's rule, awarding tickets after only two years residence.<sup>(4)</sup> Before 1817, when prisoners arrived direct from England, the only convicts in the island had been selected generally as the worst of the convict population at Sydney, and few, therefore, had conducted themselves well enough to merit a ticket. Fearing that the granting of so few indulgences would discourage the new arrivals, and anxious to encourage their industry in order to complete more rapidly buildings urgently needed for the reception of the increasing

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(1) Stretton, Evidence to Bigge Commission, 17/4/1820: H.R.A. iii, iii, p.404.

(2) Phillips, op.cit. p.130;  
Sydney Gazette 14/12/1817.

(3) H.R.A. iii, iii, pp 909-922: Correspondence between Kemp, Sorell, Macquarie, and Bigge.

(4) H.R.A. iii, iii, p. 656-7: Sorell to Bigge, 26/5/1820;  
Bell, Evidence to Bigge Commission, loc.cit., p.236.



convict population, he arranged with the Government Engineer that tickets be promised in two years to those whose behaviour and efficiency he could recommend. Reduction of the high price of labour by release of such men from the Public Works Department to enter the competition of the labour market was another reason for the early granting of tickets. After 1819, instructions from Britain to reduce the cost of the colony pointed to the same solution. <sup>(1)</sup> Altogether, 430 tickets were granted by Sorell in the first three years of his government, exactly one third of the number who arrived in that period. <sup>(2)</sup>

From an economic point of view, the position of the convicts in Van Diemen's Land at this time compared very favourably with that of labourers in contemporary England. Both assigned servants and Government labourers were allowed a minimum ration of 7 pounds of meat and flour weekly, <sup>(3)</sup> but very rarely did a private settler limit his men to this when both commodities were produced on the property. Extras such as milk, vegetables, tea, sugar, and salt were usual additions to the diet, often given as an inducement to good behaviour. <sup>(4)</sup> Men in Government service were not so well off, but as all but men in punishment gangs had opportunities to earn extra money, and food was very

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(1) H.R.A. iii, iii, p. 656-7: Sorell to Bigge, 26/5/1820.

(2) H.R.A. iii, iii, p. 550, List of Tickets of Leave, 1811-20.

(3) Bell, Evidence to Bigge Commission, loc.cit. p.232.

(4) Wade, Evidence to Bigge Commission, 20/3/1820: loc.cit. p.313;

Gavin, Evidence to Bigge Commission, 31/3/1820: loc.cit.

cheap, the prisoners were generally well fed.<sup>(1)</sup> This could not be said of many agricultural labourers in England at that time where, according to the Poor Law authorities, one and a half gallon loaves weekly was considered sufficient to keep one man, and five such loaves enough for a family of four!<sup>(2)</sup>

The regulation clothing allowance for all prisoners was generous, but a temporary failure in the supply of slop clothing from Britain had caused a great scarcity in the island, especially at George Town where some of the men were most inadequately clothed, and many others were excused from work as they had no shoes!<sup>(3)</sup> The position was little better in Hobart where no change of clothes made washing day definitely an indoors day!<sup>(4)</sup> It was no uncommon occurrence for new arrivals to find themselves minus a shirt or pair of shoes next morning.<sup>(5)</sup>

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(1) Bell, loc.cit. p.232;

Kemp, loc.cit., pp 224-5;

Wade, loc.cit. p.314.

(2) J.L. and B. Hammond: The Village Labourer 1760-1832. (London, Longmans. New Edition, 1913) p.185.

(3) Van der Muelen, Evidence, 14/4/1820: loc.cit. p.383:

R.W.Owen, Evidence, 15/4/1820: loc.cit. p.407.

Petchey, Evidence, 3/5/1820: loc.cit. p. 467.

(4) Van der Muelen, Evidence, 14/4/1820: loc.cit. p.383:

R.W.Owen, Evidence, 15/4/1820: loc.cit. p.407.

Petchey, Evidence, 3/5/1820: loc.cit. p. 467.

(5) Humphrey, Evidence: loc.cit. p.287.

Government regulation also determined the hours prisoners worked. Again comparison with English conditions shows the prisoner to be much better off than his more honest relatives at home. Early morning muster for the Public Works convicts was held at 6 a.m. in the Summer. They then worked till 9 a.m., had one hour for breakfast, and finished the day at 3 p.m., with 4 hours on Saturday mornings; that is 44 hours a week. In winter work began at 8 a.m., and finished at one, with only 5 hours on Saturday, only 28 hours all told!<sup>(1)</sup> The hours demanded from an assigned servant were the same, but since 1800 it had been a rule that they were to work the rest of the day with their master if he could employ them, and in return, he paid them an annual wage.<sup>(2)</sup>

Work in Government gangs was supervised by convict overseers, there being no other alternative, a factor to be lamented by each succeeding governor. They were usually chosen as the most industrious of the gang, and, therefore, gave little time to watching the rest. Besides it was part of the convicts' creed never to inform against a fellow prisoner.<sup>(3)</sup> It was left to Major Bell, or his assistant in the Public Works Department, John Lakeland, making unexpected visits to the gangs throughout the day, to detect idlers. Bell, a humane man as well as an efficient engineer, usually punished idlers and misconduct by removal to a pick and shovel gang, or by

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(1) Bell, Evidence: loc.cit. pp.231-2.

(2) Coghlan, op.cit. pp 54-5, and Government and General Order, N.S.W. October, 1800.

(3) G. Read, Evidence: loc.cit. p.335.

depriving them of their free time. Only serious and persistent offenders received corporal punishment or sentence to a chain gang<sup>(1)</sup> by direction of Bell, though this was more common with other magistrates.

Mechanics such as shingle-splitters, sawyers, brick-makers, and nailors were mostly worked on a task-work basis.<sup>(2)</sup> Tasks were always finished early (and badly),<sup>(3)</sup> sometimes in half a day,<sup>(4)</sup> and the men could employ themselves with settlers. The colonists' demand for labour was so great from 1817-1820, that all who were prepared to spend their extra time in this way were able to earn at least three shillings daily, and mechanics as much as 7/6 or 10/- for half a day's work.<sup>(5)</sup> Those whose trades were not in demand, such as quarrymen, found it worthwhile to employ themselves making shoes, or bricks which they could then sell at a considerable profit.<sup>(6)</sup> On any occasion when the Engineer required men to work later, overtime rates were paid, 2/- for labourers and 3/- for mechanics.<sup>(7)</sup>

(1) and (2) Lakeland, Evidence: loc.cit. p.329.

(3) G. Read (Superintendent of Carpenters), Evidence: loc.cit. p.334.

(4) and (5) Gatehouse, Evidence: loc.cit. p.351.

(6) Lakeland, Evidence: loc.cit. p.330.

(7) G. Read, Evidence: loc.cit. p.330.

Wages given assigned servants varied. The award rate was £7/10/- if the master also clothed the man, and £10 otherwise, both amounts paid in sterling.<sup>(1)</sup> Evidence from all masters, both here and in New South Wales, agreed, however, that servants could not be made to work for £10 a year, and that it paid the settler to give them an extra £5 rather than be put to the constant expense and trouble of taking them before a magistrate for idleness, (they were not permitted to punish their men themselves) possibly losing their services altogether.<sup>(2)</sup> James Gordon considered that most settlers would have given men from £15 to £20 annually, though rarely in cash.<sup>(3)</sup> Clothing, and necessaries like tea, sugar and tobacco were the usual means of payment, often given in the form of an order on a merchant in Hobart.<sup>(4)</sup> When a dispute over payments was taken before a bench of magistrates, the ruling was always for masters to pay in sterling as the regulation decreed.<sup>(5)</sup> Wade, a farmer at Pittwater and chief constable there, told how servants took advantage of this decision, and knowing their masters to be short of specie, would accept payment in goods

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(1) H.R.A. 1, ix, pp 516-7.

(2) Gatehouse, Evidence: loc.cit. p.350;

J.Wade, Evidence: loc.cit. p.314; and  
Phillips: "A Colonial Autocrat", p.139.

(3) Gordon, Evidence: loc.cit. p.248.

(4) Kemp, Evidence: loc.cit. p.224.

(5) See Note(1)

only at a reduced price. (1) According to the evidence of John MacArthur, the same practice in paying assigned servants was common in New South Wales. He paid his men £15 in money and property, and even an extra £5 to those whose conduct had deserved it. The attitude taken in the older colony, by magistrates to the question of payment in sterling or kind was possibly determined by the feeling against emancipists there. In several cases that arose over this issue, the verdict was given in favour of the master (2) who had paid his men in kind, it being considered that "yearly wages were allowed to convicts as a payment for overtime, in order to provide extra rations, and so long as the master gave extra rations and some few luxuries, the magistrates would not interfere further than to see that the several articles set down in the account between master and servant were not exorbitantly charged". (3)

According to their ability, ticket of leave men, convicts on their own hands, and free labourers seem all to have been paid much the same wages, varying with employers. No regulation covered the wage to be paid these three groups, as with assigned servants, but 10/- per day for a labourer, and 15/- for a mechanic seems to have been general. A watchmaker, possibly the only one of his trade in the island at the time,

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(1) Wade, Evidence: loc.cit., p.314.

(2) Coghlan: "Labour and Industry in Australia", p.61.

(3) Coghlan, op.cit. p.61.

claimed to have earned £300 within six months as the Government man allowed to Captain Watkins, the officer in charge of the military detachment at George Town.<sup>(1)</sup> Farm hands at Pittwater received twenty shillings per week in cash, as well as a liberal allowance of food.<sup>(2)</sup>

Considering the general abandoned character of the majority of convicts in the island, however, it was inevitable that not all would attempt to earn an honest living. Many proved but indifferent workers, willing to work only until they had earned enough to support themselves, and food being cheap, this sometimes meant two days work only. The London pick-pockets rarely turned their free time to any profit, preferring to use their energies house-breaking at night,<sup>(3)</sup> a crime particularly prevelant.

Inadequate barrack accommodation made constant supervision even of the convicts in government employ impossible. One reason for the limited government hours was the necessity to give the men an opportunity to earn enough to pay for private lodgings in the town. Apart from the gaol and watch-house which took 40 disorderly persons nightly,<sup>(4)</sup> there was no other government building to house the 553 public works men.

(1) Capt. Watkins' Evidence: loc.cit. p.390.

(2) Wade, Evidence: loc.cit. p.313.

(3) Bell, Evidence: loc.cit. p.232.

(4) Pitt, Evidence: loc.cit. p.485.

The majority, therefore, found lodgings in the town, in the servants quarters of free settlers' houses, where they could often work off their rentals by providing firewood, and carrying water. Opportunities were available for convicts to build their own huts, and this was encouraged. Those who had brought or earned enough to build a house, could apply to the Lieut. Governor for a quarter acre block (there were two to three thousand such blocks reserved for this purpose by the Surveyor). The house and fence had to be completed within three months, and then in effect the property belonged to the convict, though the Government could reclaim it at any time on payment of the improvement value.<sup>(1)</sup>

The state of convict discipline in Van Diemen's Land in 1820, was determined by many factors, some of them common to New South Wales too, others arising solely from conditions in the island.

The finance available was a limiting factor in all spheres of colonial administration, and especially determined the discipline in the public works. Lack of accommodation for convicts gave them comparative freedom for the greater part of each day. Insufficient salaries attracted only prisoners to fill the roles of overseers, constables, and clerks. Servants were assigned to whomsoever would relieve the Government of the

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(1) Evans, Evidence: loc.cit. p.325 and Coghlan, op.cit. p.177.



cost of their support, so ticket of leave men, and expirees became masters, with the inevitable result a lowering of moral standards and an increase in crime. (1) The limited number of respectable persons in the community who realized their social responsibilities affected the efficiency of the magistracy. (2) Sorell had been instructed to appoint Justices of the Peace from suitable settlers, to keep order among assigned servants in each district, but as they were themselves masters of convicts their attitude to cases that came before them was often biased. West's comment on the unpaid magistrates is interesting. (3)

"Nor were they willing always to spend the time required by a proper defence. Some curious examples of magisterial equity are often told; one rose from the bench, when he heard his waggon in the street, and delivered his sentence in his progress towards the door -  
- "I can't stop: give him fifty."

Convict control in Van Diemen's Land was a fairly accurate copy of the position in New South Wales, generally according with Macquarie's policy of leniency towards the prisoner population. The actual administration was better

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(1) West: op.cit. Vol.ii, pp 142, 184.

Sorell to Arthur, 22/5/1824: H.R.A. iii, iv, p.134.

Kemp, Evidence: loc.cit. p.224.

(2) H.R.A. iii, ii, p.183.

(3) West: op.cit. Vol. i, p.105.

(1)  
 in Hobart, due possibly to its confined area and smaller numbers, and the three very efficient officers at the head of the Public Works and Police Departments. At least the whereabouts of the convicts, their personal particulars, and the number of convictions against them were all known to the authorities on the island, and constant checks, in the way of convict travelling passes and weekly musters kept the records fairly accurate. (2)  
 This was not the case in New South Wales where the Principal Superintendent of Convicts, responsible at that time for about 7,000 prisoners had himself been sent to the colony at Government expense, and had not served a particularly blameless sentence either. It was his duty to assign all the convicts on arrival, so that a man who had brought money with him could be sure of an easy position. Free settlers wanting particular servants, male or female, had no difficulty securing them by this means either. (3)

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- (1) J. Bigge: Report of the Commissioner of Enquiry into the State of the Colony of New South Wales. London 1822. p.15.  
 Coghlan, op.cit. p.177.
- (2) Bell, Evidence, loc.cit. pp 231,4;  
 Crowder, Evidence, loc.cit. p.332;  
 Gordon, Evidence, loc.cit. p.250;  
 Bigge, op.cit. p.15.
- (3) West, op.cit., ii, p.154;  
 Bigge, op.cit. p.158;

Assignments made in the town were recorded by him, (though convicts allowed on their own hands were soon lost), but no account was kept in the country where magistrates made their own distribution of the men allotted to that

(1) district. There was no co-ordination between the magistrates and the Principal Superintendent, the former refusing to recognize the authority of an ex-convict.

It might, therefore, be said, that at this time, sentence of Transportation meant for most convicts, an irksome exile only. Materially, he must have gained tremendously, for the standard of living of the English Village labourer, if Hammond's picture is the correct one, (2) could scarcely have been lower. The loss of freedom, implying liability to summary punishment for the slightest misdemeanour indeed gave transportation the flavour of slavery, but the labourer at home was subject to just as severe a punishment for idleness and misconduct, - dismissal, possibly involving starvation for himself and family. Letters written home from convicts in the colonies, describing the magnificent houses and carriages of emancipists who had done well for themselves, did little to impress the potential criminal in England with the terrors of Transportation.

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(1) Bigge, op.cit. p.58.

(2) Hammond, op.cit. Chapter viii, pp 166-206.

## Chapter One.

"The Bigge Commission and the Re-organisation of  
the Convict System in Van Diemen's Land 1820-27"

In England after the Napoleonic War, crime was increasing. Economic distress was adding its complement to the usual number of professional thieves and pickpockets. Unemployment resulting from the return of men to peace time occupations; a fall off in the demand for corn; high rents and tithes, and a series of bad harvests and severe winters which raised the price of food, reduced the value of real wages, and threatened the agricultural worker with starvation. Urban overcrowding arising from the industrial revolution and the aftermath of the war, coupled with the hardships of unemployment and low wages, added to the general distress, and resulted in an outbreak of rioting, machine-breaking, and rick-burning. The governing aristocracy, afraid of the spread of the revolutionary spirit it had just stamped out in France, looked to means of suppressing the outbursts rather than to ways of removing the causes of the distress. Questions were asked concerning the efficiency of the existing punishments as deterrents to crime, and transportation to the Australian colonies was looked on in a new light.

Increases both in their prosperity and knowledge about them, had removed their terrors. Macquarie's attitude of forgetting the convict's past, offering him only encouragement, although approved by the Colonial Office in 1812,<sup>(1)</sup> was now

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(1) West, op.cit. Vol. ii, p.152.

looked at askance, as no longer suitable.

(1)  
Complaints of the administration of Macquarie drew the attention of the House of Commons to New South Wales, and J.T.Bigge, an eminent London Barrister was sent to the colonies to see how far they were answering their purpose, and whether it was still possible, considering their progress, to make transportation a punishment that would bring terror to offenders at home, as well as reform the convicts themselves. (2)  
Bigge's instructions clearly express the attitude of the British Government to transportation, and the colonies; and the new situation which had developed:

Not having been established with any view to territorial or commercial advantages, they must chiefly be considered as receptacles for offenders, in which crimes may be executed at a distance from home by punishments sufficiently severe to deter others from the commission of crimes, and so regulate, as to operate the reform of the persons by whom they had been committed. So long as they continue destined by the legislature of the country to these purposes, their growth as colonies must be a secondary consideration, and the leading duty of those to whom their administration is entrusted, will be to keep up in them such a system of just discipline, as may render transportation an object of serious apprehension.....While the settlements were in their infancy..... it appears that transportation to New South Wales answered every

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- (1) Hon.H.G.Bennet: Letter to Viscount Sidmouth, Secretary of State for the Home Department, on The Transportation Laws, the State of the Hulks, and of the Colonies in New South Wales," 27/12/1818. (London, 1819)

end of punishment; for while it operated not very severely though always beneficially, on the convicts themselves, the opinion of its severity in this country was so enhanced by the distance of the settlement and the little which was known of it, that it was an object here of peculiar apprehension..... Many circumstances, however, have since concurred to render the punishment lighter in itself, to diminish the apprehension entertained in this country of its severity, and to break down all proportion between the punishment and the crimes for which it is now inflicted.....While transportation is thus applied as an adequate punishment for the more heinous crimes, it unfortunately at the same time carries with it in public estimation so little of apprehension in any proportion to the guilt of the convicts, that numerous applications are made from those who are sentenced to imprisonment for minor transgressions to participate in the punishment to which the greatest offenders are condemned.

The great end of punishment is the prevention of crime.....the sufferings of those to whom punishment is awarded do not answer the ends for which they were inflicted unless they are in some degree proportioned to the offences committed and of a character to deter others from similar misdeeds.....Mere expatriation in these days, is not an object of terror....It is the situation of the convicts in the place to which they have been consigned, the strict discipline, the unremitting labour, the severe but not unwholesome privations to which they are condemned....and above all, to the strong feeling impressed upon this country that such is the fate of the unhappy men, on whom the sentence has passed, that can alone make transportation permanently formidable. (1)

Bigge spent two months in Van Diemen's Land taking evidence from settlers of many sympathies and types, officials, settlers and convicts. Evidence was not taken on oath but came from such a wide variety of people that with the help of his own

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(1) Bathurst to Macquarie No. 1, 30/1/1819: enc. No. 2,

Bathurst to Bigge, 6/1/1819, (H.R.A. i, x, p.4 and ff).

observations outside his court of enquiry, he was able to make an accurate appraisal of the situation. Nothing escaped his curiosity, and the reports he sent in submit his opinions on every subject from "the salting of beef to the most profound questions of Government."<sup>(1)</sup> His report evoked a tremendous outcry in the colonies among the officers whose personal affairs he had detailed to illustrate various systems in practice. But his assessment of the results of transportation according to standards accepted outside the society immediately involved, was of undoubted value to both colonies.

The basic criticism he had to make, was that the treatment given a convict in the colony bore no relation at all to his past conduct, either in England or on the voyage out. This he saw, could be remedied if the information given in the ships' indents, (name, crime, date of conviction, and sentence - the only record ever sent from London, and often inaccurate at that) was supplemented with as many details of their past history as could be collected from the convicting magistrates, county gaolers, the Hulk Superintendents and the surgeons of the transport ships.<sup>(2)</sup> In all cases, the prisoner's record was to be considered as more important in deciding his distribution in the colony than his abilities, especially if

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(1) West, op.cit., Vol. 11, p.169.

(2) Bigge: Report op.cit., pp 156-7.

he was being transported for the second time. He, therefore, strongly disapproved of Macquarie's addresses to the new arrivals which had assured them that no reference would be made to their past conduct, thus putting all crimes on an equal footing, and reducing any fears the convicts might have had regarding their future. (1)

The Government's monopoly of all the best mechanics was another practice which was to cease, as this was not only unfair to the settlers, but more especially to the convicts themselves whose worth was rewarded with the worst punishment. The frustrating of their hopes to obtain tickets of leave had had a bad effect, giving them a careless and indifferent attitude. He proposed that only those needed to finish the most urgent of the buildings then on hand should be retained by the Government in Sydney and Parramatta, and on their completion they should be assigned with the others to settlers in the country. If the Government needed mechanics later, then the convict's record and character should determine his distribution to private service or that of the government. The exclusion of mechanics from the towns he considered so important to their reform that it outweighed any claims of master tradesmen in the towns who would be left without the assistance of convict mechanics.

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(1) Bigge op.cit. p.15.



He was very impressed indeed with the system of assignment, which seemed to him not only best for the convicts' reform, of value in the production of wool and other articles of value to Britain's manufacturing interests, but also saved the government at least £24/10/- p.a. for each convict. As 2,000 convicts assigned meant a saving of £49,400 he suggested that it would be worthwhile for the British Government to reduce the duties on colonial wool and other products to stimulate the market and so increase the demand for labour in the colonies. (1)

His proposals for the extension of the assignment system, however, was subject not only to the consideration of the convicts' character, but also the character of the masters. The Colonial Secretary, after a consideration of the information given him by magistrates, chaplains and the police, was to select both convicts and masters, assigning those convicts of the best character and ability only to those settlers of the best character. By thus endeavouring to preserve a moral distinction even when conveying a civil benefit, he hoped that the value of good character and good conduct would be considered more seriously than it had been in the colonies, both by convicts and settlers. Convicts would then be no longer able to look forward to enjoying the profit of their crimes, (2) and so transportation would be regarded more in the light of a punishment. Assignment was to be restricted to those who owned at least 50 acres of land,

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(1) Bigge: op.cit. pp 76, 163;

Coghlan: op.cit. pp 178-9.

(2) Bigge: op.cit. p.163.

and, to encourage the more respectable to extend their agricultural undertakings and take up more convicts, he suggested that extra land grants should be made in proportion to the numbers of convicts employed, and head of sheep or cattle run. This he hoped, would also have the effect of getting the settler to reside on his land to exercise a personal control over his property and servants, which had so impressed him at the station of John MacArthur in New South Wales, where from 90 to 100 men were employed  
(1)  
successfully.

To make this ideal situation possible at a time when there was a surplus amount of labour on Government hands he proposed that several new penal settlements should be formed in New South Wales where new arrivals of bad character including secondary transportees, and those whose trades were of no use to a young colony could be sent. Those already in the service of settlers, but proving either of bad behaviour or useless workers could then be withdrawn and also sent to the new settlements, leaving places for the useful men among the new arrivals. This separation of the good from the bad would make the problems of control much simpler, and give the men an opportunity for reform. As those in the new settlements improved, they could be rewarded by return to an older district. (2)

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(1) Bigge, op.cit. p.161.

(2) ibid. pp 163-5.

Throughout the convict's term in the colony, account was to be kept of his progress. All proceedings before the magistrates' courts were to be recorded, so that when the time came for the granting of tickets of leave, each man's whole history would be before the authorities. In future, no other claim was to be considered in this regard but good behaviour, and no personal services were to constitute ground for an indulgence as they had done under Macquarie. The latter's failure to send home the names of those to whom he had given tickets of leave had already created legal difficulties, for the remissions were not valid without the King's sanction. Therefore, lists of those receiving tickets were to be published regularly in the Gazette, and sent to London for the ratification of the Crown. <sup>(1)</sup> In New South Wales convicts had automatically received land grants on recovering their freedom, but as 50 acres could not provide a livelihood, and few had any agricultural ability anyway, the system was to cease. <sup>(2)</sup> This seemed to him the best way of subduing the emancipist class, by making them rather resident labourers, than property owners, which had given them their power. <sup>(3)</sup>

Other anomalies in the existing system were pointed out. The payment of wages, at a set rate to all types of convict workers, good and bad, had reduced the incentive to industry. Task work, adopted by some of the "higher type" of settlers,

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(1) ibid. pp 122, 169-171.

(2) West, op.cit. Vol. ii, p.174.

(3) Bigge, op.cit. p. 173.

had more to recommend it, but he considered it much more consistent with the idea of punishment, as well as reform, for the convict to have no other claim on his master than a sufficiency of the necessities of life.<sup>(1)</sup> He, therefore, recommended that all claim to wages should be abolished, that the master should be required to give an ample ration, clothing, and bedding allowance, and that any extra luxuries like tea and tobacco should be given as a "reward for extraordinary exertion or good conduct".<sup>(2)</sup>

He thought it best to abolish the practice of allowing men to employ themselves in the hours after government work finished, since this had lowered the quality of the work produced. This was the origin of the term "the government stroke", applied to government employees who work slowly or inefficiently on their jobs to save their energies so they could work the better on their own account after hours.<sup>(3)</sup>

The whole system of paying officials and overseers by the assignment of a convict whose labours who bring them a profit was unsparingly condemned. Men were selected for this privilege, not because they deserved it and others did not, but usually quite by chance, because they had been trained as shoemakers, or had been able to bring the profit of their crimes

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(1) ibid. p.168.

(2) ibid. p.169.

(3) ibid. p. 43, and Coghlan: p.176, and p.53.

with them to the colony. Bigge, therefore, advised that of the officials who had been paid in this way, only magistrates should continue to be so, and they were to employ their men only as domestic servants, or on their own properties. (1)

The distribution of educated convicts in responsible and profitable positions in the colony, as government clerks or merchants' accountants, had not borne any relation to their character either. The Commissioner considered that their abilities would be used with more benefit to the men themselves whose reform hitherto had been almost impossible, if they were removed from the towns and employed as clerks to the government road gangs, or as school teachers. (2)

The employment of convict overseers he considered, should also be dispensed with. Settlers should be required to engage free men to take charge of their servants. He proposed that the conditions for tickets of occupation, giving settlers temporary grazing rights to a tract of unoccupied land, should include the employment of a free stockman, so that unsupervised convict stock-keepers would no longer have such opportunities to steal sheep. (3). It was important that overseers to government gangs should also be free. A supply

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(1) ibid. pp 18, 170.

(2) ibid. pp 42, 103, 160.

(3) ibid. p.161.

of these could possibly be obtained by the emigration of retired non-commissioned officers, whose experience in superintending compulsory labour would make them ideal for the colony. Their attention to duty could be rewarded by a proportion of the proceeds of their charges' labour, or plots of ground for gardening. (1)

A plan was devised for the boys sent to the colony. They should be kept by the Government in barracks in Sydney, and there taught a trade which would fit them for service with the settlers later. (2)

Criticism of the administrative side of the system was mainly directed at Macquarie's policy of raising emancipists to important offices. Bigge strongly disapproved of the appointment of ex-convict magistrates, such as Andrew Thompson and Simeon Lord, whose business sense had brought them prosperity, but whose domestic affairs by no means merited public esteem. (3) But it was the appointment of Hutchinson as Principal Superintendent of Convicts which earned his most vehement disapproval. With a man of his record in possession of so much power, it was inevitable that irregularities should have crept into the system. In future, he advised that all assignment procedure should be handled by the Colonial Secretary, and regular quarterly checks of the positions and behaviour of

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(1) ibid. p.166.

(2) ibid. p.163.

(3) ibid. p.82.

all convicts should be made to put an end to the day when  
convicts could buy virtual freedom from the authorities. (1)

More care ought to be taken in the distribution of female  
convicts too, as previously applications for these had been  
judged solely by Hutchinson, whose own morals were not above  
reproach. (2)

Recommendations specifically concerning Van Diemen's Land  
were few, but they included much that was vital to the island.  
He pointed out that subordination to New South Wales had not  
only limited the power of the Governor in the island,  
unnecessarily in most cases, but had put the younger colony at  
a disadvantage regarding the number and type of convicts and  
stores sent from New South Wales. (3) Lack of a criminal court  
in the island was another handicap which should be removed as  
soon as possible. (4) Administration of the convict system had  
been hampered by dependence on the Governor in Chief, too.

A factory to house and employ female convicts was badly needed in  
Hobart and George Town, (5) but Macquarie had refused to sanction  
the expense, considering the demand from free settlers for  
servants would have been sufficient to relieve the Government  
of all its convict women, and that those who needed punishment  
could be returned to Parramatta factory in New South Wales. Due

(1) ibid. pp 18-9.

(2) ibid. pp 15, 18, 74, 167.

(3) Bigge to Bathurst, 11/2/1823: H.R.A. iii, iv, 695.

(4) Bigge: Report, op.cit. p.109.

(5) ibid. pp 46-7.

to the very depraved type sent to the island, on one occasion six women had to be returned only three weeks after their arrival!<sup>(1)</sup> Barrack accommodation at Launceston and George Town was urgent, as lack of constant supervision was chief cause of the huge amount of crime there. Sorell had attempted to begin a prisoners' barracks in Hobart for the reception of new arrivals, but not for twelve months would Macquarie permit the expense.<sup>(2)</sup>

Bigge's first report dealing with the convict system in the colonies was presented to Parliament in May 1822, and ordered to be published six weeks later. Despatches sent to the Colonial Governors directed the full implementation of all the commissioner's recommendations.<sup>(3)</sup> Governor Brisbane's reply<sup>(4)</sup> in April 1823 showed that the more important changes were already underway, and by May 1825,<sup>(5)</sup> each suggestion had been adopted in New South Wales as far as expediency would admit. Sorell<sup>(6)</sup> received the report in May, 1823, but his directions did not come until later, and then via New South Wales. Sorell's

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(1) ibid. p.94.

(2) ibid. p.49.

(3) Wilmot to Sorell, 7/9/1822;

(4) Bathurst to Brisbane, No. 7, 9/9/1822.

(5) Brisbane to Bathurst No. 7, 28/4/1823.

(6) Brisbane to Bathurst No. 53, 14/5/1825;

Coghlan, op.cit. p.176.

(6) Sorell to Wilmot 30/5/1823.



successor had already been appointed, and it was to him that the Colonial Office looked to introduce the changes which were to restore to transportation its aspect of terror.

- ii -

As the most likely man to recover the position, the Colonial Office chose George Arthur as successor to Sorell. Temperament and experience fitted him for the part he was required to play. A soldier's training had impressed on him the value of discipline and absolute obedience to authority, suitable qualities for a Governor of a penal colony, particularly when the growing free population was likely to protest against the autocracy deemed necessary to administer the convict system. He was a man of energy and initiative such as the situation demanded if the objects of transportation were to be realized. His stern, unbending morality would set a good example to the prisoners and his own executive and restore respect for the King's representative, rather in abeyance while Sorell's domestic life had been irregular. In British Honduras, he had shown his capabilities as an efficient administrator of boundless energy, and if his authoritarian outlook was not one

of the popular virtues, it would not be amiss if Van Diemen's Land was to fulfil its utilitarian purpose.

On appointment it was impressed on the new Governors, Brisbane to New South Wales, and Arthur in Van Diemen's Land by the Colonial Office policy makers, that for transportation to be successful as a crime deterrent they must restore to it those terrors which ought to be associated with a punishment second only to death. (1) Originally, exile to Australia, a little-known continent peopled with black savages, had been regarded as a fearful punishment, but its terrors had abated somewhat as the colonies became better known and more prosperous. Free immigration, as the Colonial Office realized, necessarily limited the extent to which transportation could be made a terrifying punishment. But, subject to the changes Bigge had recommended, it was a limitation they were willing to accept. For though the convicts would not be treated by their settler masters as severely as the Home authorities, in their demand for punishment, would have wished, the costs saved the British Treasury by private support of convicts were considered adequate compensation. (2) By judicious application of Bigge's recommendations, they were confident a suitable compromise could be worked out. "The punishment of the offender for the offence he committed" was to be always the

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(1) Bathurst to Brisbane, No. 7, 9/9/1822;  
 Bathurst to Arthur, No. 6, 31/3/1826;  
 Bathurst to Arthur, No. 14, 23/4/1826.

(2) Coghlan: pp 178-9.

primary object, and, therefore, great care was to be taken to see that "the situation of the assigned servants was one of laborious employment". The worst class of offenders was to be sent to penal settlements where "the legitimate terrors which originally attached to a state of transportation cannot fail to revive and to resume their power of checking the inroads of crime by the certainty of effectual punishment"<sup>(1)</sup> - a formidable proposition.

Before ~~settling~~ setting out for the colony, Arthur was determined that the powers hitherto belonging to the Governor of Van Diemen's Land should be increased. Bigge had pointed out the embarrassments Sorell had been subject to, referring to the Governor in chief in New South Wales whenever he granted land, awarded tickets of leave, or spent Treasury funds. Arthur, anxious not to have his hands tied so firmly wrote to Horton,<sup>(2)</sup> an Under-Secretary at the Colonial Office suggesting what powers should be given to the Governor of a rapidly developing island colony to protect its rising interests, and to successfully administer the convict system. His suggestions were not limited to matters of Government only. The appointment of an experienced architect, reliable departmental officers, permission to go ahead with a large number of buildings, and more trivial matters like the supplying of

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(1) Bathurst to Brisbane, No. 21, 30/5/1823.

(2) Arthur to Horton 28/7/1823: H.R.A. iii, iv, p.78-82.

plate for the church were all requested from the Colonial Office with a presumption and authority that reflects his character and the terms on which he was with the key personnel there. His suggestions were for the most part adopted in the compromise charter under which Van Diemen's Land was to be governed until the colony was fully separated from New South Wales.

Any laws the Lieut. Governor found it necessary to pass were to be drawn up by the Attorney-General, and sent to Sydney for the approval of the Governor in Chief, who sanctioned them if not repugnant to the laws of England. He could over-ride the decisions of his subordinate, and originate legislation for the island, but in both cases he had to submit a full account to the Colonial Office. The Lieut. Governor, however, was given control of his own finances and Public Works programme, though the appointment of officials, pardons, and land grants still required the assent of his superior in Sydney.

In practice, this position proved little better than Sorell's had been, and the delay was even worse, since the creation of the Supreme Court in the island in May 1824, as the old Judge Advocate's Court would act on any proclamation of the Lieut. Governor, but the new court would enforce laws only if passed by the New South Wales Legislative Council. Commercially,

Van Diemen's Land was at a disadvantage from subordination to New South Wales. The adjustment of the colonial currency in the large colony proved "ruinous to the agricultural and mercantile interests in the island".<sup>(1)</sup> From a legislative point of view, too, the compromise between dependence and complete freedom was a failure. The two acts Arthur sent for ratification were never attended to, and several acts passed in New South Wales for both colonies without submission to Arthur, proved totally inapplicable to the island.

Arthur's protests served to hasten the passing of the Order in Council separating the two colonies.<sup>(2)</sup> Ralph Darling was appointed Governor of both New South Wales and Van Diemen's Land,<sup>(3)</sup> but in his absence from the colony, the Lieut. Governor received all his powers in full. Under the new charter, the island was given a Legislative Council of five nominated members (three of them Arthur's own choice), and an Executive Council, consisting of the Lieut. Governor, the Colonial Secretary, and two heads of Government departments,<sup>(4)</sup> whom Arthur was obliged to consult, but as he initiated legislation, and could over-ride the members when he thought it necessary, their function was chiefly advisory. Check was

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(1) Arthur to Horton, 28/10/1824: H.R.A. iii, iv, p.226.

(2) Bathurst to Darling, No. 9, 28/7/1825, enclosing Order in Council, 14/6/1825, (H.R.A. i, xii, 41.)

(3) H.R.A. iii, v, i.

(4) Darling to Bathurst, 5/12/1825; H.R.A. iii, v, ii.

kept on the Governor by the Colonial Office through perusal of the minutes of Council meetings.

"The effect of this constitution was to give form, legality and efficiency to the rule of an official responsible nominally to the British Parliament, really to the Colonial Office." It showed "the determination of the Colonial Office to leave its Governor and Lieut. Governor unhampered in their (1) administration", and it is not surprising, therefore, that so determined and competent a man as Arthur was able to effect what was demanded of him so successfully in the sphere of convict discipline.

- iii -

Like his predecessor Sorell, Arthur's first important task was clearing the island of gangs of bushrangers. The menace had sprung up again in the last years of Sorell's term chiefly because of the inadequate accommodation and control over the large numbers of new arrivals; the number of unreformed bad characters whose sentences had expired, and the want of a greater military and police force in the colony.

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(1) Forsyth, op.cit. pp 21-3.

The crisis reached a peak in September 1825, with the shooting of two soldiers by a party of bushrangers. Sheep stealing and burglaries had increased so much that some settlers had deserted their farms, and others had been forced to leave under the threat that their crops and properties would be burned if any attempt was made to resist them. Each week the Gazette posted the names of runaways from road gangs and assigned service, and rewards and indulgences were offered the convict field police for apprehending absconders. A dozen or so were caught each week, but it was impossible to dislodge the more desperate and better armed gangs with the small detachment of the 3rd Regiment, the only force then in the colony.

Arthur urgently appealed to the Secretary of State for the Colonies, that the military force be increased to 500<sup>(1)</sup> which was the minimum force needed by a convict settlement with two penal stations (one established at Macquarie Harbour by Sorell in 1821, and other more recently at Maria Island off the East coast). In the meantime, he detained a detachment of the 57th Regiment on its way to Sydney, and sent them in small parties to<sup>(2)</sup> every settled district to give confidence to the colonists to stay and defend their properties.

(1) Arthur to Bathurst 14/9/1825.

(2) Arthur to Horton 14/9/1825.

Governor Darling arrived in Van Diemen's Land on a tour of inspection, at the height of the atrocities committed by Brady's party, "a most desperate body of ruffians....14 in number.... committing every species of enormity upon the defenceless settlers". On his return to Sydney, he sent the first two extra detachments of the 40th Regiment ordered by Bathurst.<sup>(1)</sup> The Secretary of State authorized Arthur to increase the Police establishment if the militia still failed to cope, and thirty of the best behaved assigned servants were added to the force, but there were no arms available for them. However, the British Government would go no further than this, arguing that with precautions for the safe confinement in barracks of Public Works convicts at night, and the assistance of the company of veterans who had been sent to act as overseers, the force available would be sufficient to meet all emergencies. The whole episode was successfully concluded four months later when Brady, whose ruthless leadership had held the gangs together, was caught and executed.<sup>(2)</sup> After this, comparatively few absconders ever remained at large for long, as generous indulgences rewarded the co-operation of assigned servants and ticket of leave men in giving information and bringing in escapees.<sup>(3)</sup> Full descriptions were inserted in all newspapers with any information that would

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(1) Bathurst to Arthur, No. 18, 28/7/1825.

(2) Arthur to Bathurst, No. 14, 11/4/1826.

(3) Government Order, 10/8/1826.



(1)  
 help in their apprehension, but order was maintained only at  
 the cost of the severest treatment and the imposition of the  
 greatest restraints upon the free population. (2).

The accommodation problem was the next on the list.  
 Arthur had sought the Secretary of State's approval for the  
 erection of extra buildings to house the convicts, before he  
 had left England, and Bathurst, acting on the recommendations  
 of Bigge, readily agreed to any expense necessary to relieve  
 the unsatisfactory situation in Hobart and Launceston. (3)  
 By 1827, therefore, Arthur was able to report that a new  
 penitentiary and barracks were completed, and a building at the  
 Cascades, three miles from Hobart, had been bought and converted  
 for a female factory. (4) The existing one held only 80 and  
 though only six years old was described as in a shocking  
 condition. (5) The establishments of the two penal settlements  
 in accordance with Bigge's policy, had not only helped solve  
 the problem of control presented by the mixture of  
 "incorrigibles" sent from New South Wales, and the many minor  
 offenders transported direct from England, but also relieved  
 congestion in Hobart and its resultant evils. (6).

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(1) Hobart Town Courier 12/11/1830.

(2) Coghlan: op.cit. Vol. 1, p.187.

(3) Bathurst to Arthur, No. 14, 23/4/1826.

(4) Arthur to Bathurst, No. 20, 24/3/1827.

(5) Arthur to Bathurst, No. 10, 3/7/1825.

(6) ibid.

The liberties assigned servants had enjoyed had been one of the more obvious reasons why transportation had been regarded in Britain rather as a boon than a punishment for crime. The "thirds system" was the first of the objections to be abolished under the new administration. The practice of giving assigned servants, stock-keepers especially, one third of the increase of the master's flocks had arisen with the poorer class of settlers who had been unable to pay for their labour in money or goods. It had extended since Sorell's administration to all classes of settler, who found the only way to make convict labour profitable, and prevent the prisoners joining bushranging bands, was to give them a financial interest in their work, either by paying them in stock or in the produce of their gardening. Payment by stock, however, was easily abused, for it gave the convicts easy opportunities to secrete stolen stock whose brands were (1) skilfully changed or completely blotted out. The Crown was a loser by the system, too, for the convicts not owning land on which to graze their flocks, had either to leave them on their master's land or let them temporarily to new settlers with large grants but no flocks. In either case, the settlers could often illegally claim a secondary grant on the size of their herds. In explaining why he had refused another grant to Benjamin Horne, a "respectable" settler who had come to the colony in 1823, and received a choice grant at Ross, in the

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(1) West, op.cit. Vol. 2, pp 138-9.

heart of the sheep-grazing midlands, Arthur exposed the land grant racket. By acting as agent for investors in England, an immigrant could bring into the island capital up to £3,000 which he claimed was all his own, and for which, therefore, he would be entitled to a maximum grant of 2,000 acres. <sup>(1)</sup>

Without spending more than a few hundred pounds, or cultivating more than 30 acres, the settler would proceed to occupy his land, taking in sheep on the "thirds". Altogether he might accumulate from 2,000 to 2,500 sheep, including a small flock of his own, and so would be entitled to make a claim for another grant, on the grounds that his present one was not large enough for his herds! <sup>(2)</sup>

The obvious remedy was to withdraw the need for an increase of herds from the conditions for secondary grants and this Bathurst, then Secretary of State for the Colonies, agreed should be done. <sup>(3)</sup> Arthur, therefore, directed the Colonial Secretary to draw up a notice making it illegal to pay servants in this way, and warning settlers who had failed to comply with the terms of their original grant (as almost all who had used the thirds system had done), that their land was liable to be resumed. <sup>(4)</sup> The magistrates were put on the alert, and the police were constantly on the watch for suspicious

(1) Arthur to Bathurst, No. 12, 11/8/1825.

(2) Bathurst to Arthur, No. 3, 5/3/1826.

(3) C.S.O. 1/21/370: Minute from Arthur to Montagu,  
September, 1826.

(4) Government Order, 30/9/1826.

characters, but as had already been found, it was very difficult to discover when both master and servant had an interest in concealing the transaction. An extract from the diary of George Hobler, a settler in the Longford district, shows the settlers' attitude.

May 19, 1833: A few days ago, I made arrangements with Reid, my gardener, that will be very beneficial to him and pleasant to himself. I have desired him to crop the garden as fully as possible with vegetables, with the intention of selling them, my pork butcher having proposed to take all we can grow. For his (Reid's) encouragement, I promised to give him one third of the proceeds, and to take him from his gardening as little as possible. This will enable me to have a well-cultivated garden without being at any expense. (1) on the contrary, it will be profitable, I expect.

Warnings were made regularly, a fact which seems to indicate how unsuccessful was the attempt to suppress a practice of such advantage to the parties concerned. (2)

The advantages of assigned service were further diminished by the regulation requiring approved overseers, either free or well-recommended ticket holders, on all properties where servants were employed and the owner was not in attendance. By this precaution, it was hoped to check sheep-stealing and prevent the spread of bushranging which had been assisted previously by the efforts of isolated convict stock-keepers. Arthur was very particular that magistrates should report the names of all settlers who failed to

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(1) Hobler Diary (unpublished manuscript in Mitchell Library, Sydney), May 19, 1833.

(2) Government Orders, 30/9/1826; 24/10/1827; May, 1828.

comply with this assignment condition, and if reminders were ignored convicts were withdrawn, regardless of the financial (1) loss it meant to the settler.

Restrictions on the liberty of Government men also, were introduced so that it would be longer be said, as it had been when Bigge was in the colony, that convicts preferred Government service to that of settlers. As soon as the barracks were able to house all those working on public works, hours were increased to 6 p.m. in Summer and 5 p.m. in Winter, so leaving no time for the men to employ themselves after hours (2) on their own behalf. With assigned servants, it was made the responsibility of masters to see that they did not employ themselves, either on or off the property, on their own account, (3) the fine for indifference in this matter being up to £50!

If Arthur had restricted their privileges and increased control over their activities in order to make the convicts' position more consistent with their status as prisoners, the conditions he thought suited that status were still, materially, very much superior to that of contemporary English labourers.

Arthur had agreed with Bigge that payment of any kind to convicts was ill-advised, so settlers were strongly advised to give their men no more than the ration prescribed by Government regulation, and an occasional gift of tea, or tobacco, as a reward

(1) Government Orders 10/4/1828; and 23/5/1828.

(2) Arthur to Bathurst, No. 19, 23/3/1827: and Government Order, 30/9/1826.

(3) Government Order, 14/2/1833.

(1)  
for good conduct. But to compensate for the loss of wages, or the time in which to earn them, rations and clothing allowances were increased. Ten and a half pounds of meat and flour was allowed each man weekly, as well as seven ounces of sugar, two of salt, and vegetables in season. The supply of clothing was regulated too, two woollen suits, three pairs of strong "stock-keepers" boots, four shirts, and a hat being considered the minimum allowance yearly. Even the bedding to be given servants was determined by Government

(2)  
order! Settlers were asked to allow their female servants no more than £7 worth of clothing each year, on grounds of discipline, and to purchase it themselves, so that it would be of a plain and neat description. All these rules were made conditions of the assignment, and rigidly enforced. (3)

Conditions regulating the physical well-being of servants were completed with provision for their medical care. Originally, masters of servants requiring attention were obliged to provide rations for fourteen days while the man was in hospital, but this scheme proved unsuitable. (4) It was then suggested that settlers who took convicts from the Government, should be charged a small sum annually in consideration of medical needs, (5) but Arthur thought that as

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(1) Government Order 30/9/1826; and  
Arthur to Bathurst, No. 19, 23/3/1827.

(2) Government Order 30/9/1827.

(3) Government Order 18/6/1828.

(4) Government Order 30/9/1826, section 4.

(5) Sorell to Arthur, 22/5/1824. (H.R.A. iii, iv, p.134).

the colonial economy was rather strained at the time, 1824, it would be impossible to enforce this. By 1829, however, there was no reason for not trying the scheme. Assistant surgeons were stationed in each district, and required to attend the men of all settlers living within fifteen miles, on their payment of five shillings annually, for every man in the service. The agreement was optional, but only those who paid regularly were entitled to the services, and those who didn't were liable to lose their men, for wilful neglect! (1)

On admittance to hospital, the assignee paid one shilling a day for his care, the whole sum being paid within a fortnight, on pain of losing the man's services. (2)

Prisoners were returned to their masters on recovery, often with an invalid ticket exempting them from heavy work during convalescence.

Under the Probation system which replaced assignment in 1842, it was made compulsory for employers of convicts to contribute to this medical scheme.

Government requirements of this nature were intended to eliminate, in the material condition of convicts at least, the inequalities that arose from the great variation in prosperity and temperaments of the masters, and by demanding a fairly high standard, it was hoped that the rations actually given the men would at least be adequate. How far these

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(1) C.S.O. 1/446/9,873: Pol.Mag. (Norfolk Plains to Col.Sec. December, 1829.)

(2) S/C Letterbook (Mitchell Library F79) p.141:  
S/C. to P.S/C. 2/7/1832.

regulations did ensure adequate physical comfort is difficult to say. Convict appeals to the Governor always brought immediate action, and the men were removed from the service, or else their condition was improved (though with what deterioration in the relation between master and servant can only be guessed). But whether appeal to magistrates, if the convict had the opportunity to do this, always met the same active response, is difficult to tell. It is undoubted, however, that many convicts had to suffer ill-treatment without hope of redress, and the records give ample evidence that men goaded by harsh masters from one act of insubordination to another, in the end became convicts of most desperate character.

Regulations did nothing to ensure uniform housing for assigned servants. In the country, they were usually housed in barns, or log huts, which, to Backhouse and Walker, two missionaries sent by the Society of Friends to investigate the condition of convicts in the 1830's, seemed very cold comfort. This was very likely the case with most poor settlers and those who had not been in the colony, but one gets the impression, from the total want of any evidence in the records indicating that complaints were made on this score, that most landowners provided at least less draughty quarters for their men.

How effective was the Government injunction not to pay wages to servants, is clear: - it was not. G.T.W.B. Boyes, a diarist who held important official positions under four Governors, and whose biting sarcasm usually reveals the true picture of colonial



society, remarked that Arthur's claim that the convict received no wages was not true, and if it was, "the exceptions to the rule are nearly equal to the instances that establish it. In some shape or other, a very great number, if not the majority of prisoner servants derive advantages from their situation above their food and clothing. Many are paid £5 to £15 a year in money. Some are furnished with the means of supplying themselves with tobacco, and others are allowed to receive a profit out of the garden with a view of creating an interest in their own labour etc.etc; and all find opportunities of making a few shillings in the month by clandestinely assisting their neighbours."

"(1)

- iv -

The general administration of the Convict Department was not left unchanged either. On handing over his office, Sorell had outlined the condition of the colony, offering suggestions, explanations, and recommending officers who had proved reliable. Lakeland, formerly Assistant to the Engineer, and Inspector of the Public Works convicts, had taken over the duties of the Principal Superintendent of

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(1) Boyes Diary unpublished m.s. in Royal Society Library,

(1)

Convicts when Crowder had died, and he gave the new Governor a more detailed account of the activities of his department, its procedures and policies. But Arthur, having read Bigge's recommendations, and being authoritarian both by training and inclination, had determined to obtain "a more perfect insight into the employment of the convicts" (2) by personally supervising their assignment.

Procedure in the Principal Superintendent's office had changed little since Bigge's visit, and personnel had not increased, although the numbers of convicts to be recorded and distributed was three times as great. (3) The records of convicts' offences were in arrears, and kept by convict clerks; application and assignment procedure was still haphazard and unmethodical. Before a regular system of convict discipline could be effective, an efficient administration and accurate records were necessary so that the authorities could see the effects of their policies, and modify if necessary. Information from London about the convicts arriving was still inadequate despite Bigge's advice, so that convicts, hearing of the laxness of discipline in Government service, or the advantages of private service had often passed themselves off as mechanics, or farm

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(1) Arthur to Bathurst No. 9, 15/5/1825.

(2) Arthur to Hay, 10/2/1825;

Government Order, 1/7/1824.

(3) 1820: - 1,823 convicts in V.D.L. (H.R.A. iii, iii, p.554)

1824: - 5,938 convicts in V.D.L. (Statistics of Tasmania Vol. 1, 1804 - 1856).

labourers, accordingly causing great dissatisfaction both among settlers, and to the Government, who could not expect transportation to terrify if prisoners chose their own fates. (1) Arthur lost no time in writing to his friends at the Colonial Office, insisting that a "Hulk List" detailing names, crimes, former habits and connections, manner of life, previous convictions, and comments on character and behaviour, should be sent with the men on the transport. (2) From a legal point of view a descriptive list such as this, certified by the Sheriff of the gaol, was necessary. Until this was sent, the Governor was in the extraordinary position of not being able to prove that the offenders transported from England were convicts. (3) The indents of the transports had been

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(1) Courier 30/1/1830;

( ) Goghlan, op.cit., Vol i, p.194.

(2) Arthur to Hay, 10/2/1825.

(3) Arthur to Hay, 30/10/1827;

Arthur to Bathurst, No. 34, 19/5/1827; and reply,

Murray to Arthur, No. 9, 24/6/1828.

remarkably defective too, occasionally omitting names and sentences. In one case where the sentence had been omitted and the prisoner could give no information, he was awarded "life" - in compliment to his friend!<sup>(1)</sup>

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(1) West, op.cit., Vol. ii, p.160.

Note: Frequently though not invariably, there were eight lists held in the colony relating to each transport which arrived:

1. Charter Party.
2. Assignment List.
3. Hulk List.
4. List of Convicts who had entrusted money to the Surgeon.
5. Appropriation List (Assignment of individuals).
6. Distribution List (Numbers of men assigned to Public Works, Private Service etc.)
7. Lists of Tradesmen.
8. Lists of Applicants (Earlier Version of Appropriation List.)

Under the new administration, assignment procedure became more systematic. A letter to the Governor asking for a servant was dispensed with. Special forms were prescribed requiring settlers to state all particulars about their properties: area, number of stock, acreage under cultivation, and the number of men both bond and free, already in their service. (1)

Understandably, the colonists resented this official inquisitiveness into their personal affairs, another notice had to be published, assuring them that this information on the agricultural state of the colony was required by the Secretary of State, and, therefore, settlers should be honoured that he had taken such an interest in the welfare of the colony. (2)

This information was sent to the Principal Superintendent who listed each application strictly in order of receiving them, added comments as to the suitability of the applicant, and then sent them each week to the Colonial Secretary for the approval of the Governor. (3)

No man was to be assigned to any individual without the written authority of the Governor. (4)

Records of the assignment were kept by both the Colonial Secretary and the Principal Superintendent

(1) Government Notice, 28/12/1826.

(2) Government Notice, 6/3/1827.

(3) C.S.O. 1/386/8,728: Draft Instructions to the P.S/C. 1/1/1829; and

C.S.O. 35/3/ p.125: Colonial Secretary to P.S/C. 16/12/1825.

(4) C.S.O. 1/55/1,132: Minute No. 200: Lieut.Governor to Col.Secretary, 1/8/1828.

in an exhaustive cross-reference system, so that it would be known how many convicts were in the service of each settler, and when and where they had been assigned.<sup>(1)</sup> The names of all mechanics arriving were to be listed under their trades, and until application was made for them they were worked under the direction of the Engineer on public works. Settlers were no longer invited to select their own men at the first muster after landing. Assignments were arranged and posted in the Gazette, settlers collecting them that day. In 1830, the Colonial Times also published this information, and several other papers followed suit.<sup>(2)</sup> Convicts assigned in the north of the island, if numerous enough, were sent round by sea, or else overland under Police escort. As the assignees had to pay for the conveyance if they came by coach, many Launceston settlers preferred to apply for men from the Public Works Department there. In this case, they wrote to the Principal Superintendent asking for a servant from Launceston. If this was approved then notice was given his assistant in the north, who would then direct the applicant to come and collect his servant.<sup>(3)</sup> Escort arrangements, however, were not satisfactory until Franklin's time. Criticism was often made in the opposition press of the practice of sending new arrivals across the country by themselves, instead of passing them from

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(1) C.S.O. 1/265/6,345.

(2) Colonial Times 27/8/1830, and 3/9/1830.

(3) S/C Letterbook, (Mitchell Library F 79) p.17: S.C. to Powell, 28/5/1831.

one police station to another, with constables. (1)

Lakeland suggested further improvements in 1826, (2)  
so that regulations governing the actual assignment procedure would not fall so heavily on the country settlers whom it was politic to assist, since they required more labour, and reform was more likely on their properties away from the towns. He suggested that the Government should allow these settlers to appoint friends in Hobart Town to act as agents, collecting their servants when assigned and arranging their transport to the country. An advertisement in the Hobart Town Courier on the arrival of a convict ship indicated the (3)  
working of this system:

The under-signed begs leave to remind those gentlemen in the interior who have been pleased to appoint him their agent in town, of the necessity of furnishing him with the means either by a remittance or an order on some house in town, to enable him to forward the men who will most probably be ordered out of the present arrivals.

N.B. Gentlemen on the Pt. Dalrymple side of the island are requested not to remit in notes of the Cornwall Bank, as they are not negotiable in Hobart Town but at a discount of 5% to 10%.

James Ross.

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(1) Colonist, 10/9/1833.

(2) C.S.O. 1/119/3004: P.S/C's Memo. to Col.Secretary, 9/5/1826.

(3) Courier, 23/10/1830.

Other suggestions which met the Governor's approval concerned transfers, and convict returns. All assignees wishing to transfer men to another service, were required to set out all particulars on a special form. A check was kept on transfers, and assignments generally, by an annual return. (1) These replaced periodic musters of the free population, as full details again were required from the settlers. These were sent through the Police offices in each district to guide the record section of the Convict Department, and assist the Governor in deciding on tickets of leave, as the master and police magistrates too, sometimes, were required to comment on the general character and behaviour of the men in his employ. (2)

Arthur's methodical mind left nothing undone in organizing the department along efficient lines. Even the supplying of clothing received his attention as it seemed an uneconomical procedure! A committee was appointed to investigate, but Arthur was not satisfied with this report and re-considered the matter in the Executive Council, which agreed with him that it would be advisable to issue a new suit of clothing with every prisoner on his assignment, charging the master the cost price, £1/10/- (though this was later reduced to one guinea (3) ) rather than open a permanent account with every assignee for broken periods caused when the man had to be sent back to the Government for punishment.

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(1) Courier 10/3/1832.

(2) Government Order, 3/1/1834.

(3) Colonial Times 12/11/1830, and 23/4/1830.



This sum was to be sent to the Principal Superintendent's office before any servant was handed over. (1)

The record department, to be the key to Arthur's system, was brought up to date too. Bigge's chief criticism of transportation had been that the treatment of the convict in the colony bore no relation to his character, which might have deserved either better or worse treatment. One of the reasons for this had been that the needs of the colony had been considered more important. The other was that records of the convicts' progress in the colony were inadequate, indeed, almost non-existent in New South Wales. For transportation to be an effective deterrent punishment, it had to be certain: reward should be given only for improvement of character, punishment should inexorably follow misconduct. It should never happen that notorious forgers were given positions of responsibility in Government offices, or that criminals of the worst kind were let out on their "own hands" because they had been able to bring the gains of their robberies with them to the colony. An accurate case-history of each convict was, therefore, essential from the moment of his first conviction to his final emancipation.

A haphazard record of convicts' offences had been kept in the Police Office at Hobart under Sorell's administration, but the staff was insufficient to attend to all the duties that had since fallen on that office. Under the new regime,

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(1) Arthur to Bathurst, No. 63, 20/12/1826.

the Principal Superintendent drew up lists of all convicts and their current employment, and the course of their colonial careers, for the reference of the Colonial authorities, and to send to the Home Office in London, for the information of relatives. <sup>(1)</sup> Lakeland suggested that all quarterly returns from the country magistrates should be sent to his office, as well as to the Police office, so that he could keep a "Black Book". <sup>(2)</sup> Arthur approved of this suggestion, but records for 6,000 prisoners soon proved too much for the Principal Superintendent to handle without extra assistance. <sup>(3)</sup> The Executive Council and the Governor both considered that a full-time registrar should be appointed to take descriptions of all convicts on arrival, and keep record of all crimes committed in the colony, and the general conduct of the prisoner. He could hold musters of both ticket of leave men and assigned servants to check his records, and the whereabouts of the convicts to prevent bushranging rising to such alarming proportions again; send each week to the police magistrates a list of travelling passes granted to convicts, and descriptions of absconders; and attach comments on character to each application for indulgence from convicts, for the Lieut. Governor's benefit. <sup>(4)</sup>

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(1) Arthur to Bathurst, No.10, 3/7/1825.

(2) C.S.O. 1/119/3004: Memo. from P.S/C. to Col. Secretary, 9/5/1826.

(3) E.C. 2/1/p.160. 29/3/1827.

(4) C.S.O. 42/1/p.4. Instructions to the Muster Master from the Lieut. Governor.

He would, in fact, co-ordinate the activities of the Police offices throughout the colony. Such an officer was needed to keep count of the free population, too, its births, deaths, and marriages, and the numbers residing in each district.

Arthur reported home that he had appointed Josiah Spode<sup>(1)</sup> as Muster Master and Registrar provisionally, at a salary of £200 p.a. Huskisson, then at the head of the Colonial Office, was chiefly concerned with reducing expenditure, and considered a full-time registrar a luxury that could not yet be

afforded.<sup>(2)</sup> Arthur was just as adamant that a Muster Master<sup>(3)</sup> was an officer that the colony could no longer do without.

He emphasised that the justice of all sentences and petitions depended upon the keeping of accurate records. Nor should indulgences such as tickets of leave, the greatest inducement to good conduct yet found in the colony, be allowed to lose their desirability through official delays caused by checking. He agreed, however, that with an increase of salary, this duty could be combined with those of Assistant Police Magistrate, an officer badly needed in Hobart Town, and this was the final<sup>(4)</sup> settlement.

(1) Arthur to Bathurst, No. 26, 29/3/1827; and C.S.O. 1/78/1,705. C.P. Magistrate's Memo. to Exec. Council 27/3/1827.

(2) Huskisson to Arthur, No. 8, 26/4/1828.

(3) Arthur to Huskisson, No. 63, 30/8/1828.

(4) Murray to Arthur, No. 69, 22/8/1829.

- V -

The first full-scale report on the effect of the changes introduced by Arthur was sent home at the request of the Secretary of State in March, 1827. Evidence taken from key officials in the administration of the convict system showed that the measures introduced on Bigge's recommendation had been well-advised to satisfy both Britain and the colony.

Lax discipline, unavoidable when the means of controlling the convicts had been inadequate, had been replaced by a more rigid discipline when the completion of the barracks removed the need to allow convicts to work for themselves half the day. Longer hours, abolition of task work, and better supervision had removed all attractions of work for Government, and with a little extra expense on more reliable overseers Arthur assured the Colonial Office that transportation would indeed be a severe punishment, and as effective as deterrence by threat ever is.

Assigned service had been robbed of its charms too, with the abolition of compulsory wages, and the thirds system, (in those services where these rules were observed) and the regulations requiring resident overseers.

The transfer of the worst convicts to penal stations and the examples made of sheep-stealers "at the hands of the executioner" had restored "a perfect state of tranquillity"

(1)

to both town and country, a state which would be preserved and improved even further by the increases in the Police to be introduced later in that year.

The distribution of the convict population had changed considerably since Sorell's time. The four classes had been reduced to three, the practice of paying officials by the loan of men to be worked "on their own hands" having been replaced by an increase in salaries. The proportions of the classes had changed accordingly. (2) The urgent need for buildings demanded a great Public Works labour force, largely composed of men under punishment as a result of the stricter

- (1) Arthur to Bathurst, No. 19, 23/3/1827, enclosing  
Minutes of the Executive Council, 15-16/3/1827.

(2)	<u>1820</u>		<u>1827</u>	
Ticket of Leave class:	358	20%	650	11%
Assigned servants:	743	40%	2,750	46%
In Government service:	577	32%	2,500	43%
"On their own hands":	145	9%	-	-

(1820 figures taken from H.R.A. iii, iii, p.554:

1827 figures taken from "Statistics of V.D.L." Vol. i, 1804-1856).

discipline. Increases in the number of free settlers meant an increased demand for convicts as assigned servants. The ticket of leave class 20% of the total in 1820, was only half that seven years later, due to the new regulations introduced in accordance with Bigge's advice, by which tickets of leave could only be awarded after four years' residence in the colony.<sup>(1)</sup>

Generally, the report showed that the most important of Bigge's recommendations had been introduced, with a success which showed the wisdom of the Commissioner, and the ability of Arthur as an administrator.

One of the most interesting features of the report, however, is the indication it gives of the development of Arthur's theories of penal discipline. Possibly, Bigge should again be given the credit, for his belief that the fate of the convict in the colony, his rewards or punishment should be determined solely by his own behaviour, was in effect the basic idea on which Arthur developed his system.

His attitude to the convicts he handled, was a novel one, and to a certain extent, suggestive of the modern psychological view.<sup>(2)</sup> He looked on them as subjects of mental delirium seeing everything through a false medium, and best handled, therefore, by a system of "enlightened rigour". Unrelenting hard labour, with all cause for excitement removed was the

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(1) Government Order, 28/12/1826.

(2) West, op.cit. Vol. ii, p.229.

basis of his system. Not until the convict was in an unruffled or passive frame of mind would reformative teaching be able to replace the tendencies to evil which constituted the "delirium".

Having established such a situation by restrictive regulations, developments began on two principles - reward and punishment - moderate indulgence (such as appointment to the Field Police, or other situations of greater responsibility) was the reward for reform, more coercive labour the penalty for relapse. Strict adherence to these principles was essential, for machine-like qualities, certainty and uniformity in the treatment of convicts were more effective than very severe (1) punishments unexpectedly.

The condition of assigned service was considered the norm, the treatment of these prisoners sent direct from the ship to the Government works being made to accord as closely as possible, the better behaved having permission to find their own lodgings. Convict arrivals, he likened to unbroken horses! Under the reins of their masters, subjected to constant hard labour and corrective instruction, they would either become submissive and useful servants, or else remain unruly. In this system the settler was the voluntary auxiliary of the Government. It would be in his interests to take trouble with his servants, rewarding when it was deserved, and sending the intractable ones back to Government for punishment.

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(1) Arthur to Bathurst, No. 19, 23/3/1827.

The punishment code was designed to assist them. "Insolence of expression or even of looks" wrote Arthur in 1833,<sup>(1)</sup> as well as minor offences such as:

"drunkenness, absence without leave, disobedience of orders, idleness, neglect or wilful mismanagement of work or duty, indecent or abusive language, profane swearing, indecent exposure, ....or other turbulent or disorderly conduct",<sup>(2)</sup>

anything betraying the "insurgent spirit" rendered the convict liable for punishment. Two justices of the peace could award penalties to the extent of a three years addition to a convicts' original sentence, solitary confinement, hard labour, in or out of chains, transportation to a penal station for more intensive punishment, or a flogging. One justice of the peace alone was able to order corporal punishment to any extent that didn't endanger life!

If the servant showed he was not suited to assigned by behaving badly, and incurring a more severe punishment than assigned service constituted, he was placed in a lower class. There were seven different classifications, and it was considered that eventually each convict would sink or rise to that classification with its corresponding degree of punishment which seemingly suited his needs - the punishment automatically fitting the crime. Misbehaviour in assigned service was

(1) Arthur to Goderich No. 6, 8/2/1833.

(2) Act 10, Geo.IV No. 1, passed by the V.D.L.Legislative Council, 20/1/1830.



punished first by removal to a road gang or public works gang in the settled districts. If the convict rebelled against the discipline there, or had committed a more serious offence in assigned service, he was sentenced to work at the quarries, or on the roads, in chains. If this restriction failed to break his opposition, then the penal settlements awaited him. On the other end of the scale, assigned servants, or well-behaved Government convicts could receive a ticket of leave from the Governor once they had served part of their term satisfactorily. Four, six and eight years was the minimum for sentences of seven years, fourteen, or life respectively, though rewards were also given for special services to the public or Government, such as catching absconders, rounding up the natives, or service in the Field Police. On application to the Governor, after a ticket had been held a reasonable period, a pardon, conditional on remaining in the colonies, might be awarded, or even a free pardon.

The chief merit of the system, Arthur considered, was its ease of operation. The convicts themselves arranged their own distribution, according to their good or bad behaviour, and the personnel of the convict department merely operated the system, recorded each offence, and ordered the deserved penalties.

Arthur was most insistent that nothing should destroy the fine detail of the system, and the most trifling

differences of classification were rigidly observed. In the Public Works Department, it was left to the overseers of each gang to preserve the distinctions in the treatment of gangs under punishment, and those men not serving sentences. It was the privilege of the latter to have Saturday afternoons to themselves, but if the overseer considered that a man's behaviour in that week had not merited such a reward, it was withheld. (1) The same principle operated in the penitentiaries and barracks. After serving a certain time in one class, where the work was harder and penalties more severe, the well-behaved prisoners would be moved to the next stage, where demands on them were less severe. (2) Careful examination of the magistrates' weekly reports of hearings held by them, gave Arthur the opportunity not only to see that the penalties ordered for offences were fair, and observed the general principles of the system, but also to note the effects of the system in the progress of each convict.

Obviously, the attempt to regulate the punishment of offenders mechanically, was impossible of perfection, and it says much for Arthur's self-assurance and pretensions that he should have considered it possible. The balancing of a moral wrong and a physical pain, two unknowns, is quite beyond human abilities, and so far from convicts receiving their just

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(1) Uncatalogued MSS. Mitchell Library:

Col. Secretary to P.S/C. 27/4/1836.

(2) Government Order, 9/8/1826.

retribution, many were inevitably provoked into outbreaks against authority by the severity of unfair punishments awarded by biased magistrates, and by the brutality of vicious overseers. Arthur believed, however, that the most sensitive prisoners who had some hope of reform, would find assigned service a punishment sufficiently severe to impress shame upon them, yet not so severe as to make them abandon hope, which would have ruined any chance of reform. With this in view, he developed the assignment system, making it the foundation of the convict system in Van Diemen's Land.

The Secretary of State's instructions that transportation should be a terrifying punishment was one of Arthur's chief influences throughout his administration of Van Diemen's Land. It was not only the convicts who were affected by his determination to realize this policy as far as possible, but the free settlers too, whose role in the drama was an important, if subordinate one.

In shaping the convict system to achieve the desired end, he was limited by the fact that the system of assignment he was obliged to continue because of its cheapness was, as Bigge's report had shown, essentially unterrifying. Convicts were assigned to masters differing greatly in character, wealth and temperament, and this very diversity introduced the element of uncertainty into the punishment fatal if it was to terrify. The regulations Arthur had introduced had attempted to reduce the uncertainty and lack of uniformity in the physical and material condition of the servants, but not until there was more effective Government control to enforce obedience would the regulations have any chance of success.

The arrangements made for this control, large increases in the police force, refusal of any political power, and more frequent use of the Governor's power of revoking assignments, however, necessarily encroached on the rights of free British citizens,

and in the view of some, went far towards turning the island into a secret police state.<sup>(1)</sup> But residence in a penal colony was interpreted by Arthur as an acceptance of the responsibilities associated with the presence of convicts. Failure to co-<sup>(2)</sup>operate was a crime punishable, in some cases, by fines, and invariably by a withdrawal of Government assistance, an exercise of power which meant near ruin to many. Arthur was well aware of the absolute dependence of the free settlers on assigned labour, and exploited this dependence to enforce his regulations.

It had been Sorell's policy, when the numbers of immigrants requiring labour had increased so much between 1820-23 (106 arriving in one week in 1822)<sup>(3.)</sup> to compromise convict discipline to meet the claims of these settlers.<sup>(4.)</sup>

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(1) M.C.I. Levy: Governor George Arthur (Melb. Georgian House 1953) P. 144.

(2) V.D.L. Legislative Council Act 6 Will. 4 No. 2:

"...Laws relating to the Courts of General Quarter Sessions and to the more effectual punishment and control of Transported and Other Offenders".

(3) Hobart Town Gazette 14/9/1822.

(4) Arthur to Bathurst No. 9/6/1824, enclosing: Sorell to Arthur 22/5/1824.

But Arthur was determined to satisfy their claims only if this did not interfere with the more important object of disciplining prisoners as Macquarie had done in New South Wales.<sup>(1)</sup> He took the view that "Van Diemen's Land was a convict settlement before it was a colony."<sup>(2)</sup> He regarded the whole island "in the light of a gaol"<sup>(3)</sup> and the settlement of free men, whether immigrants or prisoners free by servitude was but subsidiary to the control and reform of convicts; "their claims, their duties, and their political rights were, in his view, determined by their peculiar position."<sup>(4)</sup> In a despatch to his friend Robert Hay, at the Colonial Office, he stated how important it was to define the privileges and restrictions of the free settlers to make it quite clear that their labour needs were secondary to those of Britain, in its demand that assignment should be a severe punishment. It was, therefore, in the assignment of labour, and in the applications of sanctions to enforce the conditions of the assignment bargain, that the inferior position of the colonists was most obvious, and most bitterly felt.

(1) Coghlan op.cit. Vol. i, pp 188-9.

(2) Stanley to Wilmot, No. 289, 31/8/1844.

(3) Arthur to Hay, 23/3/1827.

(4) West, op.cit., Vol. i, p. 178.

Most of the policies introduced to check abuses in the system were well-advised, such as the limitation placed on the types of persons permitted to take servants, and the increased use of the Government's power of revoking assignments. But essential though these were, they put great power into the hands of the Governor and his officials inevitably increasing the opposition to Arthur's government.

- i -

It was essential if transportation was to be successful as a reformative punishment, both from the British Government's and the convicts' point of view, for restrictions to be placed on the types of settlers allowed the privileges of convict labour, since the consequent behaviour of the servants depended very largely on the attitude taken by the masters.

It was obvious that some settlers such as expirees, who had originally been sent to the colony because they were the worst of the punishment gangs in Sydney, would pay no heed at all to Government requirements for the treatment and control of servants, either in spirit or letter. No reform could be expected of the convicts if such unprincipled and irresponsible people were allowed to undertake their care. <sup>(1)</sup>

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(1) Arthur to Goderich No. 33, 17/8/1830.

Arthur regarded it as one of his most important duties, therefore, to limit the assignment of men as far as possible, to settlers of whose good character the Government could be absolutely confident. Bigge's suggestion had been to restrict the operation of the system to the best convicts and the best masters to be chosen from the most respectable and wealthy. With the possible exclusion of the need for the masters to be wealthy, these would have been ideal conditions, and the resulting system, quite likely, would have been one of the best ways of rehabilitating criminal offenders ever devised. But the qualities needed in a master of convicts, an unruffled temper, keen observation, integrity and above all, a love of humanity, were virtues seldom found in combination, and with the British Government's concern for expense requiring that as many convicts as possible be assigned, and the lack of any alternative labour supply, colonial governors were unable to restrict assignment to the cream of colonial society, or the best of the convicts. All that could be done in the way of selection was to choose settlers whose moral integrity would at least command the respect essential for good discipline.

Those refused assignments fell roughly into six classes.

Inn-keepers were one class on the doubtful list, as convict masters. Throughout Arthur's term, they were allowed assigned servants only if the district police magistrate guaranteed the respectability of the house. The importance



of this supervision was pointed out in 1832 by the disclosure that over thirty inns in Launceston were of undesirable notoriety! <sup>(1)</sup> Reliance on the verdict of the police in this regard seems to have continued until Franklin's regulation in December 1838 when no assignments were made to inn-keepers if the convicts were to be employed on the premises. <sup>(2)</sup> With the introduction of the probation system, the law was changed again and all applications from inn-keepers for servants, even if they intended to employ their men on properties at a great distance from the inns, were rejected, <sup>(3)</sup> indicating perhaps, that the earlier system had been abused too often.

It was a general rule, and a very necessary one, that persons who had been convicts should never be given the charge of convicts. Expirees, with few exceptions, were not the type that could command respect from servants. The general reaction of ex-convicts to their reversed situation, was to hate the police, and so treat their men leniently; others, permanently embittered, kept a savage discipline, in the desire for retaliation - to make someone else suffer as they themselves had done; neither attitude at all suitable.

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(1) C.S.O. 1/577/13,104; Sup't/Cons. to P.S/C. 10/2/1832.

(2) C.S.O. 5/169/3990.

C.S.O. 5/149/3683: Franklin's Memo; Feb. 1839.

(3) C.S.O. 22/41/1,309: Franklin's Note: 9/11/1842.

Needless to say, no convicts were ever given to persons still serving sentence. The days when convict constables, clerks and overseers were paid by men on the store passed with the publishing of the Bigge report and the appointment of new Governors.

In New South Wales it was not possible until 1826 to make restrictions on assignment, as not until then did the demand for labour exceed the supply, and so make the selection of masters possible. Even then, due to the social rift between the exclusivists, free-born settlers, and the emancipist class, the restriction was limited to ticket of leave men, not to all persons who had been convicted as in Van Diemen's Land. It was one of the first of Darling's regulations and met a storm of protest from the emancipists who regarded it as a symptom of the new Governor's unfavourable attitude to that class.<sup>(1)</sup> There was no such reaction in Van Diemen's Land where the convicts whose sentences had expired before the introduction of this policy in 1825 were generally of very low character. Only three had acquired land, and were living respectably when Bigge visited the island, and of these only George Gatehouse, a builder and merchant in partnership with Anthony Fenn-Kemp, had ever been invited to Government House.

Few applicants found on enquiry to be closely related to prisoners were ever recommended as convict masters, and more rare still was the actual assignment of relatives,<sup>(2)</sup>

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(1) Coghlan: op.cit., Vol. i, p.180.

(2) C.S.O. 1/597/13,584.

since the lax discipline that would be almost inevitable in such a situation would not have been in the interests of either Government or convicts whose reform would have been most unlikely.

The assignment of married convicts was an exception. Here the Government had to choose between two opposing policies. If encouragement was given to the wives of convicts to immigrate, then it was necessary to release the husbands, so that they could support them on their arrival, a policy tending to destroy the terrors of transportation. Yet, on moral grounds, a colony where the disproportions of the sexes was so great, could not afford to do otherwise. By 1829, however, a compromise policy had proved fairly satisfactory. The Colonial Government would recommend the emigration of wives only when assured that on their arrival the man would have either earned a ticket of leave, or his master was willing to support the rest of the family in return for domestic service.

On those occasions when free settlers married convict women (and while unmarried free women were so few, this was quite common) they found they did so at the cost of losing any other servants they might have had. John Luckman's case, fully recorded in the Colonial Office files, was a typical one. Luckman, a hotel-keeper, with one child and a sick wife, applied to the Principal Superintendent for a female servant. Lakeland, not knowing any of the circumstances or character of the man, passed the application to the Hobart Police Magistrate, who was able to report, a few days later, that the public house was

"well-run" and the applicant, a "well-conducted" man, who could be entrusted with a female servant. The Governor, therefore, "approved". Three weeks later, however, he called for the papers again, having heard from a private source that Luckman's wife was a prisoner, and directed that if, on enquiry, this proved so, then the servant must be withdrawn immediately. On consulting his records, Lakeland found that she had been tried in 1822, sentenced for seven years transportation, and had married in the colony in August, 1826; accordingly she was removed. Arthur's concluding remark needs no comment:

"It is extremely desirable with a view to carrying into effect the object I have determined upon that either through the Police or Principal Superintendent's Department, the most conclusive information should always be obtained of the character of the applicant and all circumstances."<sup>(1)</sup>

Settlers who had failed to comply with the Government regulations regarding convicts, needless to say, were refused. Mrs. Elizabeth Laughton, a resident of Macquarie Street, Hobart Town, in urgent need for someone to make clothes for her son, asked the overseer of a nearby chain gang if there was a tailor among his men who would take on the job. A man was found but although the overseer was in league with him, the authorities heard of the business. Not until later did Mrs. Laughton hear the outcome when an application was returned with the comment that as "she should have realised she was not

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(1) C.S.O. 1/172/4150: Arthur to Col. Sec., 20/10/1827.

allowed to employ a chain gang man, the Governor would not allow her an assigned servant for another six months", a punishment Arthur considered just "the overseer and convict having both been punished."<sup>(1)</sup>

Offences against the actual assignment regulation were treated more severely. One settler, John Roberts, having no further need of his servant, left him to his own devices. The servant fearing to employ himself contrary to regulations, reported to the Police, and Roberts' name joined others on the "red list" in future to be refused Government assistance.<sup>(2)</sup>

The last general category of settlers excluded from the benefits of assigned labour were those ne'er-do-wells of dissipated habits and broken fortunes always to be found in colonial outposts.<sup>(3)</sup> It was surely this type of colonist that Maconochie had in mind when representing the typical Van Diemen's land settler as cruel and depraved and altogether unfitted as a reformer.<sup>(4)</sup>

(1) C.S.O. 1/426/9584: Arthur to P.S/C. 24/10/1829.

(2) An appeal on her behalf from Dr. Bohan who was treating her for a serious illness brought immediate sympathy from officialdom, and, of more use, a female servant.

(2) C.S.O. 1/264/6298: Memo. from P.S/C. 2/4/1828.

(3) K. Fitzpatrick: Sir John Franklin in Tasmania 1837-1843,

(Melbourne University Press, 1949) P. 139.

(4) Capt. A. Maconochie: Australiana, Thoughts on Convict Management, London, J. Parker, 1839, P.11.

Refusal of servants was one of the easiest ways of enforcing Government regulations since the average settler depended for his livelihood on his land, and his land was useless without labour.

Immediately after its introduction, the law making free overseers a condition of land grants was responsible for a whole crop of applications being rejected.<sup>(1)</sup> Proper discipline was insisted on in the same way. Just before the harvest of 1827-28 Anthony Geiss, a Glenorchy farmer, applied for two men to replace two others he was about to send to the magistrate for punishment, so he would not be left without aid for the harvest. The Colonial Secretary, however, made sure of his intentions, and refused to assign new men until the others had been taken to the Police.<sup>(2)</sup>

Civil regulations, too, were enforced this way. Again, the example was the unfortunate Mr. Geiss who, by February, 1828, still had not received any extra men, although he had complied with the Colonial Secretary's order, and had the others duly punished. His offence on this occasion was non-attendance to a Police summons, regarded by the magistrate concerned as a personal insult, and a highly improper attitude to the magistracy.<sup>(3.)</sup>

(1) C.S.O. 1/208/4,935; and

C.S.O. 1/206/4,876; P.S/C. to J. Ferguson, 18/10/1827.

(2) C.S.O. 1/222/5,358: Col.Sec. to Geiss, Dec. 1827.

(3) C.S.O. 1/247/5,963: Hamilton (Pol.Mag. at New Norfolk) to Col. Sec. 23/2/1828.

He explained fully that any insult had been quite unintentional,<sup>(1)</sup> but not until he had "paid the proper respect to the summons of the magistrate" was his application again considered.<sup>(2)</sup>

Tremendous powers of discretion were given Government officials connected with the Convict Department, especially Police Magistrates on whose advice the selection of masters was made. It was their duty to get to know all the settlers in their district so that they could advise as to the suitability of each as a master of convicts. While there was no alternative labour supply, and the refusal of convicts could determine the settlers' ruin or success, the power so given the police magistrates was resented by many. George Meredith, one of the more forthright of the opposition clique, a cantankerous and unforgiving enemy of all authority, and a disappointed aspirant for the Commission of the Peace, bore a perpetual grudge against the police magistracy.<sup>(3)</sup> Between 1827 and 1835, there were four different magistrates at Waterloo Point, and he fell out with each of them. It was the height of indignity for him, therefore, to have to ask the local magistrate if he would recommend him as a man of good character, before he could receive any servants! But with what must have been great delight,

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(1) loc.cit.: Geiss to Col. Sec. 3/3/1828.

(2) loc. cit.: Col. Sec. to P.S/C, 9/3/1827.

(3) Levy, op.cit. P. 171.

the Government insisted he swallow his humiliation and apply "through the proper channels", which, having no alternative, he was obliged to do. <sup>(1)</sup>

A couple of incidents did arise where the hostility of a magistrate unfairly prevented settlers obtaining servants. Such abuses were not common, however, and the very lengthy correspondence files of the Colonial Secretary's office indicate that private appeals to the Governor were always carefully considered and decided impartially. <sup>(2)</sup>

The magistrates acted only as assistants to the assignment authorities, and the Governor, who kept a constant check on applications and assignments made by the Principal Superintendent, would disregard the advice of the Police Magistrates if he thought their reasons for refusing men inadequate. <sup>(3)</sup> This occurred with Charles Reid, a Norfolk Plains farmer whose applications for servants had repeatedly been refused by the Chief Police Magistrate who considered him a firebrand in the district. In Sorell's time he was indeed a stormy character and in 1820, was ordered to leave the colony for insulting the Governor. He was allowed to return later, but although a generous supporter of the Church, official opinion seems to have been that he was a troublesome figure.

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(1) C.S.O. 1/697/15,289

(2) C.S.O. 1/54/1079

(3) C.S.O. 1/258/6126.



This, Arthur regarded as an "insufficient reason for withholding labour from him", and as there was no complaint regarding his treatment of his servants, he rejected the opinions of his officials and assigned more labour to him.

Despite criticism from an intolerant opposition, who resented such discretionary power in the hands of the magistracy and convict officials, the impression given by the records (which in many cases give not only letters to and from the settlers and Government, but also the private opinions, and remarks of his officers) is that there was a real desire to treat the settlers fairly in situations in which this was not always easy. On occasions the convict department may have been too keen to keep to the letter of the law, and used their advantage over the settlers high-handedly. But in a colony where the threat of bushranging was always to be guarded against carefully, it was necessary to subordinate the settlers' claims for labour to the welfare of the convicts, and very few were refused the benefits of assignments, who did not deserve it by their failure to keep step with the Government. <sup>(1)</sup>

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(1) Levy, op.cit, P.173.

- ii -

Of equal importance to the effectual control of the assignment system, was an active Police Department, both to ensure and assist the keeping of discipline among assigned servants.

Under Sorell, the force, although well-organized by A.W.L. Humphrey, the Police Magistrate of Hobart Town, had been a defective body,<sup>(1)</sup> as the constabulary were composed almost solely of convicts, thought by Arthur to be "rather the authors than detectors of crime".<sup>(2)</sup> In the country districts, respectable landholders had been appointed as Justices of the Peace, but their own farming pursuits did not allow much time for them to attend thoroughly to their duties as magistrates.<sup>(3)</sup>

The bushranging menace had proved how necessary were a few active full-time magistrates to keep law and order in the districts between Hobart and Launceston. Additions to the convict field police had improved the position a little, despite objections at the time that it would be disastrous to arm prisoners. With promises of shortened sentences to ensure

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(1) Arthur to Bathurst, 9/6/1824, enclosing:

Sorell to Arthur, 22/5/1824.

(2) Arthur to Bathurst, No.10, 3/7/1825.

(3) West, op.cit. Vol. i, p. 105.

their exertions, the policy of "setting a thief to catch a thief" proved a sound expedient, creating disunion and distrust among the convict population. <sup>(1)</sup>

Bathurst's demand that "a stricter surveillance" should be kept over the convict population, was the immediate cause <sup>(2)</sup> for the appointment of stipendiary magistrates.

Requests to keep down expenses had made Arthur hesitant earlier, but by re-organizing the department, and by allocating the available funds more profitably, he was able to devise a much superior system. Country magistrates had previously been paid in kind, - rations for themselves and four servants, and forage for one horse, the total cost amounting to £2,640 p.a. Like Bigge, he disapproved of payment in kind, especially in servants, and, therefore, with their consent, and the concurrence of the Executive Council, he made their position an honorary one. With the funds so freed, he appointed five extra stipendiary magistrates, <sup>(3)</sup> and three assistant magistrates, <sup>(4)</sup> to bring the total strength by the end of 1828, to 300, including the Chief Police Magistrate, six full Magistrates, four Assistants, and a body

(1) Levy, op.cit., P. 54.

(2) Bathurst to Arthur, No. 44, 26/9/1826.

(3) Arthur to Bathurst, No. 15, 16/3/1827.

(4) C.S.O. 51/1: Records of the Police Department, 1828-36.

of special constables, clerks and field police distributed over ten districts. Each district was supervised by a Magistrate, (or an Assistant Police Magistrate), with a Chief District Constable, and several division constables who each controlled a sub-division of the district, assisted by a small force of free constables, convict police, and clerks under the orders of the Police Magistrate.

The chief purpose of the police was to see, "that all orders and regulations respecting the discipline, control and management of the convicts" were strictly observed. <sup>(1)</sup>

Under this heading their duties ranged from the simple mustering of convicts, both ticket of leave and assigned servants, <sup>(2)</sup> to the hearing of complaints from masters, overseers of road-parties, and the convicts themselves: from the awarding of punishments, to the recommending of petitions for indulgences like tickets of leave, or conditional pardons; from advising the Governor as to the suitability of settlers as convict masters, <sup>(3)</sup> to the simple escorting of the men assigned to their districts; <sup>(4)</sup> from the issuing of travelling passes to convicts, to the withdrawal of them from services for infringement of the Government regulations. In addition to their duties as Magistrates, they were to act as local

(1) Franklin to Glenelg, No.104, 7/10/1837, Enc. No.1.

(2) Government Order, 11/6/1835.

(3) G.S.O. 22/1/106; Franklin to Col. Sec., 23/7/1841.

(4) Colonist 4/2/1834.

Commissioners of the Court of Requests, and as Coroners. They were responsible for maintaining the registers of the free and bond inhabitants. They collected quit-rents, recorded improvements made on land grants, and reported breaches of the conditions of grants by settlers. Through their offices passed all applications for servants, for remittance of sentence, and the annual returns of stock, labour, and acreage under cultivation. They were in fact Arthur's "watch-dogs", advising the Governor on all facets of the system, reporting fully each week the cases heard for the Governor's consideration and keeping check on masters and  
(1) servants to ensure that "the situation of the convicts, when taken off the store by the colonists" was one "of laborious employment, tempered at the same time with every consideration of humanity, and with every corrective principle of  
(2) reformation."

Throughout his term in Van Diemen's Land, Arthur was adamant that the Police Department should be "perfect and complete in all its parts". If police vigilance could convince the convicts that crime, with or without the

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(1) C.S.O. 1/170/4079.

(2) D.D.Bathurst to Brisbane, No. 21, 30/5/1823.

connivance of the master, would inevitably be detected and punished; and show that laziness and other misconduct also met immediate requital,<sup>(1)</sup> he was confident that transportation could be made a really severe punishment despite the inherent advantages of assignment.

With this as their object, a high standard of efficiency within the force was essential, and weekly dismissals and replacements posted in the Gazette give evidence of the Government's determination that the personnel of this key department should be up to the mark.<sup>(2)</sup>

Generally the convict constabulary proved a more active body than their free counterparts who did not have the same incentive to distinguish themselves,<sup>(3)</sup> but they were given no second chance if ever found wanting.<sup>(4)</sup>

(1) Arthur to Goderich, No. 43, 10/8/1833;

Arthur to Bathurst, No. 35, 22/5/1827;

Arthur to Goderich, No. 10, 27/2/1833,

enclosing No. 4: Police Memo.

(2) Levy, op. cit., p. 53; and,

Arthur to Goderich, No. 25, 7/4/1832.

(3) Levy, op. cit., p. 145;

Arthur to Goderich, No. 35, 27/2/1833,

enclosing No. 4: Police Memo.

(4) Colonist 4/3/1834;

S/C Letterbook p.283 (Mitchell Library, F80):

S/C. to Pol. Mag. (Westbury), 17/11/1836.

As magistrates Arthur favoured ex-army officers,<sup>(1)</sup> a caste he could expect to be well-trained to direct the men beneath them to the best advantage, accustomed to give and expect absolute obedience.<sup>(2)</sup>

The arrangement proved a master-stroke,<sup>(3)</sup> and apart from the opposition of the Meredith-Gregson faction, received high praise from all sides. Even Henry Melville, editor of the Colonial Times, an out-spoken antagonist of the Arthur Government, (though not of Transportation) regarded this move as the master-piece of Arthur's administration.<sup>(4)</sup> Captain Cheyne, Maconochie's chief supporter in criticising Arthur's convict system,<sup>(5)</sup> had to admit that "the efficiency and thoroughness of the Police had brought about a decrease in crime, and so achieved Arthur's object, (though both Cheyne and Maconochie disapproved of the method, and claimed it was no real indication of the reform of the prisoner population generally.)

(1) Courier, 8/2/1833;

Colonist, 22/2/1833; and 14/12/1832.

(2) Levy, op.cit., p.52.

(3) A.G.L. Shaw, The Story of Australia,

(London, Faber and Faber, 1955) P. 109.

(4) Melville: Van Diemen's Land Annual. 1833,

(London, Smith, Elder) p. 125.

(5) Franklin to Glenelg, No. 104, 7/10/1837, enclosing

No. 3: Cheyne, Memo. on Prison Discipline, June 1837.

- iii -

However careful the selection of masters or efficient the police, without the power to revoke assignments the Government would have had no control over the convicts in the service of settlers.

Assignment being "a labour contract, by which the Government, as the owner of a labour supply, bargained with the colonist-employer to give him so much manpower in return for the performance of certain duties on behalf of the Crown,"<sup>(1)</sup> it had been assumed as the Governor's prerogative<sup>(2)</sup> to cancel assignments when the settlers failed to fulfil the conditions on which the convicts' labour was made available to them. However, when given a legal basis by the Transportation Act of 1828,<sup>(3)</sup> and brought before the public notice in the Jane New case, heard before the Supreme Court of New South Wales in 1829 it raised a tremendous furore in colonial circles. Not only did it involve the discipline and protection of the prisoner population in assigned service, but the whole question of autocratic government and the relative importance of British and Colonial interests. When brought to the public eye, the absolute power the Governor exercised over the commercial

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(1) Levy, op.cit., p.162.

(2) Sydney Gazette, 28/3/1829.

(3) Act 9 Geo. 4 cap.83. sec.9.



and agricultural activities of the colony through his control of the labour force, rankled with the Radical opposition who feared an unpopular Government might use this power to silence its opponents,<sup>(1)</sup> and resented the fact that the urgent need of the colonies for labour was not considered as of equal weight with the British Government's interest in punishing the transportees. Both Gilbert Robertson and George Meredith, thorns in Arthur's side throughout his government, accused him of trying to take revenge on them by unjustly depriving them of servants, and so causing their financial ruin.

Until Peel's term at the Home Office, the practice which had developed in Australia of assigning the services of convicts from the Governor to the settlers, though so useful to both the colonies and the British Government, had not been recognized by law. Peel's resolve to eliminate discrepancies in the criminal code and give legal authority to what had already proved sound in practice produced in 1824, a new Transportation Act<sup>(2)</sup> officially recognized the Governor's power to re-assign his "property in the services of the convicts" committed to his care, but also authorized the re-assignment<sup>(3)</sup> by the settlers who received such convicts as often as they might desire! This provision was a dangerous threat

(1) Australian, 20/3/1829.

(2) Act 5 Geo. 4 cap. 84.

(3) C.S.O. 1/55/1132: Alfred Stephen (Solicitor-General)  
to Arthur, August 1828.

to the Governor's control over the convicts in the colony. It was evident that if the colonist had the power to re-assign, the Government would lose sight of the distribution of the prisoner population, and corrupt persons could even have re-assigned men at a profit to themselves. Macquarie (1) had issued an order forbidding "assignees to re-assign or transfer a Crown servant, or suffer him to be employed in any manner out of his immediate service on pain of being deprived of such servant by the sentence of a magistrate, and excluded from further indulgence." Were it known generally, the inconsistency between the colonial order and the British Act may have resulted in unwanted press publicity, and possibly legal action, so Stephen, (2) the Solicitor-General advised Arthur to have the matter put beyond dispute by Parliamentary action, so that it would not be necessary to require a bond from the settlers," not to do that which an Act of Parliament expressly legalizes." (3) The problem was, therefore, referred back to Peel, who (4) replied that there was nothing in the act preventing the operation of the order existing, or preventing the local government making regulations about the re-assignment of

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(1) Government Order, (New South Wales) - 24/7/1813.

(2) C.S.O. 1/55/1132.

(3) Arthur to Hay, 4/6/1826.

(4) Bathurst to Arthur, No. 16, 20/2/1827, enclosing a letter from Hobhouse to Hay, 13/2/1827.

convicts," provided the assignee be apprized of the condition under which he accepted the convict's services. . . .

The whole property in the convicts' services is in the first instance vested in the Governor, and the Governor, who is empowered to assign that service, is fully competent to modify his assignment in such as manner as justice and good policy may require." But the intention of the act was to make re-assignment from one service to another legally possible if the Government ever found this necessary.

This was a very unsatisfactory explanation, and it seems a surprising one coming from Peel whose interest it was to rid the criminal code of such inconsistencies. Besides, the explanation did not account for the fact that he had made it possible for secondary assignees "if they thought fit" to re-assign, a power which was needed by the Governor only. It is clear that Peel had not considered the detrimental effects this power might have until Arthur had pointed it out to him, and at the time it was either not possible, or inconvenient to pass an amending act. Four years later, these faults were remedied when Huskisson, Secretary of State for Colonies, in a cabinet led by Peel, passed another act which forbade re-assignment without the written permission of the Governor. In the meantime, however, Arthur had made all his assignments  
(1)  
conditional on these terms.

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(1) H.R.A. iii, v, p. 280: Arthur to Hay, 4/6/1826.

When put to the test, this act also proved unsatisfactory, and the issue was raised again. Briefly, the case was this. Transported to Van Diemen's Land in 1822, Jane New had been allowed to marry, and on her husband appealing to Arthur, she had been permitted to accompany him to New South Wales, the governor expecting her there to be within the jurisdiction of the laws relating to convicts transported directly to that colony. Shortly after her arrival, she was sentenced to gaol for receiving stolen goods,<sup>(1)</sup> but it was subsequently found that the statute under which she had been convicted was no longer in force in the colony, and the conviction was, therefore, void. Governor Darling then cancelled her assignment to her husband, although an act of Arthur's, and removed her to the Female Factory at Parramatta, as an ordinary transported prisoner of the Crown. Her counsel claimed, however, that i) the Governor had no power to revoke an assignment except to grant a temporary or partial remission of sentence,<sup>(2)</sup> and ii) he couldn't cancel an assignment made in Van Diemen's Land of a prisoner transported there, and that she should, therefore, be discharged.

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(1) Colin Roderick, in his book "The Lady and the Lawyer" considers she was innocent.

(2) Act 9 Geo. 4 cap. 83, Section 9.

(1)

In giving judgment, the Bench decided this case on the second point, i.e. the inability in law for a Governor of New South Wales to have jurisdiction over a convict transported originally to Van Diemen's Land, and transferred before her sentence expired, as such a Governor may revoke his own acts, but not those of the Governor of another colony. It was then claimed by the judges, that Jane New was a prisoner illegally at large, and ordered her to be shipped back to Van Diemen's Land.

From the convict's point of view, this issue was very important, as cases did arise where a prisoner was glad to be transferred from one colony to another to escape the retaliation of a person convicted through his disclosures. Moreover, there was a strong moral argument that those convicts whose husbands were in another colony should by all means be encouraged to join them there.

At the request of the Attorney-General, Mr. Baxter, the Bench also gave an opinion on the wider issue, to "guide the discretion of the Executive Government" in other cases. Arthur<sup>(2)</sup> considered it most ill-advised that they should have attempted to give a decision on the ambiguity contained in the ninth section of the act, which dealt with

(1) Forbes to Darling, 25/4/1829.

(2) C.S.O. 1/185/4448: Arthur's Memo to Stephen and

A. Montagu, Attorney and Solicitor-Generals resp.

30/4/1829.

this point, and thought that until it had received "the most mature deliberation on the part of the Government, and until an act had been brought before Council, declaratory of the meaning of the ninth section", it was most imprudent to interfere, an attitude supported by the Secretary of State<sup>(1)</sup> in his reply.

To find Parliament's intention in passing the act which dealt with the revocation of assignment, the Chief Justice, Sir Francis Forbes, considered first what had been the position before the act was passed. He claimed that Transportation had been instituted to fill two requirements, the first being the punishment of criminals, and the second, the supplying of the colonies with labour. This latter view<sup>(2)</sup> is held by some historians, but it seems a fallacious one, considering the constant reminders to the Australian Governors from the Colonial Office, which emphasized that the original and primary object was simply the punishment of offenders, and that the supply of labour to the colonies was no more than a prudential means of carrying this object into effect. Writing to Sir Thomas Brisbane, Bathurst distinctly stated that His Majesty's Government would never lose sight of the important distinction between the primary object, which

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(1) Murray to Darling, (Separate), 30/1/1830.

(2) K.M.Dallas, (University of Tasmania), unpublished

was the punishing of offenders for the offence committed, and the employment of his labour for the benefit of the colonist.

Forbes' Radical sympathies blinded him again when he doubted that the British Government could possibly have intended to grant what the Attorney-General claimed for the Governor, i.e. the power to revoke assignments of the prisoners in the service of settlers even to the extent, had he thought it necessary, as to render their estates almost worthless, through lack of labour. This, however, had been the gist of Peel's reply to Arthur when questioned, <sup>(1)</sup> "that it was within the Governor's power to modify his assignment in such manner as justice and good policy may require." Forbes considered that the reason for the latest act <sup>(2)</sup> was to put beyond dispute the legality of the Governor's right to revoke assignment solely to grant remission of sentence by a ticket of leave, a power which, he said, had been thrown in doubt by the last act, <sup>(3)</sup> which had vested such a property in the assignee as could not be affected by any act of the Governor's in granting tickets of leave. Certainly, this was one of the reasons for passing the amending act, but the British Government was aware too, of the anxieties raised in the

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(1) Arthur to Hay, 4/6/1826.

(2) Act 9 Geo. 4 cap. 83.

(3) Act 5 Geo. 4 cap. 84.

Colonial Governments by the threat to the discretionary authority to revoke assignments, by so firmly vesting in the assignee the property in the services of assigned felons, by British law, as to make the colonial ordinance annulling this of doubtful legality.

However, having made this premise, the Chief Justice proceeded to interpret the ninth section of the act in accordance with this view. The act begins with a preamble stating that the laws concerning the Governor's property in the services of offenders are defective, and it is, therefore, expedient "to make further provision on that behalf". Then follow four separate clauses linked together by "and". The first - assignees shall not transfer their servants "without the written consent and licence of the Governor"; the second - the Governor may "from time to time, as to him shall seem meet, revoke any such assignment"; the third - the Governor may grant the offenders such temporary or partial remissions of their sentences as to him, the Governor may seem best adapted to their reformation"; and fourthly, the Governor may "from time to time, revoke and renew, as occasion may require, the indulgence thus given."

Instead of accepting this section as a collection of four separate enactments, divided by, yet joined by "and", the Judges isolated the "and" which linked clauses two and three, to unite the acts of revocation and remission into two successive steps in one proceeding. Were these clauses



taken together to be interpreted that the Governor had no power to revoke assignment unless to grant indulgence they were a most illegal-like and inadequate way of doing so. The insertion of a phrase definitely referring clause three to clause two, would have been the least that could have been expected from the lawyers who framed the section.<sup>(1)</sup>

Besides, were this interpretation correct, there should have been no discretion allowed the Governor, who having revoked the assignment should have been obliged to then grant a remission, - "shall" should have been used, not "may".<sup>(2)</sup>

Justices Stephen and Dowling, however, agreed with the Chief Justice's view.

The "Decision" alarmed both Governors. Arthur at once asked the opinion of his own legal advisers.<sup>(3)</sup> Both the Attorney-General and the Solicitor-General agreed<sup>(4)</sup> with the decision of the New South Wales bench that as the law stood, it was not in the power of the Governor of Van Diemen's Land to transfer a prisoner transported to his protectorate and still under sentence, to another colony.

(1) Colonist 1, 8, 15, /4/1834.

(2) Sydney Gazette Editorials, March 26th, 28th, and 31st, 1829.

(3) C.S.O. 1/185/4,448: Arthur's Memo. to the Attorney and Solicitor Generals 30/4/1829.

(4) C.S.O. 1/185/4,448: Montagu and Stephen to Arthur, 4/8/1829.

They agreed too, that in such a case the prisoner would not be within the laws concerning the management of convicts in that colony. The only way to solve this problem was for the British Parliament to pass an amending act, as any colonial act intended to remedy this fault would be repugnant to the laws of England. They disagreed on the other point of issue, the Solicitor-General arguing that as the granting of a ticket of leave or remission of sentence ipso-facto meant cancelling of any assignment, there was no purpose in adding another clause revoking such assignment.

At the Colonial Office, the decision met with searching criticism. Mr. Twiss, an Under-Secretary, <sup>(1)</sup> reproached the New South Wales bench for "travelling out of the sphere of the case" to give opinion on a delicate point that was bound to prove popular with the party opposing the Government. He expressed the British Government's attitude to the policy of assignment, and the priority of colonial and British interests, in a comment on the decision. The right of the Governor to revoke assignments was one of vital interest to colonists since without labour their estates would be useless - very likely: but what right has the colonist to the services of the convict which the Government may have lent to him, for any longer time than the Government may be pleased to continue the loan?" On Forbes' claim that transportation had two objects,

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(1) Murray - Darling (Separate) 30/1/1830, enclosing Mr. Twiss' memorandum.

the punishment of the offender, and the providing of a labour supply for the colonists, he had this to say.

"Acts of Parliament relative to transported convicts had in view the saving of expense to the Government, and not the dispensation of mere boons to the settlers," and gave as evidence, the conditions on which land grants were made originally, and the later set-off given on quit-rents for the maintenance of a number of convicts.<sup>(1)</sup> He explained as the Government's purpose in passing the Act, that "convicts should be encouraged to good conduct by the establishment of a lawful authority to remit their labour; that meritorious prisoners should not be detained in the custody of harsh or unworthy masters, nor intractable prisoners left in the care of masters too lax or lenient; and that the right of property in the labour of a convict should never more be set up against the Government which has the charge of him."<sup>(2)</sup>

This then, was the final word on a question of such importance to the control of convicts in assigned service, and it clearly showed the attitude of the Colonial office to the Australian Colonies and the interests of the private settlers. A solution to the second point, that of transfer of convicts between colonies had to wait for a later session of Parliament, but an Act in 1832,<sup>(3)</sup> remedied this too to the satisfaction of the Australian Governors.

(1) See next Chapter.

(2) Murray to Darling (Separate) 30/1/1830, enclosing Twiss' memorandum.

(3) Acts 2 and 3 Will. 4. cap. 62.

A sequel to this occurred a few months later, again in New South Wales, where unfortunately it could not be said that the Government's use of its revoking powers was completely impartial. Three months after the Jane New decision, the Darling Government withdrew the convict servants of Mr. Hall, publisher of The Monitor whose criticism of the Government had provoked official hostility. Mr. Hall paid no attention to the notice of withdrawal, continuing to employ the men, an act for which he was brought before the bench of magistrates. Knowing the Government's views on revocation, the magistrates fined Hall under the Harbours Act. Mr. Wentworth, representing the radical, anti-Darling interests, claimed this was contempt of court, and the judges, most indignant that their decision had been set aside, made them pay the costs of the suit. (1)

Having failed for a second time, the Government decided to abide by the Bench's interpretation of the law on revocation, and when withdrawing the servants of Hayes, editor of the Australian the Radical party journal, took the precaution of granting the servants tickets of leave to release the prisoners from their assignment. Despite this the printer still claimed damages for abduction, which the Court upheld, on the grounds that "the sudden deprivation.... by an arbitrary and unusual indulgence, granted only to

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(1) West op.cit. vol. ii, p.193.

deprive the master of his rights as an assignee, was not contemplated by the law which modified those rights by the prerogative of mercy." Such abuse by the Government<sup>(1)</sup> of so important a power as that of withdrawing labour earned a sharp rebuke<sup>(2)</sup> from the Secretary of State when the case<sup>(3)</sup> was presented to him.

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(1) Colonial Times 10/12/1830.

(2) Murray to Darling No. 91, 8/11/1830, H.R.A., i,xv,pp.811-2

(3) D.D.Darling to Murray No. 43, 2/8/1830, also H.R.A.i,xv, pp.56ff, 648ff; and xiv, pref.xi, and p. 648ff.

- iv -

Despite both contemporary and modern claims to the contrary, Arthur's use of his power to revoke assignments, was very reasonable. It was only for the infringement of the assignment regulations that convicts were withdrawn, but when this did happen, Arthur was uncompromising. In his view, convicts were sent to the colony for punishment, (not as punishment), and the settlers who needed their labour were expected to assist the Government by making assignment a punishment. These were the conditions on which they obtained their labour, and failure to fulfil the conditions inevitably meant cancellation of the assignment, and loss of that labour. It was a severe penalty for what seemed a minor deviation, but to the Government convict discipline was an important object, and in a country where labour was so precious, there was no better way of ensuring obedience to the regulations designed to obtain this object. An extract from a Government Order in 1833, was a typical accompaniment to the periodical exhortations to settlers to co-operate with the Government in the reform and punishment of the convicts.

"The Government will still more firmly pursue the course of withdrawing assigned servants from all masters who neglect to regard cleanly, decent and moral habits, and a seasonable attention to moral and religious duties, as part of the compact under which the convict is placed at their disposal." (1)

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(1) Government Order 14/2/1833.

Once settlers had proved unco-operative their names were put on a list<sup>(1)</sup> with those of exceptionable character and no future assignments were made until the Governor was willing to give them a second chance!<sup>(2)</sup>

The overseer rule was reason for a number of revocations,<sup>(3)</sup> and high and low alike paid the penalty. Two magistrates hearing a case of sheep-stealing had reason to believe William Weir, a servant employed by Mr. J. Gage, another magistrate, on his secondary grant, was implicated. Without consulting his master, they withdrew the man. Mr. Gage, a half-pay officer, and Peninsular War veteran, resented this treatment and presented the case to the Governor, who sympathised with him. Further investigation, however, showed that the overseer Gage employed on his additional grant, was a free-by-servitude man of a very doubtful record, and since his appointment, sheep-stealing had increased in the district.

(1) Colonist 16/7/1833

C.S.O. 1/224/5, 434; and

C.S.O. 1/119/3,004: Memo. of suggestions from P.S/C. to Arthur 9/5/1826.

(2) G.O. 22/2: Minute No. 272: Arthur to Col.Sec., 3/11/1827.

(3) C.S.O. 1/99/2,387;

C.S.O. 1/467/10,362; and

C.S.O. 1/266/6,363.

Arthur no longer sympathised, and magistrate though he was, Gage received a sharp reprimand as well as loss of his  
(1)  
servant.

The order forbidding the former practices of paying men in wages or stock, or hiring them to others, threatened that every support and indulgence of the Crown would be withdrawn and henceforth withheld from the person who may be guilty of so direct a breach of the regulations promulgated and so gross a dereliction of the duty which he owes the community.  
(2) The Governor was as good as his word. Mr. D. Ballantyne, Government inspector of stock at New Norfolk, had let one of his farms to a ticket-of-leave man, who took it on the condition that either an assigned servant went with it, or else Ballantyne received £50 less rent p.a. As Ballantyne could make no satisfactory explanation, the servant was taken back to the Public Works,  
(3) and for a time, no others were assigned.

Poor families who found it difficult to support their assigned men, occasionally were able to hire them to neighbours, but as soon as the local magistrate found out the men were withdrawn and the names entered on the "red list".  
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(1) C.S.O. 1/467/10,362: Arthur to Col. Sec., 19/7/1830.

(2) Government Order, 30/9/1826.

(3) C.S.O. 1/170/4,094: Col. Sec. to P.S/C, August, 1827.

(4) C.S.O. 1/369/8394, and C.S.O. 1/383/8659.



The restriction on convict trading was another enforced in this way. Simeon Lord, son of the emancipist trader who had won such success in Sydney (having been given the Commission of the Peace by Macquarie, much to the disgust of the freeborn magistracy)<sup>(1)</sup> owned a tremendous area of land in the Midlands, but nevertheless, all his labour was withdrawn when it was found he had allowed them to trade. Three years later, the Governor withdrew the ban, but soon after, the assignments were again revoked, on this occasion, because they had been given a large quantity of spirits.<sup>(2)</sup>

Administrative regulations were enforced in the same way. All assignments ceased to a settler who had returned a man to the Public Works without sufficient reason or the permission of the Police Magistrate.<sup>(3)</sup> Transfers made without reference to the Principal Superintendent of Convicts were revoked and the offending party refused all future assistance.<sup>(4)</sup>

How rigorously the Government enforced its administrative procedures, however, depended on its current needs. In 1829 there were 700 applications outstanding.<sup>(5)</sup> The Government could, therefore, afford

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(1) Bigge's Report.

(2) C.S.O. 1/584/13232.

(3) C.S.O. 1/134/3,220.

(4) C.S.O. 1/202/4,814.

(5) Colonial Times, 8/5/1829.

to choose its masters with care and insist that all regulations be carried out to the letter. Thirteen people who failed to send in an annual return of the convicts in their employ, were deprived of all their men.<sup>(1)</sup> But the reverse was the case in 1834. The Launceston convict depot reported that it was becoming impossible to cope with the numbers available for assignment.<sup>(2)</sup> Again a large number of settlers forgot to make the annual return, but on this occasion, none lost their men, a Gazette notice merely reminded them.

The power to revoke assignments was most essential when convicts reported ill-treatment at the hands of cruel overseers and hot-tempered masters. The cases appearing in the Colonial Secretary's correspondence are not many, but those that are recorded show the depths of brutality to which settlers could sink, and the demoralising effect the position of slave-master could have on those who regarded themselves in this light. The overseer of Mrs. Ramus' property at Bothwell, in a fury with a particularly exasperating servant roped his wrists behind him, heavily chained him to a pair of bullocks, and in that state marched him five miles to a magistrate, following him with a loaded gun.<sup>(3)</sup>

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(1) C.S.O. 1/396/8,980.

(2) Sup't of Convicts Letterbook, p.331, (Mitchell Library, Access'n No. F.80): S/C to P.S/C, 2/1/1834.

(3) C.S.O. 1/569/12,796.

An appeal to the Governor from a convict whose master had unfairly refused to sign his petition for a ticket of leave until after the harvest, was upheld, and all other servants removed from that master's service at once. <sup>(1)</sup>

Relaxation of discipline within the settler's household met the same response from the authorities. A widow with three children failed to send her female servant to be punished for disobedience, as she could not afford to be without help while the woman was serving her sentence at the Factory. <sup>(2)</sup> Spode immediately withdrew the woman, though the widow's pathetic situation roused the Governor's sympathies and a new servant replaced the other. The case of a female convict found wearing her mistress' clothes, with her permission, was considered a serious breach of the proper master-servant relationship! <sup>(3)</sup> The annual New Year and Harvest Home festivities kept police busy - catching settlers who broke the regulation which forbade the issuing of spirits to assigned servants. The comments on a report of a New Year's party held by George Meredith for all the convicts in the neighbourhood, in direct defiance of the Police Magistrate are most enlightening. The magistrate had felt doubtful about removing the men, and so referred the matter to the Governor. John Burnett, the Colonial Secretary saw the letter first, and wrote his comments. "As this seems to

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(1) C.S.O. 1/598/13,671.

(2) C.S.O. 1/422/9470.

(3) C.S.O. -5/19/337: Mrs. Burgess to Franklin, 11/3/1837.

have been merely a little merry-making on the first of the New Year, and as the men do not seem to have been drinking to excess, I should think the magistrate would have acted more prudently to have taken no notice of the matter."

The sanctimonious Governor thought differently. "Inform Mr. Aubin that I conceive he could have been perfectly justified if he had ordered all Mr. Meredith's men to have been returned to the service of the Government, and any master who can be found at 2 or 3 o'clock on Sunday morning carousing with his servants, is, in my opinion, very unworthy of the trust reposed in him by the Government. The Colonial Secretary will notify to Meredith that a repetition of such conduct will lead to immediate removal of all his servants."<sup>(1)</sup>

Another settler who let his convicts have Christmas dinner with the family, found his name put on the list with others "unfit to take convicts."<sup>(2)</sup>

Apart from the careful choice of assignees, there was little positive action the Government could take to ensure the moral training of the prisoners. An extensive church building programme made public worship possible in most settled districts, and constant appeals to the Colonial Office that more clergymen be sent, always met with a fairly satisfactory response. All settlers were expected to send their men to

(1) C.S.O. 1/141/3,493: Arthur's note to Col.Sec.,  
21/1/1831.

(2) C.S.O. 1/224/5,434.

church and muster on Sunday, and issue a Bible to those who could read; few could read, however, and fewer still received one. Officially no work was to be demanded from servants on Sunday, but this too, was ignored, especially by servants on farms, where work went on regardless. Whenever Arthur heard that settlers were having no regard to the religious needs of their men, he was remorseless in punishing the offenders. One master unwittingly gave himself away by charging his servant with neglect of duty on the previous Sunday! Arthur was extremely angry when it also appeared he had never fulfilled the Government requirements regarding Bibles or church-going; consequently all his men were immediately withdrawn and future assignments definitely banned; for "such abuse of the Government's confidence."<sup>(1)</sup>

A more generous master let his most trusted convict have the day off each Sunday.<sup>(2)</sup> On one occasion, the man went kangaroo shooting, and unfortunately lost his way. When after six days, he hadn't returned, the master feared he must have been killed by natives, and reported to the magistrate so that a search party could be arranged. The man appeared later, further down the coast, but Arthur transferred him from this service, to that of some master who would be more "considerate" towards his servants!

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(1) C.S.O. 1/585/13,268: Arthur to Col. Sec. March, 1832.

(2) C.S.O. 1/281/6,766.

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Many settlers who found themselves deprived of convict labour accused Arthur of abusing his power for political ends. Any assessment of this accusation must bear in mind the fact that Arthur considered his chief duty in Van Diemen's Land was the administration of the penal system, so that as a punishment, transportation to the colony would be as effective as possible. The only way he could make this at all likely with the assignment system, was by establishing rules to regulate every phase of the convict's discipline, and by enforcing these through the threat of withdrawing the labour.

The charge made against him by the opposition press that he misused his power to "crush" his chief antagonists was quite unfounded, although he may have rejoiced privately that certain enemies had given him completely justifiable reasons for depriving them of their men.

Gilbert Robertson, a fluent, hard-drinking, booming Scot,<sup>(1)</sup> District Constable at Richmond, and owner of "Woodburn"

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(1) Courier, 10/12/1844, p. 2, col. 6.

an excellent property in the district, lost his servants as result of a harvest celebration in 1832.<sup>(1)</sup> Although a Government officer paid to see that settlers obeyed the regulations regarding convict discipline, he lavishly supplied his men with wine, invited over another eight men from neighbours' farms and left them (25 in all) to celebrate in regular Scotch fashion, while he himself went off on duty! He expected the party to become unruly, so as a precaution, he left two of the constables under his control to keep an eye on things, and see that no undue interest was aroused in the neighbourhood. They can have had little effect, for next morning one of the men was found seriously wounded, (he later died), and several of Robertson's men were suspected of murdering him. Two months after, Gilbert Robertson was dismissed from the Police,<sup>(2)</sup>

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(1) D.D.Arthur to Hay, 1/3/1834, enclosing letter from Gilbert Robertson to the Clerk of Councils; and Arthur Papers, Vol. 50, Robertson to Arthur. (Mitchell Library).

(2) Government Notice, 26/4/1832; and "Colonial Times" 9/5/1832.

and on the strong recommendation of the Attorney-General<sup>(1)</sup> and the Chief Justice, the Governor refused to allow him any further assistance, not ungenerous treatment when it is considered that for less serious offences, many had had all their men withdrawn as well. When his plea to the Executive Council to reconsider his case failed, he joined the opposition, petitioned the Secretary of State charging Arthur with mis-government,<sup>(2)</sup> and became editor of the "True Colonist", the organ of the radical party, and the most out-spoken critic of the Government. Several times within the next three years he was involved in libel actions, and served prison sentences. Despite this, however, a further appeal from him for servants in 1836 was successful, Arthur considering he had "learnt his lesson."<sup>(3)</sup>

Throughout 1833 and 1834 the Governor's power of revocation was the chief topic in the opposition press, as first Meredith and then William Bryan, a Justice of the Peace at Norfolk Plains, followed Robertson's fall from grace.

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- (1) D.D.Arthur to Hay, 1/3/1834: enclosing No. 1: Montagu to Arthur, 16/6/1832.
- (2) D.D. Hay to Arthur, 16/4/1833: enclosing Robertson to Secretary of State, 30/7/1832.
- (3) Levy, op.cit., p. 170; and C.S.O. 1/618/15,424: Arthur's Note, 4/6/1836.



Refusal of assignments to George Meredith was the culminating point of "a vexatious warfare" he had waged with the Government for years. His intractable and cantankerous disposition had involved him in a series of conflicts with the local magistrates, each of which he put before the Governor in voluminous letters criticising all aspects of Arthur's administration particularly its alleged injustice to himself. The disputes had generally arisen from his failure to comply with the assignment regulations, regarding application forms, annual returns, overseers, transfers, and the regulations forbidding the issue of spirits to prisoners. Although Mrs. Louisa Meredith, his daughter-in-law, in her book "My Home in Tasmania" claims he was a good master, his hostility to the Police led to the most unreasonable conduct in the Heggs affair.

While at Maria Island penal station, Heggs had been appointed first a constable, and then overseer, so earning the enmity of his fellow convicts. When assigned to Meredith's service, in 1831, the hostility of a fellow servant forced him to abscond. The magistrate did not punish him, but advised Meredith to employ him at another of his properties, which his son, Charles Meredith agreed to do. Accidentally, the man was returned to his former employment, was again threatened, and again absconded. The magistrate returned him to Meredith's own residence, "Belmont", but refusing to take the advice of the magistrate he forced Heggs to return to "Riversdale", the

original property. Again he absconded, and was sentenced this time to fourteen days' solitary confinement. In his own interest he was then withdrawn from Meredith's service, much to the latter's indignation which, as usual, found outlet in a lengthy complaint to the Governor demanding retrial!<sup>(1)</sup>

Without this foreknowledge of Meredith's pig-headed pugnacious disposition, his plot to bring the local magistrate into disrepute, (the disclosure of which was the reason for suspension of assignments to him), seems fantastic. In 1833, Nicholson,<sup>(2)</sup> one of Meredith's assigned servants discovered six unarmed absconders from a nearby road-party in a hut near his master's property. He reported to his master, who devised a plan by which to capture them, and show up the inefficiency of the Police by doing so without their knowledge. Nicolson returned to the men, and pretending to help them, told them of a boat in which they could make their get-away. As merely apprehending unarmed men was not sufficient for Meredith's purpose, he arranged with his servant that they should take his boat, row along the shore after dark, until opposite the local inn, which, he was to convince them, would be easy to plunder, before rowing off to the nearby island. Meanwhile, unbeknown to the Police Magistrate, he arranged for a group of armed soldiers to be at the inn to apprehend them. All proceeded according to plan,

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(1) C.S.O. 1/141/3,493.

(2) Levy, op.cit. p.171.

but the absconders having gained an easy access into the inn, were greeted with a shot, which killed one, and in the scuffle that followed another was wounded. The convicts were committed for trial, and the Magistrate who had suspected all was not as it seemed took care to take evidence from Meredith and his servant separately. Not wanting the men to be punished unduly for a plan he had been responsible for, Meredith hired a lawyer to defend them, supplying him with full information which completely confounded the magistrates when it was produced in Court.

The convicts were duly convicted, however, and sentence of death passed against them. While this decision was being considered in the Executive Council, Arthur interviewed Meredith who declared to the other's amazement that he and his son could easily have taken the prisoners while in the boat, but that neither of them "could be expected to render such assistance to the Government!" As his attempt to inculcate the magistrates throughout the trial had not been particularly successful, he bribed Hogarth, a clerk at the Police Office at Waterloo Point to give him copies of the evidence he and his servant had given, to make out a better case. This was soon discovered, and an explanation demanded of Meredith, who claimed he had only hoped to save the lives of the convicted men.<sup>(1)</sup> That this was not the real reason,

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(1) Executive Council Minutes 14/5/1833;

C.S.O. 22/5: Minutes of Instruction to Col. Sec. 4/6/1833; and Colonist 16/7/1833.

appeared later from a letter published by Rowlands, the lawyer, after a quarrel with his client, unethically exposing all Meredith's instructions to him, which had been to show up the police in a bad light, rather than to save the men from the gallows.<sup>(1)</sup> Meredith being a very litigious individual, as no charge of libel was brought against Rowlands, his statements must be taken as true.<sup>(2)</sup> The Executive Council then reviewed Meredith's part in the affair, and unanimously advised the Governor that all his servants should be withdrawn, "for so deliberate an attempt to excite the convicts to an open resistance of the magisterial authority."<sup>(3)</sup> So far from deliberately mis- using his power to ruin his enemies<sup>(4)</sup>, Arthur used to extreme power as Governor to rescind this motion, modifying it, as in the Gilbert Robertson case, to the refusal of assignments<sup>(5)</sup> in the future only.

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(1) Arthur to Glenelg, 30/9/1837, enclosing Rowlands to

Editor of Colonist, 11/6/1833.

(2) ibid.

(3) E.C.2/2// p.671: 3/4/1833; Levy, op.cit. p.172.

(4) Colonist 16/7/1833.

(5) E.C. 2/2/p.671: 3/4/1833; Levy op.cit. p.172.

Meredith then attempted to keep up his labour strength by having servants assigned to his son,<sup>(1)</sup> and when the Government saw through this, by refusing to recommend his men for tickets of leave when they became eligible.<sup>(2)</sup>

As with Robertson, three years later Arthur decided to remove the ban, and would have done so had not another attempt of Meredith's to defeat the intention of the Government, this time through a nefarious scheme with his ticket of leave overseer, come to light.<sup>(3)</sup>

- (1) Arthur Papers, Vol. 47 (Mitchell Library):

Charles Meredith to Glenelg, 1/3/1836;

loc.cit.: Draft : Arthur to Glenelg, 1837; and

C.S.O.1/697/15,289: C.Meredith to Col.Sec. January, 1834.

- (2) Police Office Correspondence (Mitchell Library):

Pol. Mag. (Waterloo Pt.) to Meredith, 18/4/1834.

- (3) Arthur Papers, Vol. 35. (Mitchell Library):

Capt. Mackenzie to C.P.M. 20/7/1836; and

True Colonist 24/6/1836.

It was the absolute dependence of the free settlers on the Governor's favour in granting them assigned labour which caused such resentment when he withdrew this favour and on such occasions, the knowledge of their political subordination, of which the Police were a constant reminder, served to  
(1)  
aggravate their resentment.

Although the police establishment received high praise generally, to the opposition Press, particularly those members of it who had lost their servants, it was both symbol and instrument of a hated autocracy, turning the island into a "Police colony over-run with spies".  
(2)  
The very composition of the force was itself a "standing insult" to the rights of free Englishmen", especially the convict police, hated for their "cunning and unscrupulousness."  
(3)  
The Executive Council, which included the Chief Justice, had been unanimous in opposing the appointment of half-pay army officers as police magistrates, as this encroached on the civil and legal rights of the free colonists. But the attitude of the Secretary of State had been that in Van

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(1) Melville: Australasia and Prison Discipline,  
(London, 1851) p.135.

(2) Levy: op.cit. p.144.

(3) Clyde Company Papers, Vol. 1, p.72.

Diemen's Land, "the state of society was so evil as to require the temporary sacrifice of many principles of law, which under other circumstances could hardly be too scrupulously maintained".<sup>(1)</sup> Generally they were most efficient, but many were "very limited in their knowledge of the law",<sup>(2)</sup> awarded excessive penalties, and antagonized the settlers, so that close supervision by the Governor of all decisions was essential. The military qualities of obedience to authority and an uncompromising regard for the letter of the law, which Arthur considered fitted them so well for the position, brought great unpopularity to some. Their summary treatment of refractory convicts and settlers alike turned the court "into a cock-pit of personal squabbles".<sup>(3)</sup>

Most abhorrent was their secretive investigations, an aspect of their efficiency bitterly resented. On numerous occasions, settlers were presented with the removal of their

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(1) Levy, op.cit, p.52.

(2) Arthur Papers, Vol.10 (Mitchell Library): Pedder to Arthur, 28/3/1836.

(3) Levy, op.cit, p.52.

men, and not given a chance to defend themselves against the charges made against them by their servants (often completely without their knowledge) or the convict police. (1)

It was because of his secretive methods that Hobart settlers hated Mulgrave, (2) the Chief Police Magistrate from 1829 to 1831, and rejoiced when Matthew Forster replaced him in this office, and opened police hearings to the public. But within a few months Forster too, was losing favour for his antagonizing efficiency. (3) Henry Oakes a prominent New Norfolk farmer had returned from a trip into the town, to find a servant who had been in his service for eight and a half years, had been removed, on charges of being at large, and in unlawful possession of money. Both charges were completely unfounded; the man had for years, been given the task of paying his master's bills, which he was doing at the time!

In the Bryan case, it was because no charges were made against him openly, and the fact that those they had had been collected from what seemed "ex-parte" statements, that his cries of injustice found so sympathetic a hearing both in the colony and in London. (4)

(1) Melville, op.cit., p.134;

C.S.O. 1/544/11,858;

C.S.O. 1/873/18,466;

Colonist 1/4/1834.

(2) Colonial Times 20/7/1831, and 4/1/1832.

(3) Colonist 23/11/1832.

(4) Colonist 1/4/1834, and 15/4/1834.



William Bryan, a "rich Irish gentleman" had come to the colony in 1824, soon acquired 11,000 acres, and considerable herds, and in 1828, accepted the Commission of the Peace. Besides farming, he had maritime and commercial interests, including a flour mill, and the selling of meat and hides.

In October, 1833, Samuel Arnold, a ticket of leave man in the employ of Bryan, was sentenced to death for cattle-stealing. From the evidence, it seemed clear, however, that "the master and not the servant" should have been in the dock, and Lyttleton, the convicting magistrate, made no secret of this opinion. Bryan resented this, challenged him to a duel, and sent in his resignation as a Justice of the Peace. The Executive Council refused to accept it, however, and "for acting in such a strange way for a magistrate....engaging in improper transactions with convicts", preferred to strike his name off the list of

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(1) C.S.O. 1/198/4,716: Bryan to Col.Sec. July, 1828.

(2) Levy, op.cit. p.168

(3) Arthur to Stanley No. 62, 24/10/1834, enclosing evidence of trial of Samuel Arnold, 12/10/1833.

(4) Independent 9,16,23,/11/1833;  
7,14/12/1833.

(5) E.C. 2/3/p.83: 27/11/1833.

magistrates, and withdraw his men.<sup>(1)</sup> As no direct charges had been made against him, he did not know what information had been extorted from Arnold, "a prisoner under sentence of death",<sup>(2)</sup> and so was unable to make any defence. He refused to accept defeat, however, and following the example of Hall and Hayes, he challenged the Governor's right to revoke assignments, by prosecuting the constable who withdrew his men.<sup>(3)</sup> By June 1834, when the case was heard, however, the law left this in no doubt, and his case collapsed.

That he had made large profits from stolen cattle, particularly the "wild cattle", descendants of the original Government herds, was unquestionable. Arnold's evidence had shown that besides paying his men in cattle which he then depastured on his land (in defiance of the "thirds" rule), he had induced Arnold to bring in and brand the wild cattle, and any other beasts straying from settlers' herds, allowing him to keep half as payment. As pound-keeper for the district, he frequently had put one of his eight brands on the cattle he impounded, selling unclaimed stock to his own servants, or son! For three years he had

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(1) Col. Secretary to Bryan, 29/11/1833, enclosed in

D.D. Arthur to Stanley, No. 62, 24/10/1834;

Government Order, 28/11/1833.

(2) Colonist, 15/4/1834.

(3) Levy, op.cit. p.162.

harboured an absconder, whom he had sent round the district buying up cattle in return for part of the profits.<sup>(1)</sup>

By 1835, there was enough evidence against him to convict him capitally (sheep and cattle-stealing being crimes punishable by death under the Colonial laws), but Bryan had left the colony to bring his charges<sup>(2)</sup> against Arthur before the Secretary of State, (they were, however, all "triumphantly" refuted),<sup>(3)</sup> and his nephew Robert Bryan,

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(1) Arthur to Hay, 6/4/1834.

(2) Arthur to Hay, 4/3/1834, enclosing Bryan to S/S.

Glenelg to Arthur, No. 78, 16/11/1835 enclosing:

Bryan to S/S, 5/11/1835.

Glenelg to Arthur, No. 79, 17/11/1835, enclosing:

Bryan to S/S., 7/11/1835;

11/11/1835;

13/11/1835;

16/11/1835.

Glenelg to Arthur, No. 33, 30/7/1835, enclosing:

Bryan to S/S, 23/7/1835.

Glenelg to Arthur, No. 39, 8/8/1835, enclosing:

Bryan to S/S, 29/7/1835;

3/8/1835; and

5/8/1835.

(3) Glenelg to Arthur, No. 60, 10/10/1835;

E.C. 2/3/p.641, 6/6/1835;

Arthur to Glenelg, No. 55, 7/6/1836.

not able to flee the country, was left to undergo a life sentence at Port Arthur. (1)

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However, without an efficient police system, and careful supervision of all hearings to keep check on the treatment of assigned servants, the position of the prisoner would indeed have been no better than that of a slave. (2)

How far Arthur's police system, and the use of the power of revocation were successful in the two objects - protection of the convicts from the injustice of the masters, and the maintenance of discipline among assigned servants, is difficult to assess. In out-back,

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(1) Arthur to Hay, 28/10/1835.

(2) Franklin to Glenelg, No.104, 7/10/1837, enclosing No. 4: Forster's Memo., 21/5/1837;  
Arthur to Stanley, No. 21, 4/4/1834; and  
C.S.O. 5/112/2,509.

thinly-populated areas where there was no police station or resident magistrate, it was undoubtedly no uncommon event for masters to take it upon themselves to punish their servants. <sup>(1)</sup> But, Arthur was confident, <sup>(2)</sup> and Backhouse and Walker, two independent visitors in 1833, agreed, <sup>(3)</sup> that in districts where there was a police station, both the prisoners and settlers benefitted. With few exceptions, it was easy for the convict to appeal to a magistrate against his master; one of the reasons for the Sunday muster was to give the convicts the opportunity to do this. At other times, on obtaining permission from the master to leave work for an hour or two, the servant could bring complaints to the notice of the Police. This seems to have been the general rule, but when this permission was refused, justice could be obtained through the intimacy of the convict police. After the appointment of the stipendiary Magistrates, servants could be fairly sure of protection, <sup>(4)</sup> though this had not been the case earlier,

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(1) Hobler Diary, 23/10/1826

(2) Arthur to Goderich, No. 18, 14/3/1833.

(3) Backhouse and Walker: Report upon the State of the Prisoners in Van Diemen's Land, with Remarks upon Prison Discipline and Observations on the General State of the Colony.

Appendix F.

(4) Ross: "Essay on Prison Discipline", 1832 Van Diemen's Land Almanac

when the settler-magistrates had had definite sympathies with the masters against servants,<sup>(1)</sup> Even after the introduction of the new system, the awarding of punishments was open to abuse. George Hobler's diary mentions several instances where he charged his men with neglect of duty, and then asked the magistrate if they might be given so many lashes, instead of a term in a road-party, which would deprive him of their services for several months.<sup>(2)</sup> However, much can be said to support Arthur's claim that the law was interpreted in favour of the convicts.

It is doubtful whether the threat of losing their men had its effect of making settlers abide more rigidly by the disciplinary regulations. Boyes, the diarist, believed that neither Arthur nor his two chief ministers, Forster, the Chief Police Magistrate, or Montagu, the Colonial Secretary, were qualified to judge the effectiveness of the system.<sup>(3)</sup> Arthur, he claimed, had formulated a theory of prison discipline to which he obstinately held, and neither the settlers with whom he was on good terms, or his own officials dared to risk loss of favour "by citing instances or volunteering information in the slightest degree opposed to his favourite theory". Certainly his idea that the

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(1) West, *op.cit.*, Vol.i, p.105, and Melville, *op.cit.* p.133.

(2) Hobler Diary, 9/11/1827, 6/10/1830.

Colonial Times, 3/9/1830.

(3) Boyes' Diary, 15/3/1836.

self-interest of both master and servant, worked naturally towards the ends desired by the Government, often broke down in practice. In many cases, it was not in the interests of employers to abide rigidly by the rules. The offer of work on a task-work basis, or some other payment scheme proved a stronger incentive than the distant hope of a ticket of leave, and partial freedom in four or more years, as the Van Diemen's Land Company soon discovered.<sup>(1)</sup> Isolated on the furthestmost north-west tip of the island, it was not difficult for the Company's Director, Mr. Curr, to evade the regulations, as until the 1830's there was no Government magistrate there to check on his treatment of his prisoner-servants. Soon after the establishment of the settlement, he adopted a task-work system with the best men, paying them for all the extra work they did; two others employed as explorers were actually paid wages. In a despatch to the Company's Directors in London, he expressed the settlers' view point:

"It is true that they (the convicts) are sent out here as a punishment, but it is equally true that it is not in the interests of the master to make his service a punishment, but rather to make the condition of the convict as comfortable as is consistent with economy. I grant that this shows that the interest of the master essentially counteracts the objects of transportation, but this, though a very proper consideration to be entertained by the Home Government, should be lost sight of by the settler whose sole object is to obtain the most work at the least expense."

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(1) Curr to Inglis, 13/2/1827, 4/6/1829, and 5/10/1832, (Van Diemen's Land Company Office, Burnie).

He then takes as an example the issue of rations. "The quantity of food which will keep 10 men dissatisfied and hungry will feed 8 men well, and 8 satisfied men will do twice the work of 10 dissatisfied." (1)

The settlers' interest in their servants' labour not only induced them to increase their material comfort, but also to disregard the Government's disciplinary code in other ways. Where the punishment of their servants would have entailed sentence to a road gang, or, in the case of females, to the Factory, it was frequently thought preferable to put up with misconduct, rather than have their household, or work programme disrupted for several months. (2)

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(1) V.D.L. Comp. Correspondence (Burnie): Curr  
to Court of Directors, 13/2/1827.

(2) Hobler Diary (Mitchell Library): Entries, 12/4/1828;  
11/8/1828; and 2/4/1829.

Colonial Times 23/4/1830.

Courier 30/1/1830.



Chapter Three"The Role of the Settler", Part 2.

Three factors determined Arthur's attitude to the Van Diemen's Land settlers.

(1)

First and foremost, he regarded it as his mission while in the island to fulfil the British Government's demands from transportation: - that it should punish and deter, and do so cheaply. He insisted, therefore, that the interests of the free settlers should be subordinated to this end. (2)

However, he realized that as the numbers of free colonists were bound to increase tremendously so long as immigration continued, and convicts regained their freedom, it was inevitable that eventually protest would be made at the penal nature of the colony, and transportation thither would have to cease. As Governor of a colony, as well as administrator of a penal system, he had, therefore, to lay the foundations for the day when "the chains and trammels of convictism would be thrown off". (3)

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(1) West, op.cit., Vol. i, pp.178-9

(2) Arthur to Hay, 23/3/1827;

West, op.cit., Vol. i, p.178; and

Forsyth, op.cit., p.136.

(3) Arthur to Bathurst, No. 19, 21/4/1826.

Finally, as representative of the British Government interests, he had to postpone as long as possible that day when the colony would no longer take convicts.<sup>(1)</sup>

The encouragement of capital investment in the primary industries of the colony, chiefly through the assignment system, was the means by which he hoped to reconcile these conflicting interests. The assignment of convicts was in the interests of both the British Government and the colonists; in fact, both parties were dependent on it. The colonists needed the convicts' labour, and the Government were glad of the opportunity to shift the expense of the convicts' maintenance to the settlers.

- 1 -

Bigge's Report had pointed out to the British Government the great financial saving to be made by giving encouragement to the wealthy pastoralist.<sup>(2)</sup> It was not long before schemes for achieving this end were suggested, all based on the realization that the Government could turn to account the assets it possessed in colonial lands, and the convict labour force.

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(1) Arthur to Spring Rice, No. 31, 21/4/1835.

(2) Bigge's Report, op.cit. pp.76, 163.

By manipulating the conditions on which it made these factors available to settlers, so that persons of capital would be encouraged to immigrate, it could reduce the cost of the penal establishments in the colonies.

Governor Brisbane, attempting to follow Bigge's advice and confronted with a surplus of convict labour, made the first suggestion which linked land and labour. <sup>(1)</sup> He recommended that it should be made compulsory for all settlers taking up land, to take convicts to the extent of one man for each hundred acres granted. This, however, would not have been expedient, due to differences in the quality of labour, but more particularly of land. Bathurst approved the principle, but the scheme he suggested made the motive less obvious, and, at the same time, eliminated the drawbacks. He thought land grants should be made conditional on improvement, which necessarily meant the employment of convict labour, since there was no other available. <sup>(2)</sup> Sorell, however, raised objections to this, too. He saw that unless the settlers could be assured of a market for their products the employment of convicts on a large scale would still not be possible. He, therefore, suggested that some concession should be made to colonial agricultural interests, by affording farmers protection, and giving them encouragement in marketing their wheat. <sup>(3)</sup>

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(1) Brisbane to Bathurst, No. 12, 10/4/1822.

(2) Bathurst to Brisbane, No. 21, 30/5/1823.

(3) Colonel Sorell to Horton, 19/11/1824. (H.R.A.iii,iv, pp 570-1)

In 1824, the attitude changed, and it was announced that a policy of encouraging rather than compelling the employment of convicts would be adopted. <sup>(1)</sup> Bathurst had suggested earlier, <sup>(2)</sup> a scheme for remitting quit-rents in return for the maintenance of convicts, and this was the basis for the Instructions to Emigrants, advertised in 1824. These regulations had been framed with the encouragement of capitalist immigration in mind. If those who bought land spent ten times the purchase price on the maintenance of convict labour, reckoning this at £16 p.a. per head, the original payment would be refunded. This was a tremendous concession to capitalist investment, and no less an encouragement was contained in the conditions for grants, the quit-rents of which would be reduced by one-fifth of the sum saved the Government by the support of convicts. By increasing the size of the grant, and making it obligatory to spend in seven years, at least half the value of the land on its cultivation and improvement, it was hoped to encourage only immigrants with large capital, these being most likely to relieve the Government of large numbers of convicts. For the same reason, the agriculturist was encouraged rather than the pastoralist who needed less labour, and employed it in less tedious situations, often where it could not be easily supervised.

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(1) Coghlan, op. cit., p.179.

(2) Bathurst to Brisbane, No. 21, 30/5/1823.

As had so often happened, the new regulations were formed on evidence from New South Wales only. Since 1822, the demand for labour in Van Diemen's Land had been far greater than the supply, and as long as immigration continued so did this demand. All newly arrived convicts were immediately taken off Government hands, and only desperate criminals were left.

In 1825, there were one thousand applications for servants

(1) outstanding. While this situation continued the Crown would be bestowing a double benefit in assigning labour then remitting the quit-rent of those fortunate enough to receive this boon! Arthur's strongest objection to the regulations, however, was on the score of discipline. He feared that if the settlers could reduce their quit-rents merely by taking convicts, then they would do so just for this reason, and not because they really needed their labour. If this was the case, it was unlikely that they would bother to discipline them properly, letting them fend for themselves so increasing the bush-ranging menace. (2)

The best solution seemed to him the cultivation clause, but like Sorell, he realized that unless they could market their produce, settlers would be unable to comply with this condition. The Commissariat store, which supplied the rations for the several thousand unassigned convicts was the chief market for Van Diemen's

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(1) Colonial Times, 26/5/1826;

Hartwell, op.cit., p.71.

(2) Arthur to Bathurst, No. 11, 10/8/1825.

Land wheat as long as transportation continued, and served as a solid support for the island's commerce and agriculture. At this time, however, the price paid per bushell, was so low that it gave almost no profit to the producer. Arthur, therefore, took the opportunity to suggest that the British Government should arrange a type of Imperial preference for the colony's wheat on the home market, which would revive the industry in the island, and by so doing, increase the demand for labour without resort to artificial means.

The Secretary of State was not a little displeased that his scheme had met with so much criticism. <sup>(1)</sup> He refused to compromise British interests either by raising the Commissariat price of grain in the colony, or by allowing an Imperial preference on colonial wheat on the British market. He refused to believe that in Van Diemen's Land there was no need to make further concessions to stimulate capitalist immigration. With regard to Arthur's objections on the score of discipline, he could see no reason why Arthur could not exercise more vigilance and discretion in assignment to prevent any irregularities.

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(1) Bathurst to Arthur, No. 20, 14/5/1826.

Arthur was chastened by this rebuff, but undeterred. He explained the injustice that would be done to settlers whose lands had been granted on less liberal terms, and appealed that it was difficult enough to get the settlers to co-operate at any time without giving them real cause for resentment. Assignment to these people would be no punishment at all.

These representations finally had effect at home, and the new Land Regulations in 1827<sup>(1)</sup> suspended the unnecessary and objectionable set-off on quit-rents until such time as there might again be a surplus of prisoners to assign. Land and labour were no longer specifically linked, but Arthur's regulations of 1829 preserved the policy of encouraging capitalist immigration. He made it necessary to produce evidence of £500 capital for each square mile granted.<sup>(2)</sup> Arthur was incensed when several immigrants, mainly Scotch, pooled their resources to produce the proceed on successive occasions to trick the authorities, and defeat the policy. But no harm was done; they were particularly suitable settlers - industrious farmers, and excellent masters for convicts, albeit for fewer of them.

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(1) Bathurst to Darling, "Private", 2/4/1827.

(2) Arthur to Huskisson, No. 26, 18/4/1828.

"Any settler who is enabled by the liberal and judicious employment of his capital to take a greater number of convicts off the store than the generality of settlers, thereby becomes entitled to the favourable consideration of Government,"<sup>(1)</sup> thus Bathurst, in 1823. The encouragement of the capitalist immigrant was, for the British Government, the means of reducing the cost of the penal establishment. It was for other reasons that Arthur supported the policy.

The immigrant with capital which he intended to sink into a farm, received Arthur's blessing chiefly because he was the best type of convict master. He resided on his property; he was usually used to handling servants, and could be expected to preserve the correct master-servant relationship; moreover, as his fortunes depended on the labour of his men, he couldn't afford to let them loaf. Above all, assignment to his service took the convicts away from the temptations of the towns. To Arthur, the service of a resident settler seemed the perfect situation in which to cure the convict of his mental "delirium" -<sup>(2)</sup> his predisposition to crime. There were no opportunities for crime, no cause for "external excitement", strict discipline, and hard labour at a healthy occupation.

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(1) H.R.A. i, xi, p.87: Bathurst to Brisbane, No. 21, 30/5/1823.

(2) West, op.cit. Vol. i, pp 228-9.



His administration of the assignment system was influenced chiefly by this consideration, as numerous comments on the applications of settlers show. But this was not the only reason for the encouragement of the man with capital, and his earnest endeavour to keep the settler content with his convict labour. He realized that although the dependence of the settlers on convict labour had given him the opportunity to add to the simple assignment agreement, (exchange of the convicts' labour for their support), conditions which would make the assigned servants' position more of a punishment, the addition of these conditions increased the British Government's dependence on the settlers. Without their co-operation, transportation could not continue as effectively or as cheaply, and in the eyes of the British Government it was almost as important for Transportation to be economical as it was for it to be effective. Only so long as the colonists were satisfied that the value of the labour they received outweighed the disadvantages which accompanied it, could the Government be sure that the demand for assigned labour would continue. <sup>(1)</sup> These disadvantages were by no means slight. <sup>(2)</sup> The felon was a difficult man to handle, had rarely been trained for the work required of him, and the effort expended on him often proved futile. <sup>(3)</sup>

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(1) Arthur to Spring Rice, No. 31, 21/4/1835.

(2) Arthur to Goderich, No. 29, 28/6/1832.

(3) Courier, 19/4/1833.

Besides this, however, he realized that the peopling of a new country with felons was essentially evil to start with, and became irksome as well when the free population had to forfeit their political and legal rights as a result. <sup>(1)</sup>

Encouragement of their economic interests did, therefore, represent a sincere attempt to compensate the colonists for the social stigma of convictism, and the loss of traditional British rights. The colony could at least make economic headway as a result of transportation if not advance politically.

Within its narrow limits, the policy was successful; and three ends did eventuate. The ready supply of convict labour suited the influential landed capitalist class so that Transportation continued for <sup>twenty</sup> thirty years after Arthur took office, until the day when the colony was forced to finance the probation system, and the employment of convict labour became a liability to the colony. Preferential treatment of the resident farmer helped to ensure proper discipline of the prisoners in situations that were conducive to their reform. Finally, although many of the disadvantages associated with convictism could not be bought off financially, the island's prosperity did increase tremendously, and was some compensation to the colonists.

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(1) Arthur to Spring Rice, No. 31, 21/4/1835.

- iii -

The administration of this policy was complicated by two factors: the demand for labour, and the type of convicts transported.

In the twelve years of Arthur's administration, 19,366 convicts arrived in the colony, two-thirds of whom arrived after 1830. On an average, in the years prior to that date, 1020 convicts arrived annually, and generally about 70 per cent of the new arrivals were put at once into the service of settlers. However, the supply of labour from the convict transports was never sufficient to cope with the demand at this early period. For though 70 per cent might be assigned it was rarely a permanent assignment - most were returned within a short time for punishment or because they had proved useless for the settlers' needs.

Prior to 1828 many of the prisoners who had arrived during Sorell's governorship were still serving sentences <sup>(1)</sup> in Public Works gangs, and because of the urgent necessity for the erection of barracks, factories, churches and watch-houses with convict labour, only half of the convict population was available for private assignment. But by 1831, nearly three-quarters of the total convict working force was in the service of settlers, and two years later, due to the large influx of both convicts and

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(1) Arthur to Goderich, No. 84, 1/12/1827;

Bathurst to Arthur, No. 2, 10/1/1827.

working class immigrants in 1830-32, the supply of convict labour was almost adequate to the demand. This reached a peak in 1836 when 97 per cent of the 4,480 applications were complied with. This position, however desirable from the settlers' point of view, and satisfying to the British Government's demand for economy, did not suit Arthur's requirements. He looked on it as essential to the good discipline of the prisoner population in assignment, for the demand for labour to outweigh the supply. The need for economy did not then force him to comply with all applications: <sup>(1)</sup> he could select only those most suitable. Because the supply was inadequate, he considered it followed that settlers were more disposed to take care of those they did have, since withdrawal of one man even would be a serious loss when replacement was almost impossible. (It was very improbable that this would have been the reaction of many settlers. Most shut their eyes to their convicts' misbehaviour and failings, if sending them for punishment involved loss of their labour).

The scarcity in labour in the first ten years would not have been so serious a problem had the convicts sent to the colonies been efficient workmen, and of a type needed in a new settlement. But an examination of the assignment lists of convict ships shows that except in 1830 when agricultural riots in the South of England, increased their number, farm labourers, for whom demand was <sup>(2)</sup> greatest, made up no more than eight per cent of each ship load.

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(1) Arthur to Spring Rice, "Separate", 26/1/1835.

(2) M. Clark: "Origins of the Convicts Transported to Eastern Australia 1787 - 1852", Historical Studies, Vol. 7, No. 26. (May, 195 ) pp 132-5.

Ordinary labourers, such as road menders, smiths' hands, and quarry-men made up twenty per cent, while town workers and tradesmen, like sawyers, found both in town and country districts, completed the number. Of the last groups, a few would have been trained for a trade useful in the colony, but the majority were highly specialised factory workers, like weavers, or cork-cutters, or small craftsmen such as needle-makers reflecting the advanced stage of the industrial revolution, but of little use to a colonial society where versatility and resourcefulness were the qualities called for. It was the continual lament of the Australian Governors that so many unsuitable types were sent when the colony could have absorbed any number of able-bodied mechanics or farm hands.<sup>(1)</sup> The "professional" criminal class, inveterate thieves, "London pick pockets, and other idlers useless for any employment" made up a good percentage of each ship load.<sup>(2)</sup>

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(1) Arthur to Twiss, 30/5/1829;

Arthur to Goderich, No. 84, 1/12/1827.

(2) Arthur to Goderich, No. 84, 1/12/1827;

A.G.L. Shaw: The Story of Australia (London, Faber and Faber, 1955) pp 96-7;

A.G.L. Shaw: "Convicts and Their Crimes": Sydney Morning Herald 29/6/1953; "The British Criminal and Transportation": T.H.R.A. Papers and Proceedings, Vol. 2, No. 2 (March 1953) pp. 29-33; "A Rejoinder to Mr. Dallas' Comments on 'The British Criminal'" Loc.cit., Vol. 2, No. 6(October, 1953) pp 113-14.

A memorandum from the Principal Superintendent in 1829, in reply to an appeal by Arthur to assign every possible man leaving only the really useless on the hands of the Government, stated that thieves made up one-third of each ship-load. Boys from twelve to sixteen years were one type sent frequently to the colony. Forty arrived on one ship in 1827, but proved so mischievous and corrupt in assigned service, that most of them were sent back to the Government.<sup>(1)</sup> The colonial demand was so great that settlers were willing to receive almost any description of men. But even if not physically unfit, (and few ships arrived without at least a small number of idiots, cripples, and old people) many proved totally unable to earn their keep on a settler's farm, and within weeks after their arrival, having been tried at a variety of farming jobs, application was made for their return to the Government.

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It was during the first ten years of his governorship that Arthur developed his system, when the supply of convicts was

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(1) Arthur to Goderich, No. 84, 1/12/1827.

inadequate to the demand, and, therefore, an examination of those who received labour from the Government is fair indication of his policy regarding assignments. Direct application to the Governor for labour was not generally permitted after the re-organisation of the Principal Superintendent's department, but letters from new settlers not knowing the correct form of application, and others better known to the Governor received a more enlightening comment to the Colonial Secretary than the curt "direct him to apply through the usual channels."

It was the "respectable farmer"<sup>(1)</sup> whom Arthur considered the ideal colonist. Of all types of settler he was most likely to achieve all that Arthur hoped for from the assignment policy. As they depended solely on Government assistance, and so valued the convict system more than any other class they might be expected to throw their weight against any attempt to end the system. Service in the country gave the convict a knowledge of farming skills which would be certain to provide an honest livelihood when his service expired. Furthermore, settlers on the land were the only ones who could relieve the Government of those convicts with no useful training, who could be worked only at clearing land. Above all they were the "landed aristocracy" of the island and had most influence in its community.

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(1) C.S.O. 1/342/7,850: Arthur's Note, 7/10/1828.

Many promises of labour were made by Arthur to these settlers, and he was most anxious always that they be fulfilled as soon as possible. <sup>(1)</sup> When a particularly useful shipload of men arrived, such as the 70 farmers who came by the Eliza in 1831, they were distributed as evenly as possible, no settler receiving more than one <sup>(2)</sup> {with the exception of the Van Diemen's Land Company), a measure which earned high praise from the press. <sup>(3)</sup>

A settler whose servants received tickets-of-leave, or appointment to the Field Police, <sup>(4)</sup> was given replacements automatically. He received priority over settlers applying for extensions to their labour force, for it usually indicated that he had taken trouble to reform his men. Arthur was, therefore, anxious that such suitable masters should not be inconvenienced, as this might have prevented settlers from recommending their men for "indulgence". It was not always possible, however, to replace them immediately and in 1837-38, <sup>(5)</sup> there were over 800 ticket-of-leave replacements to be made.

(1) C.S.O. 1/467/10,327 Arthur to Spode, June, 1836.

(2) C.S.O. 1/524/11,376: Memo. Arthur to Col.Sec. 30/5/1831.

(3) Tasmanian 4/6/1831.

(4) G.O. 22/2: Minute No. 272, 3/11/1827;  
C.S.O. 1/395/8,942;

(5) C.S.O. 5/125/2,950: Ass't Board to Col. Sec. 8/6/1838.



The settler with capital to invest received high priority. Richard Willis<sup>(1)</sup> had come to the colony in 1833 and had acquired property in the Campbell Town district to the extent of 8,000 acres. He was a progressive farmer, and in 1824, imported stud merino stock to improve his own flocks, and soon after introduced the first threshing machine. His labour requirements were extensive, and when in 1832 he had been unable to obtain extra men, he complained to the Governor of his ill-treatment at the hands of the Assignment Board. They were able to show, however, that he had thirty-five men in his employ, and had received no less than five mechanics on loan from the Government in the past 18 months which they considered very generous treatment indeed. Arthur's comment on his letter, however, was that:

"Mr. Willis perhaps has no positive claim, but when the very large capital he has brought into the colony is considered, and the great outlay he has made in the interior is taken into consideration, it certainly does not appear that the assistance he has received during the last three year has been commensurate with the benefit he has done the community in the prosecution of his own benefit. I wish, therefore, that some mechanic's assistance should be afforded him, and a good shoemaker assigned." (2)

The most obvious instance of this policy was the effort Arthur made to provide a reliable servant to manage the household of Captain Fenton, a retired army officer from India, representing a wealthy Indian Barrister, Mr. Princeps, who was

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(1) C.S.O. 1/270/6,500: Willis to Col. Sec. 21/1/1833.

(2) C.S.O. 1/270/6,500: Willis to Col. Sec. 21/1/1833.

considering settling in Van Diemen's Land. He was regarded by both the Government <sup>(1)</sup> and the Press <sup>(2)</sup> as "the forerunner of a rising tide of immigration from the wealthy shore of India", and it would have been impolitic to allow him to depart to the Isle of France under the idea that no convict labour" was to be obtained. "The Colony could not fail to derive great advantage from so respectable and wealthy a class of emigrants", <sup>(3)</sup> so Arthur and the Executive Council considered it advisable to relax the conditions for buying land on their behalf, to further reduce the attractions of the Isle of France.

The best servant for Fenton's purpose was found to be in a confidential position connected with the Prisoner's Barracks in Launceston, where a trusty man was essential. But he was immediately removed by his Excellency's Command, and all future requests for labour met with the same prompt attention.

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(1) E.C. 2/1/p.421: 8/6/1829.

(2) Courier 17/1/1829 p.2., Col. 2

(3) C.S.O. 1/270/6,500: Willis to Col.Sec. 21/1/1833.

- v -

The loan of skilled convicts to settlers was another important means of ensuring support for the continuation of Transportation. Particularly in the twenties, and early thirties, before the arrival of assisted immigrant mechanics, the colony was almost entirely dependent on the offerings of the convict transports, though the Scottish Australian Company at Hobart was "encouraging immigration of industrious artisans and their families from Scotland."<sup>(1)</sup> Besides, those few tradesmen who were in the colony charged exorbitant rates,<sup>(2)</sup> so that settlers were very grateful indeed for the loan of skilled convicts. These were not very numerous either, however, though why the number of mechanics among those transported should have been so few, is hard to tell. Had they been skilled, presumably most of them would not have been transported.<sup>(3)</sup>

Another likely explanation is that, although sentenced to Transportation, most of the valuable tradesmen never left England, but were employed in Hulks' gangs on the dock yards. The building of the naval base at Bermuda was another reason for withholding skilled men from the Australian colonies.

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(1) Widowson : "The Present State of Van Diemen's Land"

(London, 1829) p. 43.

(2) Arthur to Hay, 25/7/1832.

(3) K.M.Dallas: "A Criticism of A.G.L. Shaw's 'British Criminal and Transportation'". Papers and Proceedings (T.H.R.A.) Vol. 2, No. 6, (October, 1953) p.111.

(Arthur was continually requesting the Home Office to send a better selection from the Hulks, and finally urged that all transported convicts should be shipped to the colonies immediately after sentence was passed, allegedly on the ground that this was better for the reform of the men, though he may possibly have been hoping to prevent by this means the withholding of mechanics in the Hulks. <sup>(1)</sup> Not until the assisted immigration scheme of the thirties, did any number of free mechanics arrive, but even then they were reluctant to leave the two main towns. There was no question whether convict mechanics should be assigned. On arrival, all mechanics were sent to the Public Works Department, and employed under the supervision of the Engineer. <sup>(2)</sup> There they were divided into gangs according to their trades. <sup>(3)</sup> A record of these trades lists was also kept by the Principal Superintendent of Convicts. Application procedure for mechanics was the same as for any other type of convict. The settler wrote to the Governor stating the number and types he required, and any special circumstances that might further his claim. If the Governor approved, the Principal Superintendent inquired from the Engineer if such men were available. If they could be spared, they were sent to the settlers at once; if not, the application was listed under the trade required, and complied with when possible. <sup>(4)</sup>

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(1) Arthur to Hay 25/7/1832.

(2) C.S.O., 1/104/2,511 P.S./C. to Lt. Governor, 15/5/1824.

(3) C.S.O. 1/21/373.

(4) C.S.O. 1/107/2,586: Arthur to P.S./C. 11/5/1827.

Direct application to the Governor soon proved cumbersome, and was allowed after 1826 only when the case was desperate,<sup>(1)</sup> or when the settler had private influence in Government circles.

As with assignments, a draft appropriation list was drawn up showing the distribution of all mechanics available for loan after the Public Works Department had taken those they needed. This was then sent for the Governor's approval. If he agreed that such was the best distribution possible, directions were given for the removal of the men to the services of the settlers.<sup>(2)</sup>

On the expiration of the loan, the Principal Superintendent sent a reminder to the settler and directed the nearest Police Magistrate to return the man to a Public Works gang where he awaited a new assignment, if this had not yet been determined.<sup>(3)</sup> Arthur insisted on supervising all operations himself as with general assignments, and when the number of applications for the few men available were so many, the Principal Superintendent found this superior authority behind him of great advantage,<sup>(4)</sup>

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(1) C.S.O. 1/134,3,232: Butcher to Col. Sec. June, 1837.

(2) C.S.O. 1/368/8,728: Draft Instructions to P.S./C. 1/1/1829.

(3) C.S.O. 1/455/10,109: Arthur to Col. Sec. 12/6/1830.

(4) C.S.O. 1/478/10,648.

since it relieved him of all charges of partiality. Arthur checked the efficiency of the system occasionally, calling for particulars of all current loans, lists of appointments, and the number of convicts whose loan term was due to expire.<sup>(1)</sup>

This gave him the opportunity to see if his policy was adhered to, and also to judge its effects, and modify where necessary.

Since the number of mechanics was so small, and the needs of all settlers could not be satisfied as far as Arthur could have wished, examination of those he did assist gives good indication of his policy. As with ordinary assignments, the first consideration was always given the country residents rather than the townspeople, for reasons of discipline and reform, but chiefly because while free mechanics were few, the demand in Hobart and Launceston for their services was sufficient to keep them in work without attending to the requests of country residents.<sup>(2)</sup> Again, cases of emergency made exceptions to the rule. In 1836, the Hobart Rivulet flooded and tore down the retaining wall between the properties of Anthony Fenn-Kemp, and James Thompson, the building contractor. The latter applied for loan of a brickmaker and carpenter to repair the damage. Arthur "approved of assistance being granted...if this didn't interfere with the Public Works,.....but", he added, "persons in the interior stand more in need of assistance than residents in the town."<sup>(3)</sup>

(1) C.S.O. 1/207/4,932: P.S./C. to Col. Sec. 20/3/1829

Col. Sec. to Arthur, 16/4/1829.

(2) C.S.O. 1/523/11,353: Arthur to Col. Sec. 25/5/1831.

(3) C.S.O. 1/851/17,999: Arthur's Note, March, 1836.

Arthur stressed this attitude on numerous occasions <sup>(1)</sup> for the benefit of his executive officials, but after the formation of the Assignment Board in 1832, it seems to have been almost completely ignored, to the advantage of those same officials!

New settlers were always given priority over the long standing claims of older settlers. Soon after Spode's appointment, the Governor emphasized the importance of this policy, and added that the preference given to new settlers both in the assignment of convicts and the loan of mechanics was to date from their arrival in the colony, rather than that of their official application, which might have been delayed through ignorance of the correct procedure. To Spode, it seemed unfair that older settlers should have to abandon long-standing claims in favour of newer ones. To illustrate his point, he took the case of Mr. Axford, a Bothwell farmer, whose claim for a brickmaker was of eighteen months standing. He had obviously wanted the assistance originally to build a house, had not been able to wait so long for Government help, and had hired a free man, probably at great expense. The brickmaker he had applied for was no longer needed for that purpose, but skilled labour could always be used, and when it became available, was it not

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(1) C.S.O. 1/523/11,353: Arthur to Col.Sec. 25/5/1831;

Arthur to Stanley, No. 59 , 14/10/1834: enclosing No.1:

Arthur to Col. Sec. 20/12/1832.

C.S.O. 1/604/13,785: Arthur to Col. Sec. 18/7/1832.

fair that the Government should give him the assistance it would have willingly have given earlier had it been available? Other difficulties presented themselves; how long a term was fair for each loan? There should be some limit, as, if each settler was allowed to keep mechanics until he no longer required them, a few wealthy ones could monopolize the lot. How long need a colonist have lived in the island before he was no longer considered a new settler, and was an application from a settler who had received no aid before, but had lived a year or so in the colony, to be considered in this light?<sup>(1)</sup>

Arthur's reply gave a full outline of the policy he wanted pursued. The new immigrant was more subject to inconvenience from the difficulty of procuring mechanics and was to be first entitled to Government consideration. All of these who intended to reside on their farms and had not erected a shelter for their families should be given assistance for at least three months, but once their houses were built they should receive no special preference.

Second priority was to go to those intending to build mills or other works from which the public would derive benefit.<sup>(2)</sup> A Norfolk Plains school-teacher building his own school-house, received Government encouragement in the form of a convict carpenter on loan for nine months.<sup>(3)</sup>

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(1) C.S.O. 1/207/4,932: Spode to Col. Sec. 12/10/1829.

(2) C.S.O. 1/568/12,745: Arthur's Note, 26/12/1831.

(3) C.S.O. 1/708/15,485: Arthur to P.S./C. April, 1834.



William Bryan's projects for building a flour-mill<sup>(1)</sup> at Carrick, and a wharf at Clarence Point on the Tamar to serve as the depot for an inter-colonial shipping service,<sup>(2)</sup> also met with official approval.

Any remaining mechanics were to go to resident settlers with long-standing applications. Emigrants bringing letters from the Secretary of State for special consideration, (and few arriving before 1831 did not possess such a "talisman"<sup>(3)</sup> procured often from a friend of a friend of a member of Parliament) formed exceptions to this general rule. Finally, the farmer of limited means was to receive more consideration than a wealthier settler, who "would have it in his power to employ free or ticket of leave mechanics".<sup>(4)</sup>

Not all skilled convicts were kept only for loan. Tailors, shoemakers, printers, tanners, bakers, and butchers were assigned either to master tradesmen in the towns, or to settlers whose properties and labour force was sufficiently large to require such assistance.<sup>(5)</sup> Bigge, the protectionist, was

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(1) C.S.O. 1/289/6,920: Bryan to Col. Sec. 9/6/1828.

(2) C.S.O. 1/198/4,716: Memo: Arthur to Col. Sec.

(3) Colonial Times, 28/1/1831, 18/5/1831, and 8/6/1831.

(4) C.S.O. 1/207/4,932.

(5) D.D. Arthur to Hay, 12/12/1832, enclosing Report of Board enquiring into the introduction of Contract System.

anxious to discourage assignment to the small manufacturer, fearing their competition with British goods. But he approved whole-heartedly of assigning these to encourage capitalist settlers. (1) Arthur agreed with this too, and made many assignments, particularly of shoemakers and tailors, to settlers with large establishments, (2) but he had no such desire to restrict colonial industry by refusing assistance to small manufacturers. When the supplies for the Convict Establishment were not sent from England, he advertised for the Government's needs to be supplied by colonial producers.

Every type of article and work was called for through the Gazette:-

"Tables with drawers for the Engineer's Department, the contract for the conveyance of military baggage to and from Launceston to out-stations, for stationery..... for twelve double pewter ink-stands.... twelve butcher's knives....144 sheepskins dressed fine for the bookbinder....tenders to supply '500 pairs of good and serviceable shoes', the Government being willing to furnish the contractor with six shoemakers (four men and two boys) on loan to assist in the manufacture...." (3)

With the government supplying the labour, and then buying the proceeds of the labour, the colony could not but prosper!

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(1) Bigge's Report, op.cit., p.158.

(2) C.S.O. 1/72/1,505.

(3) Forsyth, op.cit. p.125, and footnote No. 2.

Economic expediency was not the whole story behind the distribution of mechanics. Of the total population in 1832, whose names appeared on the Jury list, ten per cent could be called "Government Friends", being either on the Government pay list, or in the Commission of the Peace which, though not necessarily implying active sympathy for the autocratic Arthur Government, nevertheless meant at least that on appointment the holders had not been actively opposed. This small group received forty per cent of the loans made in 1832-3, a discrepancy which becomes even greater when it is considered that only two-thirds of that ten per cent received loans! In the country districts, most assignees of loaned labour did belong to the wealthy property-owning class, such settlers as Richard Willis, Captain Fenton, Thomas Reibey, and R.W. Loane, a Governor of the Van Dieman's Land Bank, a wealthy trader and land speculator with extensive property at Oatlands. But the frequent appearance of names like J. Burnett, the Colonial Secretary, Major Schaw, a close friend of the Arthur clique of ex-army men, W.T. Parramore, Police Magistrate at Richmond, and ex-Private Secretary to the Governor, in the lists of loans appearing weekly in the Gazette is suspicious. Gilbert Robertson's claim<sup>(2)</sup> that Arthur had told him "persons who opposed the Government could not expect to receive favours from the Government the same as loyal subjects", is amply supported by this evidence.

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(1) Hobart Town Gazette, 1832 and 1833.

(2) Colonist 4/3/1834.

In 1832, the loan of mechanics was put on a different basis. While essential buildings such as the female factories and prisoners' barracks were still required, priority was always given to the needs of the Engineers' Department rather than those of settlers. But the system, though necessary, was not popular either with the Engineer, who resented the constant change of men in his department, or the settlers who required more labour than the Public Works could make available. In 1832, therefore, when these buildings had been completed, arrangements were made with the Engineer to form loan gangs, <sup>(1)</sup> one in the North, and one in the South, for the use of settlers only. On arrival, new mechanics were then sent either to the trade's gangs in the Public Works, under the direction of the Civil Engineer, or to a loan gang from whence they were distributed to settlers, (though still on occasions when the Public Works Department were hard pressed, mechanics were kept by the Government). <sup>(2)</sup>

Relations between the convict authorities and the Engineer were never easy on this issue. Loan gang men, returned from service were sent to the Lumber Yard to assist with the Government works, while awaiting another service. Lieut. Kenworthy, representing the Engineer in Launceston, refused to allow the men to leave the yard on one occasion. Spode was irate that another department should so presume to interfere with the working of his.

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(1) C.S.O. 1/207/4,932: P.S/C. to Col. Sec., 7/10/1829.

(2) C.S.O. 1/891/18,969: P.S/C. to Ordnance Engineer, 27/5/1837.

The Governor realised that the needs of the Public Works Department at that stage building the female factory were urgent, but pacified Spode by upholding the principle and directing the Engineer never to interfere with loan gang men.

The position was reversed when a settler from Bothwell asked for the loan of an Engineer's Department man working nearby on the new church. It was the Engineer's turn to be indignant:

"the Principal Superintendent having a loan gang especially for the use of settlers, it is totally impossible for me to proceed with any work if settlers in the neighbourhood of a working party are to apply to me for assistance as they require it". (1)

When the Public Works were really urgent, Arthur was adamant that the Engineer should not give up any men whose assignment would interfere with the building programme. At all other times, however, he readily gave preference to the needs of settlers. An appeal from the Engineer that all sawyers should be retained by the Government on the expiration of the current loan period, in order to supply the Public Works with sawn timber, was not received favourably at all. The Government decided that rather than deprive the settlers of convicts, it would be better to buy sawn timber from mills near the town. (2)

A compromise was reached with the Public Works over convicts in greatest demand in 1830. Few wheelwrights ever came to the

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(1) C.S.O. 1/452/10,048: O'Connor to Arthur, March, 1830.

(2) C.S.O. 1/207/4,932: Notes from Arthur and Col. Sec. 30/8/1829.

colony, so to make their services available to all, Arthur directed that one wheelwright should be attached to the Public Works Department in each township, where he could attend to settlers' needs as well as those of the Government gangs. <sup>(1)</sup>

In 1832, it was suggested that since blacksmiths were so scarce, these might also be given to the community generally rather than to individual settlers. This had been prompted by the refusal of George Meredith to allow his smith to make an urgent repair for a neighbour with whom he was at variance, and who had then to go thirty miles to have his plough mended. <sup>(2)</sup>

The number of mechanics available regulated the period of loan allowed. Sawyers were scarce in 1832 with twenty-three applications outstanding, <sup>(3)</sup> so loans were limited to three months, and all requests for extensions were refused even from the most needy settlers. <sup>(4)</sup> In normal times, however, six months was considered fair.

But as with ordinary assignments, so with loans, the convicts' welfare had to be borne in mind as well as the settlers' prosperity. Application for a bricklayer was refused by the Assignment Board because he was particularly valuable in the town

(1) C.S.O. 1/93/2,219: Spode to Arthur, January, 1831.

(2) C.S.O. 1/270/6,500: Note by Arthur on letter from R. Willis to Col. Sec. March, 1831.

(3) C.S.O. 1/18/9,373: Ass't Board to Col. Sec. 14/2/1833.

(4) Arthur to Spring Rice, No. 1, 24/8/1833 enclosing Ass't Board to Col. Sec. 21/3/1834.

as a Sunday School teacher and needless to say, Arthur enthusiastically supported the Board's decision. Loan of ordinary labour for short periods was bad for discipline and detrimental to reform, and in all cases when it was possible, permanent assignment was insisted upon.<sup>(1)</sup> Loan gang mechanics who had earned a ticket of leave, were limited to country areas, so that they would not be subjected to the temptations of the larger towns. But this rule had to be relaxed when the number of free mechanics was too small even to serve the needs of the towns. It was then feared that all ticket holders would rush to the towns and leave country settlers without assistance, though it was hoped that strict limitation of loan gang labour to these, would counteract this tendency.<sup>(2)</sup> Arthur always feared that loaned mechanics, because prized highly, would be treated more indulgently by settlers than assigned servants. He, therefore, attempted to restrict the privilege of serving in the loan gang to convicts known to be of good character.<sup>(3)</sup> Any offence then brought prompt removal from the loan gang, and the place was filled by mechanics who had proved themselves well-conducted while in the Public Works.

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(1) C.S.O. 1/472/10,504: Arthur to P.S./C. 23/8/1830.

(2) C.S.O. 1/554/12,201: Memo. from Arthur to P.S./C 19/10/1831, and P.S/C to Col. Sec. 27/12/1831.

(3) Evidence to Select Committee on Transportation, 1838:  
Arthur, Q. 4,372.

- v i -

Another feature of the convict system designed to assist agricultural settlers was the loan of convicts for harvesting. Getting in the crop was a community effort, and as early as November, the Governor would direct his police magistrates<sup>(1)</sup> to send him regular reports of the prospects for the ensuing harvest, so that arrangements might be made for assisting farmers. A board was then appointed consisting of the Colonial Secretary, Engineer, Brigade Major, and Principal Superintendent of Convicts to consider the position. The latter drew up a rough list of all men in Government employ who could reap, including those from out-stations, gaols, and those who had the privilege of sleeping out of barracks. Reference was then made to the Engineer to spare as many as possible without inconveniencing the Public Works. A six week's season was reckoned on, dating from mid-January to the beginning of March, during which period each settler whose application for help was approved by the Governor was allowed a few men until his harvest was gathered. A Gazette<sup>(2)</sup> notice called for applications, sometimes asking particulars of<sup>(3)</sup> acreage and crop, and giving conditions of employment.

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(1) C.S.O. 40/1/ p.39: Col. Sec. to Pol. Mag. 13/11/1829.

(2) Government Public Notice, 30/12/1825.

(3) C.S.O. 1/224/5,436.



One shilling and sixpence was to be paid each man who behaved well and put in a full day's work from dawn to dark. However, as with loan gang mechanics, settlers found they were not disposed to work satisfactorily without extra pay. Hobler had two chain gang men on one occasion to whom he had to pay seven shillings an acre which amounted to four shillings a day! Any failure to pay the minimum wage, however, was viewed very seriously as "lowering the character of the free population in the eyes of the convicts, and thereby creating a spirit inclining to insubordination". No further assignments were made until justice was done the reapers.

(1)

Failure of the New South Wales crops in 1829 and 1831, brought a change of attitude, however. The usual orders were given at the beginning of the season - the Public Works weren't to be interrupted in any way "by sending away useful men", and no loan period was to exceed six weeks. (2) By the end of the month, the position was desperate. The New South Wales market was too good an opportunity for Van Diemen's Land settlers to miss. The Engineer, however, could spare only thirty-four men "without inconvenience", so an "immediate" instruction was given the Inspector of Roads, that any able-bodied men in the road-gangs under his control were to be sent to the settlers, "even though the work in progress should for a time be retarded." (3)

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(1) Colonial Times, 7/1/1831.

(2) C.S.O. 1/224/5,436: Col.Sec. to P.S/C, January, 1829.

(3) C.S.O. 1/3/51: P.S/C's Note, 29/1/1829.

Spode's comment adequately expresses Arthur's attitude:

"It will give satisfaction to the settlers to know that, however, trifling the assistance, every possible accommodation was afforded that could be". (1)

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The personal security of settlers, most especially those living in the outback and exposed at different times to attacks from offended natives, bushrangers, and occasionally armed absconders, was a constant concern, particularly before 1832. Arthur's decisive action against the bushrangers had been successful, and few absconders remained at large long after the re-organization of the Police force. He was adamant, however, that additions to the police and military detachment in the island, should accompany an increase in the severity of discipline, or extension of settlement. As a result of the Parliamentary enquiry of 1831 into the effectiveness of Transportation as a deterring punishment, the control and discipline of the prisoners was tightened, and sentence to road and chain gangs replaced punishment by the lash. Unfortunately, one of the military

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(1) C.S.O. 1/3/51: P.S/C's Note, 29/1/1829.

detachments was ordered to the Swan River settlement,<sup>(1)</sup>  
 leaving an inadequate force in the colony to give support to  
 the new policy. Bushranging again flared up in the north,  
 especially along the Tamar,<sup>(2)</sup> and though he soon brought it under  
 control,<sup>(3)</sup> Arthur was insistent that a further regiment be sent  
 to the Colony. In the meantime, he urgently appealed to Bourke  
 to provide an extra detachment.

He was equally insistent that the Police establishment  
 should expand with the extension of the settlement, to ensure  
 safety of life and prosperity, but especially to give the masters  
 of servants the opportunity of having them punished when necessary.  
 It was difficult for settlers to keep their men under proper  
 restraint, and derive the maximum advantage from them if the  
 nearest magistrate was much more than fifteen miles away.  
 Throughout 1832 appeals were made to the Governor from newly  
 settled districts.<sup>(4)</sup> Settlers in the populous and influential

(1) Arthur to Goderich, No. 43, 10/8/1833.

(2) Colonist, 27/8/1833, 26/11/1833, and 31/12/1833.

Colonial Times, 18/6/1833.

Arthur to Stanley, No. 8, 24/1/1834, and

No. 11, 4/2/1834.

(3) Arthur to Stanley, No. 8, 24/1/1834, and

No. 11, 4/2/1834.

(4) Arthur to Goderich, No. 10, 27/2/1833 with enclosures.

neighbourhood of Hamilton (which received a larger proportion of assignments for its size, than any other district)<sup>(1)</sup> found it impossible to prevent their properties from being plundered, or keep their servants from drunkenness after the establishment of two inns in the town! Arthur was anxious to remedy the situation, but, as at this stage, the British Treasury still financed the Police Department, he was obliged to refer to the Secretary of State. However, the Executive Council agreed with him that Hamilton must be given a Police Magistrate immediately and also undertook to defray the extra cost, since they considered that police stations were as much a source of profit as outlay, as Crown Lands in their vicinity increased in value, when settlers could feel confident that their properties would be secure, and that they could expect a fair quantity of work from servants, under the threat of being taken before a magistrate.<sup>(2)</sup>

That they might have no grounds for complaint on the score of security,<sup>(3)</sup> Arthur made special assignments to settlers who

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- (1) The Bothwell Police District received on an average, in 1832-3, one convict to each settler, compared with Hobart, six convicts to every ten settlers, and Great Swan Port and Oatlands, three convicts to every ten settlers.
- (2) Arthur to Goderich, No. 18, 14/3/1833; and  
Courier 28/1/1832.
- (3) Arthur to Spring Rice, No. 30, 20/4/1835.

were in situations exposed to attack, or who had suffered loss from bushrangers or natives. Two servants employed by Major Gray, a retired Indian army officer with a property on the St. Paul's River, near Avoca, were killed by natives in 1830. Arthur directed four men be sent him at once so that he could adequately defend his property. <sup>(1)</sup> About the same time, the natives became hostile in the Carlton district too, and Richard Dodge, a settler of long standing in the colony, lost two men. Arthur again directed the Principal Superintendent to assign him two others immediately without awaiting an application, as he <sup>(2)</sup> was quite unprotected.

In September 1830, the convict authorities assigned the total number of men arriving by the David Lyon to country settlers, to protect them from the blacks, <sup>(3)</sup> and later in the same year, when the campaign against the natives was under weigh, all men brought by the Clyde were sent to replace servants settlers had given up to go in pursuit of the "sable tribes." <sup>(4)</sup>

At Richmond, bushranging outrages were responsible for considerable damage, and Mr. Lawrence's house and farm buildings were completely

(1) C.S.O. 1/396/8,949: Memo: Arthur to Col. Sec. 30/9/1830.

(2) C.S.O. 1/400/9026.

(3) Colonial Times 3/9/1830.

(4) Colonial Times 31/12/1830.

razed in 1827. Arthur rightly regarded this as a Government responsibility, and ordered him six of the best convicts then on the Government farm, and promised four more from the next Transport.<sup>(1)</sup>

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None appreciated better than Arthur the importance of alleviating the difficulties incident to the employment of convicts labour. Even grievances of a trivial nature were given consideration by the Government, since these were liable to make a deal of difference when settlers were able to choose between convict and free labour.

One settler complained that men sent for punishment were always returned to his service with their clothing ruined from several months road-work. It was found on enquiry, that stores of spare clothing at out-stations were always inadequate, and directions were accordingly given<sup>(2)</sup> so that "settlers would have no just cause for complaint."<sup>(3)</sup>

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(1) C.S.O. 1/163/3891: Arthur's Note, August, 1827.

(2) C.S.O. 1/611/13,941: Arthur's Note, 15/1/1834.

(3) Colonial Times 23/4/1830.

Complaints of a similar nature, that men sent for punishment  
 or to receive medical attention <sup>(1)</sup> were not returned to their  
 masters were also promptly remedied. <sup>(2)</sup>

Three servants assigned to Richard Willis in March, 1829, proved absolutely useless within a few days after arrival, two being permanently ill, and the other, an idiot. He applied for their return to the Government, and sent them to the nearest road-party, a move which brought a shower of abuse from the overseer of the party who claimed that if settlers were to be allowed "to turn their Crown servants whom they considered useless, into the Public Works.... it will be useless for me to attempt to make roads any longer, but set about building a hospital for their reception." <sup>(3)</sup> The Colonial Secretary, however, realized that "if these men are of no use in a road-party, they certainly could not be worth their meat to a settler, who under such circumstances could hardly be expected to feed and clothe them." Arthur agreed to the return too, and asked for a full-scale report on the case to be made, to be sent to the Colonial Office as an example of the "reciprocal good understanding of the Government and settlers with regard to assigned servants." <sup>(4)</sup>

(1) C.S.O. 1/263,6,247: Arthur's Memo., February, 1827.

(2) Circular Letter to the Police Magistrates from the Colonial Secretary, 9/9/1828.

(3) C.S.O. 1/270/6,500: Notman to Gordon (P.S/C), March, 1829.

(4) C.S.O. 1/270/6,500: Arthur's Note, 27/8/1830.

This "mutual reciprocity and cordial co-operation"<sup>(1)</sup> in the assignment system seemed to him the only way to "reconcile the civil and penal interests" in the island. Unless the Government showed a "zealous endeavour"<sup>(2)</sup> to diminish the difficulties, the settlers would not submit to the "losses and disquietude" associated with the employment of forced convict labour, or "endure the restrictions with which it (was) shackled",<sup>(3)</sup> but employ instead free labourers.

Peter Lette, another of the wealthy land-owning class applied for a blacksmith,<sup>(4)</sup> and duly received one who had claimed to be of that trade. It took no time after the man's arrival for Lette to find out that he knew very little of the calling, having been apprenticed only a short time before his conviction. Lette, however, employed twenty-five men, and Arthur was anxious to keep him satisfied with them. His order to the protesting Principal Superintendent, therefore, was to comply with the original intention of the order and assign him a good blacksmith.

Clerical mistakes in the Principal Superintendent's office were not common, but often very important from a settler's point of view. Edward Nicholas, a Bothwell farmer, complained that his applications for servants had not been answered.

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(1) Arthur to Spring Rice, No. 38, 14/5/1835.

(2) Arthur to Goderich, No. 29, 28/6/1832.

(3) Arthur to Stanley, No. 48, 24/8/1833.

(4) C.S.O. 1/99/2,384: Arthur to Spode, June, 1831.



It later appeared that the men had been sent to a brother living in the same district, in mistake.<sup>(1)</sup> Arthur comment was this: "The Principal Superintendent will, I am quite sure, be sensible of the extreme importance it is for every settler to be supplied with servants, and whenever any case can be made to appear that any individual, by any mistake has suffered, the most prompt means should be adopted to rectify the error".

Official concern for the convicts' welfare often resulted in protest from the settlers. One of the Principal Superintendent's duties, was to see that they received fair treatment in regard to the awarding of tickets of leave. The Muster Master at Police Department informed him when each man had served the required period, and if there appeared nothing against it, he was accordingly recommended for a ticket. This action was necessary in the case of some masters, like George Meredith who hoped to defeat the ban on assignments to him, by refusing to recommend his men for tickets of leave which would have meant loss of their labour. But those who were interested in the welfare of their men resented this high-handed action on the part of the Principal Superintendent, which often resulted in tickets being given to servants whose behaviour didn't qualify them for one. Besides depriving the master of the man's services sooner than they had expected, such action destroyed the respect felt by the other servants for his authority.<sup>(2)</sup>

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(1) C.S.O. 1/570/12,893: Spode to Nicholas, January, 1832.

(2) C.S.O. 1/500/10,945: S.Lord to Colonial Secretary, 27/1/1831.

Arthur, like the Principal Superintendent, was concerned that the prisoners should receive their due, but he also saw that the masters were not unfairly treated. On several occasions he was called to support the Van Diemen's Land manager, Mr. Curr, on this issue. Special care was taken with the company's servants, since Mr. Curr, their master, was also the only magistrate at Circular Head. <sup>(1)</sup> When several of the company's men seemed due for a ticket Spode sent a list for Curr's comments. Where these remarks seemed inadequate, the convicts were given the benefit of the doubt. Curr was most indignant as some very unsuitable men had profited, and he proceeded to describe their characters for the Governor's benefit. But Spode would not be convinced. The Governor upheld Curr, however; a clerical mistake had caused the trouble, several of the men's offences not having been yet recorded; but he consoled his Principal Superintendent by commending his desire <sup>(2)</sup> to protect his men.

One grievance not so easily settled related to the replacement of men sent for punishment. Since so many convicts assigned from each ship proved idle or unmanageable, the policy of the Government on this question was of great interest to the settlers. Sentences were often short, terms in a road-party,

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(1) Colonial Times, 6/7/1831.

(2) C.S.O. 1/23/412: Correspondence between Curr, Spode, and Arthur, August 1832, to March, 1833.

followed by return to the master's service, but when it appeared that the men had formed bad connections in the district, they were removed completely. Often settlers were able to rid themselves of unwanted men in this way, but more often the settler was the loser. <sup>(1)</sup> The Principal Superintendent suggested that he should be allowed to replace these men at once, if others were available, so that settlers would not have to wait for their claims for replacements to come up in rotation. The Colonial Secretary supported him, realizing that unless this was done, settlers would be too ready to overlook misconduct. However, when the case was submitted to Arthur, he suggested that in avoiding one evil, they would be falling into another. He thought that the settlers would rather be too keen to find fault with their men, to have them punished just to have them changed, and too many would, therefore, accumulate on Government hands. He would not give the Principal Superintendent leave to replace men automatically when sent for punishment, <sup>(2)</sup> but he did allow the names of such settlers to be given to Colonial Secretary who could give their claims priority if it seemed <sup>(3)</sup> necessary, and if others were available.

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(1) C.S.O. 1/55/1132: P.S/C. to Col. Secretary, 28/3/1827.

(2) C.S.O. 1/55/1132: Memo. Arthur to P.S/C. and Colonial Secretary, 7/7/1831.

(3) C.S.O. 1/258/6,126: Arthur to P.S/C., April, 1835.

The return of men to Government, so often necessary, presented another problem to the Government policy-makers. Was the Government to allow the return of useless men to road-parties where they would be a charge on the British Treasury, or should they ignore the settlers' interests and insist that they continue to support them? The need for discipline complicated the matter. Men not wanted would not be cared for properly, and even left to roam at large. There was no real solution to the problem, but Arthur decided to trust the judgment of his Police Magistrates, who were to permit the return only of men physically incapable of labour,<sup>(1)</sup> a decision not popular with the colonists, however.<sup>(2)</sup> The strictness with which the regulation was enforced probably varied from magistrate to magistrate, and with the demand for labour. In the 'thirties, when the immigration of free labourers, and an increase in the numbers of convicts arriving made a surplus of labour available, the regulation was repeated, and probably more rigidly observed.

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(1) Government Order, 30/4/1828;

S/C Letterbook (Mitchell Library, F79) p.191:

S/C to Dutton, 3/1/1833.

(2) Colonist, 18/6/1833.

(1)  
 The policy of the 'thirties, which encouraged the immigration of pauper and working class men and women to the Australian colonies, not only had serious consequences for the convict system, causing a return of the more useless assigned prisoners to Government, and reducing its ability to select settlers to whom to assign prisoners; the immigrants themselves suffered from the glut on the labour market. Protests were sent to the Governor throughout 1833 and 1834 from small tradesmen unemployed because of the competition of cheap convict labour. Such a movement inevitably culminated in the Anti-Transportation meetings of 1835, when it was claimed that the immigration of all those present, mostly anti-Arthurites such as Anthony Fenn-Kemp, R.L.Murray, (2) and J.T. Gellibrand, as well as the unemployed tradesmen, had been induced in the expectation that the penal character of the colony would be "progressively

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(1) See next chapter.

(2) R.L. Murray, the mover of the resolution, was an emancipist who had "emigrated" in one of His Majesty's Transports after a conviction for bigamy!

modified in order to its final extinction; instead of which,... it has lately increased and is increasing to a fearful extent, thereby violating the feelings of the adult and barbarizing the habits and demoralizing the principles of the rising generation and tending essentially to check future emigration."<sup>(1)</sup> As Arthur had foreseen, accompanying the Anti-Transportation movement was the demand for a Legislative Assembly. He was very wary indeed of the working class immigrant, whom, as he expected, combined with the radical free element and threatened to destroy the penal framework he had built up in the colony. When put to the test, however, his policy of economic assistance through the administration of the assignment system proved successful. A Launceston meeting representing the pastoral interests in the colony, strongly dissociated themselves from the Hobart Anti-Transportation resolutions.<sup>(2)</sup> Arthur took comfort from the fact that "the settlers as a body pay no attention to public meetings. Their flocks and herds and the

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(1) Address to the King from a Hobart public meeting,

28/2/1835: enclosed in Arthur to Spring Rice, No. 30,

20/4/1835; and

Courier 6/3/1835.

(2) Arthur to Spring Rice No. 1, 20/4/1835, enclosing Extract from Launceston Advertiser, 16/4/1835, reporting Resolution of Launceston Meeting, 6/3/1835, signed by 260 persons.

daily accumulation of wealth occupy their almost undivided attention", <sup>(1)</sup> an opinion which is supported by the evidence of Mr. Peter Murdock to the Molesworth Committee in 1837-8, who agreed that the meeting was not a popular one with the settlers as they feared the abolition of transportation would "interfere with their pecuniary interests." <sup>(2)</sup>

The encouragement he had given their material prosperity had been an effective counteraction to opposition, for he had gained the support of the largest and most influential section of the colonial population, that dependent on convict labour. He had taken care to give the settlers no reasons for complaint on the score of insecurity of property or person, <sup>(3)</sup> so that the material advantages of transportation, the labour supply, and the Commissariat market which made good that labour, <sup>(4)</sup> sufficiently outweighed the moral and social evils. Not until the 'forties, when convict labour was both socially, morally and economically disadvantageous to the colony, did the small dissenting town group gain the support of the landed classes to achieve the cessation of transportation. <sup>(5)</sup>

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(1) Arthur to Spring Rice, No. 38, 14/5/1835.

(2) Report and Evidence before the Parliamentary Committee on Transportation: Evidence, Murdock, Q.1428-35, and 1514-21, (22/3/1838).

(3) Arthur to Spring Rice, No. 30, 20/4/1835.

(4) Forsyth, op.cit. pp. 124-5.

(5) ibid, p.129.

Chapter Four

"The British Government attempts to exploit the colonial dependence on assigned labour."

Private enterprise had established the colonies in America, and the British Government was, therefore, to some extent obliged to respect the wishes of the free population. But as Australia was founded by the Government, and with a specific purpose, the claims of free settlers were completely subordinated to the interests of Britain. Two things were demanded of the new colony: first, it was not to be an undue burden on the Treasury, and second, transportation to its shores was to be effective as a deterrent punishment. This utilitarian view, and especially the concern with finance, was a major influence on the administration of the colony, and the development of the Australian economy throughout its penal history. As long as this attitude continued, those who had chosen to settle in the penal colonies were regarded by Britain as a body whose presence could be exploited to further government interests.

This attitude can be traced in almost all policies relating to the Australian colonies. Governor Phillip's suggestion that land, labour and capital should be combined by encouraging the immigration of farmer-settlers who would take up land and employ convicts was the first instance of this attitude. The Government had approved whole-heartedly, and to increase the number of assignments made, provided each convict with rations. Once established, this economic triangle had given ample opportunity for the government to profit. By 1796, it was obvious that the



granting of land was in itself sufficient stimulus to the demand for assigned labour, without the further incentive of an allowance of rations. By 1820, the position had changed, and a large number of assignable men had again accumulated on the hands of Government. It was suggested, therefore, that for each 100 acres granted, the settler should be forced to support one convict. Another inducement to immigration was offered in the remission of quit-rents for the support of servants, but, as had happened before, this concession was revoked as soon as the demand for labour again absorbed all the available convicts. When continued immigration in the 1820's kept up the great demand, the Government realized that it could take advantage of the settlers' dependence on the supply of prisoners, to tax the assignment of convicts. At the same time, the granting of land was replaced by sale, the proceeds of both going towards the fund to assist pauper immigration, by then the type most wanted by Britain.

The same utilitarian attitude which held that colonies existed for the benefit of the Mother country, directed policy regarding colonial finance. As soon as it appeared that the colony was benefitting from transportation, the Treasury decided that the colony should pay the cost of the penal establishments there.

British policy was equally inconsiderate of colonial interests in its demand that transportation should be so severe that it deterred crime at home. The maximum punishment, 14 years in a chain gang, which one Secretary of State considered was the

only way to achieve this end, would have created in the colony a situation where the very safety of the colonists would have been placed in jeopardy.

Though Arthur himself subordinated the claims of the free colonists in the spheres of penal discipline and political government, he had realized the importance of the free settlers' co-operation to the whole penal system, and that it was, therefore, politic to make some concession to their private interests. Political rights had to be abandoned but by taking up the cause of their economic prosperity he hoped to reconcile them to residence in an autocratically governed penal settlement. The intolerant attitude of the British Government was bound, therefore, to meet the active opposition of the Colonial Governor. He had determined to avoid measures such as those British policies directed him to adopt, which might have given "any party in the colony, adverse to the continuance of transportation, a vantage ground upon which it might assail the system....."<sup>(1)</sup>

Chiefly due to the fact that he was so far from his chiefs at the Colonial Office, in the issues that arose in the thirties, his opposition was usually successful.

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(1) Arthur to Spring Rice, No. 31, 21/4/1835.

- i -

The first indication of the policy during Arthur's term in Van Diemen's Land arose over the quit-rent issue. By allowing a small remission on the quit-rent due on land grants, in return for the employment of convict labour, Britain hoped to increase the number of prisoners assigned to settlers. Without a reliable and expanded market for the produce of the convicts' labour, however, the settlers have been expected to increase their undertakings and employ larger numbers. Britain was not prepared to allow the concession that both Arthur and Scroell suggested, (though throughout the period, the Commissariat store did buy a large percentage of the goods the settlers produced with the aid of their assigned labour) and the scheme was abandoned when it became clear that once again, the demand for convicts was large enough without the further stimulus of a quit-rent set-off, as, indeed it always had been in Van Diemen's Land.

- ii -

Conditions in New South Wales frequently influenced the policies that Arthur was directed to apply in Van Diemen's Land. The proposed compulsory assignment of female prisoners,

another indication of the Colonial Office's utilitarian attitude to the colonies, was an instance of this.

In 1828, it had been reported by the Governor of New South Wales, <sup>(1)</sup> that great difficulty was experienced in the disposing of female prisoners. The Secretary of State, therefore, suggested that for every two or three males received, settlers <sup>(2)</sup> should be forced to take one female. But enforced assignment was contrary to all Arthur's beliefs and policies, and indeed would have had the most disastrous effects. He insisted that unless settlers took convicts because they wanted their labour, and so looked on the assignment as a favour from the Government, they would have no fear of losing the services of such servants, and, therefore, no incentive to co-operate with the Government in keeping proper discipline. If women servants were not needed as domestics, it was not unlikely that they would be sent to work at out-door jobs alongside the male servants, a practice which he considered would have results <sup>(3)</sup> prejudicial to the management of the whole prisoner population.

In any case, there was no need for such a move in Van Diemen's Land, where the demand was quite adequate to the supply, and though a large number of female convicts were on Government hands in the Factory, they were serving punishment sentences there, and could, therefore, not be assigned. Murray, the

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(1) Darling to Murray, No. 19, 18/2/1829.

(2) Murray to Arthur, No. 63, 21/7/1829.

(3) Arthur to Murray, No. 63, 25/11/1829.

Secretary of State, was ready to take the advice of the man  
(1)  
on the spot, and his instructions were withdrawn.

- iii -

Perhaps it was because of the division of responsibility for the colonies between the Home Office and the Colonial Office, that directions given the Governors were often quite incongruous. It was the Secretary of State for the Colonies who corresponded with the Governors since that department was responsible for the administration of all Crown colonies. But the penal aspects of Van Diemen's Land were chiefly the concern of the Home Secretary, who, however, had contact with the Governor who was implementing the penal system, only indirectly. Contact between the ministries must have been fairly close, but some of the directions given Arthur in the thirties seem to indicate that at times, concern with matters belonging solely to the Colonial Office, such as financial and immigration problems, caused the penal aspects of the island to be overlooked.

The projected tax on convict assignments was the most obvious instance of general Colonial Office policy being applied to Van Diemen's Land without full consideration of its effects on the administration of the penal system.

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(1) Murray to Arthur, No. 32, 26/8/1830.

The tax was suggested in conjunction with land sales as part of the Colonial Reformers immigration programme, outlined in the January Despatches of 1831.<sup>(1)</sup> Wakefield, leader of the new movement, claimed that though capitalist immigration had been useful, what Britain most needed to remedy its post-war economic ills was the emigration of the surplus pauper population. Besides, inducements such as the granting of land and assignment of convict labour, were wasteful of Crown assets. Arthur was directed to substitute a system of land sale, with five shillings per acre the minimum price, and introduce a tax on assigned servants, and perhaps ticket of leave men, the proceeds of which were to assist the immigration of British paupers, whose labour, it was thought, would be a valuable acquisition to the under-<sup>(2)</sup>populated colony. Goderich argued that if free labour could be employed at moderate wages, and a tax was imposed on assignments, the competition for convict labour would be reduced so that there would be no more bitterness felt towards the Government by frustrated applicants for convict labour. The tax should be as high as possible, without preventing the colonists from continuing to employ prisoners. He saw no reason why ticket of leave men should enjoy all the fruits of their labour, as free men, either, so a tax on them would make real freedom seem all the more to be desired.

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(1) Goderich to Arthur, No. 10, 28/1/1831, and No. 11, 29/1/1831.

(2) Goderich to Arthur, No. 11, 29/1/1831.

Arthur's general reaction to the Wakefield plan was one of opposition.<sup>(1)</sup> As local director of the British penal system, he feared the introduction of lower class labour to any extent, to compete with the demand for convicts. The new land policy would no longer attract the "respectable" farmers who had been so suitable as employers of convict labour. With free grants, they had been able to invest their moderate capital in their properties, but few immigrants would have the capital to both buy and develop their land. In later years, it was always the Wakefield policy that was blamed when complaints were made of an increased convict bill. He condemned the new attitude to the colonies as selfish, and tending to check their progress, as it was unlikely that the introduction of paupers would bring any benefit, an attitude also taken by the colonial press.<sup>(2)</sup> Men who had failed to make a livelihood in Britain would not be fitted to take a useful place in colonial society.

The Immigration Committee, appointed in accordance with Goderich's instructions and composed of heads of the Executive Government took evidence from well-known settlers, such as Anthony Fenn-Kemp, George Meredith, James Bisdee, and William Kermode.<sup>(3)</sup> It was not very enthusiastic, however, as the

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(1) Arthur to Goderich, No. 43, 9/7/1831.

(2) Tasmanian, 2/7/1831.

(3) Arthur to Goderich, No. 43, 9/7/1831, enclosing Report of Immigration Committee.

colonists' response to the proposition when advertised, had been negligible. It was thought that 1200 families could be absorbed, but not those from parish work-houses, or under an indenture agreement, which in all cases had been found to work  
(1)  
badly.

Concerning the financial suggestions, they regarded the convict tax as most unfair on the part of the mother country. The assignment system implied the mutual give and take of favours, the colonists agreeing to support the convicts, in return for the labour, useless though it often was without a  
(2)  
few years' training.

Britain benefitted from the system by disposing of two more vicious elements of her population at very little cost, to settlers who undertook the task of rehabilitating these offenders. To try to improve on this bargain by charging for the labour of useless London thieves who may even have contaminated the families of their consignees, was most unjust.

It was the opinion of all, that the tax on servants would throw a great many useless convicts back to Government where their support would absorb all the revenue which the tax on

(1) V.D.L. Co. Office Papers, (Burnie, Tas.):

Curr to Court of Directors, London, No. 228, 5/10/1832;

Colonial Times, 29/6/1831; and

Tasmanian, 2/7/1831.

(2) G.S.O. 1/257/6,833, Archer to Col. Secretary, 29/4/1832.



the labour of the more useful prisoners had gained.<sup>(1)</sup>  
 Spode and the rest of the Committee opposed the ticket of leave tax, on the grounds that it would diminish the value of the ticket as a reward, and, therefore, seriously affect the moral reform of the convicts. Arthur would not agree that any consideration should be given the convicts because they had become used to the idea that tickets were given after a certain time, and comprised such and such privileges. He estimated that the ticket of leave holder could contribute at least one third of his earnings, reckoned on an average to be £15 p.a., without lessening the value of the ticket as a reward. He even made the surprisingly vindictive suggestion that all convicts should, on gaining their freedom, be forced to pay the Government the cost of their transportation!<sup>(2)</sup>

Replying to the Secretary of State, he again took the opportunity to further colonial economic interests, by suggesting that the payments to be made to the British Government and parish authorities should be made in wheat, which would provide freight for the migrant ships on their return journey, and would save the colony's specie.

Meanwhile, Goderich, in a despatch concerned with the expenses of the colony,<sup>(3)</sup> had again urged the adoption of the convict tax. It appeared to him that the assignment of convicts

(1) Colonist, 24/8/1832.

(2) Arthur to Goderich, No. 43, 9/7/1831.

(3) Goderich to Arthur, "Separate", 3/11/1831.

was no less "advantageous to a settler than a donation of money" when labour was so short. He could see no reason why the Government could not make capital out of the settlers' dependence on convict labour.

(1)

However, on receiving Arthur's despatch, he admitted that the arguments advanced in the colony against the tax did seem conclusive. But, with the Colonial Reformers at his elbow, he refused to give up the immigration scheme and rather than abandon altogether the tax on assigned labour as a means of financing it, he suggested that it should be applied in a modified form. Able-bodied prisoner labourers and mechanics could be hired at a weekly rate to the highest bidder, among those thought fit to take convicts. He maintained there would then be no fear that discipline would be disregarded, (one of Arthur's objections to the general convict tax had been that the master would not take his men to be punished, when this involved loss of the labour he had paid for), as it would be in the assignee's interests to have his badly behaved hired-man punished for failure to exert himself to the utmost. A similar system had been introduced in New South Wales by Brisbane.

(2)

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(1) Goderich to Arthur, No. 56, 27/1/1832.

(2) Brisbane to Bathurst, No. 7, 23/4/1823:

Mechanics were hired to settlers at a weekly rate of 3/6d., but it was difficult to collect the payments, and in 1827 the scheme had been replaced.<sup>(1)</sup>

Goderich scoffed at Arthur's claim that the Government were indebted to the "respectable" colonists for taking trouble with their servants, refusing to admit that "any degree of respectability" entitled a settler to "great pecuniary advantage from the public". Nor would he agree that the tax on labour, accompanying the tax on land would check profits in Van Diemen's Land generally, but only those of "particular capitalists" who employed convict labour.<sup>(2)</sup> He obviously did not realize that almost every settler in the island employed convicts!

As soon as it had been suggested, the question had become an important issue among the colonists, and as might have been expected, their attitude was one of indignation. The reaction to an earlier proposal that the settlers should be willing

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(1) Darling to Horten, "Most Private and Confidential", 6/2/1827:

H.R.A. i, xiii, p.80;

Coghlan, op. cit. p.179.

(2) Goderich to Arthur, No. 56, 27/1/1832.

to pay for the cost of the transportation of convicts in return for their labour for a five year period, had clearly indicated that on any increase in the price already paid for that labour, the colonists would prefer to do without it altogether. <sup>(1)</sup> As Arthur had feared, <sup>(2)</sup> demands for a House of Assembly and representative legislation was the immediate outcome of the assignment tax proposal. <sup>(3)</sup> But, even in the opposition papers <sup>(4)</sup> confidence was expressed that the local Government would resist the tax.

Arthur was pleased to hear in June 1832 on receipt of Goderich's latest despatch, that the tax was not to be applied indiscriminately, <sup>(5)</sup> but he remained unconvinced as to its fairness.

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(1) Colonial Times, 12/11/1830.

(2) Arthur to Hay, 23/3/1827;

Arthur to Bathurst, No. 17, 23/3/1827.

(3) Tasmanian, 23/7/1831;

Courier 17/8/1832.

(4) Colonist, 24/8/1832.

(5) Arthur to Goderich, No. 39, 31/7/1832, enclosing Second Report of Immigration Committee.

The question called forth his strongest arguments in favour of the former policy of economic encouragement to settlers, particularly capitalists. He pointed out the tremendous difficulties involved in converting a social mis-fit and idler, into a labourer of some value to the colonists. Unless the Colonial Government showed itself anxious to ease their many discouragements, the settlers would not submit so patiently "to the losses and disquietude incident to the employment of convicts".<sup>(1)</sup> He still insisted that the British Government was under an obligation to the colonists who maintained the convicts, submitted to all their impertinence and unwillingness, and were put to all the trouble of having them punished. In these circumstances, they might very well enjoy the benefit of their services without being taxed for the privilege. Besides, the time was not ripe for imposing another tax, as quit-rents were becoming due,<sup>(2)</sup> and this seemed too valuable a source of income to be jeopardized by competition from a tax on labour.<sup>(3)</sup>

The Immigration Committee were again convened to consider the new proposals. Like Arthur, they thought it unfair to tax agricultural labourers, as this was, in effect, charging the assignee for the improvement he had effected in his servants' skill. Moreover, it was violating the agreement to withdraw the assigned servant in order to tax the assignee, when it was

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(1) Arthur to Goderich, No. 29, 28/6/1832.

(2) Colonist, 1/4/1834.

(3) Arthur to Goderich, No. 29, 28/6/1832.

believed by both Government and settler at the assignment that the servant should remain unless withdrawn for punishment, the granting of an indulgence, or to enter the field police force. But none of these objections applied to mechanics who were assigned on loan for a short time only. A Board was appointed, therefore, to evaluate the skills of this class. They estimated that £2,200 would accrue from the 220 mechanics then available for the service of settlers, and another £3 could be charged settlers with more than fifteen servants, the price rising with each new assignment. The value of this tax was that it would fall only on the wealthy, as indeed Goderich had originally intended. £5 seemed a fair amount to expect from ticket of leave men, and as there were 1,400 of them, this alone would contribute £7,000, making £10,000 altogether. <sup>(1)</sup>

Having won general acceptance from the Colonial Immigration Committee of the revised taxation suggestion, Goderich then obstinately reverted to his original plan of taxing all assigned servants! <sup>(2)</sup> He refused to recognize any obligation to the colonist, and merely regarded the difficulties they suffered as proof of the need for an alternative labour supply. But he gave no suggestion as to the management of the convicts who would

(1) Arthur to Goderich, No. 39, 31/7/1832, enclosing Second

Report of the Colonial Immigration Committee.

(2) Goderich to Arthur, No. 121, 23/3/1833.

be replaced in the settlers' service if free labour became available in large quantities, nor any hint that the Government were prepared to support so great an increase in the numbers that would then be in the service of the Crown! He left it to the Colonial Executive to arrange the details of the tax but implement it they must.

It was to Arthur's advantage that correspondence with London took ten months. He was most reluctant to upset the balance of mutual advantages on which the assignment system was founded, by imposing a tax which had nothing to commend it. He, therefore, explained his reasons again to the Secretary of State, but implement the tax he would not.<sup>(1)</sup> At the time the cost of living was rising in the colony following the change from meat to wool production,<sup>(2)</sup> and it was inexpedient, therefore, to increase the cost of labour by adding a tax.

He waited four months before directing the members of the Board of Assignments to arrange a scale of rates to be charged for mechanics on loan. They reported in March, 1834, three months later.<sup>(3)</sup> The actual implementation of the tax was complicated by the fact that the 326 mechanics then available for loan to settlers were all assigned for periods ranging from

(1) Arthur to Stanley, No. 48, 24/8/1833.

(2) Colonist, 10/9/1833.

(3) C.S.O. 1/528/11,502: Memo, Board of Assignment to Col.Sec. 21/3/1834.

two to six months. They did draw up a table of rates which would produce a maximum revenue of £2,682 p.a. but they were not optimistic that this would all be collected, as some of the mechanics were very inferior workmen, and would be returned to the Government if payment was asked for them. Brickmakers, carpenters, masons, wheelwrights, and bricklayers were all valued at one pound each per month, while all other trades were classed together as worth ten shillings a month. These rates were to be paid in advance to the clerk of the Assignment Board, who would send the proceeds each month to the Assistant Commissary-General.

Arthur made no further move in the matter until June, 1834, when he invited their written views on the problem that had arisen because of the assignment of mechanics for various periods. (1) Another month passed before the replies were handed to the Colonial Secretary. The Board, with the exception of Gregory, the Colonial Treasurer, was also loath to implement the tax, (2) and snatched at any argument, including several illogical ones. Their main reasons were these. Such a tax would injure discipline as the person paying for the mechanic would look only to the quantity of work he could obtain from him, without regard to his conduct. The tax would be very difficult to collect without resort to law in many cases, and few would be

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(1) loc. cit., Memo, Arthur to Board of Assignment, 10/6/1834.

(2) loc. cit. Assignment Board to Col. Sec. 4/7/1834.



satisfied, as a mechanic may work well in one service but behave badly under a different master.

In reporting to the Colonial Office in October, Arthur  
(1) regretted that the convict tax had produced no revenue. It was too late at this stage to impose it, since the Land Fund had been sufficient to pay for the immigrants who had arrived, and the settlers would have preferred to employ these to taxed convicts. The tremendous curve of development had levelled out since the Wakefield policy put an end to the system of grants. Those who bought land now had little money left to embark on a large development programme, so that the demand for labour was no longer so much in excess of the supply from convict ships. (2) Then the high cost of living, and the difficulty in collecting quit-rents fallen due made it an <sup>in</sup>expedient time for demanding further outlay from farmers. (3)

Spring Rice was at the Colonial Office when these despatches reached London. He accepted Arthur's reasonings, and understood his unwillingness to jeopardise convict discipline and the co-operation of free settlers for so small a return. It was left to Arthur, therefore, to implement the policy when the difficulties could be overcome. (4)

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(1) Arthur to Stanley, No. 59, 14/10/1834.

(2) Arthur to Stanley, No. 48, 24/8/1833.

(3) Colonial Times 9/5/1832.

(4) Spring Rice to Arthur, No. 24, 9/11/1834.

Van Diemen's Land was not a good site on which to thrust the Colonial Reformers programme. The previous system of land granting to encourage "respectable" settlers to invest capital in the colony and employ its convicts had been better suited to its needs. By 1831, the best land had been alienated, and Arthur, on first mention that granting was to cease, took advantage of the Secretary of State's permission to grant land to any to whom "positive promises" had been made.<sup>(1)</sup> In that year, therefore,<sup>(2)</sup> 205,000 acres were disposed of, more than in any other year, with the exception of 1829, when depression in New South Wales turned many immigrants to the shores of the younger colony.<sup>(3)</sup> The majority of land purchasers after 1831 were older settlers buying additions to their establishments for grazing purposes, and not often needing to increase their existing labour force at all. This had a great effect on the demand for labour, particularly unskilled, which was usually required only for clearing land. By 1833, the demand was not sufficient to take these less useful men off Government hands. The introduction of working class immigrants and at the same time, an increase in the numbers of convicts sent, (in 1830-1, 4,400 convicts arrived in the colony), were

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(1) Forsyth, op.cit. p.120.

(2) Statistics of Tasmania, Vol. 1, 1804-1854.

(3) Hartwell, op.cit. p.69.

incompatible either with the successful working of the convict system, or the Wakefield theories, and inevitably resulted in the downfall of one.

(1)  
In April 1833, Arthur reported that there were still one thousand applications outstanding which couldn't be met as almost all the Public Works Department prisoners were undergoing punishment. (2)  
But by August, saturation point had been reached. Wages had fallen and Arthur feared any further immigration would not only have reduced the demand for convict labour so much that the Government would have been forced, for reasons of economy, to allow any applicant to receive assigned servants irrespective of his suitability as a master, but would also have caused a return of prisoner-servants to Government. In October the assignment authorities informed Arthur that it was becoming increasingly difficult to assign any but trained farmers or mechanics. (3)  
Already, there was a bank up of 150 men and boys in the Hobart Barracks, who had to be supported at public expense. The new land sale policy was given as the reason for the fall-off in demand for convict labour, and the increase in the price of meat (4) which had caused a reduction in the establishments of some.

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(1) Arthur to Hay, 9/4/1833.

(2) Colonist, 18/6/1833.

(3) C.S.O. 1/611/13,942.

(4) Colonist, 10/9/1833.

As a solution to the problem, Arthur ordered the formation of a road-party of men who had never been assigned to be stationed on the Perth to Campbell Town road <sup>(1)</sup> so that they would be readily available to most Midland settlers north of Oatlands, and encourage them to take these men at once, rather than wait for an assignment direct from a convict ship.

Throughout 1834, letters from the Superintendent of Convicts in Launceston reported that the barrack accommodation there, was inadequate for the numbers of men awaiting assignment. <sup>(2)</sup>

The tremendous increase in Convict and Military Expenditure, from £90,000 in 1832, to £146,000 in 1833 reflects the rise in numbers left to the Government to support. Settlers could be more critical of the convicts assigned to them when they had a choice of labour, and directions to Government officers from Arthur urging greater strictness regarding the return of men from service is indication of his anxiety, <sup>(3)</sup> concerning the bank up of men in the barracks.

(1) C.S.O. 1/611/13,942: Arthur to Col.Sec., October, 1833.

(2) S/C Letterbook, (Mitchell Library. F80):

S/C to P.S/C, 2/1/1834, and 15/9/1834.

(3) S/C Letterbook, (Mitchell Library F79):

S/C to Dutton, 13/1/1833.

Numbers of men available for assignment increased so much that the gangs originally formed of men who had never been assigned, and who were, therefore, almost as much sought after as new arrivals, were extended to include those returned, either direct from assignment, or through punishment gangs, as useless, disabled or incorrigible.

The Superintendent of Convicts, reviewing the new scheme in December, 1833 for Backhouse and Walker,<sup>(1)</sup> attributed its lack of success chiefly to the poor calibre of the men in the gangs. At least two thirds of the men were known to the settlers to be useless. The methods of assigning the men were not designed to relieve the Government of large numbers either. At first application procedure was the same as for convicts assigned directly from transports. The assignment authorities would give settlers in urgent demand for men, and who could, therefore, not wait their turn for new arrivals, an order on an assignable gang, stipulating the man they were to take. This, the Superintendent considered most unsatisfactory, as settlers rarely received men suitable for their requirements. Gunn himself found it expedient to deviate from this method of assigning, allowing settlers who applied direct to him to choose the man they would like to take, and assign him

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(1) S/C Letterbook, (Mitchell Library F79):

S/C to Backhouse and Walker, December, 1833.

provisionally reporting to the Assignment Board for approval afterwards, <sup>(1)</sup> a practice which was permitted when the numbers to be disposed of were so many, but not generally sanctioned on disciplinary grounds. <sup>(2)</sup> The system did give greater satisfaction to all parties, as the settlers were happier with men they had chosen themselves, and the Government was able to get rid of more men, and had fewer returned. However, not even this method was effective in face of the increasing proportion of useless men in the gangs. Rarely did a settler return a good worker to the Government, so the complaints <sup>(3)</sup> from settlers forced to accept "orders on an assignable party", instead of the assignment of men newly arrived in the colony were frequent.

In theory, the emigration of unemployed Britons to underpopulated Van Diemen's Land seemed a mutual arrangement.

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(1) S/C Letterbook, (Mitchell Library F79):

S/C to Backhouse and Walker, December, 1833.

(2) C.S.O. 1/262/6,229: R.O'Connor to Col. Secretary, July, 1830.

(3) C.S.O. 5/118/2,950: Dumaresq to P.S/C, 31/5/1838.

C.S.O. 5/206/4,880;

C.S.O. 1/10/198;

C.S.O. 1/374/8,517; and No. 104, Franklin to Glenelg,

7/10/1837, enclosing Cheyne to Maconochie, June, 1837.

But the increase of transportation in 1830-3 alone went far  
 beyond remedying the inadequacy of the labour supply<sup>(1)</sup>  
 without the arrival of pauper immigrants, or the cessation of  
 land grants. Combination of all three meant the inevitable  
 failure of the new policy, especially when the few who did  
 arrive were not suited by training, character<sup>(2)</sup> or age to  
 colonial conditions.

- iv -

The suggested tax on convicts as a means of achieving the  
 emigration of British paupers was typical of the failure of  
 the Colonial Office to realize penal policy in the colony.  
 The contract system for public works was yet another scheme of  
 the Colonial Office for reducing expenditure, found to conflict  
 with Arthur's policy for the administration of the penal colony.

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(1) Colonial Times, 2/4/1830; and Tasmanian, 28/5/1830.

(2) Colonial Times, 23/7/1833, and

Arthur to Stanley, No. 21, 4/4/1834.

Though Bathurst had assured Arthur that the Colonial Office would support his plans for remedying the accommodation problem, whatever it cost, it was continually impressed on him to keep down expenses as far as possible. This was particularly the case after the re-shuffle of colonial finances, <sup>(1)</sup> when the British Treasury was charged for all expenses connected with the Convict Department, and the colony left to disburse its own Civil Bill. It seemed incredible to the British Government, that despite the tremendous demand for convict labour the cost of gaols should increase. <sup>(2)</sup> Arthur explained <sup>(3)</sup> that until 1821 the colony had been the punishment station for New South Wales, that many were, therefore, desperate criminals who could never be managed on settlers' properties, and only in the service of Government if kept under close supervision at the quarries.

Despite this explanation, Bathurst was suspicious that the colony was profiting unfairly from the presence of the convict population, and persisted in the belief that more convicts could have been assigned. To keep check, therefore,

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(1) Bathurst to Arthur, No. 14, 23/4/1826.

(2) Bathurst to Arthur, No. 2, 10/1/1827.

(3) Arthur to Bathurst, No. 10, 3/7/1825, and

Arthur to Goderich, No. 84, 1/12/1827.



he instructed Arthur to send an annual return of all  
 assignments and applications, "so that His Majesty's  
 Government could consider means of reducing expenditure".

Arthur had maintained that all convicts not absolutely  
 indispensable to the Public Works were assigned on arrival,  
 but that this did not mean that they were permanently off the  
 Government's hands. Many were returned at once for  
 punishment, and though the outstanding applications could  
 have absorbed them, the civil government could not disregard  
 the decisions of the magistrates by forthwith remitting their  
 sentences in order to reassign, despite the settlers' clamour  
 that they should.

The convicts had to be punished, and  
 pick and shovel work under Government direction was the most  
 effective means. It was logical, therefore, to employ the  
 punishment gangs to some benefit. Under proper supervision,  
 they could assist with the erection of the necessary gaols  
 and watch-houses, and open roads into the unsettled areas to  
 attract a respectable class of immigrant who would in turn  
 reduce Government expense by taking convicts.

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(1) Bathurst to Arthur, No. 21, 25/3/1827.

(2) Bathurst to Arthur, No. 21, 25/3/1827.

(3) Tasmanian, 28/5/1830.

(4) Arthur to Goderich, No. 84, 1/12/1827.

The Home authorities were unconvinced. The various bodies concerned with colonial finance considered the position, and in 1830, after consultation with Captain Montagu, former Private Secretary of Governor Arthur, then holidaying in Britain, the Lords of the Treasury suggested that if all Public Works were erected by contract, the Government would need support only those undergoing punishment, who should be worked out of town on road-building and under such strict discipline that they would soon be induced to prefer the service of settlers to that of the Government, (this latter an assumption of Montagu's based on the returns for 1828, showing that of 5,780 labouring convicts, there were more than 2,700 under punishment!)

When handing over his administration, Sorell had suggested that the contract system might be the cheapest and best mode of erecting the larger buildings, if there were enough free mechanics available. Both Arthur and Darling tried the system, but both found that there were no master-builders of any "respectability" and the Government was forced to advance not only men and materials, but also money. Colonial opinion,

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(1) Howick to Arthur, 14/12/1830.

(2) Tasmanian, 28/5/1830.

(3) Arthur to Bathurst, 9/6/1824, enclosing Sorell to Arthur, 22/5/1824.

(4) Arthur to Bathurst, No.10, 3/7/1825;

Darling to Goderich, No.133, 31/12/1827 (H.R.A. i, xiii, 673).

however, was strongly in favour of the scheme, <sup>(1)</sup> as non-punishment convicts, retained by the Public Works could then be released for assignment. Again in 1831, Goderich urged <sup>(2)</sup> the adoption of the contract system, and indeed the arguments advanced in its favour did seem conclusive. The charges for the care and control of the convicts would be minimized; there would be no temptation to embark on buildings not really indispensable; and those that were contracted for would be built more quickly and economically; private builders could buy materials more cheaply, arrange their own storage, and ensure that there was little wastage, as free workmen would be more reliable than unwilling convicts. <sup>(3)</sup>

Arthur as Governor of a penal colony, had more to consider than the saving of expense to the British Treasury, and he thought the scheme most unsatisfactory in all ways. <sup>(4)</sup> He contended that were all punishment men employed at road-making,

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(1) Colonial Times, 8/5/1829.

(2) Goderich to Arthur, (Separate), 3/11/1831.

(3) Howick to Arthur, 14/12/1830, enclosing Montagu to Hay, 8/3/1830.

(4) Arthur to Howick, 18/2/1832.

their barracks would have to be moved constantly. Besides, it was most wasteful of the talents of mechanics in punishment gangs to set them making roads when skilled labour was so scarce, and there were so many buildings urgently needed. His most conclusive argument, however, was that there were too few mechanics in the colony to undertake such a large building programme on contract. Convict mechanics would have to be assigned, therefore, if the Secretary of State still insisted on the policy, and this would have disastrous effects on convict discipline. It would not be in the interests of the contractor to maintain strict discipline and have his labourers punished for their offences. Rather it would pay him to disregard Government regulations and treat his men leniently, for servants produced better results on an incentive system rather than by compulsion. In order to complete the contract on time all sorts of abuses would be tolerated, and the skilled mechanic, aware of his value, would be in a position to bargain with his employer. Transportation on such terms would encourage rather than deter crime, and the prospect for the colony when the sentences of mechanics so indulged expired was by no means attractive. All that would have been achieved by the system, he considered, would have been the enrichment of a few contractors, at the expense of still deeper depravity among the convicts and an unnecessary

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waste of public funds in an attempt to reclaim them. He was not without support. Bigge had advised against the system on the grounds of discipline,<sup>(1)</sup> and in the colony, the Courier<sup>(2)</sup> spoke for the Government view on this question.

A Board was appointed in July, 1832, to consider the advantages and disadvantages of the system.<sup>(3)</sup> This consisted of the Chief Police Magistrate, the Inspector of Roads, and the Commanding Officer of the Troops, three of the most competent officers of the Executive. The Board supported Arthur as to the injurious tendency of the contract system on discipline, and after fully investigating decided it was also more expensive than the existing practice.<sup>(4)</sup> The number of builders able to contract was too few for real competition, nor did the Board consider them "respectable" enough to entrust convicts to them. Those mechanics who had been assigned in the towns, such as tailors, shoemakers and printers, had been the cause of more drunkenness and insubordination than any other type, due to their lenient treatment.<sup>(5)</sup> It would be fatal, therefore,

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(1) Bigge's Report, op.cit. p.163.

(2) Courier, 4/2/1832.

(3) Arthur to Hay, 12/12/1832, enclosing Report of the Committee considering the Contract System.

(4) Courier, 4/2/1832.

(5) Courier, 4/2/1832.

to extend this practice, for unlike convicts from the English agricultural districts mechanics from the towns were usually hardened offenders. The Executive Council too, decried the system.<sup>(1)</sup>

Arthur, therefore, again stressed that transportation would be no punishment at all if convict mechanics were assigned to contractors only to be bribed to work harder. His experience had led him to believe that prisoners were most likely to reform if given no chance to relapse, and advised that it would be false economy indeed to adopt a system which would assign them to situations of such temptation.<sup>(2)</sup>

Lord Stanley's reply merely re-iterated the instructions. His Majesty's Government intended to implement the system, and Arthur was directed to use his ingenuity and devise a scheme which would not compromise discipline.<sup>(3)</sup>

Arthur won the next round. He detailed the arguments for the system, and countered them decisively one by one. The first object of the policy was economy. Although wages in the colony had recently fallen, free mechanics still cost more than convicts to produce the same amount of work. The next object, that of making the convicts dread Government service,

(1) E.C. 2/2/ p.417, 6/8/1832.

(2) Arthur to Hay, 12/12/1832.

(3) Stanley to Arthur, No. 11, 21/9/1833.

had been achieved simply by increasing the severity of the discipline there. Was the final aim of the system more advantageous use of convict skill by assigning it to settlers, to be achieved by undertaking public works by contract? His answer to this was that "the greater number of mechanics and others employed in the Public Works are person who, having misconducted themselves in assigned service, are necessarily retained by the Government as a measure of discipline". He suggested instead, a compromise system, whereby the Government could invite tenders for stores, but do the actual construction itself with the labour of prisoners. From the colonists' view point, this would have been a double advantage. Building materials would have been added to the goods already supplied to the Commissariat; and the market for colonial meat and wheat provided by the convict establishment, would not have been reduced by the assignment of mechanics to settlers. There were advantages from a Government point of view also. There would be no need to accumulate stores, which always resulted in great waste when convicts were employed. Discipline would not be jeopardized, and the benefit of the skill of those mechanics undergoing punishment would not be lost on road-gang  
(1)  
work.

This sort of compromise was not at all what Stanley had desired, but he did not receive the reply. A change of

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(1) Arthur to Stanley, No. 15, 10/3/1834.

Government had brought Spring Rice to the Colonial Office, and as with the tax on convicts, he was prepared to be advised by the man on the spot. He, therefore, welcomed the suggestion as an excellent temporary solution, until such time as there were enough free mechanics and master-builders to make the competitive contract system possible.<sup>(1)</sup>

- v -

Stanley's "Worse than Death" system of convict discipline was another instance of the utilitarian attitude to the colonies taken by the British Government.

From 1831-4, during the sittings of the Parliamentary Committee on Secondary Punishments, and after, the problem of increasing crime was one that received much thought in Government circles. The Committee, on the meagre and often hear-say evidence of a few absentee land-holders with interests in New South Wales, and several settlers from that colony, then in England, had decided that transportation to the Australian colonies was neither deterring crime at home, or punishing offenders. Having spent eight years in Van Diemen's

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(1) Spring Rice to Arthur, No. 32, 17/11/1834.



Land perfecting a system of discipline designed to effect both these objects, Arthur was not a little annoyed that the Committee should have included transportation to that colony in its general condemnation, when the only evidence taken on the system in practice there, was from Archdeacon Scott, who had visited the island once, and compared it very favourably with New South Wales! <sup>(1)</sup>

Within one month of receiving the report <sup>(2)</sup> he had written four lengthy reports, <sup>(3)</sup> correcting the misconception and justifying transportation, particularly transportation to Van Diemen's Land. The Committee's chief criticism was that transportation, followed as it was in most cases by assignment, was no punishment at all, and indeed seemed rather a reward for crime. Arthur agreed, but pointed out that however rigorous the discipline that might be involved, any term of imprisonment

(1) Arthur to Goderich, No. 6, 8/2/1833.

(2) Hay to Arthur, 27/9/1832, enclosing Report of the Secondary Punishments Committee.

(3) Arthur to Goderich, No. 6, 8/2/1833;  
 Arthur to Goderich, No. 8, 15/2/1833;  
 Arthur to Goderich, No. 10, 27/2/1833; and  
 Arthur to Hay, 9/2/1833.

which ensured adequate physical support would be unsuccessful in deterring the hungry man from stealing bread.<sup>(1)</sup>

Penitentiaries were no more effective, cost more, and had the added disadvantage of returning the criminal to society even further corrupted by the training he had received from other offenders. The result was then only further depredations on the British public, and the extra expense of frequent trials. Transportation at least rid an over-populated Britain of its unwanted criminal population.<sup>(2)</sup>

Nor was the lot of an assigned servant an enviable one. Restrictions on personal liberty, the summary punishment, meted out for the most trifling offences, - "idleness and insolence of expression ... anything betraying the insurgent spirit, subjects him to the chain gang, or the triangle, or to hard labour on the roads".<sup>(3)</sup> He would not accept the Committee's view that most masters, interested only in the amount of work they could get from their men, preferred not to insist on strict discipline. An unreclaimed convict might be a corrupting influence in a settler's household, and it was essential, therefore, for him to attempt his reform.

Even if the assignment system was to be abandoned, he strongly urged that transportation should continue. The new

(1) Arthur to Hay, 9/2/1833.

(2) Arthur to Goderich, No. 8, 15/2/1833.

(3) Arthur to Goderich, No. 6, 8/2/1833.

penal establishment at Port Arthur, where discipline was made as severe as human endurance could take, would hold another ten thousand without much extra expense. Wide circulation of the report of the Quakers, Backhouse and Walker on the horrors of the penal station at Macquarie Harbour, he was confident, would deter potential criminals at home. <sup>(1)</sup> Stanley was not impressed. The assignment system was his chief bone of contention. He realised how dependent the colonies were on assigned labour, but it seemed to him that the system of sending convicts to settlers' services was neither an efficient punishment nor a deterrent. If it could be executed without raising the cost of the convict establishment in the colony, he advised that all prisoners should go through a period of strict road-party discipline on arrival, which he thought would help to counteract the laxness of the assignment which followed. <sup>(2)</sup> All felons of a more hardened character were to spend seven years at a penal station followed by five years in a chain gang, while the lesser offenders, of whose reformation there was some hope, were to be worked in irons on the roads for a period of seven years. <sup>(3)</sup>

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(1) Arthur to Hay, 25/7/1832, enclosing Report on Macquarie Harbour by James Backhouse and George W. Walker.

(2) Stanley to Arthur, 26/8/1833.

(3) West, op.cit., vol.ii, p.238;  
Colonial Times, 3/12/1833; and  
True Colonist, 1/4/1834.

The settlers were horrified and in his reply to these forbidding instructions, Arthur urged consideration of the colonial case. Within a few years, had Stanley's instructions been obeyed, the colony would have become a "demoralised and degraded community of convicts". He admitted that the "interest of Britain was the grand object to be provided for", yet the reformation of the culprits and the welfare and tranquility of the colony were considerations which should not be disregarded and both of these would be sacrificed, "if all convicts without distinction were subjected to hard labour in the Public Works on their debarkation, and detained therein for such a definite period as seven years". He appealed that if the suppression of crime at home could be obtained by means "not inconsistent with the welfare of the colony", he would not resort to extreme punishments which led to a great number of escapes and filled the countryside with bushrangers. <sup>(1)</sup> No increase in the severity of discipline would be safe until the military force was restored to normal strength if not increased, for the immediate result of the decrease in the number of troops had been an outbreak of outrageous crimes in Launceston. Additions were needed also in the Police Force, and in the number of clergymen in the colony, for it was the responsibility

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(1) Colonist, 27/8/1833, 26/11/1833, and 31/12/1833.

of the British Government to counteract the contaminating effects on the free population as far as possible. <sup>(1)</sup>

Luckily for all concerned, Stanley's suggestions were found to be illegal. <sup>(2)</sup> It was impossible in law to add an extra punishment to the original sentence when no additional crime had been committed. The "worse than death" discipline remained to offend the sensibilities of the free population and arouse the virulence of the Press. However, his demand for increases in the Police Force were sanctioned, and ensured the safety of the colonists, and Arthur saw to it that they were not brought into unpleasant collision with prisoners in chain or road-gangs. <sup>(3)</sup>

- vi -

The final episode in the Colonial Office battle to make the Governor conform to policies dictated by the economy drive at home, went to the British Government.

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(1) Arthur to Stanley, No. 11, 4/2/1834.

(2) Aberdeen to Arthur, 21/2/1835.

(3) Arthur to Spring Rice, 20/4/1835.

As early as 1826, Horton, an Under Secretary of the Colonial Office, had hinted that as the services of the convicts were so valuable to the colony, the expenses incurred by the convict establishment in Van Diemen's Land might well be defrayed by the colony.<sup>(1)</sup> Arthur was apprehensive when a despatch from Bathurst reported the new financial policy. Under the new arrangements, all civil establishment expenses were to be defrayed by the colony, and any expense caused by convicts would be met by the British Treasury. Arthur contended that as the whole colony was only a gaol on a large scale, and the executive and judicial authorities only extensions of the functionaries necessary in such an establishment, Parliament should defray its costs,<sup>(2)</sup> but the Secretary of State, now Goderich,<sup>(3)</sup> was adamant and even hinted that as the prosperity of the colony increased, it might expect that "some portion of the convict expenses, especially those of a mixed character, such as police, will eventually become chargeable under the local treasury."

By 1834, Arthur had warded off British intentions of making the colonists contribute to immigration by a tax on convicts, and resisted the full adoption of the contract system. But he was unable to defeat the determination of the home Government to save the Imperial Treasury by transferring

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(1) Hansard -: Parliamentary Debates, Vol.15, p.1409.

(2) Arthur to Hay, 23/3/1827.

(3) Goderich to Arthur, No.10, 31/7/1827.

to the Colonial revenue the charges of police and gaols in Van Diemen's Land. In 1835, Spring Rice instructed him to arrange for the local disbursing of "that part of the expenditure from which they were relieved in 1827".<sup>(1)</sup> The Police Establishment, gaols, and a certain part of the Colonial Marine, together amounting to about £12,000 were transferred, though the British Treasury still provided the finance need for the penal settlements, medical department, and the custody and superintendence of convicts.

In his role as protector of the economic interests of the free colonists, Arthur was completely opposed to the placing of so great a financial burden on the colony. He suggested, therefore, two ways the British Government could reduce the expenditure incurred by the punishment of criminals. The first was by a more extensive use of the new penal station. With a small additional expenditure on this it would be able to meet the penal needs of the whole Empire, so saving costs of several establishments, and preventing the increase of crime which always followed prison sentences in Britain. Alternatively, the Government could revert to the old policy of disposal of lands by grant, attracting to the colony respectable farmers with means adequate both to develop their properties and employ convict labour.

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(1) Spring Rice to Arthur, No. 33, 17/11/1834.

Arthur warned that self-interest had governed the actions of the free settlers from their original immigration to their preferences for assigned labour. This preference made a tremendous difference to the cost of the convict establishment, assigned convicts costing the Government only £4 p.a. compared with £14 p.a. for Government-supported men.<sup>(1)</sup> It would be impolitic to add the cost of police and gaols to the price of that labour, as self-interest would soon lead them to prefer the available free labour which had fewer drawbacks. Not only was it impolitic, it was unfair to add this extra burden to the colony which already financed many civil departments whose main duties were connected with the convict establishment. No less than \$200,000 p.a. was saved the Government by the assignment of convicts; the disbursement of the costs of civil departments concerned with convict matters.

If the Government was still determined to transfer expenditure to the colony, it would be more diplomatic to take a less dictatorial attitude than exacting a tribute, which in effect was what was implied by transference of two departments, Police and Gaols, which would have had "no existence but for convict discipline". The same ends would be achieved if colonial revenue defrayed the maintenance of all convicts employed in the public works, which could then be considered as the colonial contribution towards buildings chiefly of benefit to the colony.<sup>(2)</sup>

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(1) Arthur to Stanley, No. 80, 19/12/1834.

(2) Arthur to Spring Rice, No. 31, 21/4/1835.



These arguments failed to convince and Glenelg reiterated the instructions.<sup>(1)</sup> Meanwhile Arthur employed his delaying tactics until assured of the Secretary of State's determination to enforce the transfer. The 1835 estimates had been passed, and fearing an upsurge of popular feeling, he had made no attempt to introduce the change in the next year's revenue. He did arrange for the colony to disburse the increased costs of superintendence on the roads,<sup>(2)</sup> but as soon as he received Glenelg's reply, he could delay no longer, as it would have been unfair to leave the introduction of so unpopular a measure to his successor. The new bill met the expected opposition in the Legislative Council, where it was passed by only one vote, several of its supporters insisting that their agreement on this occasion should create no precedent.<sup>(3)</sup>

The immediate concern in the colony was, therefore, the consideration of ways and means of reducing the cost of the convict establishment now chargeable to the colony. Regulations regarding the return of convicts to the Government were strictly adhered to.<sup>(4)</sup> The employment of convict clerks

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(1) Glenelg to Arthur, No. 119, 29/2/1836.

(2) Arthur to Glenelg, No. 93, 20/9/1836.

(3) Legislative Council Minutes of 9/8/1836.

(4) C.S.O. 1/518/11,290.

in public offices, though generally acknowledged as "subversive of convict discipline", <sup>(1)</sup> was nevertheless continued: they <sup>(2)</sup> were cheap, only £18 p.a. The convict authorities were not so restrictive as earlier regarding the assigning of convicts to doubtful characters. Mr. Leith, previously refused servants because of the irregularity of his domestic life, was given an order for two men from an assignable party, though <sup>(3)</sup> the irregularity had not been remedied.

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(1) Arthur to Hay, 23/3/1827;

Arthur to Bathurst, No. 84, 27/1/1827;

Arthur to Hay, 25/5/1835;

Arthur to Stanley, No. 11, 4/2/1834; and

Memo. No. 281: Arthur to Board appointed to investigate the expediency of discontinuing the employment of Convict Clerks, 19/8/1834.

(2) Bathurst to Arthur, No. 14, 3/8/1827;

C.S.O. 1/192/4,539: Col. Secretary to Engineer, 3/12/1827.

(3) C.S.O. 1/520/11,547: Assignment Board to Arthur, December, 1835.

The Van Diemen's Land Company, because so far removed from the more closely settled districts, had been required to provide half the salary of the police magistrate in that area. In January, 1835, Arthur insisted that they should also finance the building of a gaol at their establishment too, a point he had not insisted on when the gaol had been first suggested. (1) As soon as the final decision had been known, a Committee had been appointed to advise on ways of reducing expenditure, but they had been unable to suggest a reduction in any department. It was impossible to reduce the strength of the Police force, without endangering the safety of property and life in the colony. (2) Directions, however, were given the Principal Superintendent to compile a statement of all men employed in the Public Works, marking those who could be dispensed with, (3) but of the number employed by Government, nearly five thousand altogether, only three hundred could have been made available for assignment. Later in the month, on the arrival of a convict transport, further directions were given the

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(1) Hutchinson (Colonial Manager of the V.D.L. Co. in 1835) to Directors' Court, London, January, 1835.

(V.D.L. Company's Office, Burnie, Tas.)

(2) Arthur Papers, Vol. 35 (Mitchell Library):

Memo. on the Expense of the Convict Establishment, 1834-5.

(3) C.S.O. 1/891/18,969: P.S/C to Col. Secretary, 16/12/1836: referring to Col. Secretary to P.S/C, 10/12/1836.

assignment authorities, to assign every man to settlers, in order that "the public should be relieved as much as possible of the expense of maintaining convicts not under sentence". (1)

The self-seeking, utilitarian view which the British Government took of its penal colonies had triumphed over Arthur's insistence that free settlers' interests should be considered, even if for the effective running of the penal system. Perhaps the fact that the estimates did pass each year until 1844, proves the gamble was successful, but it was undoubtedly this financial burden which finally hastened the abolition of transportation.

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(1) loc. cit.: Col. Secretary to Board of Assignment, 26/12/1836.

Chapter Five

"Administration: Personnel, Developments, and Arthur's Contribution."

- i -

It was Arthur's genius for administration that enabled the convict system in Van Diemen's Land to function so efficiently.

The separation of the island from New South Wales, in December 1825, had demanded the formation of a complete civil service in Van Diemen's Land. <sup>(1)</sup> Departments, previously branches of those in Sydney were extended, and in most cases, men were sent out from England to supervise them, Arthur appointing the minor officers, subject to the approval of the Secretary of State. Five departments were re-formed, the Colonial Secretary's, the Principal Superintendent's, those of the Chief Police Magistrate, Colonial Treasurer, and Surveyor General.

It was a thorough-going, comprehensive organization, characterized by the virtues Arthur demanded of it, - honesty, efficiency and dignity. Punctuality in opening offices, voluntary overtime, preservation of the proper social and moral tone, and above all, no shirking of work in Government hours,

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(1) Arthur to Bathurst, No. 19, 23/3/1827.

set a high standard, and conformity with this code was a sine qua non for remaining in the service.

Each departmental head was required to submit periodical reports to the Lieut. Governor, and in matters relating to the discipline of convicts correspondence between the Governor and the Convict Department was more frequent. The activities of the four officers connected with the control of convicts, the Governor, the Colonial Secretary, the Principal Superintendent and the Chief Police Magistrate, were all co-ordinated, each letter handled by one officer which related to the department of another receiving often the comments of all four officials. Complete dossiers on the subject were compiled and meticulously filed to be available to prompt the Governor's memory, outstandingly retentive in any case, whenever the case came up again for his consideration.

The standards he expected were no lower than those he set himself. Calder, a Government surveyor who had no love for Arthur, described him as "the most indefatigable quill-driver of his own or any other age". Melville, enemy of the colonial autocracy, was more appreciative of his (1) "indefatigable zeal, industry, and perseverance". His executive government owed its strength and quick, easy

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(1) H. Melville: History of Van Diemen's Land, (London 1835)  
p.127.

functioning to the "untiring activity, thorough planning, constant supervision" of Arthur himself, and his "insistence (1) on correct standards of conduct and regularity of procedure".

For the better working of his government, Arthur insisted on an adequate staff to fill the requirements of each department, a policy which brought him into conflict with the Secretary of State if their salaries were to be defrayed by the British Treasury, and with the Colonial Press if they were chargeable to the colony. (2) Respectability was a characteristic he demanded in all his officers, but low salaries on his arrival made it difficult for Government officers to keep a respectable appearance without occasionally resorting to the petty-cash box. Having found an officer whose efficiency and reliability suited his requirements, he invariably obtained for him a decent salary, (3) a practice in (4) which he was supported by the Executive Council.

The officials sent him by the Colonial Office, often the cousins or ne'er-do-well sons of influential families, were a constant source of irritation, as rarely did they measure up to the standards he demanded. To those who really seemed

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(1) Levy, op.cit. p.62.

(2) Colonial Times, 19/4/1831.

(3) Arthur to Goderich, No. 2, 6/1/1833; and  
Arthur to Glenelg, No. 3, 20/1/1835.

(4) E.C. 1/1: 15/6/1826.

unsuitable, he suggested an alternative, and less demanding situation, but if this failed, he had no hesitation in dismissing them on first sign of inefficiency, replacing them with officers of his own choice, on whose devotion and ability he could rely. As those he appointed were in many cases his own relatives, he exposed himself to charges of nepotism and favouritism. But he was responsible for the efficiency of his government, and the strength and success of his administration is evidence enough of the ability of the men he chose.

Captain Matthew Forster, a half-pay officer who had married one of Arthur's nieces had arrived in the colony in 1832 and was in need of a job. Mulgrave had replaced Humphrey as Chief Police Magistrate in Hobart, in 1829, but was proving most unpopular there. <sup>(1)</sup> Police business was increasing.

Demand for stricter discipline required greater vigilance by the Police, and more frequent hearings of cases therefore. Arthur, therefore, took the opportunity of Forster's arrival to create a new office of Chairman of Quarter Sessions appointing Mulgrave to the new position, and giving the vacated post of Chief Police Magistrate to Forster. <sup>(2)</sup> The first charge of favouritism was laid. But within a few months the opposition press were extolling their new police officer as "a scholar and

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(1) Colonial Times, 4/1/1832, 20/7/1831.

(2) Colonial Times, 4/1/1832, 11/4/1832.



a gentleman", (hard to imagine as later descriptions of him by the same paper, and substantiated by Boyes, pronounced him a "bouncing, blundering soldier", <sup>(1)</sup> blunt, insensitive, and brusque,) for the impartiality of his decisions, for opening hearings to the public, and for his devotion to duty evidenced by his attendance to the business of his office while still convalescing from an eye operation. <sup>(2)</sup> His competence earned not only public esteem, but praise from the Governor, <sup>(3)</sup> who would not tolerate inefficiency from any public officer, even if he was a relative. Like Arthur, he expected full co-operation from his subordinates, and insisted that he be informed of all dealings between the magistrates and the officers of other departments, so that he would know what was going on in the department for which he was responsible. Boyes pronounced him "inexperienced, rash and arrogant", <sup>(4)</sup> one of the "pack of unprincipled place-hunters" who supported Arthur's theories of convict discipline for his own advancement. <sup>(5)</sup>

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(1) Colonist, 30/11/1832, Colonial Times, 11/4/1832.

(2) Colonial Times, 2/4/1833.

(3) Arthur to Hay, 12/12/1832.

(4) Boyes' Diary 15/2/1835.

(5) Boyes' Diary 15/3/1836.

Kathleen Fitzpatrick in her study of "Sir John Franklin in Tasmania" takes the view also, <sup>(1)</sup> that he regarded his position as a job, and did not question the purpose of the convict system. Both these charges may be true; he was an ex-soldier trained to give implicit obedience to his chief, the quality Arthur demanded of the officer who was to implement his policy on convict discipline. His returns were accurate; his reports were complete and competent; the organization and administration of his department were excellent; the due punishments were enforced; his advice was sound, and Arthur required no more.

The Muster-Master, the convict registrar housed in the Police Department, was another officer of vital importance to the convict system from an administrative point of view, if not an executive one. First occupant of this office was Josiah Spode, who fulfilled his functions so meticulously that he was appointed Principal Superintendent on the dismissal of Woods. His successor to the office of Muster-Master, was Thomas Mason, son of an eminent West Indian lawyer, and one of the class who came to the colony under official patronage. His duties were not of an arduous nature (he was dubbed one of the class of <sup>(2)</sup> "Do-Littles" by the Colonial Times) and he fulfilled them

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(1) K. Fitzpatrick: op.cit. pp 109-11.

(2) Colonial Times, 19/4/1831.

without particular merit, but well enough to obtain promotion within four years. (1) As a magistrate, however, he was most

unpopular, and earned a rebuke from the Governor and Executive Council for his rough-handling of the case of a convict, Greenwood, brought before him for violently assaulting two constables. (2)

His overbearing arrogance, hasty temper, and inexperience (he was only 22 years on appointment) made him the unfortunate butt of the sarcasm of the Colonial Times which ran a weekly commentary on the doings of "Mr. Muster-Master Mason", tantalizing their victim by carefully keeping within the libel law. (3)

In a government whose chief function was administering a system of convict discipline, the head of the convict department was bound to be one of the most important executive officers. Fortunately for Arthur, in all but twelve months of his term in Van Diemen's Land the officer who filled this post could be relied upon to carry out his policy relating to the treatment and disposal of the convicts. As with the Chief Police Magistrate, there was little need when the head of the Government was determined upon what course the administration of

(1) Arthur to Glenelg, No. 42, 1/6/1835.

(2) Memo. Lt. Governor to Col. Sec., 10/4/1834.

Forster to Turnbull, 7/6/1834,

Forster to Col. Sec. 12/3/1835, enclosing

Colonial Times, 8/4/1834.

(3) Colonial Times, 7/1/1831, 2/4/1831, 31/7/1832, and ff.

the system was to take, for the Principal Superintendent to do more than carry out his orders efficiently.

Lakeland, who held the office in 1824, had already had several years' experience of the colony prior to Arthur's arrival, and necessarily did more than implement orders. A likeable, "conscientious person of decided responsibility",<sup>(1)</sup> his advice was sound, and his co-operation and experience was invaluable in familiarizing Arthur in the first few years, with this most important aspect of his office. Without his assistance it would have been impossible for Arthur to re-organize the system into the disciplinary machine it became so quickly.

On his death in 1828, James Gordon, considered at the time the most able of the police magistrates, and a colonist of fourteen years standing, was appointed to fill the vacancy, and instructed to follow the practice Lakeland had shown to be satisfactory.<sup>(2)</sup> The "burly Yorkshireman", however, had not the orderly mind that Arthur required of his civil servants, and he held the office only seven months, during which time he had let his weekly returns fall into arrears, and had failed to appropriate the convicts available according to Arthur's instructions, and unforgiveable sin. On a re-allotment of offices in July, 1829, Josiah Spode, previously Muster-Master, and so possessing a valuable knowledge of most of the convicts in the island was appointed Principal Superintendent, Gordon

(1) Arthur to Bathurst, No. 25, 29/3/1827.

(2) C.S.O. 1/357/8,174: Col. Sec. to Gordon, December, 1828.

taking the magistracy at Richmond. This appointment proved more satisfactory, but again was of short duration. The Secretary of State had already appointed Lakeland's successor, - (1) R.H.Woods, "the self-proclaimed friend and associate of a well-known leading English jurist." (2) Fortunately, he was the only placeman who interfered with the administration of the convict system. "When he presented himself, the Lieut. Governor, seeing he was....'worse for liquor....and had all the appearance of a muddler', tried unsuccessfully to persuade him to accept another less responsible position; and then, with much dread, put him in orders as Principal Superintendent". (3) Arthur's fears were justified. Within seven months he was dismissed, having proved dissolute, unreliable, and generally unsuitable for so responsible a position.

Complaints made to the Governor from resentful settlers whose urgent demands for labour had received no answer, were the first indication of the muddle in the Convict Department. (4) His incompetency was soon obvious to his colleagues, the running of whose departments was hindered by the delays arising from his inefficiency. On investigation, he was found to have disobeyed almost every instruction Arthur had given him. (5) He had made assignments without authority, assigning even mechanics which

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(1) Murray to Arthur, No. 65, 30/7/1829.

(2) Levy, op.cit. p.64.

(3) Levy, op.cit. p.64.

(4) C.S.O. 1/462/10,250: Arthur's Memo. 26/5/1830.

(5) C.S.O. 1/443/9,891.

at that time was never permitted on any account. He had deliberately mis-represented the trade of a convict joiner as a farm-hand as he wanted him assigned to himself, (a man of that trade would not have been permitted to be assigned, being so valuable to both the Public Works and the settlers). Several of his own men he had failed to cross off the Ration List, so that they continued to be supported by the Government. He had disregarded Arthur's instruction to assign convicts to settlers exposed to attacks from the natives, and had failed to send his provisional assignment lists to the Governor on time. His conduct as a magistrate, too, had been highly irregular. He had remitted sentences, the exclusive privilege of the Governor; awarded excessive penalties for very slight offences, and had recommended the applications of the most unsuitable settlers for convicts. These were faults serious enough, but his habitual intemperance was a standing insult to the dignity and moral tone of the public service. <sup>(1)</sup> Thirteen charges were brought against him by his associates, including Spode, and on failing on cross examination, to answer them satisfactorily, he was dismissed.

Spode was again provisionally appointed, but on this occasion, Arthur's recommendations were heeded, and the appointment was officially ratified. Spode's length of service, from July, 1829 until the end of the assignment system in 1843,

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(1) C.S.O. 1/443/9.891.

is itself sufficient comment on his efficiency. He had the qualities Arthur demanded of the officers administering his convict machine. He was methodical and efficient, priding himself on the accuracy of his returns. In a situation which many would have used to their own advantage, he was scrupulously honest, appropriating the convicts available as fairly as possible. <sup>(1)</sup> From constant dealing with returns, he had made himself familiar during his long term of office with many of the convicts he controlled, and from perusal of the annual reports on their behaviour came to know whether a particular man was entitled to a ticket of leave, whether he was a good mechanic or only "indifferent", if a charge against him was likely to be well-founded. Such information was invaluable to the Governor when deciding claims for remittance of sentence, answering complaints, and finding convicts for assignment to special settlers. His suggestions regarding policy were valuable so that Arthur invariably sought his opinion first before deciding questions at issue.

Thorough and conscientious though he was in his devotion to the duties of his important office, he was, however, apt to be bound by the letter of his instructions, never deviating to make concessions to suit the convenience of settlers if it meant disregarding the general rules on which he had been directed to run his department. At times, therefore, he

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(1) Colonial Times, 17/7/1832;

Tasmanian, 4/6/1831;

C.S.O. 1/528/11,502: Arthur to Col.Sec. 18/7/1832.

appears very niggling, with little generosity of thought or feeling, a humorless, slightly arrogant, always "respectable"<sup>(1)</sup> servant of Government. But if his implicit acceptance of his duty makes him a rather colourless subordinate, it was due to his dependability that the functioning of the convict department was so much to Arthur's satisfaction.

- ii -

Though Arthur told the Secretary of State in 1825 that he had "taken upon himself the entire management of the assignment system",<sup>(2)</sup> the administrative routine fell to Spode, Arthur in fact acting only as director and supervisor. It was the Principal Superintendent as head of the central Convict Department, who served as a focal point around which the duties of allied departments were co-ordinated. Reliable though he was, when the numbers of convicts in the colony increased so tremendously in the 1830's, (the 12,000 point was reached in 1832), it was finally considered time to relieve Spode of the invidious task of appropriating servants so that he would have more time to devote to the convicts who claimed his attention.

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(1) Boyes' Diary, 9/2/1837.

(2) Arthur to Bathurst, No. 11, 10/8/1825.



The assigning of convicts according to the rules Arthur set down required not a little discretion from the Principal Superintendent. With the co-operation of the police magistrates, he collected information regarding settlers' characters; from the shipping lists he had to find the date of their arrival, noting all these particulars on their applications for servants. After considering the preferences of the Government, he then drew up an appropriation list on the arrival of each transport, which was submitted to the Governor for approval. This approval was no mere token, as Arthur had an astounding memory, and questioned any assignments which seemed ill-advised or unfair. Ultimate responsibility, therefore, lay with the Governor, but it was at the Principal Superintendent that all the abuse was directed. Arthur lent the weight of his authority to most of Spode's decisions and replies to charges of unfairness or inattention, realizing that the difficulties encountered in establishing themselves in an unfamiliar country often led frustrated settlers to make unnecessarily rash complaints.<sup>(1)</sup> But when the number of unsatisfied applicants rose, he appealed to the Governor to appoint a Board to relieve him of the responsibility. It would be more satisfactory, both to the Principal Superintendent and the settlers to have several officers for such an important function, as these would at least give colonists more confidence, a vital factor in the system, as Arthur realized.

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(1) C.S.O. 1/207/4,932: P.S/C. to Col.Sec. 6/5/1831.

With a clerk devoted full-time to their assistance, the whole procedure could be executed more satisfactorily. A Board of three was chosen, consisting of the Chief Police Magistrate, Matthew Forster; the Principal Superintendent; and a third, at first Colonel Logan of the 63rd Regiment stationed in the island, and later, the Colonial Treasurer, Gregory, <sup>(1)</sup> officers who together would have come to know a great many of the colonists as well as the prisoners. <sup>(2)</sup> The officers preferred to give their services free, and spend the extra on obtaining a reliable person as clerk, who would have an office in the Police Department, where he would keep record of proceedings.

As on other occasions, concern for economy blinded the Secretary of State to the need for a really reliable officer, and though the colony was to meet the cost, Goderich would only allow a salary of £150 p.a. <sup>(3)</sup> which Arthur considered inadequate compensation for anyone of real merit. <sup>(4)</sup> This defeated the whole purpose of the Board, as the settlers would have had no more confidence that their applications were being considered fairly if an unreliable clerk handled the business than if the Principal Superintendent managed the whole procedure alone. It was a confidential post, and the colonists had to be assured that the officer filling it was above all suspicion

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(1) Government Notice, 12/12/1833.

(2) C.S.O. 1/528/11,502: Memo. from Arthur to Col.Sec. directing Government Order, 19/7/1832.

(3) Goderich to Arthur, No. 123, 26/3/1833.

(4) Arthur to Goderich, No. 54, 30/10/1833, enclosing Assignment Board to Arthur.

of unfair influence, for it was left to him to register each application, and bring it forward in strict rotation with any information about it, so that the Board need do no more than consider the suitability of each applicant, and decide according to the circumstances of the case. Therefore, in spite of the Secretary of State's decision, Mr. Thorneloe, a settler of long standing in the colony, was appointed to the post,<sup>(1)</sup> and granted £250 p.a. by the Executive Council on the recommendation of the Governor and the Assignment Board, until a further reply was received from home. As usual when the salaries of officials were to be disbursed from the Colonial Chest, the appointment was followed by an outburst from the press, who though most impressed with the offer of the members to give their services gratuitously,<sup>(2)</sup> yet considered the £250 too much for the clerk.<sup>(3)</sup> The Secretary of State was inclined to agree. He couldn't be persuaded to see that a clerk should receive extra for his reliability. But, as the assisting of immigrants to find positions with settlers did occupy a fair proportion of his time, Spring Rice agreed to allow him an extra £100 for these services.<sup>(4)</sup>

Arthur still maintained control of the assignment system and checked all the Board's proceedings to make sure that his policy was being properly executed. The members reported

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(1) Arthur to Goderich, No. 54, 30/10/1833.

(2) Colonial Times 17/7/1832.

(3) Colonial Times 31/7/1832; 3/9/1833.

(4) Spring Rice to Arthur, No. 25, 10/11/1834.

monthly at Government House, (more often if necessary), to discuss the month's business and make any suggestions for the improvement of the system. Appropriation lists were sent to him for approval on the arrival of each ship, as before, and so were the monthly returns of assignments, kept in the offices of the various police magistrates. <sup>(1)</sup>

The proceedings of the Board were kept private, but settlers were able to make appointments to attend and present their cases themselves. <sup>(2)</sup> They took over all the duties of the Principal Superintendent concerned with the assignment of male convicts to settlers, and received all correspondence on this head. <sup>(3)</sup> But as he was in charge of the Female Factory and, therefore, should have known best the services most suitable for each female, the assignment of these was left to the Principal Superintendent. <sup>(4)</sup> On the arrival of a transport, he would reserve the number and type of men required for the Public Works, (not, however, selecting the best for the Government) leaving the rest to be distributed by the Board. <sup>(5)</sup> They also made all the arrangements for harvest assistance,

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(1) C.S.O. 1/659/14,785; Assignment Board to Arthur 7/10/1833.

(2) C.S.O. 1/687/15,289: Assignment Board to Col.Sec. on application of Chas. Meredith, July, 1834.

(3) Government Notice, 12/12/1833;  
Courier 30/11/1832.

(4) Gregory's Evidence before House of Lords, 23/3/1847, printed in the Hobart Town Courier and Gazette, 4/12/1847.

(5) Circular: Assignment Board to Police Magistrate, 10/2/1840  
(Uncatalogued MSS., Mitchell Library).

transfers,<sup>(1)</sup> and the loan of mechanics.

Of great assistance to both settlers and Governor, was the Superintendent of Convicts in Launceston who handled assignment business in the north. Settlers there could receive men almost as soon as they became available for re-assignment, without the delays and difficulties which sometimes arose when the assignment was made in Hobart. R.C.Gunn, who held this office from July 1830 until April 1836, was a very genial, sincere,<sup>(2)</sup> and approachable person, rather too inclined at times to help the settlers. Full account of all men available for re-assignment had to be sent to the Board immediately<sup>(3)</sup> and also at the end of the week, so that no labour would be wasted when this was so scarce. But occasionally men were left for a few days in the barracks awaiting further disposal, and in such cases, Mr. Gunn felt at liberty to lend these to needy settlers. Such independent action was not always approved and the comment he made on an application from one of his friends for the loan of a tailor for a short term is enlightening: "I have received a positive order from the Board to lend no one without their

(1) Police Magistrates (Waterloo Pt.) to Assignment Board,

24/9/1834,

(Pol. Office Letterbooks, Mitchell Library).

(2) Lady Franklin's Diary, 18/4/1843, p.5.

(Microfilm, State Archives, Hobart).

(3) S/C.Letterbook, (Mitchell Library F 80), p.97:

S/C to P.S/C. 7/5/1835.

consent, some kind friend having made himself busy in the matter!"<sup>(1)</sup>

Much was hoped for on the appointment of the Board. As the Colonial Times said,<sup>(2)</sup> "although Mr. Spode discharged the duties of so invidious a situation with infinite credit to himself, still it was impossible to give general satisfaction, coming in contact as he was necessarily obliged to do, with every settler throughout the colony." They expressed the hope that under the Board "middling" and poorer settlers would receive as much attention as the richer and more influential men, whose establishments they thought should be limited to twenty.<sup>(3)</sup>

In the appropriation of general labourers their record was a good one, though this can not be said of their conduct regarding the loan of mechanics. Even so it probably compared favourably with its counterpart in New South Wales. There, all the members were themselves the possessors of very large convict establishments, and were accused before the Parliamentary Committee on Transportation in 1838, of demanding substantial bribes before satisfactory servants were given.<sup>(4)</sup>

(1) S/C Letterbook, (Mitchell Library F 80): S/C to Thos.

Fletcher, 6/5/1835.

(2) Colonial Times, 17/7/1832.

(3) Colonial Times, 7/8/1832.

(4) Evidence before Parliamentary Committee on Transportation, 1837: Mudie, Qs. 1434-1451.

A brief investigation of the assignments from the appropriation lists published weekly in the Hobart Town Gazette over six months in 1832 and 1833, immediately after the appointment of the Board, shows that settlers with official positions under the Government, and who might, therefore, have exerted an unfair influence over Board members, made up only ten per cent of the total population. The proportion of assignments they received was slightly higher than their numbers warranted - sixteen per cent of the total number of assignments. Whereas four "unofficial settlers" received five convicts between them, two officials were assigned three men, a ration of five to six. Of the total population of Van Diemen's Land in 1832, forty per cent of those who appeared on the jury list (qualifications for which were ownership of real estate worth £40 p.a.)<sup>(2)</sup> were assigned convicts in that year. The proportion had not changed by 1837, the census return of that year showing that in the district of New Town, one of the better class Hobart suburbs, where most of the Government officials lived, they numbered only ten per cent of the district population, and received sixteen per cent of the total assignments in that area, (14 per cent of the males, and 25 per cent of the females). Government salaries in a higher bracket than most probably accounted for this difference; civil

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(1) Evidence before Parliamentary Committee on Transportation, 1837: Mudie, Qs. 1434-1451.

(2) Ross: Van Diemen's Land Annual, 1833, p.83.

servants could afford household help, hence the higher proportion of female convicts. Furthermore, the Governor would have preferred to assign female convicts to officers of whose "respectability" he was assured.

Melville's claim that in a system of which he thoroughly approved, "favouritism was the only serious hindrance"<sup>(1)</sup> seems, from a perusal of the Gazette notices which listed the weekly assignments, typical of the unsubstantiated criticisms of Arthur's Government. But an investigation of the Board's direction of the loan system for the same period gives support to the almost weekly Press charges,<sup>(2)</sup> showing a different view of the impeccable honesty of the public officers connected with the convict system.

Without any knowledge of the persons who applied for the loan of mechanics, a survey of those who received them makes an accurate assessment of the Board's partiality impossible. When, however, ten Government men received 105 mechanics - i.e. 6 of the colony's "respectable" population received eleven per cent of the year's loans, the honour of the Board

(1) H. Melville, Australasia and Prison Discipline

(London, 1851), page 134.

(2) Colonial Times 15/2/1832, 21/2/1832, 6/7/1832, 7/8/1832, 21/8/1832, 15/10/1832, 16/7/1833.

Colonist 15/10/1833, and 6/7/1832.



appears questionable to say the least. Among the ten, Forster, the Chief Police Magistrate and member of the Board received sixteen; A. Boyd, and T. Capon, both high-ranking officers in the Police Department, received nineteen between them; Montagu, the Colonial Treasurer, and like Forster, Arthur's nephew, received nineteen; the Emmett brothers, one, chief Clerk to the Convict Department and the other also in the Public Service, eleven; James Thorneloe, the clerk of the Assignment Board, took five; Thomas Mason, Muster Master, four; William Gunn, Superintendent of the Prisoners' Barracks, six.

(1)

The Colonist's claim that the loan gang was "the most fertile source of patronage and favouritism at the disposal of the Chief Authority" was not without foundation.

If Arthur was aware of and condoned, the assignment of mechanics to officers in the city, his change of policy is indeed remarkable. It had always been his view that the loan of mechanics should be limited to country settlers. On an application from Spode himself, in 1831, for the loan of a pair of sawyers for six weeks he had noted: "Inform Mr. Spode I regret very much indeed to refuse a request made by himself or any other public officer, but before I went into the interior, I renewed to the Colonial Secretary the directions which I have repeatedly given him that mechanics, and most especially sawyers, were so much required by settlers residing on their grants, that

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(1) Colonist 16/7/1833.

every disposable convict mechanic should be assigned on loan to them."<sup>(1)</sup>

On the foundation of the Board he had re-iterated the instructions "long since laid down that all men in the loan gang should be exclusively assigned on loan to the settlers in the interior - that is to inhabitants not residing either in Hobart or Launceston in each of which places labour may be so much more easily obtained than in districts of the interior."<sup>(2)</sup> Concern for the discipline of the convicts in the towns and the desire to assist settlers with convict mechanics when free men could not be induced to leave the towns were his chief reasons, but on their appointment, to win the co-operation of the Board in the formulation of policies they were to administer, he "requested their opinion whether the practice should be continued, as by some means or other, there have been departures from it arising from the importunity of the applicants". (These same "departures" had caused criticism in the Press which resented the fact that Government officials could sometimes obtain men from the Lumber Yard, workshop of the Public Works Department, when the general settler could not.)<sup>(3)</sup>

Arthur's attitude to town loans had not changed by December, 1833, when he reiterated his former directions.<sup>(4)</sup>

(1) C.S.O. 1/523/11,353: Arthur's Note to Spode, 25/5/1831.

(2) C.S.O. 1/528/11,502: Memo, Arthur to Col. Secretary, 18/7/1832.

(3) Colonial Times 8/5/1829, 7/9/1831, 8/2/1832.

(4) Arthur to Stanley, No. 59, 14/10/1834, enclosing Arthur to Colonial Secretary, 20/12/1833.

Yet policy did change on the formation of the Assignment Board, obviously at the suggestion of the Board, and in all probability Captain Forster's opinion was a leading one. He and his brother officer, Montagu, were both building houses in that year, and loan of convict mechanics made a tremendous difference to the cost, (according to the Colonist, loan gang mechanics reduced the cost of building operations four times.)<sup>(1)</sup> To their credit, Spode received only two mechanics on loan, a tailor and a stone cutter, and Captain Logan, the other member of the Board, none at all.

Another factor for consideration is that in July, 1832, the Secretary of State's despatch, threatening to impose a tax on convict mechanics was received in the colony. In the note to the Colonial Secretary, which directed the appointment of the Board, Arthur requested the members to consider at once, ways of implementing the tax. Forster, on the Board, when appropriating so many mechanics for himself, and friends like Montagu, Schaw, Parramore, Thomas Capon, Boyd, and Mason, may have had this threatened tax in mind, and hoped to complete his house with the aid of convict labour before it was imposed.

Whatever the motives of the Board, if the number of applications for mechanics from country residents was as large as Arthur's previous views on the subject indicated (and though this is probable, there is no proof that it was so, all

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(1) Colonist 4/1/1833.

evidence by way of the Principal Superintendent's application lists, having been lost) then his conduct as Governor, in condoning such a liberal assignment of mechanics to his own friends and relatives (and he presumably knew, since all assignment lists were referred to him for approval) is highly censurable. Two factors, however, increased the element of doubt. The number of mechanics available for loan was much larger in the period in question than in any previous year (264 were in the loan gang in 1832, and 326 in 1833, compared with only 145 in 1831); and the type of skilled assistance both Montagu and Forster received was in most cases certainly not the sort for which there was a great demand.

If these factors do not provide an adequate solution to the problem his conduct is not only deserving of the highest criticism, but must appear utterly incomprehensible, for what most impresses the student in Arthur's character, is its absolute conscientiousness, and single mindedness particularly when the discipline of convicts was concerned.

- iii -

One of the most important duties of the Board, which they do seem to have discharged to the satisfaction of the opposition Press, was the direction of the transfer system.

Care was always taken by the convict authorities to place convicts in occupations that best suited them and their masters, but mistakes were inevitable. Melville recounted an amusing error in which the Colonial Times was involved. Greatly in need of a compositor to set his type, he had been relieved to learn of a man of that trade aboard the Katherine Stewart Forbes. There being no other applications for such a craftsman, he duly arrived at the Colonial Times' office. But within five minutes the mistake was discovered: "the youngster, in lieu of being a compositor, turned out to be a Staffordshire composter."<sup>(1)</sup> Settlers so circumstanced were, therefore, glad of the opportunity to exchange their men.<sup>(2)</sup>

Arthur set great store by the transfer system. In a despatch extolling the virtues of the assignment system to counter the criticism of the Parliamentary Committee on Secondary Punishments which threatened to bring about its abolition, he expressed his "optimum labour allocation" theory. The motive of "enlightened self-interest" not only led settlers to obey regulations regarding the discipline of convicts, but also governed the selection of servants.<sup>(3)</sup> If these behaved badly, it paid the settler to have them punished and replaced by others. Similarly, he thought, if the skills of one man were not those needed in that service it was best for the master to exchange him for one more suitable. Besides inconveniencing the master,

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(1) Colonial Times, 24/7/1832.

(2) Colonial Times, 12/11/1830.

(3) Arthur to Goderich 27/2/1833.

the forcing of servants to perform work they were not trained for, or in services where the influence of other convicts may have been harmful, was often prejudicial to their reform. <sup>(1)</sup>

Through continual circulation of labour assisted by the transfer system he hoped to achieve this economic and social ideal!

A haphazard, unofficial exchange of convicts had existed before Arthur came to the colony, but in typical fashion, he had insisted that the practice be put on a sound official basis, and fully recorded. An annual return showing the whereabouts of all convicts in assigned service was called. Application had to be made to the Governor before any transfer could take place, so that he could check whether the new assignee was a suitable person. When the transfer was sanctioned, a special form then had to be filled in and sent to the Convict Department so that all particulars would be recorded. <sup>(2)</sup>

With the appointment of police magistrates in each district, settlers had first to report to them. <sup>(3)</sup> They would pass on the application for transfer, ending it or not

(1) Colonist 18/6/1833; and

C.S.O. 1/603/13,703: Gunn to P.S/C. 22/6/1832.

(2) C.S.O. 1/119/3,004: Memo, P.S/C to Arthur, May, 1826.

(3) S/C Letterbook (Mitchell Library F 79) p.137:

S/C to P.S/C. 25/6/1832.

according to the characters of the parties, and the best interests of the servant. The Board would then send an order to the nearest police magistrate to escort the servant to his new master. Monthly lists of all transfers were sent from each Police Office to the Colonial Secretary for the

Governor's reference, then to the Assignment Board to check their returns. <sup>(1)</sup> The magistrates often arranged the

transfer themselves, subject to the Board's approval, a more direct proceeding which was more satisfactory to settlers. <sup>(2)</sup>

As it would have led to irregularities that would never be discovered, settlers were not permitted to lend servants to each other <sup>(3)</sup> (though the Hobler diary shows that they did), but police magistrates sometimes sanctioned temporary loans between settlers in cases of distress. The Board still had to be informed, and the convict given a pass to present to the police of the new district to show he was not illegally at <sup>(4)</sup> large.

Unless the transfer was made conditional on the consent of the convict, however, his status was little better than a slave whose services could be bought and sold almost at the will of the master. Official permission might be given, but there was no knowing that servants transferred from a

(1) C.S.O. 1/659/14,785.

(2) Police Department Correspondence, Mitchell Library;

Pol. Mag. (Waterloo Pt.) to Assignment Board 24/9/1834.

(3) Hobler Diary (Mitchell Library), 15/11/1827.

(4) Franklin to Glenelg, No. 104, 7/10/1837, enclosing No. 2.

poor settler's service to that of a wealthier were not bringing a profit to the former. This was made clear by the case of a tanner who, on leaving the district, disposed of his business on better terms by agreeing to have the servants on whom the business depended, transferred to the new owner. Neighbours who had hoped to receive them resented this transaction, and reported it, Arthur did not appreciate the injustice to the convicts concerned, and, always ready to encourage industry, considered it was fair to expect such transfer of employees provided the convict authorities were assured the owner was fit to take assigned servants. But, to avoid all arguments in the future, it seemed best for the Board to take back the convicts of any one leaving the colony, and re-assign them at their own discretion, not necessarily according to the disposal of the property.<sup>(1)</sup>

Trafficking in convicts was not common but there were occasional cases reported. William Field, a settler with substantial property in the Westbury district acquired many of his illegally. Two stock-keepers had been transferred along with their cattle in a deal with a neighbour! On another occasion Field had acted as agent for a friend he knew to be leaving the colony, in order to take over his two convict servants,<sup>(2)</sup> instead of returning them to the Government.

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(1) C.S.O. 1/606/13,806: Arthur's Note, 3/11/1832.

(2) C.S.O. 1/787/16,803: Pol. Mag.(Westbury) to P.S/C 13/2/1836.



Had the Government run the system instead of merely ratifying private agreements, Arthur's ideal might have been achieved. But, hindered by the Government's fears that return of men would increase costs, and complicated by the number of useless men sent to the colony, the transfer system, when put to the test in 1833, failed to circulate the labour force to give the greatest satisfaction to all. Though there were 1,000 applications outstanding, and many settlers were anxious to reduce their estates, the Colonist lamented, the "master who wants a hand does not always know where to seek for a person who wishes to dispose of one, and, therefore, the benefit of transferring is lost to the generality."<sup>(1)</sup>

- iv -

It was for his ability as an administrator that Arthur's career was outstanding, and nowhere were his talents so much in evidence as in his administration of the British Government's transportation policy in Van Diemen's Land. His duty to the British Government to whom he was responsible was to govern

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(1) Colonist 18/6/1833 p. 1. col. 3.

the island so that it would be effective as a penal colony, at the same time furthering British hopes that by the threat of severe punishment, crime at home would be deterred.

In establishing the system which was to make transportation to Van Diemen's Land more of a punishment than mere expatriation, Arthur built so solidly, planned and organised each department concerned with the system so thoroughly, and trained the officials to whom he had entrusted the duty of running the machine so effectively, that even without his direction, the system continued to function smoothly along the same principles. The length of his term in Van Diemen's Land, twice that of most colonial governors gave him time to shape the system he had planned. "Secretaries of State came like shadows and departed, and still Colonel Arthur was at his post."<sup>(1)</sup> His system was able to develop without interruption, becoming as far as it was possible for it to become, the disciplinary machine he intended it to be. The smallness of the area over which convicts were scattered enabled more constant supervision by the police, so that the Government could insist fairly successfully on the coercive discipline it demanded.

But chiefly it was Arthur's own qualities which made his administration so successful, in spite of obstacles like intractable colonists, who opposed his autocracy, or failed to

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(1) Forsyth, op.cit. p.12 footnote 1. (Busden; History of Australia, i, 575).

see the need for rigorous control over their servants; incompetent officials who interfered with the running of the machine; and the misguided policies of the Secretaries of State who failed to remember Van Diemen's Land was a penal colony, not an island for rehabilitating paupers. For his exertions he was widely acclaimed, received a knighthood, a new appointment as oppressor of the Canadian revolt, and finally the offer of the Governor-Generalship of India, the highest post in the Empire.

On his arrival, convict discipline was extremely lax; the prisoners' condition was in many cases anything but a punishment for crime. Though established as a place of secondary punishment for transported offenders, the immediate capacity of the colony to carry out this object on any scale was almost exhausted by the rapid increase of transports arriving in the first four years of the 1820's. The safety of the colony was threatened by attacks from natives and bushrangers; the development of commerce and agriculture in the island was hindered by dependence on New South Wales; the civil service was unreliable, and public and private morals were low.

By 1836 when he left Van Diemen's Land, the island's prosperity had increased tremendously. Wool growing had developed as settlement extended over all the easily accessible land, and with whale oil, had become the staple article of

export, the colony for many years shipping more wool to Britain than did New South Wales. <sup>(1)</sup> Colonial revenues had multiplied six times by 1836, from £24,000 to £130,000 p.a. reflecting the increase of commerce, as customs duties, fees and licences made up the greatest percentage of the colonial income. Chief contributing causes were the flood of convicts arriving in the twenties which made necessary a large Commissariat outlay, the land policy of the twenties, and Arthur's assistance to capital investment in the colony. Imports rose from £62,000 in 1824, to £560,000 in 1836, while exports, mainly wheat, wool, whale oil, and wattle-bark, though bringing only £14,000 when Arthur arrived, had increased thirty times to £420,000 by the end of his administration. Land and property values generally rose 400 per cent in the period. Montagu's tribute to his chief was well deserved: "I have seen order and precision of purpose gradually growing out of confusion and uncertainty, and the security to person and property, as a consequence taking the place of apprehension. I have traced the effect of that security in the encouragement of industry and in the increased value of property, influenced as these have been.....by that general confidence which had afforded the means of enabling everyone to turn his undivided attention to his own private pursuits, trusting implicitly to the measures of the Government for the protection of his person and property."<sup>(2)</sup>

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(1) Forsyth, op.cit. p.30.

(2) G.O. 46/1/p.25-51. Memo. Montagu to Franklin, June, 1837.

In assessing his achievement in the field of convict discipline, he must be given credit for achieving in the main, what he set out to achieve. His claim that the form of discipline he was implementing was "well-calculated to keep the convict population in due submission, and to prevent the commission of crime"<sup>(1)</sup> was borne out. Discipline in road parties and Government service generally, increased gradually, so that by 1833 there was no question that convicts preferred the service of settlers. The assignment regulations devised to ensure rigid discipline and to allow the prisoners in assigned service no prospect of comfort, were enforced by a vigilant police, and "due submission" was undoubtedly the result in the majority of services, if not all. With provision for immediate punishment of offenders in assigned service, in very few cases was transportation when followed by assignment the reward for crime it had been.

The police system was possibly not "perfect in all its parts" (convict field police had still to be employed for sake of economy), but by 1836, the force had gone far towards effecting its object - the deterrence of crime by the certainty of detection. Crime figures indicate the rapid improvement. In 1834, 16 in every thousand committed serious crimes; in 1836, only three, a very low proportion considering the composition of the population.

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(1) Arthur to Bathurst, No. 19, 23/3/1827.

Widely acclaimed though he was by the leaders of his own day, Arthur, however, does not reap the golden opinions of posterity. The aim of his administration of Van Diemen's Land was not one which merits approbation. It was his misfortune to have won his fame in implementing a policy which, to the more enlightened, now appears utterly devoid of all praiseworthy qualities - the attempt to deter crime by threatening the would-be offender with a brutal punishment. It is to his credit that while implementing this punishment policy and increasing discipline so that the British Government would be satisfied that punishment was severe enough to act as a deterrent to crime, Arthur was yet maintaining the superiority of the assignment system, as a method of handling criminals, since it alone of the penal systems so far suggested held out hope of the prisoner's reform and rehabilitation. Although the British Government's parsimoniousness and deterrence policy prevented Arthur from implementing assignment in the way he realized it should be administered, he did rigidly insist on the selection of masters, withdraw servants whenever it appeared that the Government's confidence was misplaced, supervising all through the medium of his police, which was the most he could do.

But like all (or most) nineteenth century penologists, however, the belief that all crime demanded retribution and punishment, marred his appreciation and application of the assignment system. The laws which regulated the behaviour of convicts in assigned service were strict and intended to make

assigned service a fitting punishment. Not only did the servant have to work hard for his master for no other reward than his subsistence, but any surly expression, insolence, or neglect of duty made him liable to summary punishment before a magistrate, to the extent of 100 lashes. Arthur's own austere puritanism impressed on the system. The regulations were intended to crush all human emotions, all pleasure but the thought that if the service could be borne for four years, with "due submission", the torture would ease. The police intended to see that the master did not mis-treat his servant, also saw to it that discipline did not relax, and servants were withdrawn more often for this reason, than for the former.

The imprint of his character, with its nineteenth century attitude to crime, its illiberality of spirit, and lack of insight and human sympathy was left unmistakably on the convict disciplinary machine he established in Van Diemen's Land. His theory that, having established a scale of punishments and rewards centred around the assignment system, the convicts would automatically receive that degree of punishment which their crime deserved; made no allowance for human temperaments, and provocation by masters and overseers must too often have been the reason for a convict's descent down the scale as an incorrigible.

Able administrator though he was, his talents seem to have been best employed in roles where he was implementing unpopular policies, where his authoritarian outlook, indomitable will and

determination that would brook no opposition, could have full play.



Chapter Six"The Franklin Interlude"

Change of governor in 1836 made little difference to the convict system in Van Diemen's Land. The colony's capacity for absorbing convict labour on the assignment system did not decrease, and despite the humanitarianism of Whig Liberals like Grey, Durham and Buller, which led to a reconsideration of the condition of the assigned convict, the basic demand of the British Government from transportation continued to be that it should punish and deter, then reform. The treatment of convicts arriving after the publication of the Transportation Committee's Report in 1838 was to change considerably, but those who had been transported prior to that date were sent to the service of settlers, subject to the assignment regulations which Arthur had established. There was no change in the personnel of the convict department, and as the new Governor's influence on a system, the principles and practice of which had been so firmly established by his predecessor to the satisfaction of the Colonial Office superiors, was bound to be limited, the administration of assignment was little affected by the arrival of Sir John Franklin.

As a Polar explorer, Sir John had become a popular figure and the Van Diemen's Land settlers gave him a wildly enthusiastic

(1) welcome. Relations between the Government and the settlers,  
 by the end of Arthur's regime were tense; (2) relaxation  
 through a less dictatorial and more democratic Government was  
 called for, but due chiefly to the fact that the Arthur clique  
 of officials, dominating all the principal Government positions,  
 and hated by the opposition, continued to wield their influence,  
 the "spirit of faction" continued to embitter public  
 (3) relations.

Liberalism and generosity, complete disinterestedness and  
 honesty, however, were characteristic of the new Governor,  
 Where Arthur's attitude to the settlers had been imperious,  
 autocratic and secretive, Franklin was open, humane and liberal,  
 recognizing the worth of the individual settler as well as the  
 importance of the wider object for which the colony had been  
 established. Franklin himself regarded his appointment in  
 succession to the authoritarian Arthur to imply imperial  
 approval of a more liberal regime in Van Diemen's Land. (4)  
 Within a few months after his arrival he had opened the Legis-  
 lative Council to the Press and public, (5) had increased the  
 list of magistrates to include worthy settlers Arthur had  
 discountenanced and had added another member, Mr.W.E.Lawrence,

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(1) K. Fitzpatrick; op.cit. p.117.

(2) ibid. p.70.

(3) West, op.cit. Vol. i, p.192; and  
 K.Fitzpatrick, op.cit. p.124.

(4) ibid. p. 121.

(5) Hobart Town Courier, 11/8/1837.

a gentleman of wealth and intelligence and liberal opinion,  
 (1)  
 to the Legislative Council.

- i -

His belief that "the spirit of freedom and the love of free institutions exists here quite as strongly as it does in New South Wales, and that the people of Van Diemen's Land are as much alive to their political interests, and would resist any due encroachment as vigorously as the inhabitants of New South Wales",<sup>(2)</sup> typified his administration of the convict system. In numerous instances where Spode and Forster rigidly insisted on the letter of the law in their relations with settler-assignees, Franklin countermanded their decisions. A female prisoner, Ann Carroll, a domestic servant in Launceston, whose record had been excellent, was found to be the niece of her master, and suspected of having an association with a free man in the district. It had been Arthur's general policy to forbid the assignment of convict relatives to free settlers, or indeed, the assignment of any convict to anyone known to have convict relatives, so the Police Magistrate in

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(1) West, op.cit. Vol. i, pp 193-5.

(2) Franklin to Glenelg, No. 19, 2/2/1839.

Launceston sent his constables to withdraw the woman and look for evidence to support the other rumour. They forced an entry into the house without a warrant, ransacked the place in search for evidence, frightened the mistress of the house and took off her servant. No evidence was found against her but Forster, who received the reports considered it likely (1) to be true. The Governor, but recently arrived, would not approve of this manner of proceeding. The master and mistress were both agreed to be "respectable" people, and there was nothing to indicate that the assignment of their niece to them had been detrimental to discipline. He was indignant that the police should have treated them so unceremoniously, and to relieve the "great distress of mind which Mrs. Coward (the mistress) seems at present to labour under" he allowed the servant to return, until he himself should have an opportunity, when he visited Launceston, of personally enquiring into the (2) case.

On another occasion, this time in regard to the regulation forbidding assignments to inn-keepers, re-affirmed in 1839, Mr. Stewart, a Hobart baker, appealed to the Governor to intercede on his behalf with the Assignment Board, who had refused to give him any assistance, as besides a bakery he owned a public house. Franklin saw no point in insisting on the (3) law, as long as the two concerns were separate.

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(1) C.S.O. 5/4/30: Forster to Col. Sec. 13/1/1837.

(2) loc.cit.: Lieut. Governor's Memo, 16/1/1837.

(3) C.S.O. 22/104/2,218: Mitchell to Board of Assignment, April, 1840.

He realized the objections associated with the selection of masters, which Arthur had not appreciated. The great power given to the Assignment Board in the refusing of assigned labour to settlers was not entirely satisfactory, although the greater the group who decided on the fitness of persons to take convicts "the less its decisions can be (1) imputed to the prejudice or ill-will of any one individual". Yet, they still had often to work only on the reports of police magistrates, who were not always impartial. It was a doubtful question for it could also have been said that if any one individual was to judge in a matter which "must at once stamp a man or woman's character in society, no one (was) better fitted than the Governor". Considering all, he thought that the best solution would be to establish a "code of disabilities, excluding classes, conditions or callings" rather than individuals. Such a code would exclude inn-keepers who intended to employ their men on the premises; ticket of leave men, and emancipated convicts "either absolutely or conditionally"; "persons living in certain localities dangerous to the morals of the prisoners as in the towns of Hobart and Launceston"; persons who have no obvious means of procuring, or who do not procure any religious instruction for their servants on the Sabbath"; besides, of course, persons known to be morally unfit, or those who had ill-treated their men in the past. This, it was thought, would at least give the Board less the

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(1) Franklin to Stanley, No. 64, 4/6/1843.

appearance of a Board of Inquisition, lay them open to fewer complaints of unfair exclusion, and be less socially damning on those excluded.<sup>(1)</sup>

- ii -

Apart from the occasional evidence of Franklin's liberal attitude in giving concessions to private settlers, however, the general procedure of the convict department went on as it had done in the previous twelve years. The Clapperton case, however, the most public instance of Franklin's over-ruling of his Arthurite officials, led to a serious deterioration in relations between the Governor and his executive officers. Efficient and able though both Montagu and Forster were, their loyalty had been to Arthur, and though they regarded their new superior as frank, well-meaning and honest, they considered him unfitted for the responsibilities of such a difficult Government, and were by no means above taking a mean advantage of his reliance on their good faith and disinterestedness.<sup>(2)</sup>

Alfred Stephen, the Solicitor-General, had, on the death of his wife in January 1837, entrusted the management of his household

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(1) Franklin to Stanley, No. 64, 4/6/1843.

(2) K. Fitzpatrick, op.cit. p.125.

to an emancipated convict cook, Clapperton, whom he had found reliable. His confidence had been misplaced, however, as over a nine month period, the man embezzled all his housekeeping money. Stephen charged him before Forster, the Chairman of the Court of Quarter Sessions, and he was sentenced to 14 years transportation, which at time was understood to mean hard labour in a road gang, if not imprisonment at Port Arthur penal station. The Colonial Secretary, however, was in need of a good cook, and applied for Clapperton to be assigned to him, and Forster, on the Assignment Board obliged him. It was no time before Stephen heard of the miscarriage of justice, appealed to the Governor, who was then in the awkward position where he had either to make public a breach with his two highest ranking officials, or condone their abuse of the assignment system which he was at the time defending against the charges of the Transportation Committee. (1) Franklin had no hesitation in removing the disputed servant to a road-gang for twelve months, regrettable though the public exposure of official corruption was.

- iii -

This case, however, confirmed even further, his opinion that though the assignment system undoubtedly seemed the best method

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(1) Franklin to Glenelg, No. 104, 7/10/1837.

of handling transported offenders, from the convicts', settlers' and Government's points of view, a few modifications were desirable before it was perfect. Four improvements were suggested: six months labour in road-parties under strict control on first arrival in the colony, as a punishment, and ipso facto a deterrent; the cessation of assignment for luxury purposes and to domestic service, if not town service generally; the wearing of a distinguishing badge to be compulsory for all assigned servants; and replacement of the present ticket of leave system by a graded ticket, the lower grade being less restrictive on the prisoner's liberty than assigned service, yet not so free as the second grade ticket. This was intended to restore the convict to his former freedom less abruptly than the existing system which was considered the reason for the comparatively large number of expiree offences. (1) The second recommendation, cessation of assignment in the towns and all its accompanying abuses, was supported unanimously by the Executive Council. (2) Servants like footmen, grooms, coachmen, carters, shopmen, boatmen, and servants at public houses, were undoubtedly better off than the average servant assigned in the country. Servants such as printers, painters, tailors, shoemakers, blacksmiths and mechanics generally, were also "exposed to the temptation of the towns", but theirs were not such easy berths as those of footmen and others in that category.

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(1) Franklin to Glenelg, No. 104, 7/10/1837.

(2) E.C. 2/5/p.326: 7/10/1837.



Since immigration had almost entirely ceased, however, when the change was to be introduced in January, <sup>(1)</sup>1839, the regulation only restricted the employment of convicts as grooms and in other "luxury" services after July of that year. General assignment of gardeners, bakers, printers, and other genuine workers continued in the towns for another twelve months, <sup>(2)</sup>when that too was abolished.

- ix -

It was under Franklin's administration that the transfer system was finally discarded. Two concurrent practices had become established in the latter years of Arthur's government. By the more common one, the two parties arranged between themselves for the transfer, both then applying through the Police Office, where the magistrates not only attached comments as to the eligibility of the person who was to receive the servant, but also as to the suitability of the change from the convict's point of view, disallowing it if it seemed ill-advised with a view to his discipline or reform. The other practice,

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(1) Glenelg to Franklin, No. 318, 6/7/1838.

(2) Hartwell, op.cit. p.77;

Normanby to Franklin, No. 60, 17/5/1839;

Government Notices, 17/1/1839, and 23/7/1839.

less common though more desirable, involved the return of the convicts to the Assignment Board who re-distributed them as they did new arrivals, to fill the most needy applications or those of the longest standing. This practice, however, was probably limited to settlers leaving the district, and either unable or unwilling to arrange privately for the transfer of their men.

During 1837, the administration of the system underwent a change. Instead of accepting the recommendations of the Police, the Board, and especially Forster, made transfers conditional on the consent of the servant concerned, and on an application from Theodore Bartley, a retired Custom's Officer, and prominent Launceston resident, for the transfer of a servant, the newly appointed clerk of the Assignment Board wrote: "The consent of the servant in all cases is necessary."<sup>(1)</sup> Not knowing such a condition existed (and in this positive form it had not, though the confidential advice of the police magistrates had been similar in its effect of protecting the convict), Mr. Bartley and 25 others, all prominent Launceston businessmen and lawyers, protested, "in the great interests of penal discipline" rather than for their "own individual convenience", that asking the convict for his permission, in effect putting him in a position as a dispenser of favours to his master, would weaken "that sense of submissive control which is

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(1) C.S.O. 5/70/1,451: Bartley to Col. Sec. 22/8/1837, enclosing Board of Assignment to Bartley, 18/7/1837.

so essential a principle in the governance of men under sentence of the law."<sup>(1)</sup>

Forster and Spode both considered that unless the convict's view was consulted, convictism would indeed be no better than black slavery.<sup>(2)</sup> Unless the board knew the feelings of the convict, many cases would occur where the convict was unwilling to go to the new master, and would commit crime to avoid this (not an uncommon occurrence, according to the Inspector of the road parties):<sup>(3)</sup> "Whilst on the one hand, convicts are kept in due subordination, so on the other, should they never have a just ground of complaint, or if one, it should be immediately redressed." Both recommended full adoption of the less frequently used scheme, for if convicts to be transferred were always returned to the Board, it could then re-assign them at their discretion. Any settler could then apply for their services, and the convict could not then "imagine that he is the subject of sale or barter".

The reply eventually sent to the men was based in effect on Forster's arguments. It explained that reference was made to the convict's view to ascertain not whether he agreed, but

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(1) C.S.O. 5/70/1,451: Bartley to Colonial Secretary, 22/8/1837.

(2) loc.cit.: Forster's Memo. to Col.Secretary, 7/9/1837.

(3) C.S.O. 1/262/6,229: O'Connor to Lieut.Governor, July, 1830.

whether he had any objections to urge against it, the Board then deciding what weight to attach to these objections. <sup>(1)</sup>

The explanation was unsatisfactory to the settlers concerned. Even if this was the attitude of the Board, and the curtness of the note, "the consent of the servant in all cases is necessary" made this doubtful, the effect was no different than they had feared. The convicts in the district, they claimed, regarded their ability to veto transfers as a privilege and a triumph, and "masters who had contemplated transfers, renounced their intention, determined not to submit to the indignity.....of asking convicts for their consent as a sine qua non" for transfer. <sup>(2)</sup>

The whole very lengthy correspondence was enlivened throughout by the tone of "polite recrimination" <sup>(3)</sup> adopted by Bartley and his supporters, who resented the fact that not only had the Government not accounted satisfactorily for the curt note to Bartley, but it had skirted the real issue. The Government's grounds for requiring the convict's consent were valid ones, but they had had to admit that Bartley's objection was sound too. It seemed best, therefore, to abolish transfers entirely, since they were by no means essential to the assignment system, and the ends they obtained could be effected more simply by a return of

(1) C.S.O. 5/70/1,451:

Colonial Secretary to Bartley, 17/11/1837.

(2) loc.cit.: Bartley and friends to Colonial Secretary, 1/12/1837.

(3) West, op.cit. Vol. ii, p.194.

men to Government followed by re-assignment.

(1)

When considered in the Executive Council, other objections were brought against the system. The inadequate supply of men available for assignment made it essential to adhere strictly to the order of application, but the transfer system frustrated this, as it arranged for convicts to "pass into the service of masters who have not so good a claim upon the Board as others whose applications have been of long standing". (2) A notice in the Hobart Town Gazette in the following week outlined the new procedure. Settlers with men to assign were to notify the nearest police magistrate, or the Assignment Board of the convicts' names and ship numbers, and instructions would then be given to the magistrates as to where the convicts were to be sent, and arrangements for their conveyance would be made accordingly.

This was undoubtedly the best solution, as Arthur's idea of transfer enabling the best distribution of convict labour was impossible in practice. Provided the police magistrates were familiar with the convicts in their districts, and advised the Board if the re-assignment was well or ill-advised, the new system would inevitably be an improvement as it abolished all chance of unfairness either to convicts or settlers.

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(1) E.C. 2/6/p.49: No. 62, 22/3/1838.

(2) Hobart Town Gazette, 29/3/1838.

Franklin was no less emphatic than Arthur that British interests should not encroach on the rights of the Van Diemen's Land colonists. After cessation of transportation to New South Wales in 1840, the numbers arriving in Van Diemen's Land increased to such an extent that settlers again feared for their lives. The troops at Franklin's disposal were totally inadequate to meet the increased numbers from New South Wales alone, so he felt justified, therefore, in detaining a small detachment of troops who called in at Hobart on the way to join headquarter in Sydney, as Arthur had done in a similar crisis. Franklin unfortunately did not possess Arthur's influence at the Colonial Office, and instead of receiving their approval, Stanley "strongly cautioned him against this irregular proceeding". Several months later, however, his request for extra troops was complied with and the garrison raised to 1,600.<sup>(1)</sup>

Government encouragement to colonial enterprises continued also. Alexander Fraser, a Hobart coach builder appealed to the Governor for an extension of the loan of a carpenter, since without him, he would be obliged to disappoint customers owing to the scarcity of free men. As he had arranged for the immigration of a number of mechanics to relieve the labour situation, and because the needs of the community were suffering (there were at most two coach makers in the colony), Franklin agreed to the extension, although assignment on loan in towns had ceased.<sup>(2)</sup>

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(1) Stanley to Franklin, No. 88, 4/5/1842.

(2) C.S.O. 5/217/5,501: Franklin's Note, June, 1840.

The dispute with the Ordnance Department is best indication of Franklin's pro-colonist attitude. The dispute arose first in January 1837, when Major Kelsall, the commanding Royal Engineer, protested that two convict mechanics working in his department had been withdrawn without his permission. The Secretary of State, he claimed, had promised the Ordnance Department priority over the claims of other departments and settlers in the appropriation of convict labour, and he, therefore, demanded the return of the two men withdrawn, and immediate compliance with outstanding applications for mechanics from the loan gang if necessary. There were no men available at the time, and Spode refused to withdraw men from the service of settlers when they had been loaned for stated periods. Kelsall then suggested that an Ordnance officer should represent the Department on the Assignment Board at the distribution of convict mechanics. Nothing came of this idea, however, since it was the Principal Superintendent who appropriated mechanics and labourers to government departments, subject only to the Governor's approval, not that of the Board.

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(1) Franklin to Glenelg, No. 131, 12/12/1837 enclosing

Evidence to Executive Council Committee on the Ordnance Department.

The despatch he had quoted read:

"The Board of Ordnance desire an adequate supply of convict labour for the due performance of the duties entrusted to them, and as the convicts are removed to the colony and in a measure, sustained there at the expense of this kingdom, it is right that whatever advantage may arise from their labour should accrue to the British, therefore, rather than to the Colonial Treasury.....You will have the goodness to understand that in distributing the services of other convicts (than those in punishment gangs), the demands for the Ordnance officers for Public Works are to be satisfied in preference to those of the Civil Government or of those of private settlers". (1)

Franklin had considered this claim to imply "a preference in the general distribution of labourers on the first arrival of a ship from England, or in the distribution of those who, from one cause or other return upon the hands of the Government, and thus become disposable for Public Works". The Ordnance officers laid claim, however, not only to an "unlimited demand in respect to numbers, but also a priority of choice of every convict mechanic in the colony, whether employed in the service of the Colonial Government, or in that of private individuals". (2)

This seemed so completely opposite to the policy outlined previously which had urged the construction of Public Works by contract in order to make more mechanics available for settlers and to relieve the Government of the cost of their maintenance, that Franklin questioned the Ordnance engineer to see whether their instructions, received privately from their London headquarters, gave any reason for this change of front.

(1) Glenelg to Franklin, No. 53, 2/12/1836.

(2) Franklin to Glenelg, No. 100, 4/10/1837.



Here the issue was complicated by Army-Navy jealousy. The Army officers refused to obey the request of a naval captain,<sup>(1)</sup> and hand over their correspondence records. As Governor of a penal colony 12,000 miles from Britain, Franklin's authority had to be supreme, and judging the question of sufficient importance both to the settlers and the ends of transportation, he ordered them to show their instructions which, five days later they reluctantly did. To form an accurate opinion on the question, he invited the Executive Councillors and several prominent settlers connected with the building industry to give evidence at an enquiry held in October, 1837.

Most witnesses and all councillors were opposed to the Ordnance Department's claim to preference. Spode pointed out that if it was to be able to exchange men at will, it would be necessary to keep a large body of mechanics in reserve whose services as mechanics could not be rendered available while so reserved, to the Government. If he did not do this, he would have to withdraw them from other departments to the injury of the works they were then engaged on, or from the service of settlers, which would certainly be resented and was most unfair. All considered that this would eventually increase the charge to the Treasury, for settlers would possibly refuse to take any mechanics if only inferior ones were left for their service, an attitude which seems unlikely when free mechanics were so few, but one which does show the council's hostility to the Ordnance claim.

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(1) K. Fitzpatrick, op.cit. p.100.

- vi -

Background to the Franklin period was the gradual decrease in Van Diemen's Land prosperity. After the foundation of the Port Phillip settlement, mainly by island settlers, and supported by investment from the island, the flow of British capital directed originally towards Van Diemen's Land, went to the new colony. Arthur had been able to point to the tremendous economic prosperity in which he left the colony in 1836, but within a matter of months, the tide had turned. On Franklin's arrival the revenues were falling,<sup>(1)</sup> and the "golden glow of prosperity" was beginning to fade.<sup>(2)</sup> Financial problems were to be among the most bewildering which the new Governor had to face, for the colony, saddled in July 1836, with the cost of the Police Establishment, Gaols, Board of Assignment, and Marine Department, was to find it increasingly difficult to make the revenue provide adequately for the expense.<sup>(3)</sup>

Among the schemes Franklin employed to decrease the Colonial expenditure were his attempts to charge the British Treasury with the costs of the Orphan School and the Muster Master's Department. There was much to be said for both; the children at the Orphan School belonged to convicts<sup>(4)</sup> and should, therefore

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(1) Colonial Times, 18/1/1842.

(2) K. Fitzpatrick, op.cit. pp 55-6.

(3) ibid. p. 99.

(4) Franklin to Glenelg, No. 89, 10/8/1837.

have been the responsibility of the home government, while the Muster-Master's duties were of no benefit to the colony, being solely concerned with recording convict crime and indulgences. Glenelg was highly indignant, however, and<sup>(1)</sup> ordered him to repay the sums at once to the Military Chest, and present the case to the British Government who would then decide its merits.<sup>(2)</sup> His explanation on the Orphan School was satisfactory,<sup>(3)</sup> but the Muster-Master's case led to instructions to the Commissariat officer forbidding any further such payments<sup>(4)</sup> without the express sanction of the Lords of the Treasury.

The enquiry into the advisability of adopting the Contract system for erecting Public Works was a direct result of a<sup>(5)</sup> despatch from Glenelg directing that all convicts not under punishment, and unassigned, in Colonial Government departments were to be chargeable to the Colonial funds. Reasonable

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(1) Glenelg to Franklin, No. 370, 12/10/1838.

(2) Glenelg to Franklin, No. 370, 12/10/1838.

(3) Normanby to Franklin, No. 49, 13/4/1839.

(4) Glenelg to Franklin, No. 295, 11/5/1838.

(5) Glenelg to Franklin, No. 110, 27/4/1837: enclosing letter from Lords of the Treasury, April 1837.

although it was that the colony should pay the cost of labour working for colonial benefit, it would mean a substantial rise in expenditure at a time when revenues were falling off.

Arthur had defeated the proposed Contract system when first suggested on the grounds that there were not enough reliable master-builders in the colony, nor sufficient free mechanics to enable large jobs to be undertaken cheaply without the aid of convict mechanics, whose load he considered would be most harmful to discipline. He had, however, employed a compromise Contract system. Buildings like the Female Factory in Launceston, and the church at Perth were let on contract, the Government undertaking to supply a proportion of the skill required, from the loan gang, charging the contractor so much per day, (approximately eightpence) for the support of the mechanics who were housed and rationed at the barracks at Government expense.<sup>(1)</sup>

Since the transfer of all unassigned convicts not under punishment to the local treasury, it was the constant concern of the local authorities to reduce that expenditure and the contract system was again considered as a means of releasing large numbers of convicts to private service where they were no charge on the Treasury.

The Committee appointed considered the subject under five headings - economy, the discipline of convicts, the moral improvement of convicts, the effects on free emigrant mechanics, and the practicability of erecting Public Works by contract.<sup>(2)</sup>

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(1) S/C. Letterbook, (Mitchell Library F80): S/C. to P.S/C.6/10/1834.

(2) C.S.O. 5/94/2,131.

The majority of witnesses, including Major Kelsall, and John Lee Archer, the Civil Engineer, and all the master-builders, agreed that the erection of smaller buildings by contract was cheaper than by convict labour under Government supervision. With larger undertakings, Archer considered that contractors would charge from one third to one sixth more than Government would spend building with convict labour, but that the encouragement given to colonial trade, revenue and immigration by the Contract System would cancel out this extra charge of the private contracts.

No detrimental effects were mentioned as resulting from the limited loan of mechanics to the contractors for the Female Factory, Perth church, or the Hobart Police office, (twelve loaned mechanics having worked on the latter within the previous year<sup>(1)</sup>). It even seemed likely that such mechanics were controlled better than those in Government departments, who, on Spode's evidence, often absented themselves to spend their time drinking on the profits of their pilfering from the Government yard, or from their free time work in the towns (dinner hours, evenings, and Saturday afternoons<sup>(2)</sup>). He considered that the "temptations of town life" had a very bad effect on the convicts in the Public Works Department generally.

Several witnesses agreed that this convict competition had been reported home by free mechanics in order to discourage the

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(1) C.S.O. 5/94/2,131: Archer's Evidence to Committee on Ordnance Department and Contract System.

(2) loc.cit. Cheyne's Evidence. (Director-General of Roads).

emigration of their friends. Many of those who had arrived had left for Port Phillip and South Australia where there was no such competition, and wages were higher.<sup>(1)</sup> The adoption of the Contract system, it was considered, would create a demand for the labour of skilled free mechanics, and accordingly attract immigrants of that description. Anthony Fenn-Kemp, giving evidence as President of the Benevolent Society which looked after the interests of immigrants strongly supported the system for this reason.<sup>(2)</sup>

All things considered it seemed advisable to employ the contract system more fully, for the disadvantages of the Public Works practice were many. Labourers were carelessly supervised by convict overseers, the workmanship was, therefore, defective, materials were pilfered, work could be evaded, often with the compliance of the overseers, and in very few cases was the punishment an irksome one. It was decidedly unfair on free mechanics, the immigration of whom Franklin was keen to encourage to counter-balance the effect of the convict population. Many factors pointed to the adoption of the new system. Economy, so important to the Colonial Treasury, was the chief consideration; no buildings would be undertaken but what was essential, as the actual cost would be known before the buildings were commenced; the workmanship was superior, and there would be less waste of materials and less expense in storing and guarding them.

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(1) loc.cit. Chapman's Evidence. (Master-builder).

(2) C.S.O. 5/94/2,131: Kemp's Evidence.

Most important, the settlers would be able to employ the large number of convicts hitherto kept by the Government; besides in country service, the convicts would have a better chance to reform. The cost of the Convict Department would then be tremendously reduced, as the only prisoners on Government hands would be those in the Road Department, most of whom were undergoing secondary punishment, and so were chargeable to the British Treasury.

Evidence as to consequent procedure is slight, but the indication is that all smaller works and some larger ones were contracted for. A small number of loaned mechanics were still allowed the contractors,<sup>(1)</sup> but the numbers were so few as not to interfere with the demand for free men, which seemed insatiable from 1839 to 1841, the boom years preceding the depression of the early forties. The charge made for the support of these loaned men, who slept in Government barracks at Government cost, was periodically adjusted to meet the rise in the cost of living. In December 1837, the cost was reckoned at tenpence per day, but due to increase in the cost of clothing, (most of which was made in the colony at this time more expensively than it could be shipped from Britain), the Assistant Commissary-General, representative of the Lords of the Treasury in the colony, fixed the rate at one shilling and sixpence, cheap labour indeed when during the boom years the wages of free mechanics again reached

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(1) C.S.O. 22/12/580: Contract for the Longford Gaol, July, 1840.  
C.S.O. 22/4/87: Colonial Secretary to P.S/C. 8/2/1842.

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reached eight shillings per day.

The attempt to cut down on the numbers of assignable men in the Road Department was prompted also by a desire to reduce expenses.

The first enquiry into the Department was held in June 1837 by the Executive Council. (2) From the evidence collected, it became obvious that not only was the department an expensive one, each man costing the British Government £15 annually, but the treatment of convicts there not undergoing punishment was most unfair, since they were subject to almost the same restraint as those in punishment gangs with whom they were mixed.

Spode, worried that the Board of Assignment was unable to replace the huge number of men given tickets of leave in the previous few years (3) (indication of the large number of arrivals during 1831-3) suggested that all assignable men in the Road Department should be at his disposal to fill the 800 replacements to be made. (4) Settlers would have been almost as satisfied

(1) C.S.O. 5/274/7,111.

(2) C.S.O. 5/43/907; and  
E.C. 2/4/p.671, 15/6/1837.

(3) C.S.O. 5/43/907: P.S/C. to Col.Sec. 13/5/1837, enclosing figures of arrivals and ticket of leave awards:-

1835, 849 tickets were awarded.

1836, 1287 tickets were awarded.

1837, 208 tickets were awarded. (up till April, 1837).

Agricultural labourers arriving in transports, 1835 (Jan.)  
until April, 1837.....1090.

(4) C.S.O. 5/125/2,950: Memo: Assignment Board to Col.Sec.  
8/6/1838.



with these as with new arrivals, for unlike assignable gangs, (which contained mainly those who had undergone punishment for offences committed in assigned, or Government service) the majority of Road Department men not under punishment had no colonial offences recorded against them. His other suggestion was that as there was such a demand for mechanics in the country, if the Road Department was limited to those serving punishment sentences there, those who arrived from the transports could be sent to settlers. This was found to be impossible. The Road Department needed more mechanics than the punishment gangs could provide, and without them, whole gangs who depended on their skilled labour, would have been left idle, which would have defeated the ends of punishment entirely. It was arranged, however, <sup>(1)</sup> that two gangs should be formed only of mechanics and labourers not serving secondary sentences, to be employed repairing roads and bridges, a scheme intended to reduce the inequality in the treatment of the prisoners.

On the receipt of Glenelg's despatch ordering the colony to defray the costs of assignable men working in colonial departments (as Arthur had suggested as an alternative <sup>(2)</sup> when the colony was charged with the cost of gaols in 1835) a further

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(1) E.C. 2/4/p.679 and ff. 19/6/1837.

(2) Arthur to Spring Rice, No. 31, 21/4/1835.

(1)  
 enquiry was held, and a board appointed to suggest more ways of reducing costs. Its main suggestion was the re-arrangement of the gangs into large parties, so that the number of overseers and other administrative staff could be reduced. This was done, (2) but by August 1838, when the estimates for the next year were being prepared, Franklin finally ordered the complete disposal of all assignable men, who were costing the Colonial Chest tenpence each per day. (3)

Suggestions for reducing the numbers of men in assignable gangs reflect the increasing concern with finance. The Superintendent of Convicts, head of the Prisoners' Barracks in Launceston, complained of the huge numbers awaiting assignment in June 1836, and to increase the numbers taken off Government hands, suggested ways to reduce the inconvenience found to attach to their assignment. He advised that a day should be appointed on which orders on the gangs could be taken up, and settlers notified, so that they would not ride fifteen to twenty miles to obtain a man only to find that on that day the gang was working further afield. (4)

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(1) Government Notice, 21/10/1837; and  
 C.S.O. 5/91/2,036.

(2) C.S.O. 5/91/2,036: Roads Office Memo, 3/11/1837.

(3) Colonial Secretary to Director General of Roads, August, 1838.

(4) S/C Letterbook (Mitchell Library F 80) p.233:

S/C. to P.S/C. 27/6/1836.

The numbers in assignable gangs, however, was still large in November of the next year, when the position was more serious, as they were then chargeable to the Colonial Chest. (1) Spode, therefore, recommended the establishment of gangs in each Police district, to be under the charge of the police magistrate, with selected ticket of leave men as overseers. This would not increase the cost of superintendence, but by making the men more accessible to settlers he expected the Government to be relieved of larger numbers. This wider distribution of gangs, he thought, would make it easier for the Road Department to dispose of their assignable men, without sending them long distances to Hobart or Launceston. There were many objections, however, and the proposal was not adopted at that stage. Spode was reluctant to abandon it, and suggested it again in April, 1839, (2) but there was no longer the same urgency. Failure of the New South Wales crops, always an encouragement to Van Diemen's Land trade and industry, created a record demand for labour, (3) and though assignable gang men were difficult to handle, being (4) either confirmed scoundrels or loafers, settlers were glad (5) enough to take any.

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(1) C.S.O. 5/133/3,190: P.S/C. to Colonial Secretary, 30/11/1837.

(2) C.S.O. 5/191/4,630.

(3) C.S.O. 5/268/6,952: Archer to Col.Sec. November, 1840.

(4) Curr to Colonial Secretary, 31/10/1838.

(5) V.D.L. Company Correspondence, Burnie Office, Tasmania:

Curr to Directors' Court (London), November, 1839;

loc.cit. Hutchinson to Court of Directors, August, 1840.

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The administration of the assignment system was not the focal point of Franklin's governorship; it was not his chief interest as it was Arthur's. In his opening address to the Legislative Council, he did not even mention the convict system! <sup>(1)</sup> Both he and his wife, an enlightened woman of independent thought and wide sympathies, far in advance of her time, <sup>(2)</sup> were keen that society in Tasmania, (Lady Franklin particularly was insistent that the name "Van Diemen's Land" with its associations with the penal aspects of the colony should be dropped) <sup>(3)</sup> should have content as well as the outward form. <sup>(4)</sup> Education, the establishment of cultural societies and the extension of political privilege were subjects dearer to their hearts, (though while in the colony it was one of Lady Franklin's hopes to do something to ameliorate the conditions of convict women, an attempt which failed due to the lack of official co-operation, a hostile Press, and the hopeless depravity of the women). Franklin's influence

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(1) Votes and Proceedings of the Legislative Council of Van Diemen's Land, 10/7/1837.

(2) F.Woodward: Portrait of Jane, (London, Hodder and Stoughton, 1951) p.210.

(3) ibid. pp 210, 227.

(4) K. Fitzpatrick, op.cit. pp 50-54.

on the system was not extensive. Torn as he was between sympathy with the humanitarian principles on which criticisms of the system were based, and his belief in the wisdom of his more conservative and experienced officers,<sup>(1)</sup> his opinion on the system of convict discipline, at first undecided and wavering, finally settled on a compromise. The assignment system as a whole he considered excellent, and the only effective means that could rehabilitate the convict while at the same time benefitting society. He rejected Maconochie's forthright and outspoken criticism, but his humanitarianism prompted a few modifications, such as the abolition of transfer, and the suggestion to equalize the condition of convicts by abolishing assignment in towns. (Many of Maconochie's ideas he later incorporated in his probation system, introduced in 1840 to replace assignment). Above all, his own liberal sympathies leavened the administration of the system to give more consideration to the individual, both free and bond.

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(1) P. Eldershaw and R. Sharman "The Maconochie Report on Convict Discipline". Papers and Proceedings of T.H.R.A., Vol. 1, No. 1. (January, 1952). p.7.

Chapter Seven"The Assignment System under Attack".- i -

While Arthur was perfecting the assignment system in Van Diemen's Land, the control of the system in New South Wales was deteriorating, despite the efforts of three successive Governors.

Sir Thomas Brisbane had taken over the government of the colony from Macquarie, and it was his chief concern to implement the Bigge recommendations, with particular emphasis on the reduction of costs. To this end, he had reduced the Public Works gangs in the town, working them instead at clearing land for sale, <sup>(1)</sup> "seeking in the results of their labour rather than its detail, the success of transportation".

Under his successor, Governor Ralph Darling, who replaced him in 1826, the emancipist-exclusivist bitterness flared up again. The new Governor's policy of increasing the severity of convict discipline which had slackened under Brisbane, was hated alike by convict, emancipist, and supporters of the emancipist party, like Charles Wentworth. Darling was attempting to achieve over a large area, and with a much larger number, the rigid discipline and control which Arthur was implementing in

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(1) West, op.cit., Vol. ii, p.255.

Van Diemen's Land. Magistrates were given tremendous powers for inflicting corporal punishment performing these services for each other, since in the interior, almost all magistrates were themselves masters of large numbers of convicts.<sup>(1)</sup>

Sir Richard Bourke, who took over the government in 1832, lessened the power of the magistrates to inflict corporal punishment, an act for which he was charged by the Darling protagonists with unseasonable lenity, and stirring up the labourers to rebellion.<sup>(2)</sup> Thirty of the more severe settler-magistrates were dismissed, after an investigation into a mutiny among the convict servants of James Mudie, one Justice of the Peace, proved that several men hanged for rebellion, had been provoked by the brutality of Mudie's overseer. Mudie, whose attitude to his servants was that they were sent to the colony for punishment, was himself so hated by his men, however, that after dismissal, he deemed it unsafe to return to his property.<sup>(3)</sup>

The administrative procedure of the assignment system differed little from that in Van Diemen's Land. The assignment of convicts before Darling's arrival had been left to the Civil Engineer to whom applications were addressed, and who complied with them or not according to the needs of the Government. While Arthur was reorganizing the island's administration, Darling was

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(1) West, op.cit., Vol. ii, p.256.

(2) West, op.cit., Vol. ii, pp 257-8.

(3) West, op.cit., Vol. ii, p.258.

doing the same in the older colony. The Principal Superintendent of Convicts was given the task of preparing a list of convicts available for assignment, and the application lists, both then being forwarded to the Land Board which appropriated the convicts subject to the final approval of the Governor. <sup>(1)</sup>

Assignment policy was much the same as in Van Diemen's Land also, first preference being given to new settlers, and those of high moral character. No non-resident received servants unless there was an overseer employed on the property. <sup>(2)</sup> The chief differences between the colonies were that there was no restriction on emancipist masters, though the line was drawn, at least officially, at ticket-of-leave men. After the reaction to Macquarie's expensive building projects, few mechanics were kept in Government service, most being assigned, at first on hire; later when this proved impracticable, on a more permanent basis. There was never the same efficiency in convict administration in New South Wales. The strong emancipist opposition, together with the tremendous increase in the convict population in the colony between 1826 and 1836, and the widely scattered nature of the settlement made it much more difficult to keep track of convicts

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(1) Darling to Goderich, No. 133, 31/12/1827.

(2) Darling to Goderich, No. 133, 31/12/1827: enclosing No. ii Regulations for the Assignment of Convicts for the guidance of the Land Board, 9/3/1826.



in assigned service there. Throughout the terms of both Darling and Bourke, the demand for labour kept pace with the increasing prosperity of the colony, and it was, therefore, the Government's policy to meet this demand as far as possible. Thirty thousand arrived from 1826-36; <sup>(2)</sup> of 27,000 prisoners in the colony in 1835, 20,000 were in assigned service, a tremendous proportion compared with Van Diemen's Land where of 13,000 only 6,475 were assigned. Obviously much less care was taken in assigning servants in New South Wales than in the island, where the demand was just as strong comparatively. One of the most striking differences between the two colonies, however, was the average size of each settler's establishment. It was not uncommon in New South Wales, a colony of wider and less fertile spaces for one hundred to two hundred convicts to be employed on one property. Each member of the Legislative Council had on an average fifty convicts in his service. <sup>(3)</sup> Instances of absentee land-lords were numerous so that great responsibility was given to the overseers, many of whom however, were little better than the men they controlled. The body of settlers, at large, did not have the healthy sympathy which existed between master and servant in Van Diemen's Land.

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(1) Darling to Hay, 23/3/1827, enclosing No. ii (H.R.A. i, xiii, p.181).

(2) West op.cit. Vol. ii, p. 258.

(3) Evidence to the Committee of Transportation, 1838:

Mudie: - Qs. 1437 - 1467.

The 3,000 convicts arriving in that decade could not be assimilated and reformed when handled in such numbers, and "the moral evils inseparable from such vast accumulation" were the unfortunate result. <sup>(1)</sup>

Lack of superintendence of assigned servants contributed to a large percentage of the crimes among assigned servants in New South Wales. No attempt was made to keep the men indoors at night or provide an occupation on Sunday with the result that thieving and drunkenness were very common. <sup>(2)</sup>

In the vicinity of every large estate, expiree or ticket-of-leave "squatters", would set up stills, "sly grog shops", where the convicts of the neighbourhood would congregate after dark. A great trade in stolen goods, cattle and sheep was conducted through these persons, thousands of whom were scattered all <sup>(3)</sup> over the country.

(1) West, op.cit. Vol. ii, p.258.

(2) Evidence to the Committee of Transportation, 1838:

Mudie: - Qs. 535-8, and 1467-76.

(3) Evidence to the Committee of Transportation, 1838:

Lang: - Qs. 3453-62, and

Mudie: - Q.560.

Mudie considered that the majority of his 70 to 120 men went prowling about the neighbourhood after dark,<sup>(1)</sup> not returning often until daybreak.<sup>(2)</sup> Stock-keepers were still more unmanageable, since they were at large all the time, and spent most of their time at the squatter's huts. Though the police undoubtedly knew of these places, the constabulary were chiefly convicts, and either did not want or did not dare to give information against them.<sup>(3)</sup>

Assignment of convicts in Sydney and the main towns was subject to even more abuses. Convicts were not allowed to remain out after eight o'clock, but their numbers were so large that the Police recognised very few, and the opportunities for eluding their vigilance in the scrubby country on the outskirts of the town and along the harbour, made detection very difficult.<sup>(4)</sup> Petty thieving, housebreaking, and drunkenness were common in the city, the convict mechanics assigned there making no small contribution to the general disorder. They were able to call the tune in their services, inducing their masters to pay wages and grant liberal holidays, which they spent in debauchery and violent quarrelling.

The assignment of convicts to emancipists was one of the

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(1) Evidence to the Committee of Transportation, 1838:

Mudie: - Q.535.

(2) loc.cit. Mudie: - Q. 1476.

(3) loc.cit. Mudie: - Q. 579-80.

(4) loc.cit. Forbes: - Q.470; and

loc.cit. Lang: - Q.3471-3.

chief reasons for the irregularity of the system. As a class, the expiirees and emancipists were an immoral lot and their influence on the convicts in their charge was detrimental in the extreme. <sup>(1)</sup> While on the large estates, control of convicts was an impersonal matter and the effects were little better than those of service in a road gang, in the service of emancipists, the association between master and convict was too close. Meals and drinking bouts were shared as well as the profits of their joint robberies in the neighbourhood.

Other instances where the system was abused in New South Wales, had become notorious by 1835. The assignment of prisoners to their wives was one instance. Nash <sup>(2)</sup> transported for bank robbery was followed to the colony by his wife to whom he was assigned, and on the proceeds of the crime, they set up a large drapery warehouse in Sydney. The servant of the Chief Justice had been released from his service to live with <sup>(3)</sup> his wife, who carried on a profitable trade in stolen goods.

The great demand for convicts which had induced the Government to assign such a large proportion of the annual arrivals made it necessary for settlers to keep in their service men whose conduct was very bad, the consequence of which was to

(1) loc.cit.

Mudie: - Qs. 1478-83.

(2) West op.cit. Vol. ii, p.262; and

Evidence op.cit. Mudie - Qs. 1685-91.

(3) loc.cit. Mudie: - Qs. 1691-1700.

increase the evils associated with the extent of settlement  
 over such a wide and inefficiently policed area.<sup>(1)</sup> To reduce  
 at least the evils of assignment in towns, Bourke changed the  
 Regulations in 1835 so that assigned servants were given only  
 in relation to the amount of land held, one convict given per  
 160 acres owned, for the first 1280 acres, after which two men  
 for 640 acres, with the maximum at first fixed at seventy, but  
 later reduced to twenty when the demand continued to outstretch  
 the supplies of convict labour.<sup>(2)</sup>

The lot of the female convict assigned in a country where  
 general assignment was badly supervised and where the disproportion  
 between the sexes was often as high as fourteen to one, it is  
 unnecessary to relate. Very few women prisoners arrived in  
 the colony who were not already thoroughly depraved, and few  
 who made some show of discipline resisted the temptations  
 assigned presented. Few ever remained long in one service,  
 for their conduct usually made it necessary to return them to  
 the Factory at Parramatta for punishment or confinement.  
 Pregnancy was a frequent cause for return, and at one stage  
 one quarter of the women at the Factory were nursing children.  
 Immediately after the Bigge enquiry, the assignment of women  
 had been put on a better basis with recommendations from  
 clergymen or magistrates essential qualifications for applicants  
 for female servants. The consequent state of things, however,

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(1) loc.cit. Macarthur: - Qs. 2467-78.

(2) Coghlan op.cit. Vol. ii, p.181; and  
 West, op.cit. Vol. ii, p.203-5.

makes it clear that this proviso was either inadequate or eluded. Marriage was by far the best way of reforming the women, but unless the parties were both anxious for this end, the marriage had little chance of success, and circumstances (1) were not always propitious. James Mudie relates how a master wanting to keep a servant who had shown himself well behaved, would give him permission to marry, considered a great indulgence by the servant. The master had to guarantee to the Government that neither wife or children would become chargeable to it. If the man had not found a suitable woman in his own district, he could get a "marriage order" on the Factory where those not under punishment and allowed to marry would be lined up for inspection. If he found one, and needless to say things did not always turn out so well, she was told to step aside if she was agreeable, and if after further conversation, both parties were happy, the ceremony was performed at once, and the pair returned at once to his master's employ. Living on the property with fifty or so other servants was not conducive to her reform, however, and too often her confirmed depravity asserted itself. (2)

In the face of evils and abuses so monstrous, the charges made by Justice Burton to the Petit Jury on the closing of the Criminal Sessions in New South Wales in November 1835, were not at all overdue. (3) He claimed that to one observing the colony

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(1) Evidence op.cit. Mudie: Qs. 644-53.

(2) loc.cit. Mudie: - Qs. 644-53.

(3) Bourke to Glenelg, No. 119, 18/12/1835, enclosing Sydney Monitor, 21/11/1835.

impartially, it must appear that the whole community was primarily concerned in "the commission of crime and the punishment of it." Chief cause, he considered, was the general disregard of religious principles and the desecration of the Sabbath. The number of religious teachers was totally inadequate to the extent and population of the colony. Nor were the masters of convicts fulfilling their responsibilities to their 20,000 charges. Few paid any attention to their moral training, even if the means of religious instruction were easily available. Too many allowed their men to spend Sunday "amidst scenes of drunkenness and debauchery", and others made their men work on that day, allowing them a week day off instead, but this was no compensation for the loss of "moral instruction" which the security of society required". Many of the worst crimes were committed on Sundays.

He attributed much of the crime to the presence of the unauthorised squatters and to the congregating of large numbers of convict servants in Sydney. Too little care had been taken in the licensing of public houses also.

Greatest blame he laid on the masters of convicts, for their almost total want of superintendence. Entrusting this important responsibility to an inactive overseer, was the cause of many of the robberies committed by assigned servants. "In such a matter every man of respectability was concerned; the reputation of himself and family required that he should keep his servants under restraint".

It was a thorough indictment of both Government and settler which could not but have far reaching consequences.

- ii -

Criticism of transportation had been intermittent throughout its development, periodically reaching a climax culminating in the establishment of a Parliamentary enquiry. 1812 had seen the first such investigations, Bigge's commission had marked the second in 1819-20. Following the severe winters of 1829-30, with their outbreaks or rural rioting, the Committee on Secondary Punishments had been appointed, pronounced transportation generally too lenient, and recommended the establishment of penitentiaries. But if transportation with assignment was not sufficiently severe to deter, it had economy to commend it, and with Stanley at the Colonial Office it might also have gone far towards becoming outrageously severe besides, had not his policy met opposition from the Colonial Governors. "The severity enjoined by Stanley", however, and "the lenity exercised by General Bourke raised an outcry against transportation, and once more propagate the idea that in its lenity, it was corrupt, and in its severity, cruel".<sup>(1)</sup>

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(1) West, op.cit. Vol. ii, p.263.



Throughout the thirties, criticism had poured forth in pamphlets, articles, speeches to the House of Lords, from the Archbishop of Dublin, Richard Whately, denouncing transportation as a "michievous failure". He suggested it should be replaced by a penitentiary system, to be conducted in Ireland where the prisoners could be subjected to hard labour draining the bogs. In a letter replying to a pamphlet written in defence of transportation by Arthur,<sup>(1)</sup> he demanded a searching investigation<sup>(2)</sup> be made into transportation by a Royal Commission.

Nor was this the only quarter from which opposition to transportation came. The Wakefield group with its theories of colonial reform was prevented from implementing their plans by the transportation of criminals to the colonies. It was the hope of the "systematic colonizers" to establish in the colonies, a miniature British society, the immigration of the unemployed British working class to provide the colonial labour force. But transportation was providing a labour force which was almost sufficient for the capital available in the colony, and by limiting the rights which the colonists could have expected as British citizens, the colony was far from being a miniature extension of British society.

(1) Arthur to Glenelg, 1/7/1833 enclosing Arthur's

"Defence of Transportation".

(2) B. Richmond : Some Aspects of Transportation and Immigration. (unpublished thesis, University of Tasmania) p. 123.

Coghlan, op.cit. p.189.

It was Judge Burton's charge which contributed most powerfully to rouse the attentions and conscience of Government circles to the problem which transportation had become. Crimes of violence, murders, manslaughters resulting from drunken revels, deliberate perjuries from motives of revenge or reward, altogether resulting in 442 capital convictions (1) in three years, were brought to light. As West comments: "Perhaps a more awful picture was never drawn, or a more serious impeachment pronounced against a people". The abuses it unmasked were flagrant and commanded widespread attention.

A committee appointed to promote emmigration from Ireland, of which Archbishop Whately was chairman, (2) considered the subject and decided that to send the peasantry of Ireland to a community so polluted was both cruel and extremely impolitic. (3)

It was as a result of a request from New South Wales to investigate the wisdom of the transportation policy that Parliament decided to establish yet another committee on the subject. The extension of political privileges had been a burning issue in New South Wales throughout the thirties. The exclusivist section of the community wanted the extension to be limited to themselves, and the franchise and right to serve on jury to be forbidden to those who had been convicted. The emancipist party adopted a smear campaign in the Press and

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(1) West, op.cit. Vol. ii, p.262.

(2) ibid.

(3) ibid.

claimed full rights on the grounds that the convicts were no worse than many of the lower class free immigrants who had been merely more fortunate than they. Bourke's dismissal of the thirty diehard magistrates, supporters of Darling's hostile attitude to convicts and emancipists, had brought the conflict to a crisis. The anti-emancipists presented a petition to Parliament asking for an extension of political rights, subject to the limitation of franchise to the convicted, at the same time calling for an enquiry into the system of transportation to New South Wales. Edward Macarthur, son of the famous John Macarthur, had published an account of the colony, pointing out the evils of the system and suggesting remedies, and this (1) was sent with the petition to London.

Whig Liberals were sympathetic, and a committee was appointed as requested, in April 1837, to enquire into "the system of Transportation, its Efficacy as a Punishment, its influence on the Moral State of Society in the Penal Colonies, and how far it appeared susceptible of Improvement".

Well intentioned though it appeared, the election to the committee of the leading Colonial Reformers pre-determined the conclusion, and prevented an impartial assessment of evidence which the subject demanded. Sir William Molesworth, the chairman, was a young and enthusiastic supporter of systematic

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(1) ibid.

colonization, as was Lord Howick, an Under Secretary at the Colonial Office. Charles Buller, Hume, and Roebuck<sup>(1)</sup> were all politicians who had been associated with the formation of the Colonial Association, the purpose of which was to move for representative government in New South Wales,<sup>(2)</sup> and the cessation of transportation. Others of eminence in penal and colonial affairs were Sir George Grey, Lord John Russell, and Sir Robert Peel.

After a three months sitting, and having collected a body of evidence from many well-informed witnesses from the colonies, official despatches, statistics, and other writings on the subject, the Committee did not feel able to deliver a report, and asked to be re-appointed the following year. Further colonial witnesses were heard in February and March 1838, and the report was finally tabled in the House, in August of that year.

Twenty three witnesses gave evidence, but little of it was given in a spirit of impartiality, and less still was assessed without prejudice. The majority of witnesses were from New South Wales where many of them were involved in the conflict which arose from the emancipist question. Official evidence was not lacking from Van Diemen's Land, Sir George Arthur being in the box on June 28th and 30th. John Barnes and John Russell had both been in the island with the military forces there. But only Peter Murdoch, an ex-magistrate, had owned property there, and employed convict labour. Other settlers then on

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(1) Courier 10/8/1838.

(2) Arthur to Spring Rice, No. 31, 21/4/1835.

holiday in London, though of considerable standing in the  
 (1)  
 colony, were not consulted.

The trend of questions, probing always to unmask the lurid and sensational, never turned in the other direction. No witness was encouraged to speak of the success of the system so that the worst side of assignment, the undoubted cruelty of some masters, the depravity and immoralities, the existence of which was undeniable, were made to appear the general and not the unusual.

- iii -

It was an authority from Van Diemen's Land whose testimony seems to have carried most weight with the Committee. He also had an interest in discrediting the assignment system, though for a different reason.

An interest in the problem of penal discipline, which made him keen to study the system in practice, had been the reason behind Maconochie's acceptance of the unimportant position of private secretary to Sir John Franklin, and before leaving,

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(1) K. Fitzpatrick, op.cit. p.224.

he had agreed to report his observations to the Prison Discipline Society, the Colonial Office agreeing on the condition that the report he made should be transmitted through the Secretary of State for the colonies.

The fact that in the previous year, while still in England, he had expressed his view that the reform of convicts in the Australian colonies was of prime importance <sup>(1)</sup> makes it unlikely that in the report which was completed four months after his arrival in the colony, the criticisms he made of assignment, and the system he suggested should replace it, were merely the result of his limited experience in the colony. For the views he expressed amounted to a violent denunciation of the system of assigning convicts. As a punishment, he claimed it was inhumanly severe, and most unequal, falling most heavily on the less hardened offender who felt the disgrace and the lash more keenly. As a deterrent, it was ineffective, for the apparent material comfort of the assigned servant belied the savage treatment and slave-like subjection he suffered. Nor could it be commended for its moral training. Assignment, he considered, so severe a punishment that its results could only be the destruction of all moral sense. As an example of his theory, he pointed to the general dislike of the settlers to receive men from road parties, (a dislike explained, however, by the fact that such men had usually been rejected from a variety of services as incorrigible and useless). The desire to convince that the reform of the offender should

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(1) K. Fitzpatrick op.cit. p.154.

at least bear equal weight with his punishment, and that moral persuasion was superior in achieving this to physical coercion, was the driving force in all his writings. He argued that although it was politically expedient to make examples of those who broke laws, yet the offender had as much right to benefit from his punishment as society, and no punishment could, therefore, be justified unless it reformed. In assignment, however, given no encouragement, but subjected to "cold, hard, unwearied coercion",<sup>(1)</sup> treated with suspicion and brutal retaliation for the smallest infringement of an inhuman and unnatural disciplinary code, he thought the prisoners were all made bad men instead of good.<sup>(2)</sup>

"The servants being made slaves, the masters are made<sup>(3)</sup> slave-holders", encouraged by their position to become suspicious and overbearing. The brutifying influence of assignment gave to all social relationships this harsh, peremptory character - every difference became a quarrel, every act of the Government constituted a ground of "vehement complaint".<sup>(4)</sup> The interference of the police in the colonists'

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(1) Maconochie, op.cit. p.23.

(2) ibid. p.11.

(3) ibid. p.6.

(4) ibid. p.7.

domestic arrangements made tempers quick. To the principle of coercion on which the system was based he attributed all the evils of the colony, its high criminal record, the unpopularity of Arthur, the unhealthy state of the Press.

The scheme he recommended was to replace coercion by "moral persuasion" and encouragement. The length of the convict's sentence would be determined by the extent of his reform, as measured by the number of marks he earned. Marks would be awarded daily for good behaviour, industriousness, and by giving a convict an interest in his labour, the value of that labour, he thought would be twice that when exacted by coercion.<sup>(1)</sup> Loss of marks would constitute the only punishment. The treatment would have two stages, both carried out by Government under trained officers at stations well apart from the settled districts. The punishment stage would constitute several months probation at road labour, enforced by physical means in order to humble the prisoner. Thereafter, they would be divided into social groups of six,<sup>(2)</sup> receiving marks as a group, rising and falling together, so developing each man's sense of responsibility towards his group, and so, it was thought, training him for return to society.<sup>(3)</sup>

Maconochie's theory was indeed an enlightened and benevolent one, and he rightly, if pretentiously, regarded himself as the

(1) ibid. pp. 15-16.

(2) ibid. p. 18.

(3) ibid. pp 21-2.



exponent of the growing intelligence and humanity of the age,<sup>(1)</sup> in opposition to the old martinet school of penologists to which Arthur and Forster belonged. The false principle on which the assigned system functioned deserved exposure, but it was not the cause of all the imperfections of colonial society, and in his enthusiasm, he carried his generalisations too far. His attempt to paint the existing system all black in order to show the contrasting whiteness of his own scheme was too obvious. There was a great variety in conditions of assigned servants, but by taking only examples of the worst, he made the exception appear the rule. His belief that the end justified the means, however, also determined his procedure in forwarding the report to officials in London.

When handing the Report to Franklin in May, 1837, he asked that it had be forwarded to Sir George Grey as arranged, and as many individuals in the colony as might be interested. Franklin had received Glenelg's despatch, requesting information on the penal system, for the benefit of the committee about to sit in London, and he was reluctant to forward so thorough a denunciation of the system without the counteracting views of his more experience officials who, when the report was submitted to them, condemned Maconochie as an impractical theorist, drawing wrong conclusions from wrong data as the result of insufficient

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(1) Franklin to Glenelg, No. 104, 7/10/1837, enclosing Maconochie - Forster, 7/8/1837.

(1) observation. Maconochie did win the support of Cheyne, Director General of Roads, but for the reasonableness of his views, not because they tallied with his own actual experience. (2) After a lengthy correspondence, and discussion in several Executive Council meetings, (3) Maconochie became impatient. Probably anxious for his report to make an impact in London, before the more orthodox opinions of the Convict Department officials, substantiated with the facts, arrived, he handed a packet enclosing his report, and accompanying opinions on it, to the Governor at the last minute, to be sent with his despatches to Sir George Grey. (4) Unknown to Franklin, he had included a letter, asking that the report be sent also to the Secretary of State for the Home Department, Lord John Russell, one of the members of the Molesworth Committee. The report, undertaken as a private commission and totally unconnected with his role as Private Secretary, thus assumed the character of an official document from Van Diemen's Land. As such, it was tabled before the Committee on Transportation, and printed in the English papers; no later evidence, however contradictory, could undo the damage already done. The sequel in the colony came one year later when the English papers arrived; Maconochie was dismissed, though still considering

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(1) Franklin to Glenelg, No. 104, 7/10/1837, enclosing No. 6: Forster's memo. on Maconochie's Report, 16/6/1837.

(2) loc.cit. enclosing No. 3. Cheyne's Memo. 9/6/1837.

(3) E.C. 2/4/p.662: 14/6/1837; and  
E.C. 2/5/p.100 ff: 28/8/1837

(4) Franklin to Sir George Grey, 30/9/1837.

his action justified by the importance of his mission. (1)

Blame for the mistake must lie with the Colonial and Home Offices, but the Molesworth's Committee's use of his papers was not entirely honest either. His opinions are liberally quoted throughout the Molesworth Report, attributed each time to the Secretary of John Franklin, giving his report official standing, if not actually implying that it expressed the views of Sir John. (2)

Only Cheyne's opinion on Maconochie was considered, none of those who opposed him, although Cheyne had made it clear that his support had been based not on experience but on the logical validity of Maconochie's theories. (3)

- iv -

Having considered the evidence of twenty-three witnesses, and examined both official reports, and the written opinions of private individuals on the subject, the Committee on

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(1) Tasmanian and Review 26/10/1838.

(2) K.Fitzpatrick, op.cit. p.224.

(3) ibid. p.161;

C.S.O. 5/5/319: Cheyne to Maconochie, 9/6/1837.

Franklin to Glenelg, No. 104, 7/10/1837, enclosing No. 3.

G.O. 46/1: Montagu, Memo. June, 1837.

Transportation, finally presented their report to Parliament in August, 1838.

With the natural inclination of the Committee favouring the abolition of Transportation, and the overwhelming evidence of the abuses apparent in the system, providing a real ground for reaching that conclusion, the drastic changes recommended in the report were not unexpected. The evidence against the system was damning. Whether induced by the obvious encouragement, the Committee gave to evidence adverse to transportation and assignment; or by private reasons for speaking against it; or by the power of the sensational to impress more deeply than the unextraordinary; or simply because of the undoubted evils which had become apparent, the picture presented was not one encouraging congratulation for British justice or penalogical enlightenment. The exposure of the imperfections in the system was of value, but not all was bad, and much that was, was only abuse, and not inherent in the system which itself had much to commend it, but which the Committee, in their keenness to abolish transportation altogether, refused to consider.

After briefly considering the history and nature of transportation, the report turned to the assignment system, assessing its success as a deterrent punishment. The first complaint was one which Bigge had made twenty years earlier, namely, that insufficient notice was taken of any personal details such as character, previous convictions, crimes and sentence in the assignment of convicts. Previous occupation alone determined

to what service the convict would go. The punishment of being assigned was, therefore, both uncertain and unequal, for various classes of convicts such as domestic servants and mechanics were very well off indeed, receiving from £10 to £15 p.a. as well as adequate food and clothing, while agricultural workers were not so fortunate. It could be said generally, however, that in all cases where the service was with a respectable family, prisoners were as well, if not better off than their counterparts at home, a very limiting factor if assignment was to deter successfully. Not only was assigned service an unequal punishment, it was uncertain, for "as the lot of the slave depends upon the character of his master, so the condition of the convict depends upon the temper and disposition of the settler to whom he is assigned". Arthur's despatch describing the convict as little better than a slave written originally to defend assignment from the charge made against it by the Committee on Secondary Punishments, that it was rather a reward for crime than a punishment, was now used as an argument for its abolition! Arthur had explained that although to the convict, assignment must seem like slavery, yet the settler did not possess a property in the prisoner, only in his services, and the convict could obtain redress from a magistrate if treated unfairly; but the Committee ignored this rider. The convict had often to go at least 100 miles to obtain redress from the nearest magistrate, they believed, which made this privilege a farce. While assignment for some meant near luxury, for others it involved a brutal slavery. The

conclusion reached, therefore, was that 'transportation was a mere lottery, ranging between "the extremes of comfort and misery"<sup>(1)</sup>. If the sole aim of severe punishment was to deter potential offenders from crime, then, while some were in comfortable situations, then those undergoing the vicissitudes of slavery, were suffering in vain.

Britain, therefore, did not benefit from the assignment of convicts, but did the colonies? The employment of prisoners was shown to be more trouble to the settler employer than it was worth. Most witnesses concurred in condemning the behaviour of domestic servants and mechanics. The opinion on agricultural servants, by far the greatest section of the assigned population, had varied. The Committee, however, preferred an adverse verdict, and chose to quote another despatch of Arthur's, written in 1832. Arthur had then been anxious to prevent the imposition of a tax on convict labour, and to support his opposition, he had enumerated the inconveniences to which settlers were liable in the employment of prisoners, in order to show how impolitic and unfair the introduction of such a tax would be. In his evidence before the Molesworth Committee he had clearly stated that the position had greatly improved since 1832. Some prisoners were confirmed criminals and would always prove troublesome, but improvement in the efficiency of the police in recent years had greatly diminished the annoyances to which the settlers were exposed. Of almost 15,000 convicts

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(1) Report, op.cit. p. viii-ix.

in the colony, above 4,000 had never been brought up again for any offence.<sup>(1)</sup> The Committee took no notice. His earlier despatch was conclusive!<sup>(2)</sup>

Not even the convict benefitted from his assignment, for his reform was most unlikely, thought the Committee. Arthur considered that fear of their pernicious influence around his home led the settler-master to take an interest in the reform of his men. The Committee claimed that this theory was contradicted by his own statements, and those of his own Attorney-General, (a Maconochie supporter) and the "Secretary to Sir John Franklin", Maconochie. It seemed obvious to the Committee that the only object of a master of convicts was to get as much work out of his assigned servants as possible. He would not, therefore, be prepared to expend the time and energy necessary to achieve the moral reform of the prisoner when it was easier to achieve his object either by resorting to force, or indulgence. Maconochie's statement was taken as final: "By transportation, the prisoners are all made bad men instead of good.....", and expiree crime was pointed to as evidence of this.<sup>(3)</sup>

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(1) Evidence, op.cit. Arthur: - Q. 4,363.

(2) Shaw: The Story of Australia (London, Faber and Faber, 1955) pp 109-10.

(3) Maconochie: Report on Convict Discipline, 20/5/1837, enclosed in Franklin to Glenelg, No. 104, 7/10/1837.

In dealing with the effect of transportation on the free population, statistics compiled by Maconochie were quoted to show the depraving influence of the association of free and bond in one community. Crime in 1824 was compared with figures for 1832. Convictions of free people for drunkenness were shown to increase tremendously, though in England the trend had been in the other direction. Figures for convictions under penal statutes for both free and bond were given, and again revealed an increase, but figures also given for the three years after 1832, by no means prove a "progressive deterioration". In 1824, the convictions of free people were in the proportion of 6 to 100, in 1832,  $7\frac{1}{8}$  per 100, but by 1835, they had fallen to only  $3\frac{1}{2}$  in a 100. In fact the crime increases in 1832 had corresponded with the arrival of the first pauper immigrants, the dissolute Chelsea pensioners, and the notorious "Royal Princesses".<sup>(1)</sup> The average crime ratio was about 4 per 100 for the period 1824 to 1836, and when it was considered that each year the percentage of expirees, many of them incorrigible criminals, among the free population was increasing, and the increased efficiency of the Police ensured that few escaped the penalty of the law, the proportion was very low indeed. Besides, it was grossly unfair to compare crime ratios

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(1) B.M. Richmond: Some Aspects of the History of Transportation and Immigration in Van Diemen's Land, 1824-1835.

(unpublished M.A. thesis, University of Tasmania, April, 1956). p.93.



in Van Diemen's Land with those in Britain to show the corrupting influence of transportation on the free community, when three quarters of the free offenders were ex-convicts, and the population of England was almost 100 per cent  
(1)  
unconvicted!

Looking to the economic effects of transportation, the Report had to admit that the penal colonies had prospered even more than the slave colonies, since the convict establishment had not only provided the labour, but also a market for the products of that labour. But transportation was shown to be no longer meeting the needs of New South Wales, where although 10,000 labourers were needed at once, only 3,000 convicts were to arrive in the colony in the next year. Free immigration was required, but "the continuance of transportation to the Australian colonies would be inconsistent with the policy of encouraging emigration there, for transportation has a tendency to counteract the moral benefits of emigration, while on the other hand, emigration tends to deprive transportation of its terrors". This plainly, was the attitude of the Wakefield supporters to transportation. The recommendation that the price of land in Australia should be raised from 5/- an acre to £1, to prevent the dispersion of settlement, was further instance of their theories.

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(1) K. Fitzpatrick, op.cit. pp 158-161.

Obviously, before systematic colonization could be implemented in the penal colonies, it would be necessary to abolish assignment, competition from which interfered with the employment of free immigrant labour. This then was the first recommendation. All witnesses had favoured the continuation of transportation, but after such overwhelming criticism in the Report, it was obvious that this too, would be abolished. The recommendation, however, applied only to New South Wales and the settled districts of Van Diemen's Land, a limitation to be explained perhaps by the fact that the island did not provide a field suitable for the application of systematic colonization, the accessible land had long been sold, and the convict labour supply was sufficient for the available capital.

To replace the system so thoroughly demolished, the Committee recommended the establishment of penitentiaries in Britain, where the "silent" and "separate" systems of penal discipline, then favoured in America, could be introduced. Short sentences would then be served there, while the offenders with longer terms to serve would still be transported to Norfolk Island, the penal station 1,000 miles off the New South Wales coast, or Tasman's Peninsula in Van Diemen's Land, there to be treated under an "improved" but unspecified system. This would remove the element of uncertainty which had prevented transportation deterring. They suggested also, that Maconochie's plan for

encouraging prisoners to take an interest in their own reform through the "marks system" could at least be tried.

The undoubted benefit that transportation conferred on offenders, providing them with the opportunity to maintain themselves honestly in a country where labour was in great demand, was to be continued by the scheme suggested by Archbishop Whately: "Such as may have evinced a disposition to reform, should be, at their own desire, furnished with the means of emigrating to various colonies....in which they may mix, not with such men as their old associates in crime, but with respectable persons, unacquainted with their past history..."<sup>(1)</sup>

For this reason, the Report recommended that convicts who had been punished abroad should be compelled to leave the settlement in which they had served their terms, within a limited period after the expiration of their sentences, with the aid of Government assistance.<sup>(2)</sup>

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(1) Report, op.cit. p. xivi, quoting from a letter addressed to Rev. H. Bishop, on the evidence taken before the Transportation Committee, containing His Grace's opinion on the efficacy of the punishment of transportation; see also West, op.cit. Vol. ii, p.279.

(2) Report, op.cit. p. xivii.

- v -

Both Maconochie and Molesworth had unfairly coloured their accounts of the colonial penal system, yet the ideals for which they stood marked the development in Britain of a social conscience. A new interest was being taken in conditions of workhouses and prisons, to be realized later in the reform of the penal code and the Poor Laws. The rights of the individual, particularly the unfortunate, to the consideration of society, was the philosophy of the humanitarian movement, which Maconochie and, to a lesser extent, the Molesworth Report expressed. The purpose of punishment, Maconochie saw, was not solely the preventing of crime by the threat of example, so benefitting society, but in the reform of the individual, for his own sake. The Committee's acceptance of the new attitude to criminals, was not so advanced as Maconochie's, and was considerably prejudiced by adhesion to the old attitude. Both criticized assignment for its failure as a punishment and reformative agent; but Molesworth's criticism was on the grounds that because an unequal punishment, it didn't deter, which was its object and purpose, and didn't even give the compensating satisfaction of reforming the offenders; while Maconochie blamed it not for failing as a deterrent, considering this impossible anyway,<sup>(1)</sup> but for even

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(1) Maconochie, Preface, p.iii, op.cit.

attempting to deter, since the coercive discipline it entailed, compromised its success in rehabilitating. Both schemes suggested were not remarkably different. In either case, the convicts were to be kept in penal stations and penitentiaries, to be directed by enlightened officers, in a discipline designed to reform rather than punish. Only the attitudes and some of the details differed; Molesworth desiring convicts of similar sentences to receive uniform treatment so that no lack of uniformity would compromise what prevention could be effected; Maconochie wishing to eradicate the inequality because the resentment he considered it bred, seemed detrimental to discipline.

- vi -

The basic principles of the assignment system, which had called forth such strong censure, had been developed to meet colonial needs, and later British demands. The urgency of supplying labour for food growing had been the original reason for assignment of convicts to free settlers. Britain, realizing how financially to her advantage it was, had approved of the system. After Bigge had visited the colonies, it became obvious that by making the discipline more severe, assignment to a settler's service could also be made a deterrent punishment.

Periodic directions to this effect continued to reach the local Governors thereafter. But a severely coercive system was inconsistent with the reform, and reform was essential to the colonies' welfare, as the majority of offenders would remain there after release. The system which developed, therefore, was a compromise between the four contributing factors; the British concern with economy, the settlers' demand for labour, the British insistence that transportation and assignment should deter, and the colonial need for the system to reform.

It was an expedient compromise, and that it would not be entirely successful in achieving all of its aims, was inevitable. Economy, effective reform, deterrence, were all inconsistent with each other, and the settlers' interest in labour, often frustrated the attainment of the British Government's requirements from assignment as a punishment, and sometimes, the colony's desire for reform. Critics of the system as a deterrent, or as a reformative agent, looked only at one aspect of the system. It is as a compromise that its success or failure must be considered.

In assessing this achievement, from the point of view of those concerned, the convict, the settlers, and the British

Government, much depends on the attitude taken to the convicts, who were the raw materials of the system, and the masters who determined to a large extent, the effect which the system was to have on them. For the charges of inequality made against assignment as a punishment were not unfounded.

The greatest care was taken by the Government to see that none but respectable persons obtained servants. <sup>(1)</sup> Explicit instructions were given each successive Principal Superintendent to assign no convicts to any but those recommended by the police. It was widely considered that the average master in Van Diemen's Land was of a higher class generally, than his counterpart in New South Wales, where assignment to emancipists and ex-convicts was common. <sup>(2)</sup> But due to the British Government's demand that all possible convicts, whom West considered were "not fit to govern a kennel", <sup>(3)</sup> men without human sympathy, of dissipated habits, and violent tempers, who made the lives of their servants a misery. <sup>(4)</sup> Men assigned to such services, or to those of wealthier masters, where an overseer of that category was employed,

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(1) C.S.O. 1/386/8728: Draft Instructions to the P.S/C. 1/1/1829.

(2) Report of the Committee on Secondary Punishments;

West, op.cit. p.258.

Evidence of Archdeacon Scott, 1832, to Parliamentary Committee on Secondary Punishments.

(3) West, op.cit. Vol. ii, p.274.

(4) K. Fitzpatrick, op.cit. p.92; and

Colonial Times 3/9/1830.

had little chance of coming out unscathed. Maconochie's claim that assignment brutalized the masters, making of them harsh and tyrannical slave-drivers, was in all probability true of this type, for many of the men found in road-parties claimed they had been driven to rebellion by the tyrannical treatment of brutal masters. (1)

Fortunately this type formed but a very small proportion of the population, though Maconochie claimed that the average settler was of this character, harsh, overbearing, suspicious, treating their men with contempt and insult. (2) The opinion of West, the historian, is the more valuable, as completely impartial (although a leading figure in the Anti-Transportation movement, his history of transportation is almost completely without bias). He writes of the settlers:

"It is true that the constant vexations of a settler's life produced, too generally, a tone striking to a stranger because not so common under happier circumstances. The substantial benevolence of many employers is not the less unquestionable; a large number continued their liberated men in service, whom they had taught the arts of industry, brought under the influence of moral instruction, and assisted to settle in life." (3)

The large number of ticket of leave men in the colony, is itself proof of at least an equally large number of benevolent masters, (4) for few tickets were awarded that had not been recommended by the

(1) Colonial Times 25/6/1833.

(2) Maconochie: Thoughts etc. pp.11-12.

(3) West, op.cit. Vol. ii, p.275.

(4) Evidence to the Committee on Transportation, 1838,  
Russell: - Q 546, 19/2/1838.



master. An examination of the Colonial Secretary's correspondence, with and about settlers, reveals many instances of kindness and humanity in the treatment of convicts, and very few of brutality, though it was these exceptions which reached the Press, and impressed the Molesworth Committee, and Maconochie. Backhouse and Walker, though lamenting the lack of moral training given the assigned servants, were greatly impressed with the influence for good of assignment, when so many were "persons of moral wealth and education".<sup>(1)</sup>

On a very rough assessment, based on the Colonial Secretary's correspondence, it appears that about 20% were masters of the best type, good living men of the finest character for whom the rehabilitation of their men was an unselfish and sincere concern. The next class ranging from men of equal compassion but not so patient, to those whose own interests rather than those of the convicts determined that the treatment of the prisoners should be one of encouragement, made up another 40%. A further 20% included masters again chiefly motivated by their own interests, but who preferred to have their men punished for disobedience, rather than themselves expend an encouraging word to make the obedience willing. The remaining 20% were unfitted by temperament to control men, the slave-drivers, corrupted and corrupting.

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(1) J. Backhouse and W. Walker: Report upon the State of the Prisoners in Van Diemen's Land with Remarks upon Prison Discipline and Observations on the general state of the Colony. pp 161-2.

A similar grading of convicts, though more difficult, is yet necessary for a real assessment of the achievement of the system, and it was here that Maconochie and Molesworth went astray. In condemning assignment for brutalizing tendencies, and the masters for harshness and tyranny, they were deceived by their compassion for human suffering into regarding the convict who went through the mill of assignment as a noble soul perverted by the savage tyranny of his master, and who, if treated with kindness would have turned out good servants, if not reformed characters.

"Some were indeed far superior to their degradation; they retained in bondage the principles they had derived from education, of the disposition natural to their character, offenders by accident not by habit. A much larger proportion", continues West, "were victims of early neglect, parental example, or of the social evils.....incident to the refinement, corruption and selfishness of the age; but very many, whatever the cause of their depravity, were really and recklessly depraved. The pitying eye of the philanthropist...in surveying their misfortunes might forget their crimes; but to stand in contact with them; to struggle against their passions, to hear their profaneness, to correct their indolence, and to thwart their speculations - these were duties and trials, in the presence of which the highest benevolence became practical, and theory gave way before actual experience." (1)

Maconochie considered that convicts were wicked because they were unhappy, refusing to realize that with many the "principles which debased them had become constitutional by habit, and that nothing short of divine power could change the current of their passions or the course of their lives." (2) The records of the

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(1) West, op.cit. Vol. ii, p. 276.

(2) ibid.

Police Office, "by preserving the original character and colonial career of the prisoners, illustrate the depth , continuity and recklessness of their guilt" even when allowance is made for the severity and degrading nature of the punishments. Arthur, who saw the prisoners on arrival and traced their progress through the colony, rated one third incorrigible, <sup>(1)</sup> habitual offenders, intellectually deficient, incapable of resisting temptation "who regularly returned to crime on their discharge...." and who, while prisoners were "perpetually involved in difficulties". <sup>(2)</sup> Those who were convicted after the reform of the Penal Code in the thirties, were generally more depraved than those who had arrived before. <sup>(3)</sup>

Had financial considerations not carried such weight, the selection of convicts for assignment certainly should have been taken much further. The charge made by Molesworth that regard was had chiefly to previous occupation in the assignment of convicts, must be admitted. (There is no reason why colonial officials should have been discredited for that, however, Assignment was a compromise with colonial needs as well as British hopes of deterring, and if the convict was working at an occupation he knew and liked, there was more chance of his reform, and his labour would be worth more.) Only those who had

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(1) Arthur Papers, Vol. 29 (Mitchell Library): Suggestions for a modified and improved system of transportation, 1847.

(2) West, op.cit. pp 331-2.

(3) ibid. p. 332.

committed crimes on the Transport, or who were mentioned in the Hulk Report as unmanageable, were regarded as unassignable. The great majority of female convicts were totally unfit to undertake the care of children in settlers' households, hopelessly corrupted and corrupting. Gentlemen convicts, the ne'er-do-wells from good families were generally debauched and dissolute,<sup>(1)</sup> and not much hope of their reform was ever held by the authorities. Their often superior intelligence was feared as a particularly corrupting influence, and apart from a few who had to be employed in Government offices as clerks, their noble birth earned them no better fare than the privilege of confinement at Port Arthur. For this type, unused to working for an employer, assignment would indeed have been an extremely severe and degrading punishment, and confinement was, therefore, probably the most suitable way of handling them at that time. It was unfortunate that when pointing out the faults in the assigning of convicts, the Molesworth Committee didn't realize that from this lack of discrimination both of masters and convicts arose most of the abuses apparent in the system.

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Before considering the charge that assignment didn't generally reform, it is necessary to consider the effect and

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(1) Arthur to Goderich, No. 10, 27/2/1833.

extent of the self-interest motive in the treatment of assigned servants.

In framing the system, the authorities were well aware of the settlers' interests. Around them the whole system revolved, the Government bargaining with the settler, to allow him so much labour, in return for the performance of certain duties, particularly the keeping of the strict discipline required by the Government. Arthur considered that the master's interest in the convict made him a "perfect gaoler" since for the good of his family, and because there was no alternative labour supply, he had to tame any vidious propensities, and make of the man a good servant. At the same time he realized that not all would consider it in their interests to take any care to reform their men, or to have them punished, either for crimes or offences against the disciplinary code, and to enforce the co-operation of these he created an active Police force.

Molesworth regarded the reliance on self-interest as the real fault of assignment. It certainly accounted for its failure as a deterrent (a failure more honourable than success would have been, however), but the charges that regard to reform was inconsistent with the settlers' interest and, therefore, no attempt was made to reform them, was an unjust generalization. Maconochie was equally unfair when he considered that the average

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settler treated his men with suspicion and insult.

A large number were of the type Arthur had based his theories on; men who disciplined their servants strictly. The great majority, however, were led by self-interest to treat well the men who produced their profit. The Van Diemen's Land Company were not alone in realizing that "eight well-fed men work twice as well as 10 underfed", <sup>(2)</sup> and although Government rations in Van Diemen's Land were more than adequate few settlers limited their men to them. A servant who proved himself a diligent workman was invariably encouraged in some way, for a satisfied servant would not be so inclined to pilfer the harnesses, or resentfully damage the carts. Boyes showed that half the settlers at least paid their men wages of some sort, and Murdoch, the only Van Diemen's Land resident-farmer at the Molesworth Committee considered the percentage much higher.

Self-interest worked the other way as well. Although the means of punishing men were handy to all, the majority, particularly those who employed less than 15 men, and directed them themselves, found it preferable to "operate upon the good properties of their men", <sup>(3)</sup> only appealing to a magistrate when milder measures had failed or the offence was more serious.

It was to the extent of reformation which assignment

(1) Maconochie: Thoughts etc. p.6.

(2) V.D.L. Co. Correspondence: Curr to Inglis, 13/2/1827.

(3) Arthur to Bathurst, 9/6/1824: enclosing Sorell to Arthur, 22/5/1824.

achieved that Maconochie and the Molesworth Committee looked, and on this its credit will stand or fall with a modern critic.

Several creditable witnesses concurred in Maconochie's verdict that although assignment achieved an improvement in exceptional cases, the result was not general. <sup>(1)</sup> Many New South Wales witnesses at the Committee were willing to credit assignment, in the country at any rate, with more success, but all declared that the capriciousness of the system was the greatest drawback to general reform. Cheyne's comment that many masters "rather hasten than avert the final ruin of those around them" was not without foundation. Assignment to expirees generally precluded all chance of reform, and one reason for the general disillusionment of witnesses from New South Wales was the great number of assignments made to expirees there. Domestic assignment, in towns particularly, was another cause of mischief, for even the best masters found it very difficult to control their men in the face of temptations offered by public houses, and the association of so many convicts together in the comparative freedom of assigned service. <sup>(2)</sup>

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(1) Evidence, op.cit. Assistant-Surgeon Russell, Murdoch, J. Barnes.

(2) Evidence, op.cit. J. Macarthur: - Qs. 3015-3022.

J. D. Lang: - Q. 3474.

Franklin to Glenelg, No. 19, 2/2/1839.

The general belief,<sup>(1)</sup> however, was that assignment did reform in the great majority of cases. Backhouse and Walker, who spent five years in New South Wales and Van Diemen's Land enquiring into penal discipline came to the conclusion that "as a medium of reformation, the assignment of prisoners as bond servants holds a pre-eminent place in Colonial Penal Discipline....and a great advantage over confinement in jails, or other public prisons, or in the road-parties and chain gangs."<sup>(2)</sup>

Its chief merit, as Franklin pointed out, was that, unlike penitentiaries, assignment provided a reformative discipline under the most natural conditions. The employment of the convict differed very little from that he had been used to in England. There was no physical restraint; they were under the direction of their employer, before conviction. Maconochie's tenet, that as "man was a social being" his "reformation should be undertaken in society", was well realized in assignment. Certainly assignment was more natural than the mutually trusting groups of six which Maconochie planned, where the constantly prying eyes of five others would be annoying, to say the least! By assignment to the country, the prisoner was removed from the temptations of the association of other criminals in the towns, yet he was not shut off from all

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(1) Courier 24/3/1830;

Melville, op.cit. p.134.

West, op.cit. Vol. ii,

(2) Backhouse and Walker, op.cit. p.161.



temptation, as in a penitentiary.

Few of those whose reform was at all possible did not profit from the close relationship with their masters. <sup>(1)</sup> The number who remained in service after the expiration of their sentences testifies to the mutual satisfaction resulting from the assignment. The patience of masters in turning "unprincipled outcasts into industrious and trustworthy servants" <sup>(2)</sup> is clear from the police records. Spode, the Principal Superintendent of Convicts, affirmed that of the total convict population, three quarters had either not been punished at all, or punished infrequently. Taking into account the character of the convicts, and the fact that most masters were not backward in presenting to the magistrates, convicts who had really proved beyond their control, these figures speak much for the humanity and interest of the masters. The Rev. U. Ullathorne, in evidence to the Committee, objected to assignment because it wasn't scientific, but left each man "to act upon his own discretion". <sup>(3)</sup> This, however, as the penal records show, was the value of the system; where it was superior to the unsympathetic, disinterested and uniform discipline of the Government. Van Diemen's Land convicts, assigned to smaller services, West considered, had the advantage of convicts who were transported to New South Wales, where the sympathy between master and servant, was not so "healthy" as in

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(1) Franklin to Glenelg, 7/1/1839, enclosing Curr to Col. Sec. 31/10/1838.

(2) Mrs. Louisa Meredith: My Home in Tasmania (London, 1853) p.38.

(3) Evidence, op.cit.: Ullathorne (8/2/1838):- Q. 314.

(1)

the younger colony.

The basic training as general farm hands, which assignment to the country settler offered the convict, was not the least of the benefits assignment conferred, since this made it possible for the convict to earn an honest living on release - more than could be said of penitentiary systems. Nor were aspersions cast against men who came from service with good characters. The possession of a ticket of leave was regarded by the settler as a hall-mark of reliability, and many preferred to employ such men to the free immigrants. (2)

The critics of assignment complained that as no regard was had to moral training there could be no real reform. Religious training, although available to all, indeed was given to few. Settlers were continually requesting the local mustering officer to permit their men to miss "church and muster". But the example of a high-principled, good-living master was not without its moral influence. The critics were right, however, there was no real reform in the highest sense. Of the prisoners who weren't incorrigible, the majority were chiefly affected by the prospect of reward, or the dread of punishment, and attained rather a negative reform, than an appreciation of abstract good. (3)

(1) West, op.cit. Vol. ii, p.258.

(2) V.D.L. Co. Correspondence: Curr to Directors' Court,  
London, 13/2/1827, 22/1/1831.

(3) West, op.cit. Vol. ii, p.228;  
Arthur to Goderich, No. 10, 27/2/1833;  
J.Ross: Van Diemen's Land Annual and Hobart Town Almanack,  
1832, pp 59-60.

Dr. Ross, Editor of the Courier, the pro-Government paper, in his 1832 Hobart Town Annual claimed that ten-elevenths of the convict population had not been reconvicted for serious crimes since arrival in the colony. Certainly no other penal system then tried, could boast so small a number of relapses as transportation and assignment.<sup>(1)</sup> Idle, useless, and depraved men, the outcasts of society, were invariably converted into useful and industrious members of the community, which was all that was expected or required of them.<sup>(2)</sup>

With the improvement of the convicts' material comfort, and the assurance given by their training as useful and industrious workmen that comfort could be increased honestly, the reason for much of the crime that had originally led to conviction was removed. This was the most essential factor in any reformatory programme, and no prison then or now, could compare with assignment in this regard. That not all achieved even this negative reform was no fault of the system. As West points out, thousands were hopeless criminals before transportation. The way to assess the success of the system

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(1) West, op.cit. Vol. ii, p.262.

(2) Report of the Colonial Immigration Committee, July 4th.

1831, enclosed in Arthur to Goderich, No. 42, 9/7/1831.

Mrs. L. Meredith, op.cit. pp 38-9.

Courier, 30/1/1830.

Melville, op.cit. p.134.

Backhouse and Walker, op.cit. pp 161-2.

was not to look to expiree crime and regard it as evidence of assignment's failure to reform, as Maconochie did, but rather to compare the conduct of the same men before transportation and after, and on the evidence of reliable witnesses, Melville, Mrs. Meredith and Franklin, it could generally be said, that unless assigned to a vicious master, those who were reformable improved as a result of assignment rather than otherwise.

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As a punishment, assignment did not have so creditable a record.

In compliance with the British Government's demands that transportation be a punishment severe enough to frighten potential offenders at home, Arthur in Van Diemen's Land, and Darling in New South Wales, had established a disciplinary code and list of penalties intended to make the convict's lot an unenviable one. Deterrence was the chief aim of the regulations, but not the sole one, for Arthur was a traditionalist regarding punishments. Crime, in his opinion, deserved retribution. Also the retributive discipline was a necessary part of the cure of the "mental delirium" which had rendered the offender truculent and anti-social. In assigned service, subject to stringent restrictions on his personal

freedom, liable for further punishment if he attempted to resist, he was to be purged of his evil tendencies, and rendered suitably submissive and receptive for a more constructive training. The police were organized to see the regulations were observed with a uniform strictness, for punishment must be certain, inexorably following the crime if the deterrence was to be effective.

The maximum penalties, 100 lashes and three years in a chain gang, were beyond all reason, and completely disproportionate to the penalties for real crimes. But the code was intended<sup>(1)</sup> to support the efforts of the masters as Government gaolers. Their reward, the sine qua non of their co-operation, was the obedient and diligent service of their charges, and this was the standard of behaviour expected. Those who did not derive this benefit from their men could turn to the higher authority, the police magistrate, who, considering the offence rather as an indication of the convict's stubborn resistance, awarded the penalty which seemed sufficient to enforce the required submissiveness.

Much discussion raged over the question whether or not assigned service was slavery, but the argument of the defence seem based on theory, and on examination in practice seem rather inadequate.

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(1) Arthur to Goderich, No. 10, 27/2/1833.

In that the master did not own the convict, but had only a right to his labour; because the master wasn't legally entitled to punish his servant himself; in that the services of the convict to his master would cease on expiration of sentence; and because the convict could go to a magistrate and complain of ill-treatment, and the Government would withdraw the convict if this ill-treatment was proved; and in that the convict was not bought by the master, but only loaned to him, the convict was not a slave. But whether the Government, in practice, did sanction the slavery of convicts unintentionally, depended entirely on the magistrates. The honorary magistrates were generally the masters of servants, aware of their tricks by which to avoid work, and to bring discredit on their masters. They were naturally sympathetic to the masters in cases heard before them, therefore, giving them the benefit of the doubt, so that although the convict could appeal against his master, unless he brought reliable evidence, the odds were against him. In New South Wales, the system was even more farcical. The country was extensive and independent stipendiary magistrates were not so easily accessible to all. A settler-magistrate would send a disobedient servant to a fellow Justice of the Peace, who administered the desired flogging, in recognition of a similar service the other had done him!<sup>(1)</sup> Even with professional magistrates, who were usually more reliable, and at least had time for a thorough appraisal of the case,

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(1) West, op.cit. Vol. ii.

Coghlan, op.cit. Vol. i, pp 185-6.

the master had the upperhand. No witnesses were needed, so that the master, in his anger with the servant, could make much of a trifling fault, even a misinterpreted look or word, and what the convict said in his defence was too often dismissed lightly. <sup>(1)</sup>

Full reports of all cases heard had to be compiled and sent weekly for the approval of the Chief Police Magistrate, and the Lieut. Governor. Sentences were occasionally changed, and the critical comments which appeared on almost all reports, acted as a salutary check on the magistrates. But lashes could not be revoked, and the Governor had little chance to uncover the real truth of an action which came to him at third hand only! The masters even had a hand in the punishments inflicted often. It did not suit them to have their men sent to a road-party for three months, so they invariably requested that the punishment be a flogging, which accounts for the tremendous number of lashes awarded. In 1833, when the convict population was 15,000, 51,000 lashes were given, and the proportion in New South Wales was even higher. <sup>(2)</sup>

The convict could appeal against harsh treatment, and there is much to prove that he was not backward in doing so. Appeals direct to the Governor were assured of an impartial hearing, <sup>(3)</sup> but too many frivolous and unfounded charges brought in resentment against

(1) C.S.O. 5/177/4,206: Maconochie to Col. Secretary, 16/2/1837.

(2) Coghlan, op.cit. Vol. i, pp 185-6.

(3) J. Ross: "An Essay on Prison Discipline", Van Diemen's Land Annual and Hobart Town Almanack, 1833.

masters, made magistrates wary, and unless there was strong evidence in their favour, the charge was dismissed. (1)

Maconochie's complaint that assignment was slavery was not based on the fact that a convict could not get justice from a magistrate, for he thought that they discharged an unenviable duty with considerable ability. It was because the convict had no choice of master, earned no wages, felt his situation as a shameful one, and was given no incentive to work but threat, (2) that he considered assigned service was an inhuman punishment. Franklin objected that in this respect assignment was no worse than any penitentiary system of discipline, where the convict's labour was never his own, where he was subject to summary punishment and the constant tyranny of overseers, too often expiress elated with their chance to torture. At least in assigned service, the interest of the master in his labour, made his treatment of them superior to that of a Government overseer.

But Maconochie's criticism was a valid one. In those services where strict attention was given to the Government regulations, the convict's lot was a wretched one. Men like Mudie, (3) in New South Wales, and Van Diemen's Land settlers like Joseph Archer, (4) Peter Lette, (5) and Dr. Hudspeth, (6) all employers of

(1) Colonial Times, 3/9/1830.

(2) Maconochie: Thoughts on Convict Management, p.2.

(3) West, op.cit. Vol. ii, p.259.

(4) C.S.O. 1/23/398.

(5) C.S.O. 1/103/2,384.

(6) C.S.O. 1/787/16,398.



convict labour on a large scale, thought as Arthur, that the convicts were transported to be punished, and they made no attempt to modify the severity of Government regulations. It was too expensive, in any case, to give liberal indulgences which the incentive system of handling men required, when so many were employed. No encouragement, therefore, but the long distant hope of a ticket of leave relieved the misery. When labour wasn't given willingly, or under threat, the convict incurred the full penalty of the law for his resistance. In five years, eight of Dr. Hudspeth's men between them had received 1,406 lashes. When masters were these ruthless disciplinarians it was no wonder the convict absconded, or begged to be allowed to stay in a chain gang.<sup>(1)</sup>

To their credit, "the greater number of settlers... partly from a natural disposition, and partly....from an instinctive and admitted feeling that more work is to be gained from the prisoners by kindness than severity, relax the strict regulations of Government in their favour....."<sup>(2)</sup> This statement, a later admission of Maconochie, is widely supported. Franklin, who claimed to have made extensive and unannounced calls at settlers' homes, was confident that the servants he saw had nothing to complain of but their loss of freedom.<sup>(3)</sup> The Executive Councillors<sup>(4)</sup> when considering the question of assignment were not

(1) E.C. 2/4/p.677: Road Department Enquiry, Evidence of Major Deare, Q 66, 17/6/1837.

(2) Maconochie: op.cit. p.25, (Note A)

(3) Franklin to Glenelg, 15/4/1839.

(4) E.C. 2/5/p.100, 28/8/1837.

reserved in their criticism of the system, but all thought that cases of harshness were comparatively few, an opinion echoed by Mrs. Meredith.<sup>(1)</sup> On the testimony of an ex-magistrate, Peter Murdoch, at the Molesworth Committee,<sup>(2)</sup> although the amount of punishment inflicted altogether was very great, assigned servants were not generally the ones to receive it. The three-quarters of the convict population who had either not been punished, or punished very little, were composed, in all probability, chiefly of assigned servants. For Arthur's crude classification system, based on punishment levels, undoubtedly sifted the incorrigibles, and those who would not be controlled in assigned service into the Government gangs, where if not beyond hope on entry, under sadistic overseers, provoked from one act of insubordination to another, they soon became criminals of the most desperate character.

Industrious convicts, and those who made some effort to please, who appreciated the advantages of assigned service and preferred not to receive a flogging, often served out their terms without incurring any additional penalty. Others not so easily managed, a severe trial even to the most patient, rarely failed to complete their sentences, if assigned to a strict disciplinarian, without realizing the real severity of the code. The punishments provided were themselves a degrading influence on the men who suffered them and fell most severely on the better man who was not so hardened. The flogged man was a worthless man,<sup>(3)</sup> and those

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(1) Mrs. L. Meredith, op.cit. pp 39-40.

(2) Evidence, op.cit. Murdoch, Q. 1539.

(3) Evidence, op.cit. Ullathorne, 8/2/1838: - Q.200.  
Evidence op.cit. Murdoch: - Qs. 1565-6.

who returned from chain gangs and penal settlements relapsed almost immediately, the harsh discipline having crushed their better instincts.

- X -

The assignment of women could not be criticized too severely. In a country where the proportion between the sexes was seven to one, (in New South Wales, 14 to one), it was asking for trouble to send them back into such community in the hope that they would reform. Their fall was greater than that of most of the men; <sup>(1)</sup> and having lost all self-respect, they could sink to the dregs of human depravity.

After the reform of the criminal code between 1824 and 1832, it was thought transportation was too severe a punishment for women, and fewer were sent, <sup>(2)</sup> but they made their presence felt by difficulty in handling. <sup>(3)</sup> Mrs. Meredith's description

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(1) Maconochie: Thoughts etc. pp 128-134.

(2) M. Clark, "The Origins of the Convicts Transported to Eastern Australia, 1787-1852". Historical Studies, Vol. 7, No. 28, May, 1956, p.129.

(3) K. Fitzpatrick, op.cit. p.18.  
Coghlan, op.cit. Vol. i, p.182.  
Colonist, 22/4/1834.

Hobler Diary (Mitchell Library) p.18.

of her first convict nurse-girl, could have been made of the vast majority: "She drank rum, smoked tobacco, swore awfully, and was in all respects the lowest specimen of womankind I ever had the misfortune to behold".<sup>(1)</sup> The behaviour of convict women was as frequent a topic of conversation among colonial ladies as the weather.<sup>(2)</sup>

Most, but not all were beyond hope. Those sent out for theft, often offenders by accident and not habit, became useful and reliable servants. Older women became attached to the children they cared for,<sup>(3)</sup> and others, if kept out of temptation, and treated well, did reform.<sup>(4)</sup>

But the majority had little chance of improving. Care was taken by the Principal Superintendent to assign females only to those whom the police magistrates knew to be decent citizens, but after the immigration of free women began in 1833, the demand for assigned female convicts fell off,<sup>(5)</sup> and the women were then sent

(1) Mrs. L. Meredith, op.cit. p.154.

(2) G. Greenwood (Ed.): Australia: A Social and Political History (Sydney, Angus and Robertson, 1955), Chapter One, "The Foundation Years, 1788-1821" (Crowley F.K.) p.23.

(3) Hobler Diary (Mitchell Library), 15/10/1827.

(4) Evidence, op.cit. Russell, Qs 540, 545.  
Mrs. L. Meredith, op.cit. (p.6)

(5) Colonial Times, 23/4/1830.  
Courier, 7/6/1833.

to the services of the less respectable. (1) Such employers in the towns neither knew or cared if their servants slipped out occasionally "to visit a shipmate". (2) In New South Wales, women were taken by the owners of houses of ill-fame, on the understanding that co-operation would bring a share of the profits. A report (3) on the Launceston hotels in 1832 seems to indicate much the same story, and although there were periodic injunctions given that no female was to be assigned to an inn-keeper, it seems that they were not always strictly obeyed.

Assignment to the country was little better. The escorting of the women assigned, by convict constables was itself subject of abuse and constant complaint; (4) so much so that it was suggested that female constables should be appointed! The large number of women returned pregnant to the Female Factory is evidence enough of the temptations which assignment offered. Those assigned in the towns had some chance of keeping their virtue if they so desired, but the shortage of women in the country districts made the chance very remote there. Settlers, if not sharing in the general depravity, (5)

(1) Franklin to Stanley, No. 64, 4/6/1843;  
Stanley to Franklin, No. 176, 25/11/1842; and  
K. Fitzpatrick, op.cit. p.78.

(2) Courier 10/8/1832.

(3) S/C Letterbook (Mitchell Library, F 79) p.89:  
S/C to P.S/C.10/2/1832.

(4) Colonial Times, 4/6/1830, and 25/6/1833;  
Franklin to Glenelg, No. 19, 2/2/1839;  
Backhouse and Walker, op.cit.

(5) Crooke: The Convict, (a novel written in 1884 by a convict chaplain, and in the process of publication by University of Tas.

took little trouble to keep their female servants away from the rest of the farm labourers.<sup>(1)</sup> Women servants were so hard to obtain in the country that many preferred to wink at the abuses that went on behind their backs, rather than have their domestic arrangements disrupted.<sup>(2)</sup>

There was no severe punishment hanging over them as a threat, as for men. The most severe sentence given was a term in the Factory, "The Female House of Corruption",<sup>(3)</sup> which the women rather looked forward to than dreaded, as work was light, and they had a chance of being assigned in Hobart afterwards.

Marriage was widely regarded<sup>(4)</sup> as the only means of reforming the women, and as Franklin pointed out,<sup>(5)</sup> assignment if judiciously made, did further their chances in this respect which a prison system never could!

For the better inclined, assignment was a punishment far beyond what the law intended; an open invitation to prostitution

(1) C.S.O. 22/30/1067;

Evidence of Russell, Qs 540, 545.

Murdoch, Q 1446.

(2) Hobler Diary, 13/3/1828 and 18/4/1828.

(3) Colonist 10/9/1833.

(4) Colonist 22/4/1834: and K. Fitzpatrick, op.cit. pp 80-1.

(5) E.C. 2/5/p.326, 7/10/1837; Franklin's Minute.

for most, unless the mistress was well-disposed and took care to keep her servant free from unwelcome solicitation.<sup>(1)</sup> For those already depraved, it meant little more than an irksome loss of freedom; not a severe punishment and certainly not calculated to reform. Probably the female penitentiaries at home had no better record for reform, but at least, the physical violation of the inmates was not part of the treatment.

From the male convicts' point of view, however, assignment meant for the majority, an improvement of material condition, as Molesworth had said, both during punishment and after release. Life was unfree, labour for those unused to it was irksome, but assigned to masters whose interest or inclination led them to treat their men humanely, the majority would have emerged greatly improved characters, unlikely to relapse given favourable circumstances. That Maconochie and the Molesworth Committee considered a higher reform possible does credit to their benevolence and human sympathy, even if such a high estimate of human nature does seem rather wishful. It was unfortunate, however, that after so thoroughly demolishing the assignment system, the Committee's suggestions for replacing it were not calculated to induce the higher reform either.

(1) Colonist 7/5/1833.

Courier 30/1/1830.

Mrs. L. Meredith, op.cit. p.154.

Evidence, op.cit. Arthur Qs 4570-5.

Lang, Q 3545

Ullathorne, Q 224.

For those assigned to the unsympathetic, inhumane minority, subjected to outbursts of temper and resentment, despised and treated like slaves, life was indeed miserable. But even for these less fortunate, the training given in service, although acquired under threat of punishment, gave those who had withstood the strain, a good start from which to resume an honest living.

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From Britain's point of view, assignment had meant a tremendous saving. Arthur had estimated that the cost of one man kept in Government service, was, in 1834, £14 p.a. while the assigned servant cost the Government only £4,<sup>(1)</sup> this being for the expenses of the Convict and Police Departments. The total cost of transportation was immense, however. For almost 98,000 transported before 1837, nearly £7 million had been spent, an average of £90 per head.<sup>(2)</sup> But had the prisoners been retained in England, many would have spent long and expensive prison terms, the other released from the hulks and penitentiaries further contaminated by association with more vicious characters, and the price of their thefts and trials, would have more than balanced the cost of their transportation which at least put an end to their

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(1) Arthur to Stanley, No. 80, 19/12/1834.

(2) Coghlan, op.cit. Vol. i, p.192.



depredations on the British public.

But economy was not compatible with efficiency where a deterrent punishment was concerned. For assignment was essentially a reformative discipline, and inconsistent with the severe penal discipline, deemed necessary to make it deter as a punishment. The restrictive regulations were unnatural to the employer-employee relationship on which assignment was based, and completely opposed to the interest of the average master, who realized encouragement rather than coercion was the more effective method of handling men. Artificially imposed upon a benevolent system, the severe restrictions not only failed in achieving their chief purpose, but interfered also with the reformative potential of the system so that only through the infringement of the regulations was the real value of the system apparent.

The imposition of such a code was the more unfortunate as its object was both ignoble and impossible of achievement. The attempt to make punishment deter was based on a fallacy. His present situation weighs more with the starving man who steals bread than the most horrifying prospects of what the consequences of his theft may be. Nor was the object assisted by removing the scene of the punishment so far from the community it was to terrify, particularly when that scene of punishment was in a land reported to be flowing with milk and honey, where opportunity was unlimited.

But the thinking was wrong which considered that punishment should deter. Maconochie was far in advance of his age when he suggested that crime should be regarded as a mental ill, and treated

sympathetically as any other ill. The man who breaks a leg is not held up as an example, but is cured as speedily as possible. No more should the cure of the mentally unfit be retarded while he is tortured as an example to society.<sup>(1)</sup> This is generally realized now, but failure to realize it then, accounted for much of the dissatisfaction with assignment, both as a preventative and reformative agent, since harsh discipline compromised in some cases where the regulations were obeyed, the reform of the prisoners.

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The colonies could be more satisfied. In Van Diemen's Land, the supply of prisoners was sufficient for the available capital throughout Arthur's term of office failing only in the boom years prior to the great depression in 1841. Most of the convict population were reluctant workers, but coaxed with wages, and lesser indulgences, and always with the threat of punishment before them, many proved satisfactory. The Van Diemen's Land Company found it paid to offer pay for over-time work as an inducement, but having done this they much preferred them to free labourers who could not be so easily controlled, and who

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(1) Maconochie: Thoughts etc. Preface iv.

were not keen to go to so isolated a post as the Company owned. (1)  
 Mrs. Meredith thought highly of their assigned servants, a number  
 of whom had stayed in their service on expiration of their  
 sentences, serving them faithfully and well. She thought  
 agricultural labour at home could be no better. (2) Rural  
 offenders, and those with longer sentences generally proved the  
 best workmen, the former because accustomed to hard work and  
 fearful of punishment, the latter, working in hope that their wives  
 and families might be sent out if they proved worthy of the  
 indulgence.

Many of the witnesses at the Committee on Transportation  
 considered the value of assigned labour over-estimated, and Boyes  
 agreed with them. He comments very amusingly on the trials of  
 employing convict servants:

Having applied to the Assignment Board for a Prison  
 Servant you are recommended to await the arrival of  
 the next ship, which advice, having no choice, you  
 are constrained to take. The ship at last comes to  
 anchor and soon after you have the most satisfactory  
 evidence that your application has not been over-  
 looked in the appearance of a hopeful youth in a new  
 suit of solemn grey and livid yellow, and under  
 charge of one of those respectable characters who are  
 paid 2/- per day by the Government for lounging about  
 the streets all day long with a short club in jacket-  
 pocket - and twice that amount by the public house  
 keepers for passing their doors without looking in,  
 or, being in, for seeing nothing but the colour of  
 the liquor they are about to swallow. A receipt for

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(1) Van Diemen's Land Company Correspondence:

Hutchinson to Directors' Court, London, October, 1833.

(2) Mrs. L. Meredith, op.cit. pp 38-40.

the gentleman in the parti-coloured dress being delivered he is at once upon your establishment. In your application you had carefully described the qualifications you required - 'A House Servant who could wait at table' - and you are now agreeably surprised to find domesticated under your roof for better or for worse a Cornish ploughboy who had never seen a mahogany table in his life and who was expatriated for attempting a few gaudy bandannas at St. Ives Fair.....In about six months from that time and just as the unfortunate tiller of the soil (all rogues being unfortunate when they are caught out) is beginning, at a fearful cost, to make himself useful, having in the experimental process utterly destroyed a China dinner service, chipped and broken £15 worth of cut glass, scratched your plate with sand-paper, and used the furniture brushes for scrubbing, with the aid of soap and water, the french polish off your tables and sideboard, you receive from that respectable personage, the Principal Superintendent, a note requiring you will be good enough to dispense with the young man's services, the Government having it in contemplation to make him a constable, for which situation he has been strongly recommended by the Chief Police Magistrate. (1)

Certainly those who did benefit paid their men and watched them. But even if then a convict was worth half as much as a free labourer, he cost half as much, he was subject to discipline, and he was available even to the most isolated settlers, who would (2) have found it impossible to coax free labour far from the towns. The greatest benefit of the assigned labourer was that his services were available at the earliest stages of settlement to break the land, and bring some semblance of order and civilization to a country hitherto only trodden by natives.

Whether on a long term view, the advantage of cheap labour outweighed the annoyances, political and social, with which it was accompanied under the assignment system, is debatable, but certainly

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(1) Boyes Diary 9/2/1837.

(2) Evidence, op.cit. Assistant Surgeon Russell, Q. 588, 19/2/1838.

the large majority of colonists considered it did. Without an active Government surveillance to ensure control and subjection of the prisoner population not only would absconding and bush-ranging have been a constant anxiety for the colonists, but generally they would not have been able to derive as much advantage from their men, since without the threat of punishment to accompany a more indulgent handling, many convicts, who under a wiser system would never have been entrusted to settlers at all, would have been unmanageable. Government care and active policing effected their purpose most efficiently. While in New South Wales, 442 persons were capitally convicted over a three year period from 1832-5, for crimes of violence, the prisoner population in Van Diemen's Land was well-controlled and comparatively well-behaved. The country was in a "perfect state of tranquillity in both town and country", and the percentage of serious crime, never very large, had dropped from one in 400 in 1829, to one in 300 in 1835.<sup>(1)</sup> Arthur's Government was a model of efficiency, and under his administration the colony's prosperity reached a peak it was not to achieve again for many years.

The attitude taken to the colonists, however, was not designed to enhance its popularity. Arthur considered the island a large scale gaol, concerned primarily in the punishment and reform of criminals. The free settlers who became its willing inmates

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(1) Franklin to Glenelg, No. 19, 2/2/1839.

had to accept cheerfully the restrictions intended to effect its purpose. The limitation of political rights, the constant interference of the police in domestic matters, the penalties to which the settler was liable for infringement of even trivial regulations <sup>(1)</sup> were a constant source of annoyance. The Governor's wide discretionary authority, although necessary in the situation and exercised reasonably, was bitterly resented by those whose contrariness and non co-operation had incurred the full effect of its disapproval, in the withdrawal of their servants, a loss the more momentous as the free labour in the colony did not fill the gaps. Before the end of Arthur's term in Van Diemen's Land, those <sup>(2)</sup> whose "flocks and herds" did not "hold their undivided attention" were protesting against the political subordination, and beginning to urge the cessation of transportation, considering political freedoms preferable to cheap labour.

Most, however, were prepared to accept the inconveniences associated with Government superintendence of the convict population, finding the local magistrate of more benefit to themselves in the disciplining of unmanageable men, than the red tape and the insult of the convict police were annoying.

The moral effect of the assignment of felons to private service is equally hard to judge. Maconochie's observation that assignment corrupted the free population giving it the harsh, overbearing character of a slave-owning society, and pointing to

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(1) Act 6, Will. 4, No. 2, Sections 39, 41, 45-7, 49, 72, 75.

(2) Arthur to Spring Rice, No. 31, 21/4/1835.

the increase of drunkenness as evidence of the degrading influence, was an exaggeration. The stress and anxiety always associated with the challenge of an untamed country, seems universally to be met with a toughening of character, a reckless and fearless attitude to life, a blunting of refinement and sensibility. Hard living, hard drinking are characteristic of frontier colonies, whether slave-owning or not. This is not to deny that slave-owning corrupts, or the truth that many masters of convict labour became harsher and more demanding as a result of their authority. The ex-convict, and the lower order of free settlers regarded their position as a chance to tyrannize and abuse their less fortunate brethren. Nor, often was the large scale employer much better, but the majority of assigned servants in Van Diemen's Land were employed by the small "respectable" farmer class, where the master-servant relationship was healthier. The average number of convicts in any one employ would have been about eight to ten.

The contaminating influence of convict servants, particularly female nursemaids and domestics on the younger generation, was affirmed very generally by witnesses at the Molesworth Committee. During his term in Van Diemen's Land, Arthur had several times pointed out that the peopling of a new country with felons was an evil form of colonization,<sup>(1)</sup> and in his evidence, he took the opportunity to urge the importance of further expenditure on religious instruction and education, which would lessen the evils to a great degree.

Considering the origins of the vast majority of female convicts, their unsuitability as nursemaids is obvious. Resentful

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(1) Arthur to Spring Rice, No. 31, 21/4/1835.

and generally hostile to their employers, it was not unnatural that the reaction of the more vicious should have been the determination to corrupt their young charges in retaliation. Parents who could afford and obtain free servants never employed convict women whose behaviour was bad, almost without exception. Those not so fortunate took care to keep their children apart from the convicts as much as possible, and those who failed to do so must take the blame for any consequences of their neglect.

The contaminating influence was undoubted, but whether its extent was as great as the Molesworth witnesses, and the writings of West and Crooke, both clergymen, would seem to represent is rather doubtful. Horrible though the outrage is which they all cite in lurid detail, the fact that their joint evidence is so limited, when other cases of that sensational character would surely have been equally notorious, seem to indicate it was of an exceptional character, highlighted as the sensational always is.

The clergymen's report on the colony, <sup>(1)</sup> written in answer to the Molesworth-Maconochie charges denied that the intermixture of the convict and free population was as harmful as presented. The majority of settlers were from the middle ranks of society in Britain, and were on an equal footing respecting morality, decency of conduct, and attention to religious duties with the corresponding class of society at home. Their desire for religious instruction, their intelligence, their hospitality, their kindness and readiness to relieve the sufferings of the unfortunate, their liberality in

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(1) Franklin to Glenelg, 21/1/1839, enclosing Clergymen's Report on V.D.L.



contributing to undertakings for the improvement of the moral and social condition of the people all bore evidence of their respectability, which the presence of convicts had not lessened.

The polluting influence of convictism was undoubted in New South Wales. The arrival of 30,000 convicts in ten years, without any corresponding free immigration to offset or modify the effect of such accumulation, did considerable moral damage in the free community. The too frequent assignment of convicts to large establishments and ex-convicts had not helped to assimilate the convict population and modify its anti-social tendencies, so that the picture Justice Burton painted of New South Wales was not entirely unexpected. (Even so, an equal number of felons released after sentence in England would have produced an equal amount of crime). Due to the more active surveillance by Government, possible as settlement was more confined, the superiority of the average settler, in the island where the expirée population was an unimportant minority, and stricter regulations respecting the assignment of convicts, the assimilation of the convict population was more successful, and certainly crime ratios were lower. Not until the Probation system flooded the colony with criminals in overwhelming numbers, was any real complaint made of moral pollution or any attempt made to stop its source.

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Despite the criticisms of Maconochie and Molesworth to the contrary, as a compromise assignment had achieved much that was valuable. Much of their criticism had been pointed at abuses and faults with the compromise had made necessary.

The severity of the disciplinary code was the chief fault of the system. It was not consistent with the essential nature of assignment as a reformative agent, and opposed to the principle on which assignment was based, the interest of the employer-master in the labour and reform of his servant. The assignment system was not the means by which to punish offenders if example was to be made of them to deter crime at home. Yet, concern for economy forbade the employment of any other system.

The demand for economy was a limiting factor on the success of the system in other respects, also. Had there been no need to assign all convicts, a more thorough selection would have been possible, both of masters and servants. The incorrigible and difficult should never have been assigned; the vicious, and the mean of spirit should not have been permitted convict labour. With such a selection, the necessity for severe restrictions on the free and bond would to a large extent have been removed. It is unfortunate that Maconochie's teaching was not more influential with the Molesworth Committee on the constructive side, for had he convinced them that there was no need for punishment to deter, the

only other reason for the continuance of a severe disciplinary code would have been removed, and the assignment of convicts could have then been made with the reformation of the prisoners only in view, subject to the superintendence of probation officers, perhaps. But this attitude to crime and criminals was not to be accepted generally until the teaching of psychology and psychiatry at the end of the century prepared the public mind for a wider toleration.

Assignment was not to be perfected, but even as a compromise its achievements, ably defended by Franklin, <sup>(1)</sup> were by no means inconsiderable:

"While assignment is a punishment of considerable severity, it is one in which the state of the convict is the least removed from the natural condition. It is the least artificial of all punishments. It is the one which seems to prepare him best for restored freedom. It is also the only one which can be conducted without great difficulty in a new colony, where the officers necessary to the duties of a more artificial system can be obtained, if at all, only with difficulty, and at great expense. Guarded by auxiliaries and other necessary securities, assignment.....should be at all times, the punishment of the majority of the convicts."

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(1) Franklin to Glenelg, No. 104, 7/10/1837 enclosing Minute of Lieut. Governor to Executive Council, 28/8/1837, E.C. 2/5/p.327.

- Epilogue -

The publication of evidence heard by the Committee on Transportation raised cries of indignation in the colonies, both from official circles and among the colonists themselves.

The arrival in September and October, 1838 of the English papers publishing Maconochie's letter to Russell sent via Sir George Grey, astounded Franklin, who, viewing his Secretary's behaviour with "extreme displeasure", forthwith dismissed him. <sup>(1)</sup>

The colonists were outraged at his description of them as slave-drivers, and at public meetings in various districts, denounced the man who had smeared the reputation of themselves and their

home. <sup>(2)</sup> A Campbell Town protest meeting, under the chairmanship of Captain Patrick Wood, a revered settler from Snake Banks in the Brighton district, appealed to Franklin and the clergy to disavow Maconochie's verdict of Van Diemen's Land society. <sup>(3)</sup>

(1) C.S.O. 5/146/3,558: Franklin to Col.Sec. 19/9/1838.

Boyes' Diary, 23/9/1838.

K. Fitzpatrick, op.cit. p.152.

Franklin to Glenelg, "Separate", 21/9/1838.

(2) Franklin to Glenelg, No. 132, 27/10/1838.

Courier, 28/9/1838.

Tasmanian and Review, 26/10/1838.

(3) Courier, 5/10/1838.

In fairness to them, Franklin published in the colony the October 7th despatch on prison discipline, in which was enclosed the official reports, the Executive Council Minutes, and the private views of the Convict Department officers on the Maconochie theories. (1) The Press promptly took up the discussion. As early as June, a public meeting in Sydney had petitioned Her Majesty's Government for the continuance of the assignment system, and Gipps had been asked to appoint a Committee to point out the discrepancies in the Committee's evidence on the subject. (2) The final report of the colonial committee was a comprehensive argument for the continuance of assignment, which it claimed was not only of benefit to the colonies, but was a much more satisfactory system of penal discipline from the convicts and the Government's point of view. The Van Diemen's Land press gave it full support.

Maconochie, though incurring the wrath of irate colonists, lost no ground with the British Government. The Secretary of State replied to Franklin's despatch reporting his dismissal, stating that Sir George Grey had acted on his own discretion in forwarding the report. (3) Franklin's disavowal of Maconochie's remarks about the colonists were read in the House of Commons and Glenelg expressed his regret that "the feelings of so many estimable

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(1) Franklin to Glenelg, No. 132, 27/10/1838.

(2) Courier 10/8/1838, 8/6/1838, 7/9/1838.

Coghlan, op.cit. p.190.

(3) Normanby to Franklin, No. 3, 23/2/1839, enclosing  
Stephen to Phillips, 23/3/1839.

persons should have been thus severely wounded by publications reflecting on their moral and social character."<sup>(1)</sup> But Maconochie was unrepentant.<sup>(2)</sup> He regretted his method of procedure had been irregular, but "my situation has been peculiar, my motive good, and I am sanguine in thinking that I have rendered good service."<sup>(3)</sup> Later when transportation to New South Wales ceased, he was chosen to try his theories at Norfolk Island.<sup>(4)</sup>

No less than the day after the Committee's hearings began in London, a Home Office communication suggested to the Colonial Office the desirability of abolishing assignment in the colonies, and Franklin was consequently asked to suggest alternatives for handling the convicts in the Public Works and advised that the colonists should look to free immigration in the future for their labour supply.<sup>(5)</sup> He pointed out<sup>(6)</sup> that gangs could be employed opening up unsettled land, and by so making possible an increase in the Land Fund, immigration might again be encouraged to provide an alternative labour force, but he warned against the cost of such a

(1) Normanby to Franklin, No. 21, 14/3/1839.

(2) Tasmanian and Review, 26/10/1838.

(3) Maconochie to Glenelg, 4/10/1838.

(4) Normanby to Gipps, 11/5/1839.

(5) Glenelg to Franklin, (Private) 30/5/1837, enclosing

Phillips to Stephen, 15/4/1837, and reply, 29/4/1837.

(6) Franklin to Glenelg, (Separate), 9/12/1837.

scheme. In the October 7th despatch on assignment, he had suggested that the system be modified in four ways; by the cessation of town and luxury assignment, the wearing of a distinguishing badge; by the introduction of a probation period on the roads prior to assignment, to reduce the "lottery" of transportation; and the division of the ticket of leave privileges into two stages. (1) He decided to wait for a reply before implementing them however. The replies to both despatches came at the end of 1838. Gipps in New South Wales had advertised the likelihood of the cessation of assignment, and Franklin was directed (2) to do likewise. The four modifications were approved, and Glenelg insisted they should be adopted at once, whatever the final (3) fate of transportation.

The despatch was considered in Council, where it was decided that the probation gangs should be employed near Hobart for close observation by the Convict Department officers. The men should be classified according to previous character and degree of crime, the worst going to a twelve months probation gang, the best to a four months' gang. Since immigration had almost ceased, it was unfair to abolish assignment to towns completely, which in effect would have been entailed by the abolition of luxury and domestic assignment. Cooks, gardeners and domestic labourers had not the opportunity to offend, it was thought, as mechanics, shoemakers,

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(1) Franklin to Glenelg, No. 104, 7/10/1837.

(2) Glenelg to Franklin, No. 315, 30/6/1838.

(3) Glenelg to Franklin, No. 318, 6/7/1838.

tailors, printers, shopmen, coachmen and grooms, who had more access to the public and were not so much under the eye of their employers. It was decided to forbid the employment of convicts in the latter situation, therefore, in the towns, though they might still be employed on country properties, at those occupations. The idea of a distinguishing badge was rejected as degrading to the convict and offensive to the master. The graded ticket of leave met more approval, but it could not be implemented without alteration of the Transportation Acts which limited the holders' right to own property. On 17th of January, 1839, a Government Notice announced the changes, but commencement was to be postponed until July 1st of that year. A later notice explained that existing assignment could not be interfered with unless the servants misconducted themselves, and had to be sent for punishment. After July 1st, 1840 all assignment to Hobart and Launceston would cease. No ticket of leave replacements would be made after that date, but to ease the position in the towns, ticket of leave men were no longer to be restricted to employing themselves in the country.

(1)  
The Molesworth Report had been published in August, 1838, but not until May of the following year was it sent to the colonial Governors.

(2)  
Franklin read the decision to abandon assignment and transportation to the colonies, in the English Press and was

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(1) Franklin to Glenelg, No. 30, 15/2/1839.  
Government Order, 17/1/1839.  
E.C. 2/6/p.567, 2/7/1839.

(2) Normanby to Franklin, No. 60, 17/5/1839.



confident the ministry would not act on the "vague and.....  
 impracticable" suggestions of the committee. <sup>(1)</sup> He at once  
 felt it his duty to clear the misconceptions on which the report  
 was based. A clergymen's report on the morality of the colony  
 had assured the Government that Van Diemen's Land was as  
 respectable a society as would be found elsewhere, and security of  
 life was better than most. The demoralizing effect of the  
 intermixture of free and bond was "greatly exaggerated". <sup>(2)</sup>

Maconochie's statements were "quite at variance" with his own  
 observations, <sup>(3)</sup> and were themselves contradicted in the Committee's  
 report. He assured the Secretary of State that assignment was  
 unequal only because of the variety of occupations. This would  
 be remedied by the abolition of luxury and town assignments. Nor  
 indeed was it possible to make punishment equal to all, owing to the  
 great diversity of human nature. He pointed to the encouraging  
 decrease in crime since 1829, which the Committee had not noticed,  
 as evidence of the improved behaviour of the convict population.  
 It was because of the limited area of the island which made it  
 possible for convict discipline to be more efficiently policed,  
 that the system in Van Diemen's Land was superior to that in New  
 South Wales. The Report's comments on the influence of further  
 transportation on the colonial economies did not apply to Van

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(1) Franklin to Gipps, 5/2/1839.

(2) Franklin to Glenelg, No. 9, 21/1/1839.

(3) Franklin to Glenelg, No. 19, 2/2/1839.

Diemen's Land which could not afford free immigration since the Land Fund was so inconsiderable. Even if a penitentiary system was introduced, those already in the colony would still have to be maintained, which would mean double expense. Nor was the penitentiary system likely to be an improvement on assignment, which he, as an unbiased critic, considered the most "advantageous disposal" and treatment of criminals, since it was the most natural way. Confinement was not conducive to reform, and the association with other criminals was more likely than not to be a corrupting one. He urged that assignment should be given another chance on the improved basis, for the criticisms of the system had been made on consideration of the worst examples only.

While defending the assignment system against the charges brought against it by the Molesworth Committee and Maconochie, Franklin yet had to defend the new regulations in the colony.<sup>(1)</sup> A large public meeting in Launceston on March 27, 1839, sent a memorial to the Governor asking for the suspension of the January regulations, fearing that there would be a surplus of agricultural labourers in the country, while the towns would find it impossible to obtain domestic servants. The release of ticket of leave men unused to the towns would be disastrous for public order there, and have a bad effect on the convicts themselves. It was argued that as assignment was a training for restored freedom, the wisest course was to impart that training in localities and at occupations

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(1) C.S.O. 5/236/6,018

that would benefit the men on release. The governor's reply had to voice the British Government view, and it earned him the approval of Lord John Russell.<sup>(1)</sup> He reminded the colonists that the interests of the colony in the most advantageous distribution of labour were of secondary importance only to the objects of Britain, the prevention of crime and the reformation of the criminal. The same public meeting, however, passed a resolution that a public remonstrance be offered against the implementation of the Molesworth Committee's recommendation that transportation be discontinued. A petition to the Queen was drawn up protesting against the mis-representation of the character of the free colonists, and praying that Her Majesty's Government would not sanction the abolition of transportation and the assignment system. They feared any change in the system which had been of such benefit to them would have serious effects on their labour supply, and so shake their property to its foundations.

But Franklin had the colony's labour problems in mind when planning the system to replace assignment.<sup>(2)</sup> While still arguing the merits of the system, he outlined the principles of an alternative probation scheme which was to combine the best of assignment and the best of Maconochie's proposals. All convicts arriving were to be worked in gangs of 300, under the charge of several overseers, and each with a clergyman to undertake their spiritual instruction. A daily record of each man's

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(1) Russell to Franklin, No. 18, 24/10/1839.

(2) Franklin to Glenelg, No. 30, 15/2/1839.

character was to be kept and on serving one tenth of his sentence well, he was to be permitted to go into private service, choosing his own master from those thought fit to employ convicts. He would there earn a small wage and be subject to summary jurisdiction, but lashing was to be dispensed with except in extreme cases. Misconduct would incur a sentence to a road-party, but if he worked well in private service, after a certain number of years, he would receive a lower class ticket of leave. The employment of the primary probationary gangs in breaking up and cultivating land would train men for farm work and assist with the colonial revenues, too, especially as frequent droughts on the mainland seemed to indicate Van Diemen's Land should become the granary of the Australian Colonies. <sup>(1)</sup>

While Franklin was arguing the cause of assignment, Russell at the Home Office had decided to adopt the Committee's recommendations to a large extent: transportation was to diminish, larger numbers were to be kept at home in the hulks, and assignment was to end. These were the instructions which accompanied the Report to colonies in May, 1839. <sup>(2)</sup> What exactly was to replace assignment had not been decided and was not decided until November, 1842!

With instructions such as these, however, the total abolition of transportation was not unexpected, and Montagu in London on

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(1) Franklin to Glenelg, No. 76, 14/5/1839.

(2) Normanby to Franklin, No. 60, 17/5/1839, enclosing Russell to Grey, 2/1/1839.

holiday, took the opportunity to urge the cause of probationism, not because he preferred that to assignment, but in order to secure the continuance of transportation at any cost. The projected system was not without merit either, from an economic view point. Labour would be available, admittedly with an initial time lag and not so cheaply, but without it, properties in the colony would be worthless, and there was little chance of arranging an immigration scheme. (The Derwent Bank, in which Montagu was a substantial shareholder, held the mortgages of three-quarters of Van Diemen's Land properties).<sup>(1)</sup> Besides, the Commissariat market would be a tremendous encouragement to Van Diemen's Land agriculture and manufacture.

Whatever was to become of probationism, the system of assignment was definitely out. June 30th 1839 saw the end of "luxury" assignment in town and country, for males. After June 20th 1840, all convicts who arrived in the colony were to be subject to the probation regulations, and assignment of any to Hobart and Launceston, whether from Barracks or assignable gangs, was to cease. The colonists were not to see the system go, however, without yet one more attempt to save it. Prosperity was on the rise, business was booming, and the labour supply could not keep pace. Transportation had considerably diminished since 1837 so that even without the ban on assignment, labour would have been scarce. A public meeting in April, 1840, with Captain Swanston, the manager of the Derwent Bank in the chair, suggested that the

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(1) K. Fitzpatrick, op.cit. pp 251-3.

probation gangs should be broken up to meet the demand for labour, and demanded full civil rights so that the colony could use its revenue to introduce a free labour force.<sup>(1)</sup> Franklin replied, that in 1837 when the future of free immigration was put to the colonists, the response had been negligible. Now instructions on the cessation of assignment were too positive to suspend. Writing to the Secretary of State, however, he pointed out the urgency of the labour situation. The Legislative Council was approached to consider means of re-opening the immigration of agricultural labourers and single women as domestic servants. At the end of November 1841 the Colonial Immigration Committee reported that it would devote £50,000 to assist immigration,<sup>(2)</sup> though by then the grounds for the demand for it had changed. Depression had set in, labour was demanding exorbitant wages, and an influx of labour, it was thought, would lower the cost.

As the supply of convicts direct from England for assignment ceased on June 30th, 1840, only those in assignable gangs, who had either been returned because they were useless, or had graduated from a punishment gang, were available for country service. In neither cases were they particularly desirable servants, and the Van Diemen's Land Company manager reported<sup>(3)</sup> in August that crime

(1) K. Fitzpatrick, op.cit. p.232.

Franklin to Russell, No. 66, 22/5/1840.

(2) Hartwell: op.cit. p.239.

(3) V.D.L. Comp. Correspondence: Hutchinson to V.D.L.Co.

Directors, August, 1840.

had increased in the Circular Head district as a result. To ease the difficulty, the Company Directors in London appealed to Lord John Russell to <sup>(1)</sup> assign one hundred convicts to the Company, to be sent direct to the establishment to save costs. They were to be worked at bridge-, wharf-, and road-building, which would be of benefit to the colony in general as well as the Company. The superior handling of the Company's servants in the past, affirmed by the high ticket of leave ratio (three out of five convicts in the Company's service had received tickets, while on an average, only one of every two in other services had done so), and the isolated situation on the North-west coast, were urged as reasons why assignment to the Company should not be included in the general disapproval of the system. Russell was inclined to agree to the proposition, but he left the final decision to Franklin. <sup>(2)</sup> The Principal Superintendent, into whose hands responsibility for the assignment of convicts had reverted, advised against giving any such privilege to the Company. Many large establishments in the colony might in the same grounds very justly require the number of their servants to be augmented

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(1) Russell to Franklin, No. 262, 19/7/1841, enclosing

V.D.L. Co. Directors to Col. Office, 29/6/1841, and reply, 19/7/1841.

(2) Russell to Franklin, No. 262, 19/7/1841.

(1)  
 also....." A compromise was reached when the numbers available  
 were so few; each service was restricted to 15 men, and the Van  
 Diemen's Land Company, having five distinct and isolated  
 establishments were allowed 75, but further than this Franklin  
 (2)  
 would not go.

By April, 1841, assignment had been abolished nine months,  
 and Franklin still had no instructions as to how to place the men  
 whose probation had finished. As a temporary measure, he put them  
 in a Public Works gang and gave them minor indulgences, but the  
 time had come to appoint a Director and staff for the new system. (3)  
 Forster was given the position of Director of the Probation System, (4)  
 with a special Registrar, and four clerks. The Board of  
 Assignment was no longer necessary, since all the duties could be  
 handled by the Principal Superintendent. A year later, Franklin  
 appointed a Board to replace them - the Board for the Distribution  
 of Convict Servants, whose duty it was to assess the suitability  
 of applicants. (5)

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(1) C.S.O. 22/26/927, Spode to Col.Secretary, 6/6/1842.

(2) C.S.O. 8/59/1,315: Franklin to Spode, 16/6/1842.

(3) Franklin to Russell, No. 68, 15/4/1841;

C.S.O. 22/57/491.

(4) C.S.O. 22/60/290: Col.Secretary to C.P.M. 24/5/1841,

C.P.M. to Col.Secretary, 27/5/1841.

Franklin to Russell, No. 103, 9/7/1841.

(5) Franklin to Stanley, No. 123, 17/11/1842.



After June 4th, 1841, any convict still in assigned service was to be placed in the Public Works on probation if he was punished three times for colonial offences. The loan system ceased from the same date, except in cases where written promises had been made, but all these had been fulfilled by October of that year. As soon as loans expired the mechanics were to be sent to the Public Works, or employed by "committees connected with the erection of public buildings" - presumably on (1) the contract system.

But despite the abridgement of assignment, there were still 3,500 convicts in assigned service in June, 1842, and 1244 settlers employing them. As these gradually received tickets of leave, the number dwindled, until on November 10th, 1843, no more assignments were to be made, even of men from assignable gangs, and those who had not received tickets by March of the next year were to be paid wages as the graduated probationers were. (2)

Needless to say the demand for men far exceeded the supply. Six hundred applications for men were unfilled in 1841, and the only assignable men left on Government hands were 22 physically unfit.

The colonists, though regretting the end of assignment which had meant immediate cheap labour, and provided a reliable source of trained labour when sentences of assigned servants expired,

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(1) C.S.O. 22/63/956: P.S/C. to Lieut. Governor, -/7/1842.

(2) Government Order, 10/11/1843.

were yet prepared to accommodate themselves with probationism at first. <sup>(1)</sup>

In 1841, when labour was in such demand, many requests came from private settlers and districts, willing to pay the cost of an overseer, and provide housing if a probation party would be employed in the district, making roads and providing an immediate market for their meat and wheat. <sup>(2)</sup> Not till the depression set in, and the colony found itself faced with the impossible dilemma of defraying the exorbitant cost of the probation system with a much depleted revenue, did the outcry against

probationism begin. <sup>(3)</sup> Stanley, also alarmed at the expense of the new system, looked at the discarded assignment system with a new interest and decided that it had been too hastily abandoned. <sup>(4)</sup>

As an experiment probationism promised well. It was essentially a modified assignment. The convicts after a period of probationary discipline and instruction, were given the choice of masters and the right to earn wages. It was in its detail that it failed so lamentably. British thoughtlessness deluged the colony with criminals - 30,000 between 1841 and 1847; unwillingness to provide sufficient chaplains and superintendents proved true the prophecy - Van Diemen's Land was indeed a second Gomorrah. <sup>(5)</sup>

(1) K. Fitzpatrick, op.cit. pp 323-4.

(2) C.S.O. 22/45/2: Grant to Col.Secretary, 13/7/1841.  
C.S.O. 76/1: C.P.M. Memo, 15/5/1841.

(3) K. Fitzpatrick, op.cit. p.323

(4) Stanley to Franklin, 25/11/1842.

(5) K. Fitzpatrick, op.cit. p.333.

Britain's stubborn insistence that colonial interests did not count - that "Van Diemen's Land was a penal settlement before it was a colony" decided the fate of transportation.<sup>(1)</sup>

Her Majesty's Government had failed to see the importance of reconciling colonial and British interests; had failed to realize that economic advantage had in the past compensated for the disabilities of residence in a penal colony. Arthur had warned, in 1835,<sup>(2)</sup> when the cost of Police and Gaols was transferred that the colony would regard it as a tribute exacted.

He had also pointed out that to introduce a probation system and fail, over-running the colony with unreformed felons, would be calamitous.<sup>(3)</sup> His warning was ignored, and the results were as

he predicted, a united colonial front against transportation.

In 1847, when the Probation system was an admitted failure, he was again consulted,<sup>(4)</sup> and in defiance of the Molesworth-Maconochie charges against assignment, he suggested the re-introduction of the system on an improved basis - with careful selection of both convicts and masters. But such a solution, when not accepted when its adoption would have been valuable, was not the answer to Van Diemen's Land penal problems in 1847. The answer did not come until four years later, with the total cessation of transportation, and the horrors its last ten years had brought.

(1) ibid. pp 328-9.

(2) Arthur to Spring Rice, No. 37, 14/5/1835.

(3) Arthur to Stanley, No. 11, 4/2/1834.

(4) Arthur Papers, Vol. 29: Arthur's draft reply to Lord Brougham to Arthur, 28/8/1847.

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