

**VICTIM OF AN 'EXTRAORDINARY CONSPIRACY'?**

**SIR JOHN EARDLEY EARDLEY-WILMOT  
LIEUTENANT-GOVERNOR OF  
VAN DIEMEN'S LAND 1843-46**

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Leonie C Mickleborough

## Abstract

This study examines the career of Sir John Eardley Eardley-Wilmot MP and Chairman of the Quarter Sessions, and his 1843 appointment as Lieutenant-Governor of Van Diemen's Land by Secretary of State Lord Stanley, despite Stanley's claim three months earlier, that Eardley-Wilmot was a 'muddle brained blockhead'. This comprehensive study first re-evaluates Eardley-Wilmot's extensive public career in Britain (which has been much neglected by Australian historians), especially his contribution to the reform of juvenile crime and the slavery controversy. Secondly, it explains his role and importance in the development of the probation system of convict management in the colony.

Significantly, in 1846 Sir James Stephen admitted it was the British Government's 'ill-advised' and 'non-considered pledge' to abandon transportation to New South Wales in 1840, and to throw the 'whole current' of convicts into Van Diemen's Land, which caused the colony's constitutional crises in which private members of the Legislative Council expressed their hostility and obstructed financial measures. Coinciding with the cessation of transportation to New South Wales, Britain replaced the assignment of convicts with the probation system and Eardley-Wilmot was required to place the annual arrival of between 4,000 and 5,000 convicts into probation gangs and stations. The expenses and demands of probation also impacted on the female houses of correction, hiring depots, orphan schools and Point Puer.

This thesis provides a study of the British Empire's organisation as the system of convict administration and transportation changed, and supports Eardley-Wilmot's claim that he did not receive adequate Colonial Office support and was treated unfairly. It also reveals he was appointed, not only because of patronage and experience, but because he antagonised Stanley and Sir Robert Peel over his determination to end British slavery. Also challenged is William Ewart Gladstone's claim that Eardley-Wilmot failed to report problems with the convict system and incidences of 'unnatural' crime, and discusses information supplied to Gladstone which was influential in his decision to send both a public despatch and a 'Secret' letter advising Eardley-Wilmot of his dismissal.

Eardley-Wilmot died in February 1847, eight days after the arrival of his successor, Sir William Denison, and on 3 June when news of his death reached England, his dismissal received further prominence. The matter was raised in the House of Commons and a vigorous and powerful debate exonerated him from the 'cowardly and malicious charges', and was 'ample proof' of the 'moral assassination of a good and worthy gentleman'.

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## Abbreviations

AC	Allport Collection State Library of Tasmania
<i>ADB</i>	<i>Australian Dictionary of Biography.</i>
AJCP	Australian Joint Copying Project.
AOT	Archives Office of Tasmania.
BL	British Library.
<i>BPP</i>	<i>British Parliamentary Papers.</i>
CO	Colonial Office.
CON	Convict records.
CSO	Colonial Secretary's Office.
GO	Governor's Office.
<i>HRA</i>	<i>Historical Records of Australia.</i>
<i>HTG</i>	<i>Hobart Town Gazette.</i>
ML	Mitchell Library, New South Wales.
NLA	National Library of Australia, Canberra.
<i>ODNB</i>	<i>Oxford Dictionary of National Biography.</i>
PPRST	<i>Papers and Proceedings of the Royal Society of Tasmania.</i>
PRO	Public Record Office Kew England.
RGD	Registrar-General's Department.
RS	Royal Society Library University of Tasmania Hobart campus.
TAHO	Tasmanian Archives and Heritage Office.
TC	Tasmaniana Collection TAHO
TFHS	Tasmanian Family History Society Inc.
<i>THRAP&amp;P</i>	<i>Tasmanian Historical Research Association Papers &amp; Proceedings.</i>
TL	Tasmaniana Library, State Library of Tasmania.
UTA	University of Tasmania Archives.
VDL	Van Diemen's Land.

## Conversions

### **Length**

1 inch		25.4 millimetres (mm)
12 inches	1 foot	30.5 centimetres (cm)
3 feet	1 yard	0.914 metres (m)
	1 mile	1.61 kilometres (km)

### **Area**

1 square yard (yd <sup>2</sup> )		0.836 m <sup>2</sup>
4,840 square yards	1 acre	0.405 hectare (ha)
640 acres	1 square mile	2.59 km <sup>2</sup>

### **Mass**

1 ounce (oz)	28.3 grams (g)
1 pound (lb)	454 g
1 stone	6.35 kilograms (kg)
1 ton	1.02 tonne (t)

### **Volume**

1 fluid ounce	28.4 millilitres (mL)
1 pint	568 mL
1 gallon	4.55 litres (L)



**Sir John Eardley Eardley-Wilmot 1783–1847<sup>1</sup>**  
**Lieutenant-Governor of Van Diemen's Land 1843–46.**

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<sup>1</sup> Manning Clark, *A History of Australia III. The Beginning of an Australian Civilization 1824–1851* (Carlton, 1991), between pp. 304–05 'Copy of portrait by an unknown artist, in private possession'.



**Tasmania, formerly Van Diemen's Land<sup>2</sup>**

2 Tasmania Information and Land Services Division, Department of Primary Industries, Water and Environment Hobart, Tasmania, *Tasmanian Towns Street Atlas Edition 6* (Hobart, 2001), p. 5.



United Kingdom<sup>3</sup>

3 <http://www.map-of-uk.com/>

## Introduction

After receiving notice of his recall from his colonial post, Sir John Eardley Eardley-Wilmot claimed he was the ‘Victim of the most extraordinary conspiracy that ever succeeded in defaming the character of a Public Servant’. Alleging he was ‘subjected to the condemnation of a Minister of the Crown, founded on anonymous information and unauthenticated representations’, he appealed to Secretary of State William E Gladstone, for the same justice afforded the ‘meanest’ of criminals.<sup>1</sup> He was never given that opportunity.

Eardley-Wilmot was one of Australia’s oldest governors on appointment, and served one of the briefest terms as Lieutenant-Governor of Van Diemen’s Land. He was also atypical in having already completed an extensive period in public life. Indeed, from a British viewpoint, his colonial appointment could be seen as a distinguished addition to a notable career. After his arrival in the colony he lived for less than four years, yet this brief span encompassed a major historical controversy in Australian history for which he was judged harshly by British authorities, though some contemporaries felt he had been treated with great injustice, while his own claim that he was the victim of conspiracy seems excessive. The assessment of the truth of this episode in the context of Eardley-Wilmot’s full career is one task of this thesis.

Eardley-Wilmot’s controversial rule was echoed by the abrupt termination of his commission. The ‘duplicate’ of the official despatch advising him of his dismissal arrived in the colony on 24 September 1846, and only gave him twenty days’ notice of the arrival of ‘an administrator’.<sup>2</sup> Lieutenant-Governor between 1843 and 1846, Eardley-Wilmot succeeded Sir John Franklin, who had been in the colony since early 1837. The colonists had welcomed Franklin, who succeeded the authoritative George Arthur, but were soon disappointed with him. Like Eardley-Wilmot later, Franklin had difficulty in controlling the rapidly developing and inherently burdensome probation system. He was unable to deliver the political liberties some aspired to, and he failed effectively to discipline the powerful and ambitious officials he inherited from Arthur, especially Colonial Secretary John Montagu and Matthew Forster

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<sup>1</sup> CO280/196 (AJCP 545) Eardley-Wilmot to Secretary of State for the Colonies, 30 October 1846, p. 586; *British Parliamentary Papers: (hereafter BPP) Correspondence and papers relating to Crown Lands settlement and other affairs in Australia 1847–48. Colonies Australia 10* (Shannon, 1969), p. 36.

<sup>2</sup> CO280/196 (AJCP 545) official (public) despatch Gladstone to Eardley-Wilmot (No 104), 30 April 1846, pp. 558–65; *BPP Colonies Australia 10*, Eardley-Wilmot to Gladstone, 5 October 1846, pp. 34–35.



Chief Police Magistrate and head of the convict establishments. The colonists were also annoyed at the inception, by Britain, of the probation system of convict management.

Eardley-Wilmot became unpopular as the probation system of convict control extended and as political coherence collapsed. According to historian James Fenton, writing in 1884, the Lieutenant-Governor encountered formidable obstacles in his efforts to govern a free people, while still required to obey British instructions regarding penal matters. Under such circumstances, no administrator could dispense the duties of the post with satisfaction to the settlers or to himself — still less to the Home authorities who attributed the problems of the penal system to ‘defective management in the colony’ rather than to ‘imperfections of the system itself’.<sup>3</sup> The official reason for Eardley-Wilmot’s removal from office after only three years was mismanagement of the convict system, while according to William E Gladstone’s ‘Secret’ letter it was damning allegations concerning his personal immorality. According to John Campbell Macdougall, editor of the local contemporary press, *Colonial Times*, Eardley-Wilmot was ‘the victim of ingratitude’ in the colony and ‘injustice in England’,<sup>4</sup> and 298 colonists signed a pamphlet they deemed a ‘duty’ they owed to ‘truth and justice, to express’ their ‘unqualified contradiction’ of the reports.<sup>5</sup>

The prime focus of this thesis is a re-evaluation of Eardley-Wilmot’s background and extensive public career in Britain detailing his anti-slavery stance and penal reforms. This sixty year period has, generally, received very little discussion in publications by Australian historians, their main concentration being on Eardley-Wilmot’s three-years in Van Diemen’s Land. This thesis is also an administrative case study and critical analysis of his administration of the colony. A non-military man from Britain’s upper-class, he was a magistrate, barrister, justice of the peace, and Member of Parliament for Warwickshire’s northern division, and was in the unique position of then being appointed to the convict colony to which he had earlier ordered criminals be transported. This nineteenth-century reformer was appointed to administer two systems of convict control which were operating simultaneously. The convict system for new arrivals had recently changed from assignment to probation, and it was claimed the condition of the convict under assignment was in ‘no respect different’ to that of ‘the slave’. The exception was that a master was not permitted to

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<sup>3</sup> James Fenton, *A History of Tasmania from its discovery in 1642 to the present time* (published Hobart, 1884). Facsimile edition (Hobart, 1978), p. 162.

<sup>4</sup> *Colonial Times*, 16 February 1847, pp. 2–3.

<sup>5</sup> Tasmanian Archive and Heritage Office (TAHO) TC NS448/1/2 Petition signed by VDL colonists testifying to Eardley-Wilmot’s moral character with signatures of 298 citizens (1846?).

‘apply corporal punishment by his own hands’ and only had property in his convict for a ‘limited period’.<sup>6</sup>

In his study of Ralph Darling (1772–1857), Governor of New South Wales 1825–31, Brian Fletcher investigated all aspects of Darling’s career.<sup>7</sup> Darling and Eardley-Wilmot were born in the eighteenth century when ‘aristocracy dominated political life in Britain’ and the monarchy ‘exerted great influence’. Much of the writing on Eardley-Wilmot has been dominated by his short controversial administration of Van Diemen’s Land. Similarly, before Fletcher’s study, the accepted image of Darling mainly resulted from a ‘mere seven of his eighty-six years’. Unlike Eardley-Wilmot, Darling did not begin life with the advantages of wealth and influence, yet both attained command of a convict colony.<sup>8</sup> As Fletcher achieved with Darling, Eardley-Wilmot also needs to be seen “as a whole”, and for that reason, there will be a close correlation between the structure of this thesis and Fletcher’s study of Darling.

This thesis challenges Gladstone’s claim of 1846 that Eardley-Wilmot was inept, and that his poor management skills led to a breakdown in convict administration. Significantly though, in 1840 convict transportation ended to New South Wales, and annually between 4,000 and 5,000 convicts were sent to Van Diemen’s Land. The effect of this vast number of arrivals had a significant impact on Eardley-Wilmot’s administration and his ability to cope. Colonial Office officials required the colony to contribute largely to convict maintenance; difficulties in supervision followed; sources of public revenue dried-up; the colony was soon virtually bankrupt; and private members of the Legislative Council obstructed financial measures. To fully understand Eardley-Wilmot’s appointment, it is necessary to examine methods of choosing people for administrative positions in the British Empire in the seventeenth and eighteenth centuries.

Author Peter Richards has described ‘four basic methods of choosing people’ for positions of public responsibility — ‘chance, heredity, competition and patronage’.<sup>9</sup> Chance provides people with an ‘equal opportunity of office’, and is unfair unless each candidate is equally qualified for the position. Heredity offers ‘continuity and certainty’. Nevertheless, there is no guarantee that duties will be performed conscientiously, and the qualities of one person are

<sup>6</sup> *British Parliamentary Papers: Reports from Select Committees on Transportation with minutes of evidence proceedings, appendices and indices. Crime and Punishment. Transportation 3 (1837–38) (669) Volume XXII* (Shannon, 1968), p. vii.

<sup>7</sup> Brian H Fletcher, *Ralph Darling. A Governor Maligned* (Melbourne, 1984).

<sup>8</sup> Fletcher, *Ralph Darling*, pp. ix–xiii; Further parallels are made with Sir Charles FitzRoy in chapter ten.

<sup>9</sup> Peter G Richards, *Patronage in British Government* (London, 1963), p. 11.

not necessarily possessed by successive generations. Possibly the most well-known method of succession is the monarchic aspect of the British constitution, its hereditary Monarchy and equally hereditary House of Lords. The third, appointment, is on the basis of merit or election. The electoral system ensures that legal rules which govern the community are generally in accordance with public feeling, although voters may not understand the personal characteristics and abilities of the people for whom they vote, and appointments may be secured by the most influential candidates and not necessarily the most suitable or most competent.<sup>10</sup> Eardley-Wilmot was familiar with this method, having been elected to the House of Commons in 1832.

To Sir James Stephen, permanent Under-Secretary of State for the Colonies 1836–47, there was no fixed policy or standard for the selection of British colonial governors before 1815. Later, governorships were often used as a method of ‘taking care’ of high-ranking half-pay military and naval officers, whereas colonies exposed to danger from ‘within or without’ usually had military men as governors.<sup>11</sup> During the period 1830–50 the governorship of Jamaica and the Governor-Generalship of Canada rated first in importance among colonial posts, and men of ability, such as Sir Charles Metcalfe (1785–1846) and James Bruce (Lord Elgin) (1811–63) were chosen for these two colonies. Also sent to Canada were Charles Poulett-Thomson (Lord Sydenham) (1799–1841) and Lord Durham (1792–1840). All four were civilians.<sup>12</sup> In the 1840s civil governors with House of Commons’ experience were considered most suitable for colonies with strong legislative assemblies.<sup>13</sup> This fact may, in part, explain Eardley-Wilmot’s appointment to Van Diemen’s Land. His appointment may also be justified by Stephen’s admission of the ‘great difficulty of getting good Governors and the importance particularly’ in Van Diemen’s Land of ‘having a competent person’.<sup>14</sup>

The experience of British colonial governors such as these men varies widely. Metcalfe was educated at Eton, studied classics, history and poetry, and, in contrast to Eardley-Wilmot’s

<sup>10</sup> Richards, *Patronage in British Government*, pp. 12–16.

<sup>11</sup> Paul Knaplund, *James Stephen and the British Colonial System 1813–1847* (Canada, 1953), p. 45.

<sup>12</sup> Knaplund, *James Stephen and the British Colonial System 1813–1847*, pp. 45–46. Metcalfe was a success in Jamaica but a failure in Canada, while Elgin was moderately successful in Jamaica and a great success in Canada; Olive Checkland, ‘Bruce, James, eighth earl of Elgin and twelfth earl of Kincardine (1811–1863)’, *Oxford Dictionary of National Biography* (hereafter *ODNB*), (Oxford 2009) [<http://www.oxforddnb.com/view/article/3737>]; C A Bayly, ‘Metcalfe, Charles Theophilus, Baron Metcalfe (1785–1846)’, *ODNB*, Jan 2008 [<http://www.oxforddnb.com/view/article/18617>].

<sup>13</sup> Letter from Lord Sydenham (Governor-General of Canada 1839–41) to Lord John Russell, 27 June 1841, cited in P Knaplund (ed) *Letters from Lord Sydenham to Lord John Russell* (London, 1931), p. 147, cited in Knaplund, *James Stephen and the British Colonial System 1813–1847*, p. 46.

<sup>14</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley 15 September 1843, pp. 48–54 marginal note ‘March 24 J’.

agricultural exploits, Metcalfe was not attracted to outdoor activities.<sup>15</sup> The privately-educated Sydenham, the son of a merchant, worked in a branch of his father's firm in St Petersburg. A member of parliament like Eardley-Wilmot (whose political experience will be discussed in chapter two), Sydenham became the first Governor-General of Canada under a new régime,<sup>16</sup> while Eardley-Wilmot's successor, Sir William Denison, was a military engineer. Maybe Stephen's admission that it was difficult to find a 'competent person' meant military men would be appointed when available. Lord Elgin fits the proposition of the 1840s that civil governors were chosen from those with parliamentary experience. He was later a member of parliament for Southampton, and in 1842 the thirty-one year-old was sent to Jamaica, but after four years, was appointed to Canada at a time of 'disturbed' society due to a rebellion over responsible government.<sup>17</sup>

According to Paul Knaplund, Stephen's biographer, it seems unlikely that Stephen's advice was sought in the selection of a man for his first appointment as governor, while chances of promotion once in service might have depended on Stephen's estimate of each governor's work.<sup>18</sup> Knaplund thought it likely that Stephen's praise for Metcalfe when Governor of Jamaica may have contributed to his appointment to Canada, and 'kind words' about Sir George Arthur's services in Van Diemen's Land probably led to his later appointment as Lieutenant-Governor of Upper Canada.<sup>19</sup>

The civil service offered security and respectability of employment. Government patronage was a characteristic of these appointments where the central figure was the 'parliamentary or "patronage" secretary to the Treasury'.<sup>20</sup> In theory, the patronage secretary was the first official to deal with requests for patronage from members of parliament. He then endorsed requests and forwarded them to the relevant minister. In turn, as chief whip, he was able to oppose appointments.<sup>21</sup> In spite of this, patronage secretaries did not keep strict control, and applications were often 'made direct to ministers', who made appointments without reference to the secretary.<sup>22</sup>

<sup>15</sup> Devendra Panigrahi, *Charles Metcalfe in India: ideas & administration 1806–1835* (Delhi, 1968), p. 5.

<sup>16</sup> L L Woodward, *The Age of Reform 1815–1870* (London, 1971), p. 382.

<sup>17</sup> Harriet Martineau, *Biographical Sketches* (London, 1888), pp. 108–12.

<sup>18</sup> Knaplund, *James Stephen, and the British Colonial System 1813–1847*, p. 45.

<sup>19</sup> PRO CO323/51 folio 300 (Reports of Law Officers) cited in Knaplund, *James Stephen and the British Colonial System 1813–1847*, p. 46; Woodward, *The Age of Reform 1815–1870*, p. 404 n.1 for Metcalfe.

<sup>20</sup> Norman Gash, *Politics in the Age of Peel* (London, 1953), p. 356.

<sup>21</sup> Earl Grey, *Parliamentary Government* (1858), pp. 42–43 cited Gash, *Politics in the Age of Peel*, pp. 355–56.

<sup>22</sup> Gash, *Politics in the Age of Peel*, p. 356.

In practice, ministerial powers of patronage in the colonies was small, as shown by an incident in the Colonial Office in 1845 when Sir George Clerk, former conservative chief whip and Vice-President of the Board of Trade and Master of the Mint, applied to Secretary of State, Lord Stanley, with a request for the nomination of his son to a position in Australia.<sup>23</sup> Stanley's reply indicates the powers of patronage available to Lieutenant-Governors such as Eardley-Wilmot (in Van Diemen's Land at the time):

Virtually the patronage of all the colonies is vested in the respective Governors; ... every vacancy ... must be provisionally filled up on the spot, and consequently in the case of the Australian colonies, held by the person so appointed for at least a year, before the supersession by the Secretary of State can take place. ... It sometimes happens that an office is vacant ... for which no qualified person can be found in the Colony; but this can hardly be the case in Australia, where consequently, I feel myself bound to take the recommendations of the local authorities.<sup>24</sup>

Stanley's reply was that if Clerk would tell him exactly where his son was, he would see what a note of recommendation to a Governor would do.<sup>25</sup>

### **British colonial appointments**

Colonial governors faced many difficulties, including isolation from central government, financial pressures, professional uncertainty and hard work. Distance from Britain and the time taken to receive replies to requests led to modifications and actions according to an awareness of situations. Colonial governors' perceptions of how decisions would be received by the frequently changing imperial administration in Britain also meant they were forced into changes, which, at times, depended on their inclinations and existing situations.<sup>26</sup> As noted by Zoë Laidlaw, much of the colonial history written in the middle decades of the twentieth century was inspired by the despatch expanded narratives of the governors, but the effect of their lonely and uncomfortable position has not been considered adequately by historians.<sup>27</sup> This study into Eardley-Wilmot raises questions about the emphasis placed on the administration of colonial governors, and from these, a pattern emerges.

<sup>23</sup> Gash, *Politics in the Age of Peel*, p. 349; There is 'almost no support' for any claim that 'influential men in Britain' used Van Diemen's Land as a 'dumping ground' for individuals, see P A Howell, "Shovelling out distressed gentlefolk? A reconsideration of the Colonial Office's use of its powers of patronage in Van Diemen's Land", in G Winter (ed.), *Tasmanian Insights: Essays in honour of Geoffrey Thomas Stilwell*. (Hobart, 1992), p. 73.

<sup>24</sup> Stanley to Clerk 9 July 1845 in (Sir George) Clerk of Penicuik Papers T/188/82, Register House, Edinburgh, cited in Gash, *Politics in the Age of Peel*, p. 349.

<sup>25</sup> Stanley to Clerk 9 July 1845, cited in Gash, *Politics in the Age of Peel*, p. 349; No letter of recommendation to Eardley-Wilmot has been located.

<sup>26</sup> Zoë Laidlaw, *Colonial connections 1815–45 Patronage, the information revolution and colonial government* (Manchester, 2005), p. 61.

<sup>27</sup> Laidlaw, *Colonial connections 1815–45*, p. 62.

It was possibly during December 1842 that Stanley decided he wanted a ‘sensible man’ to replace Franklin in Van Diemen’s Land. He knew Eardley-Wilmot, a ‘very plausible country gentleman’ who would ‘jump’ at the position, but Stanley also thought him to be ‘a muddle brained blockhead’.<sup>28</sup> Despite this description (which may have been provoked by Eardley-Wilmot’s prominent and politically embarrassing anti-slavery activities and juvenile reform measures), in March 1843 Stanley appointed him to the colony. As will be demonstrated, especially in the first two chapters, there were other aspects to Eardley-Wilmot’s appointment besides patronage, politics and experience.

In researching this comprehensive study of Eardley-Wilmot, biographical dictionaries were first consulted, but by convention, such publications are limited in word length, and therefore, in content. A comparison between entries in the *Australian Dictionary of Biography* (hereafter *ADB*)<sup>29</sup> and the *Oxford Dictionary of National Biography* (hereafter *ODNB*)<sup>30</sup> found many parallels. In general (apart from constantly updated online versions), the pertinent volumes of the *ADB* were published in 1965–66, and the *ODNB* in 2004. It was anticipated the later publications would include more information following public release and availability of records in the intervening years. However, apart from minor details, such was not the case, possibly indicating the scarcity of remaining relevant material.

Notwithstanding that comment, *ADB* entries provide a slightly wider coverage of the colonial experience including the names of officials than the *ODNB*, and all include sources lists. In general, *ODNB* entries list references to recent journal articles and current historiography. While all entries specify family details, they vary in their approach to employment and colonial experiences, and in choosing the approach to be taken in this study, an attempt has been made for a more balanced approach than the majority of relevant biographical entries.

### **Other Van Diemen’s Land administrators**

The life and administration of Franklin, Eardley-Wilmot’s predecessor, has been extensively researched by Kathleen Fitzpatrick. In both *Sir John Franklin 1837–1843*, and ‘Sir John

<sup>28</sup> *The Papers of the Prime Ministers of Great Britain, Series Two. The Papers of Sir Robert Peel, Correspondence with Lord Stanley (Secretary for the Colonies)*, British Library (hereafter BL) Mss. 40467 Stanley to Peel n.d. [late 1842?] pp. 315–16; *Oxford English Dictionary* (Oxford, 1971), p. 928: ‘Blockhead: a wooden head; a wooden block for hats or wigs; hence, a head with no more intelligence in it than one of these; a blockish head.’

<sup>29</sup> G Pike (ed), *Australian Dictionary of Biography: Volumes 1 and 2* (Melbourne, 1966–67) and <http://www.adb.online.anu.edu.au/biogs>.

<sup>30</sup> *Oxford Dictionary of National Biography in association with The British Academy: From the earliest times to the year 2000* (Oxford, 2004) and <http://www.oxforddnb.com>

Franklin in Tasmania', Fitzpatrick analyses the practice of assignment and the early days of the probation system during Franklin's administration, both of which were in operation when Eardley-Wilmot was appointed.<sup>31</sup> Therefore she provides background details for this study.

A G L Shaw's biography of Franklin's predecessor, Sir George Arthur, was primarily researched from the 'Arthur Papers' in Toronto, London and Sydney, the extensive Colonial Office records and despatches, and Parliamentary Papers and newspapers.<sup>32</sup> In providing broad coverage, these publications on Franklin and Arthur emphasize the lack of studies on Eardley-Wilmot and his successor, William Denison, although Denison's *Varieties of Vice-Regal Life* does, in some way, correct this imbalance.<sup>33</sup> Classic colonial histories for the 1840s were written by Lloyd Robson and John West.<sup>34</sup> Robson has a combined section of 124 pages broadly covering the administrations of both Franklin and Eardley-Wilmot, while West strongly emphasized the financial crisis and implications for the Legislative Council. Both detail Eardley-Wilmot's administration in various specialist sections, while that of Manning Clark is less defined.<sup>35</sup>

There has been little comparative published work about colonial governors. Mark Francis' *Governors and Settlers* is an exception. Francis identified problems which flowed from a lack of comparison across colonies; an over-reliance on official documents and a 'nationalist-inspired' desire to present the history of former colonies as progressive. He also examined their motivations and backgrounds.<sup>36</sup> Unfortunately, Francis only made two brief mentions of Eardley-Wilmot, even though his publication covers the period 1820–60. Disappointingly, Francis did not mention Eardley-Wilmot in his 'Appendix Biographical Notes on Governors', even though his study focuses on nineteen governors, Denison being the only one in Van Diemen's Land.<sup>37</sup>

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<sup>31</sup> Kathleen Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843* (Melbourne, 1949); Kathleen Fitzpatrick, 'Sir John Franklin in Tasmania', *Royal Australian Historical Society: Journal and Proceedings* 23.3 (1965), pp. 213–20.

<sup>32</sup> A G L Shaw, *Sir George Arthur, Bart 1784–1854* (Carlton, 1980).

<sup>33</sup> Sir William and Lady Denison, *Varieties of Vice-Regal Life (Van Diemen's Land Section)*, Richard Davis and Stefan Petrow (eds) (Hobart, 2004).

<sup>34</sup> L Robson, *A History of Tasmania: Volume I. Van Diemen's Land from the Earliest Times to 1855* (Melbourne, 1983); John West, *The History of Tasmania with copious information respecting the Colonies of New South Wales Victoria South Australia* (Launceston, 1852), A G L Shaw (ed), (Sydney, Melbourne 1981)

<sup>35</sup> M Clark, *A History of Australia III. The Beginning of an Australian Civilization 1824–1851* (Carlton, 1991).

<sup>36</sup> Mark Francis, *Governors and Settlers: Images of Authority in the British Colonies 1820–60* (London, 1992), pp. 88, 91, 132; Laidlaw, *Colonial connections 1815–45*, p. 62.

<sup>37</sup> Francis, *Governors and Settlers*, pp. 259–63.

*The Oxford History of Australia*, in contrast to eight pages of discussion on Franklin, only briefly mentions Eardley-Wilmot. The book documents how, in 1844, Eardley-Wilmot founded the Royal Society of Van Diemen's Land for Horticulture, Botany, and the Advancement of Science, but as there is no mention of his experience before appointment or his administration of the convict system, it is of limited use.<sup>38</sup> A valuable source of reference for the convict system is Ian Brand's *The Convict Probation System: Van Diemen's Land 1839–1854*,<sup>39</sup> while the Australian Joint Copying Project (AJCP) microfilms of Colonial Office and Colonial Secretary Office files of correspondence between the Secretary of State and the colony (though voluminous), are two of the few available primary sources. *Burke's Peerage & Baronetage Volume 1* details Eardley-Wilmot's hereditary lines, his education and also his publications relating to juvenile delinquency.<sup>40</sup> *Burke's*, however, omits two significant Eardley-Wilmot publications: *A second letter to the Magistrates of Warwickshire, on the increase of crimes in general, But more particularly on the Causes and Remedies of this Increasing Evil*, published 1820, and *A Letter to the Magistrates of England on the Increase of crime; and an efficient Remedy suggested for their consideration* (1828). Significantly, though, as will be discussed, in both these publications Eardley-Wilmot pleaded that prisoners younger than twenty-one years-old be segregated from other prisoners: this was a reformist sentiment to which he returned in 1845 in Van Diemen's Land.<sup>41</sup>

The first attempt by a historian to write about Eardley-Wilmot's dismissal in any depth was Kathleen Fitzpatrick in a 1940–41 article, in which she accepted that rumours of his immorality 'at the very least influenced' his dismissal.<sup>42</sup> Since Fitzpatrick's publication the British Library has released a quantity of the Prime Ministers' correspondence on microfilm, while other papers have not been copied and are not available outside the British Library. It is therefore fortunate that some of this latter correspondence was quoted by Frank Upward in his 1974 thesis.<sup>43</sup> Some material in the released *Peel Papers*, supports the contention that rumours of Eardley-Wilmot's immorality influenced his recall, though, they tend to place the emphasis

<sup>38</sup> Jan Kociumbas, *The Oxford History of Australia Volume 2, 1770–1860* (Melbourne, 1992), p. 274 for Eardley-Wilmot and pp. 228, 236, 246, 250, 265, 272, 274, 279 for Franklin.

<sup>39</sup> Ian Brand, *The Convict Probation System: Van Diemen's Land 1839–1854* (Sandy Bay, 1990).

<sup>40</sup> *Burke's Peerage & Baronetage Vol 1* (1999), pp. 933–35.

<sup>41</sup> CO280/184 (AJCP 536) Eardley-Wilmot to Stanley (No. 164) 25 October 1845, pp. 82–83; *Hobart Town Courier*, 17 February 1847, p. 2.

<sup>42</sup> K Fitzpatrick, 'Mr Gladstone and the Governor: The Recall of Sir John Eardley-Wilmot from Van Diemen's Land, 1846', *Historical Studies Australia and New Zealand*, Vol 1, April 1940–October 1941, pp. 31–45.

<sup>43</sup> Frank Upward, 'The Dismissal of Sir John Eardley-Wilmot Lieutenant-Governor of Van Diemen's Land 1843–46', unpublished Master of Arts thesis, University of Melbourne, 1974.



on the two men who tried most to convince Gladstone that Eardley-Wilmot was immoral: Bishop Francis Richard Nixon, and James Stephen.

Contact with archivists at the Royal Society, Society of Antiquaries, and the Linnaean Society of London has provided valuable details and confirmation of Eardley-Wilmot's fellowship and personal details. He was also Chairman of the Warwickshire Quarter Sessions between 1830 and 1843, and represented Warwickshire's northern division in the House of Commons (Conservative) from 1832 to 1843. H J Hanham's *Charles R Dod Electoral Facts 1832–1853*, was a valuable source of information for election candidates and results.<sup>44</sup>

Modern day historians have, in retrospect, looked at the broader view of Eardley-Wilmot's appointment. A G L Shaw considered that politics or even personal friendship was a factor in Stanley's decision to appoint him to the colony, especially as Eardley-Wilmot, like Stanley and (later Sir) Robert Peel, attended Oxford. He also followed Lord Stanley from the Whigs to the Conservatives in 1834, and was a neighbour of Peel. Shaw thought it surprising that Stanley should choose a sixty year-old, especially after Stanley's damaging description, but Shaw's personal assessment was that Eardley-Wilmot was not a suitable appointment because his only administrative experience was as a county magistrate, and as such, had no knowledge of colonial affairs.<sup>45</sup> The entry for Eardley-Wilmot in the *ODNB* suggests it was his interest in penal and imperial matters and his 'association' with Stanley since 1841 which 'might seem' to have made him an 'acceptable candidate' for the position.<sup>46</sup> As will be established, the rationale for his appointment was more complex than this entry advocates.

After an initial welcome, colonial newspapers were divided in their loyalty to the colony's new Lieutenant-Governor. The *Hobart Town Courier* and the *Hobart Town Advertiser* were two papers, the editors of which reversed their early opinions. Formerly supporters of the colonial government, and Franklin in particular, they opposed Government House and attacked Eardley-Wilmot's financial measures.<sup>47</sup> Though his administration was supported by the *Austral-Asiatic Review* (*Murray's Review*), the *Colonial Times* and the *Spectator*. Robert

<sup>44</sup> H J Hanham (ed), *Charles R Dod Electoral Facts 1832–1853* originally printed 1853 (Brighton, 1972); Warwickshire County Record Office staff and the secretary of the Stretton-on-Dunsmore History Society willingly provided information on relevant aspects.

<sup>45</sup> A G L Shaw, *Convicts and the Colonies: A Study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (London, 1966), pp. 296–70.

<sup>46</sup> Peter Chapman, 'Wilmot, Sir John Eardley Eardley-, first baronet (1783–1847)', *ODNB*, Jan 2008 [<http://www.oxforddnb.com/view/article/52438>].

<sup>47</sup> E Morris Miller, 'A Historical Summary of Tasmanian Newspapers (Part II)', Tasmanian Historical Research Association *Papers & Proceedings* (hereafter THRA P&P) 2.2 (March 1953), p. 34.

Lathrop Murray, editor of the first, was, according to E Morris Miller in 1952, Eardley-Wilmot's 'extraordinary friend and ... foe', Murray's support expressed in animosity by colonist Edward Kemp (son of Anthony Fenn Kemp), in his poem 'A Voice from Tasmania'.<sup>48</sup> Both Murray and Macdougall were critical of British policy, and strongly defended Eardley-Wilmot in his difficult position.<sup>49</sup> The *Austral-Asiatic Review* became what Morris Miller labelled a 'Government organ' following the last edition of the *Tasmanian* in 1844.<sup>50</sup>

In 1845 Murray ceased to be directly connected with newspapers, but was suspected of contributing occasional articles on his favourite themes to the *Colonial Times*. In January 1846, according to Macdougall, the columns were open to Murray as his friend and former partner, and as Morris Miller explained, it was likely that Murray either wrote or assisted in writing articles in defence of Eardley-Wilmot, especially regarding his dismissal.<sup>51</sup>

The scope for a comprehensive biography of Eardley-Wilmot is limited by the absence of private diaries so much of the focus in this thesis must inevitably fall on his professional and private life. As a result, information has primarily been sourced from official records, newspaper reports, Hansard, and Eardley-Wilmot's own publications. His views on popular topics, especially juvenile crime and sentencing, were aligned with the conservative Christian establishment, of which he was a part. As a member of the British aristocracy, his position in life (and that of his patrons) was entrenched from birth. In attempting to appreciate his public position on matters, it is difficult to separate his genuine concerns from those of personal gain. Therefore, the notion will be accepted that his actions were genuine, a proposition which will be followed in this thesis.

### **Organisation of the thesis**

This thesis is arranged in three parts, and is thematic in analysis. A chronological approach for all chapters was found to be unsuitable due to intertwining themes. Part one examines Eardley-Wilmot's background in England prior to his appointment in Van Diemen's Land.

<sup>48</sup> E Morris Miller, *Pressmen and Governors: Australian Editors and Writers in Early Tasmania* (Sydney, 1952), pp. 3–4, p. 186 for part of the 1846 poem.

<sup>49</sup> Morris Miller, 'A Historical Summary of Tasmanian Newspapers (Part II)', pp. 34–39, the *Hobart Town Advertiser* (commenced 1837), was the only early Hobart Town newspaper not incorporated into the *Mercury* (which commenced 5 July 1854), see p. 36; Macdougall was editor of the *Colonial Times*.

<sup>50</sup> Morris Miller, 'A Historical Summary of Tasmanian Newspapers', p. 34; The *Austral-Asiatic Review*, incorporated the *Tasmanian* in June 1845, see Morris Miller, *Pressmen and Governors*, pp. 177–78.

<sup>51</sup> Morris Miller, *Pressmen and Governors*, pp. 13, 279, 281; For example of articles see 14 April 1846, pp. 2–3; 29 May 1846, p. 2; 9 October 1846, p. 2.

The second part investigates the convict system in the colony and his management of it, while part three embraces colonial life, controversies, his dismissal, and death.

*Chapter One: The formation of Sir John Eardley Eardley-Wilmot's attitudes and opinions: his approach to crime and punishment in England*, explores his family environment, his education and judicial experience. The chapter details his involvement as a landlord in British agriculture, attempts to reform juveniles, and his response to increasing youth crime rates, especially in Warwickshire. Also discussed is the steep increase in crime during the decline of economic prosperity in Britain and the letters Eardley-Wilmot wrote to magistrates expressing his concerns about the problem of juvenile delinquency, and suggestions for reform.

*Chapter Two: Prelude to Van Diemen's Land: House of Commons, slavery and financial insecurity* examines Eardley-Wilmot's parliamentary career in the House of Commons following parliamentary reform in 1832. A detailed account of the difficulties he faced, especially at public meetings and in the House of Commons, in his determination to improve circumstances for slaves in British colonies follows. This chapter also examines Eardley-Wilmot's repeated applications for a colonial posting, and reveals aspects of his finances.

*Chapter Three: Appointment and reception: 'a strong & steady hand'?* looks at Sir John Franklin's dismissal. The relationship of patronage, politics and experience and Eardley-Wilmot's influential contacts through his fellowship of various societies including the Linnaean, Antiquarian and Royal Societies are also examined. Particulars of his appointment, arrival and commissioning and Franklin's denial of any early awareness of his own recall are included.

*Chapter Four: Opposition to the established scheme: assignment to probation* continues the narrative of the convict history with Colonial Office directives as they related to both convict and free settler arrivals following the report of the Select Committee on Transportation. The change from assignment to probation impacted on colonial finances as transportation to New South Wales ended and Britain transported over 5,300 convicts to Van Diemen's Land in 1842. Changes also influenced the administration of probation gangs and stations, resulting in increasing instances of homosexual activity in centres of high concentration of convicts.

*Chapter Five: Probation and population: the system under Eardley-Wilmot*, examines the transition from assignment to probation. He established probation stations and gangs with inherent problems of self-sufficiency, the nature of the stations and gangs providing opportunities for ‘unnatural crime’. This chapter also analyses Eardley-Wilmot’s reporting of this, and discounts Stanley’s claim that the Lieutenant-Governor did not alert the Colonial Office to such incidents.

*Chapter Six: ‘Misguided little creatures’ and female protagonists*. Central to this chapter are problems allied to juvenile convicts and also female convicts and their children. Problems were similar to those of male convicts, although many females had the added predicament, for colonial administrators, of infants and children. The establishment and management of associated institutions for these convicts required different organisation and accommodation to that faced by earlier administrators, principally Point Puer, Houses of Correction, the *Anson* and Brickfields Hiring Depot, the Queen’s Orphan Schools and nurseries.

*Chapter Seven: Colonial chaplaincies: church and state* deals with disputes between the main churches over the appointment of chaplains to probation gangs and stations. Eardley-Wilmot was authorised to appoint chaplains, yet his official position was not accepted by all religious authorities. Support for the system of school education also impacted on his administration, and ultimately, the determination of the Church of England Bishop, Francis Nixon, to uphold his Episcopal authority, was a factor in Eardley-Wilmot’s dismissal.

*Chapter Eight: Taxes, finances and elected representatives* explores colonial expansion and a lack of appropriate and adequate finance from British authorities for their own penal colony. Administering the colony as instructed from Britain, hampered and damaged Eardley-Wilmot’s administration and brought the colony near bankruptcy, and, in turn provoked the clash with the independent members of the Legislative Council in the crucial and political ‘Patriotic Six’ episode.

*Chapter Nine: Growth of colonial society* looks at Eardley-Wilmot’s contribution to the development of societies and public space — in particular, the public domain, botanical gardens and public regattas.

*Chapter Ten: 'Treated with injustice'?* This final chapter examines the vulnerability of the position of the Lieutenant-Governor in the convict colony and the reasons for his dismissal after only three years. Eardley-Wilmot's removal from office was followed by his death just months later. He was buried in St David's Burial Ground, and his body was not, as he requested, returned to Warwickshire.

The absence of an encompassing study of Eardley-Wilmot's life and administration, his desire for summary conviction of juveniles and the separation of juveniles from 'old' criminals, their subsequent transportation and his anti-slavery stance, serves to highlight the merit of this investigation. This study expands knowledge of the change from assignment to probation, and an understanding of a nineteenth-century reformer and his impact on the emerging colony of Van Diemen's Land.

***PART 1: Environment, Concepts and Arrival***

## Chapter One

### The formation of Sir John Eardley Eardley-Wilmot's attitudes and opinions: his approach to crime and punishment in England

This first chapter explores the background of Sir John Eardley Eardley-Wilmot,<sup>52</sup> and how his position in an influential family with opportunity to gain from patronage reinforced his eligibility for appointment to Van Diemen's Land as Lieutenant-Governor between 1843 and 1846. Also examined is his introduction to crime and punishment, followed by his varied experience of the criminal justice system, which was a probable factor in his appointment. The main source for a summary of his life has been *Burke's Peerage and Burke's Peerage & Baronetage*, as historical publications have few details.

Eardley-Wilmot's paternal great-grandparents were Robert Wilmot and Ursula (née Marow) co-heir of Sir Samuel Marow, first and last Baronet of Berkswell Warwickshire.<sup>53</sup> The Lieutenant-Governor's grand-parents were Sarah (née Rivett)<sup>54</sup> and John Eardley Wilmot (1709–92). Though Eardley Wilmot (1709–92) failed to graduate from Trinity Hall Cambridge, where in 1727–28 he was in residence, he 'developed a lasting nostalgia for academic leisure'.<sup>55</sup> According to *The General Biographical Dictionary*, his preference for a 'life of ease' was due to his 'natural disposition' which tempted him to prefer the Church, but his 'rare lack of ambition' may also be attributed to a 'dislike of bustle'.<sup>56</sup> However, instead of following his chosen vocation, his father had destined him to study law. He had 'little taste for the bar', and 'after refusing silk' and 'retiring to his Derbyshire home, he was persuaded to become a puisne judge'. In February 1755, possibly prompted by the increase in his family,

<sup>52</sup> He commonly used 'Eardley' as his first name, possibly because 'John' was the name of both his father and grand-father. In Tasmania he has been remembered by the surname of 'Wilmot' through the naming of the town, the river and the electoral division.

<sup>53</sup> Charles Mosley (ed), *Burke's Peerage, Baronetage and Knightage, 107<sup>th</sup> ed. Volume 1* (Delaware, 2003), pp. 1259–262; John Wilmot, *Memoirs of the life of the Right Honourable Sir John Eardley Wilmot, Knt. Later Lord Chief Justice of the Court of Common pleas* (London, 1811), pp. 2–3; see also Appendix A.

<sup>54</sup> Both buried in vault under Berkswell Church, with memorials in the body of church, cited by author March 2006; *The Gentleman's Magazine Compendium 1731–1868* (London, 1901) Archive CD Books, Rodney Neep, 2002, Part XIII pp. 32–33.

<sup>55</sup> C W Crawley, *Trinity Hall: The History of a Cambridge College, 1350–1992* (Cambridge, 1992), p. 131.

<sup>56</sup> Crawley, *Trinity Hall*, p. 131; *The General Biographical Dictionary* revised & enlarged by Alexander Chalmers Volume XXXII (London, 1817), pp. 155–61.

he accepted the position as judge of the court of King's Bench, which was accompanied (as usual), with a knighthood, and in 1766 he became Lord Chief Justice of the Common Pleas.<sup>57</sup>

In 1770 the great seal and 'other honours' were offered to him by Prime Minister Augustus Henry Fitzroy (Duke of Grafton), and then again by Fitzroy's successor, Lord North, but in vain. Sir John gave 'ill health' as his reason for retiring. When his resignation was accepted in 1771, he was 'surprised' to find he was to receive a pension for life.<sup>58</sup> According to the *Diary or Woodfall's Register*, when the 'able Lawyer, an upright Judge, and a good man' died on 5 February 1792 his 'considerable pension' of '£3,000 a year' lapsed.<sup>59</sup> Perhaps his tentative religious vocation influenced many acts of his life, and may also have influenced his son (the Lieutenant-Governor's father) to 'repeatedly' refuse 'to accept any mark of distinction'. Consequently, in 1821 the future Lieutenant-Governor was created a baronet by his Majesty George IV as a reward for his grand-father's public services.<sup>60</sup>

The future Lieutenant-Governor (who was born in London on 21 February 1783),<sup>61</sup> and his five sisters were the children of John Wilmot (1750–1815) and his wife Frances (Fanny), (née Sainthill).<sup>62</sup> After his father's appointment as Chief Justice of the Common Pleas, John Wilmot (Eardley-Wilmot by Royal Licence in 1812) decided to study law. He graduated from University College, Oxford in 1766, and was a barrister, Master in Chancery and a Member of Parliament 1776–96 for Tiverton, and later for Coventry.<sup>63</sup> John Wilmot was a friend of Prime Minister William Pitt, whose government he served in 1790.<sup>64</sup> He organised the Freemasons' Hall Committee for the relief of French refugees and served as Chief Commissioner for settling the claims of the French refugees and American loyalists at the time of the declaration

<sup>57</sup> *General Biographical Dictionary* XXXII, pp. 155–61; Henry Roscoe, *Lives of Eminent British Lawyers* (London, 1830), p. 232.

<sup>58</sup> *General Biographical Dictionary* XXXII, pp. 159–60. The Duke of Grafton was Prime Minister 1767–70, as was Lord North 1770–82; Roscoe, *Lives of Eminent British Lawyers*, p. 235.

<sup>59</sup> *Diary or Woodfall's Register* 7 February 1792 Issue 898, and 9 February 1792 Issue 900.

<sup>60</sup> *Leamington Spa Courier*, 12 June 1847, p. 1; *The Annual Register, or a view of the history and politics of the year 1847, Vol 89* (London, 1848), Appendix to Chronicle, p. 204.

<sup>61</sup> John Wilmot (later Eardley-Wilmot) was baptised on 29 March 1783 at St Andrew's Church Holborn Middlesex, see *International Genealogical Index* (hereafter *IGI*) (Utah, 1992), Church of Jesus Christ of Latter Day Saints. London microfiche, p. 164,611 parents: John Wilmot/Fanny.

<sup>62</sup> *Burke's Peerage & Baronetage Volume 1* (Switzerland, 1999), pp. 933–35.

<sup>63</sup> University College, see J A Venn, *Alumni Cantabrigensi, Part II 1752–1900* (Cambridge, 1954), p. 514; *Burke's Peerage & Baronetage Vol 1* (1999), pp. 933–35; *The Gentleman's Magazine Compendium 1731–1868*, pp. 32–33; *The General Biographical Dictionary* XXXII, pp. 161–64; He was admitted to the Inner Temple 22 July 1767 and Lincoln's Inn 24 February 1776, see *The Records of the Honorable Society of Lincoln's Inn Vol 1 Admissions from AD 1420 to AD 1799 and Chapel Registry* (1896), folio 17, p. 483.

<sup>64</sup> Pitt was Prime Minister 1783–1801 and 1804–06 and at the age of 24, was the youngest man to hold the post.



of American independence and the French Revolution.<sup>65</sup> Despite such notable qualifications and experience, early family life for the future Lieutenant-Governor was tainted by scandal.

Eardley-Wilmot and his sisters lived their early years in Bedford-Row Holborn, where, in 1791 the family employed ‘nine domestic servants ... a butler, a coachman, a footman, an under footman, a lady’s maid or own-woman, an housekeeper, a nursery-maid, an house-maid, and a kitchen-maid’.<sup>66</sup> In 1791 his mother, Frances (Fanny), was found guilty of adultery with the footman, Edward Washborn. Other household servants described how ‘chiefly’ when the ‘master was absent from home’, Fanny and Edward spend time in his ‘lodging-room or bed-chamber’, in the ‘parlour or fitting room’, in the ‘back drawing-room’, and after Washborn’s dismissal from the household, at his residence at 12 King Street. According to one account, ‘The very singular Cause was first brought into the Consistory Court of London — and from thence an Appeal was made to the Arches Court of Canterbury; where a Sentence of Divorce was obtained’.<sup>67</sup> Eardley-Wilmot was eight years old when his parents divorced, but there is insufficient evidence to conclude whether or not the family disruption influenced his future attitudes and decisions.

Two years later John Wilmot married Sarah Ann Percival (née Haslam). In 1804, an ‘innate and hereditary love of retirement and study’, and ‘bodily infirmity’ from ill health forced him to resign, and he purchased Bruce Castle at Tottenham. He was also an author, possibly the best known of his publications was *Historical View of the Commission into the Losses, Services and Claims of the American Loyalists* in 1815.<sup>68</sup> He also published *Memoirs of the life of the Right Hon. Sir John Eardley Wilmot, Knt., with some original letters* (1802, 1811), his father’s *Memoirs: A Short Defence of the Opposition* in 1779, *The Life of the Reverend John Hough, D.D.* (1813) and collated *A treatise of the Laws and Customs of England* written

<sup>65</sup> *Burke’s Peerage, & Baronetage Vol 1* (1999), pp. 933–35; Mosley (ed), *Burke’s Peerage, Baronetage and Knightage Vol 1* (2003), pp. 1259–262; *The Annual Register; Leamington Spa Courier*, 12 June 1847, p. 1.

<sup>66</sup> NLA ‘The trial of Fanny Wilmot, wife of John Wilmot, Esq. M.P. for adultery with a footman. Containing the whole of the curious depositions of the servants, and others ... With the result of the sentence of the ecclesiastical court’ [electronic resource] <http://nla.gov.au/nla.cat-vn3267802> Book, Online. Author: Eardley-Wilmot, John, 1750–1815 (London, 1792), evidence of Elizabeth Barnes and William Garthwaite, pp. 5, 8–9.

<sup>67</sup> ‘The trial of Fanny Wilmot, wife of John Wilmot, Esq. M.P.’, p. 69 (incorrectly numbered p. 65).

<sup>68</sup> *General Biographical Dictionary* XXXII, pp. 161–64; John Wilmot, *Historical View of the Commission into the Losses, Services and Claims of the American Loyalists at the close of the war between Great Britain and her colonies in 1883; with an account of the compensation granted to them by Parliament in 1785 and 1788* (London, 1815) [microform] <http://nla.gov.au/nla.cat-vn2781738>

by Ranulf Glanvil and printed in Latin. He died at Bruce Castle in 1815.<sup>69</sup> It may have been his father's writing which later inspired Eardley-Wilmot to communicate his concerns.

Surrounded by such influential relationships, it is no surprise that the Wilmot family became prominent. It is also not surprising with such a long and extensive family involvement in law and parliament, that the future Lieutenant-Governor of Van Diemen's Land, John Eardley Wilmot (later Sir John Eardley Eardley-Wilmot) followed the family tradition, studied law and entered parliament.

After completing his schooling at Harrow, on 21 October 1799 the sixteen year-old Eardley-Wilmot commenced study at Trinity Hall, where he was admitted as a pensioner (without a scholarship), to the Cambridge University College which was founded in 1350 with a strong tradition in the study of law.<sup>70</sup> At Easter 1800 he matriculated, and on 24 April 1801 he was admitted to Lincoln's Inn, in central London, as an apprentice-at-law. Apprentices lived a semi-sheltered life at Inns, where the major object was to provide practical legal education. A common system of education was followed which prepared the student for professional competence as a barrister and call to the Bar.<sup>71</sup>

By 1806 Eardley-Wilmot had qualified as a barrister. On 9 May he was called to the Bar at Lincoln's Inn, and for several years he worked the Midland Circuit.<sup>72</sup> On 21 May 1808 he married Elizabeth Emma Parry, daughter of Sarah (née Rigby) and Caleb Hillier Parry MD (1755–1822) of Bath, and sister of Charles Henry Parry and the celebrated navigator and Arctic explorer, Admiral Sir William Edward Parry (1790–1855).<sup>73</sup> After their marriage, and

<sup>69</sup> Index to *Eardley-Wilmot Correspondence* OSB MSS 54 <http://www.library.yale.edu/beinecke/brblhome.html> 'database of archival collections and manuscripts' James Marshall and Marie-Louise Osborn Collection, Beinecke Rare Book and Manuscript Library, Yale University, that he was executor of the estate of William Petty, 1<sup>st</sup> Marquis of Lansdowne, and 'played a role' in the purchase by the British Museum of Lansdowne's manuscript collection in 1807.

<sup>70</sup> Harrow School archivist, pers comm [<http://www.harrowschool.org.uk>]; Trinity Hall Archive Catalogue C 6, 'A Register', p. 90, pers comm with archivist [<http://collpw-newton.lib.cam.ac.uk/cgi-bin/>]; Eardley-Wilmot's son Robert Charles Chester (Chester) Eardley-Wilmot (b 1840) attended Harrow and Inns of Court see Venn, *Alumni Cantabrigensi*, p. 514; *Times*, 20 May 1847, p. 8 for Cambridge University Awards: MA to Edward Revell Eardley-Wilmot, Trinity Hall.

<sup>71</sup> Venn, *Alumni Cantabrigensi*, p. 514 for matriculation; *The Records of the Honorable Society of Lincoln's Inn Vol II Admissions from AD 1800 to AD 1803 and Chapel Registry*, folio 174, p. 6; D M Walker, *The Oxford Companion to Law* (Oxford, 1980), p. 621. Lincoln's Inn is one of four remaining Inns of Court. The earliest authentic records of the Inn — the *Black Books*— begin in 1422, see W S Holdsworth, *A History of English Law, Volume II* (London, 1956), p. 499.

<sup>72</sup> *The Annual Register Vol 89*, Appendix to Chronicle, p. 204.

<sup>73</sup> Ann Parry 'Parry, Sir William Edward (1790–1855)', *Australian Dictionary of Biography* (hereafter *ADB*) [<http://www.adb.online.anu.edu.au/biogs/A020282b.htm>]; Parry arrived in Sydney in December 1829 as Commissioner for managing the affairs of the Australian Agricultural Co NSW. He returned to England in May 1834 and gave evidence to Select Committee on Transportation (Molesworth Committee), see *British*

the birth of six sons and two daughters,<sup>74</sup> on 22 March 1818 Elizabeth died, just ten days after giving birth to twins, their seventh and eighth children. Eardley-Wilmot then resigned from the Bar and moved to reside at Berkswell Hall, where he was a magistrate and country gentleman.

The original Berkswell Hall, a substantial house of brick and Wilmot family home, was built in 1670 on 4,700 acres of land which Henry I granted to the Earl of Warwick (Henry de Newburgh) in 1120 to provide game for hunting. The land had continued with succeeding Earls of Warwick until Samuel Marrow built the Hall.<sup>75</sup> All generations attended the nearby St John the Baptist Church, twelfth century Norman-built from midlands sandstone on the site of an earlier Saxon church.<sup>76</sup> Berkswell Hall, in its present form, as shown in Figure 1.1, was built about 1815 by the future Lieutenant-Governor of Van Diemen's Land. It was leased when he left for Van Diemen's Land and sold in 1861. In 1984 the house, surrounded by 40 acres of land with a large man-made lake, was divided into apartments.<sup>77</sup>

On 31 August 1819, just seventeen months after the death of his first wife, Eardley-Wilmot married Eliza Chester,<sup>78</sup> eldest daughter of Sir Robert Chester of Bush Hall Hertfordshire,

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*Parliamentary Papers: (hereafter BPP) Reports from Select Committees on Transportation with minutes of evidence proceedings, appendices and indices. Crime and Punishment. Transportation 3 (1837–38) Vol XXII* (Shannon, 1968), pp. 62–73.

<sup>74</sup> Elizabeth (b 1809); John Eardley (1810–92); Frederick Marow (1812–77); Edward Revell (1814–99); Arthur Parry (1815–86); Henry Robert (1816–52); twins Selina Matilda (1818–1902) and Augustus Hillier (1818–92).

<sup>75</sup> Lordships of the Manor: Sir Samuel Marrow 1674–1707; his heiresses (and husbands) — Elizabeth Marrow 1707–50; John Knightley (Elizabeth's nephew) 1750–64; Catherine Knightley (John's widow) 1764–1812; John Wilmot 1812–15 and Sir John Wilmot (Eardley-Wilmot) 1815–43. [<http://www.cv81pl.freemove.co.uk/berkswell.htm>].

<sup>76</sup> *The Church of St John Baptist Berkswell*, Christine Philp (photographs), Angela Haynes and Ursula Holmes (line drawings), n.d. unpaginated [p. 1].

<sup>77</sup> G Tyack, *Warwickshire Country Houses* (Sussex, 1994), pp. 187, 227; Berkswell Hall was advertised for a seven or twelve year lease, with or without land. This included the 'exclusive right of Sporting' over 1,700 acres and an additional 3,000 acres, see *Leamington Spa Courier*, 10 June 1843, p. 3. The Hall was leased to Rev Bickmore as a boys' boarding school; in 1861 it sold to iron master Thomas Walker, and in 1888 to Joshua Wheatley. It then passed to Joshua's son Charles who served in, then commanded the Warwickshire Yeomanry. Charles held summer camps at the Hall. He died 1943 and his widow lived at the Hall until 1984 when it was sold and converted into apartments [<http://www.cv81pl.freemove.co.uk/berkswell.htm>].

<sup>78</sup> She is referred to as both Elizabeth and Eliza. She is Eliza on her husband's memorial in Berkswell Church; in Venn, *Alumni Cantabrigensi*, p. 514; and in her husband's will, see TAHO AD960/2, Will No 317, p. 333, 'Elizabeth' in *Burke's Peerage, Baronetage and Knightage Vol 1* (2003), pp. 1259–62; Peter Chapman, 'Wilmot, Sir John Eardley Eardley-, first baronet (1783–1847)', *Oxford Dictionary of National Biography* (hereafter *ODNB*) Jan 2008 [<http://www.oxforddnb.com/view/article/52438>] and Michael Roe 'Eardley-Wilmot, Sir John Eardley (1783–1847)' *ADB* 2006 [<http://www.adb.online.auu.edu.au/biogs/A010329b.htm>]. She will be 'Eliza' in this thesis.

Master of the Ceremonies to King George III. Three sons and two daughters were born to this marriage.<sup>79</sup>

Men of standing were expected to provide sponsorship and philanthropy. Eardley-Wilmot displayed a particular interest in agriculture and horticulture, undoubtedly influenced by living at Berkswell Hall with its large acreage. In this agricultural region the primary products were wheat, barley, oats and beans. As an example of his dedication, in July 1831, the future Lieutenant-Governor founded ‘what was good and eminent, and useful to the country’, the Warwickshire Agricultural Society. He exerted himself ‘strenuously and zealously’ and was elected a foundation vice-president of the Society, which was ranked as ‘one of the first societies in the kingdom devoted to the interests of agriculture’.<sup>80</sup>



**Figure 1.1:** Berkswell Hall Warwickshire 2006.

He was also a member of the Central Agricultural Society of Great Britain and Ireland and the Agricultural Society of Stratford where he held office.<sup>81</sup> At the 1837 Annual Exhibition of

<sup>79</sup> *Times*, 2 May 1829, p. 3. *Times*, 18 June 1819, p. 2 for appointment as Master of the Ceremonies; *The Gentleman Magazine Library Compendium 1731–1868*, XIII, pp. 32–33; Eliza died in 1869. The children: Robert (died in infancy); Eliza Harriott; Robert Charles Chester (1822–1910); Charles Octavius (1824–86); Dulcibella Cecilia (1827–38).

<sup>80</sup> *Leamington Spa Courier*, 31 May 1834, p. 3, 12 March 1831, p. 1 and 5 February 1831, p. 2; The Society held its last independent exhibition about 1967, and meets annually to deal mainly with applications for long service awards, pers comm with Royal Agricultural Society of England Honorary Librarian [info@rase.org.uk](mailto:info@rase.org.uk) (October 2005).

<sup>81</sup> *Times*, 21 December 1835, p. 1.

Stock at the Warwickshire Association for the Protection of Agriculture, the sheep were ‘superior to those produced’ at any former meeting, and Eardley-Wilmot’s assistance to his tenants was praised. He paid the difference between the ‘present price of wheat and the remunerating price of one guinea’, an example which was followed by Lord John Scott and ‘several other Landholders in the county’.<sup>82</sup> Agriculture remained his primary interest, even after his election to the House of Commons in 1832. When it was possible to take a break from the ‘fatigue of his parliamentary’ duties in London, he would return to Warwickshire to meet with residents and ‘view the sheep’.<sup>83</sup> As will be detailed in chapter nine, the intensity of his interest remained with him in Van Diemen’s Land.

Other sponsorships covered a variety of areas, and as he later explained, became expensive, requiring another means of income. As vice-patron of the Royal Shakespearian Club of Stratford, in 1834 he reminded residents they should be proud of the club where Shakespeare, the ‘Prince of Poets’, a native of Warwickshire, was ‘the object’.<sup>84</sup> In 1837 he was one of twenty-seven patrons of the Warwickshire Natural History and Archaeological Society, and the following year when President, attended the Society Ball and donated £5 to funds.<sup>85</sup> Similarly, in 1839–40 he was a vice-patron of the Invalid Institution at Denham Park Buckinghamshire, established for ‘nervous invalids of the upper class’.<sup>86</sup> There are indications that his second wife Eliza also demonstrated an interest in philanthropic institutions.<sup>87</sup>

### Concepts of crime in Britain

In early nineteenth-century Britain, the perception of crime and punishment was changing, and this was an area in which Eardley-Wilmot was very active. I will first discuss reforms relating to juvenile delinquents and prisons before analysing Eardley-Wilmot’s contribution to the debates. A willingness to view crime as an activity of a ‘criminal’ or ‘dangerous’ class was indicative of wider developments. Social discussions increasingly led to identifying problems which government could ‘solve’, preferably with the aid of relevant interest groups,

<sup>82</sup> *Leamington Spa Courier*, 12 July 1834, p. 4, 16 May 1835, p. 3.

<sup>83</sup> *Leamington Spa Courier*, 27 June 1835, p. 1 and 3 June 1837, p. 3.

<sup>84</sup> *Leamington Spa Courier*, 26 April 1834, p. 3.

<sup>85</sup> Warwickshire Natural History and Archaeological Society see *Leamington Spa Courier*, 23 September 1837, pp. 2, 20; 27 October 1838, p. 1; 3 November 1838, p. 1. There were 13 Lady Patronesses. Lady Wilmot is not listed attending the 1838 Ball, presumably because of her ‘continued ill health’ and ‘on the coast’, see *The Papers of the Prime Ministers of Great Britain, Series Two. The Peel Papers General Correspondence*. British Library (hereafter BL), Mss. 40505 Eardley-Wilmot to Peel 22 March 1842, pp. 31–32.

<sup>86</sup> *Times*, 27 July 1839, p. 1; 12 October 1839 p. 1; 2 May 1840 p. 1; 2 May 1840, p. 1 for Denham-park.

<sup>87</sup> In 1829 Lady Patroness of the Warwick Dispensary Ball, *Leamington Spa Courier*, 3 January 1829, p. 2.

while non-specialist observers could deal with crime in terms of stereotypes and conventional knowledge.<sup>88</sup>

Modern historian Heather Shore has explored the concept of juvenile delinquency as an invention of the period 1820 to 1850. She proposed that juvenile delinquency be recognised as a distinct social problem once it was named in new ways through ‘juvenile-specific’ legislation; once it was managed in new ways within juvenile-specific institutions by specialised staff; and once the families of ‘deprived and disorderly children’ were subjected to new forms of external intervention and regulation.<sup>89</sup>

The Philanthropic Society, established in 1788, was one such institution, where in 1828, 161 boys were housed. The superintendent, Richard Collyer, and a committee selected the boys for admission from the ‘offspring of convicts’ aged between nine and thirteen, and from ‘criminal boys’ aged between nine and twelve. The criminal boys were first housed in ‘Reform’, where they remained between eighteen months and two years until ‘sufficiently instructed and amended’ to be transferred to the ‘manufactory’, where they joined the sons of convicts. Here, the boys were placed in one of six trades: letter-press; copper-plate printing; book-binding; tailoring; shoemaking or twine-spinning. They remained until they were twenty-one, when ‘qualified to obtain their living’ in their trade.<sup>90</sup>

The peaks and dips in crime figures during the nineteenth century have been studied by historian Kenneth Macnab, and as will be shown, are similar to those given by Eardley-Wilmot. Most increase in crime was in London before 1829 when the need for a strong police force to maintain order was recognised. The Metropolis Police Improvement Bill received Royal assent in June 1829, and the Metropolitan Police Force was established.<sup>91</sup> Unlike other forces in the country, this one, where the main responsibility was crime-prevention, was

<sup>88</sup> J Sharpe, ‘Crime, Order and Historical Change’ in J Muncie and E McLaughlin, *The Problem of Crime* (London, 2001), pp. 143–44.

<sup>89</sup> H Shore, ‘Inventing the juvenile delinquent in nineteenth-century Europe’, in Godfrey et al (eds), *Comparative Histories of Crime* (Devon, 2003), p. 111; Sharpe, ‘Crime, Order and Historical Change’, pp. 143–44.

<sup>90</sup> *BPP Police of the Metropolis. Crime and Punishment. Police 4* (Shannon, 1968), p. 163, evidence of Richard Collyer to Select Committee on the Police of the Metropolis, 26 March 1828. Enquiry into Select Committee was secured by Peel, see John Prest, ‘Peel, Sir Robert (1788–1850)’, *ODNB* [<http://www.oxforddnb.com/view/article/21764>]; this situation is similar to that in later operation at Point Puer, as will be discussed in chapter six, see Dora Heard (ed), *The Journal of Charles O’Hara Booth Commandant of the Port Arthur Penal Settlement* (Hobart, 1981), Statistical Returns, p. 32.

<sup>91</sup> Kenneth K Macnab, ‘Aspects of the History of Crime in England and Wales between 1805–1860’, PhD thesis, University of Sussex, 1965; David Taylor, *The new police in nineteenth-century England. Crime, conflict and control* (Manchester, 1997), pp. 21–22.

directly responsible to the Home Office through two Commissioners of Police who were also Justices of the Peace.<sup>92</sup> In 1839 Parliament passed three Bills establishing centrally-controlled police forces for Birmingham, Bolton and Manchester. These were emergency measures to provide police forces in the towns which seemed threatened by chartist unrest.<sup>93</sup>

Most arrests and committals were at the request of the public and not the police, who were ordered to prevent crime rather than apprehend criminals. When police did prosecute, it was at their own risk and expense, and statistics tended to be depressed due to their unpopularity and inefficiency. Macnab also showed that the level of crime increased steeply during declines of economic prosperity with major peaks in 1817–19 (which coincided with the end of the Napoleonic Wars when soldiers were seeking employment and military spending had eased), 1842 and 1848, falling back less rapidly and not as far in the ensuing recoveries.<sup>94</sup>

The peak in criminal activity was also partly correlated to population density. The increasing concentration of people in towns provided opportunities for crime, and the struggle for survival also led to criminal activity. The British population increased by about 50 per cent in the late eighteenth century, and doubled again between 1800 and 1850, mainly because of economical and geographical reorganisation and relocation caused by the industrial revolution.<sup>95</sup> Urban life, which provided exposure to alcohol and access to taverns, attracted the attention of magistrate Patrick Colquhoun, who saw this as a primary cause of criminal behaviour in the young, even though the worst excesses of the ‘gin parlours’ had passed.<sup>96</sup>

### **‘shoeless, half-naked, uncombed, and dirty little urchins’**

According to Shore, in the late 1830s and early 1840s there was a criminal class which was the ‘prodigal son of respectable society — the juvenile delinquent, its potentially malleable heir’.<sup>97</sup> Consequently, juvenile crime ‘provoked both despair and expectation’. These children and youths could be ‘saved and reincorporated into respectable society or they could fall and be absorbed into the life of the hardened criminal’. Explanations were sought for juvenile

<sup>92</sup> Taylor, *The new police in nineteenth-century England*, pp. 7, 77.

<sup>93</sup> Michael Weaver, ‘The New Science of Policing: Crime and the Birmingham Police Force, 1839–1842’, *Albion: A quarterly journal concerned with British studies*. 26.2 (Summer 1994), p. 289.

<sup>94</sup> Macnab, ‘Aspects of the history of Crime in England and Wales between 1805–1860’, pp. 28, 62, 167–69.

<sup>95</sup> Noel Butlin, *Forming a Colonial Economy. Australia 1810–1850* (Cambridge, 1994), pp. 11–12.

<sup>96</sup> P Colquhoun, *A Treatise on the Police of the Metropolis, Containing a detail of the Various Crimes and Misdemeanours by which Public and Private Property and Security are, at Present, Injured and Endangered and suggesting Remedies for their Prevention* London: H Baldwin and Son for Joseph Mawman, 6<sup>th</sup> edn, 1800, cited in Butlin, *Forming a Colonial Economy. Australia*, p. 12.

<sup>97</sup> W A Miles, *Poverty, mendacity, and crime*. H Brandon (ed), (London, 1839), pp. 1, 45 cited in Heather Shore, *Artful Dodgers: Youth and crime in early nineteenth-century London* (Suffolk, 1999), p. 1.

crime, and persistent offending became a ‘symbol for social breakdown and domestic instability’. Thus a basis for political and public debate was established.<sup>98</sup>

The contemporary author William Neale focused on juvenile delinquency in Manchester. He was convinced that in 1840, other than their ‘tender years’, there was little difference in the crimes committed by juveniles and adults. One peculiar feature in the statistics for Manchester (where 53 per cent of the population were younger than twenty-one) was the profusion of petty crime. In the manufacturing districts criminals were mainly from the ‘most abject, ignorant improvident, and poverty-stricken of the population’ where housing was the ‘lowest, the most incommodious, and loathsome in the city’. As a result, Neale concluded that ‘poverty is the parent of crime, and that misery is allied to guilt’.<sup>99</sup> In such areas, especially on Sundays, it was common to see ‘shoeless, half-naked, uncombed, and dirty little urchins, who, from two to six years old and upwards, swarm in the streets, some grovelling in the dirt and mire, or collected in knots actively engaged in idle amusement.’<sup>100</sup>

In Britain at the beginning of the nineteenth century, the problem and treatment of children convicted of crimes received little attention, and there was little difference in the process for different aged children. They were liable to the same main forms of punishment, capital conviction (which was generally commuted), transportation and imprisonment as adults — although some magistrates exercised discretion in sentencing. Only children younger than seven were not to be found criminally responsible for their actions. Judicial precedent had built up the principle of *doli capax*, meaning the young child was ‘capable of mischief’ but was not punished for any crime, but from ten and a half to fourteen years old, they were ‘capable of mischief’ and ‘indeed punishable’.<sup>101</sup> Between 1812 and 1817, 780 males and 136 females younger than twenty-one years-old were transported to Australia, but by the 1840s and 1850s a new system to manage juveniles had started to evolve. Prison reform was the outcome of concerns about crowded prisons due to an increasing reliance on incarceration, the introduction of a system to classify inmates by the nature of the offence, and whether or not children belonged in gaol.<sup>102</sup>

<sup>98</sup> Shore, *Artful Dodgers*, p. 1; Criminal activity in this period was reflected in Charles Dickens, *Oliver Twist*, written and published in 1837–38.

<sup>99</sup> W B Neale, *Juvenile Delinquency in Manchester: Its Causes and History, its consequences, and some suggestions concerning its cure* (Manchester, 1840), pp. 7–8 emphasis in original.

<sup>100</sup> Neale, *Juvenile Delinquency in Manchester*, p. 11.

<sup>101</sup> *Blackstone’s Commentaries on the Laws of England. Book the Fourth – Chapter the Second: Of the Persons Capable of Committing Crimes.* [[http://www.avalon.law.yale.edu/18th\\_century/blackstone\\_bk4ch2.acp](http://www.avalon.law.yale.edu/18th_century/blackstone_bk4ch2.acp)].

<sup>102</sup> M May, ‘Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century’, *Victorian Studies*, 18:1 (September 1973), pp. 7–9, although 103 children younger than



To Shore, the changing treatment of juvenile criminals was largely generated by changing attitudes to youth and adolescence, to the working classes, and also to notions of reformation closely tied to education, occupation and religion. These changes led to altering definitions of criminality and legal separation, and children were increasingly exposed to a more formal and disciplined approach.<sup>103</sup> The nineteenth-century reformer and founder of ‘ragged schools’, Mary Carpenter (1807–77), daughter of a Unitarian minister, who argued that children should be divided between a ‘dangerous class’ and a ‘perishing class’, influenced the model these institutions eventually followed. Around this time private efforts to address the problem of juvenile delinquency and to remove young criminals from adult prisons received legislative sanction, and a system of privately-run, charitable reformatories mixing education and detention were established.<sup>104</sup>

### **British prison system**

Prisons of the eighteenth century were ‘shoddily built’ and ‘poorly adapted’ for the incarceration of prisoners, who were crowded into filthy and poorly-ventilated rooms. The prison sewers frequently blocked, spilling their contents inside the prison, therefore inmates were subjected to illness, a situation which prompted recommendations that those under sentence of transportation be ‘immediately’ sent.<sup>105</sup> Prisons were operated by individuals who received a few pence per day for each prisoner held. The keeper received his income from fees paid by prisoners on entry and discharge whether innocent or guilty, as well as any profit he could make from daily allowances, and any money he could extract from prisoners, their relatives and friends. The keeper could also charge for putting on and taking off prisoners’ chains and the provision of such items as bedding, furniture and liquor. Prisoners were not released until the basic keeper’s fees were paid. Those unable to pay spent their time in old communal prisons depending on charity for decent food until fees were paid, while those with money could purchase luxuries such as tobacco, beer and fancy goods.<sup>106</sup>

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14 years-old received capital sentences at the Old Bailey between 1801 and 1836, all were commuted to transportation or imprisonment.

<sup>103</sup> Shore, *Artful Dodgers*, pp. 149–50.

<sup>104</sup> Frank Prochaska, ‘Carpenter, Mary (1807–1877)’, *ODNB* 2004 [<http://www.oxforddnb.com/view/article/4733>]; J De Barros, ‘Metropolitan Policies and Colonial Practices at the Boys’ Reformatory in British Guiana’, *The Journal of Imperial and Commonwealth History* 30.2 (May 2002), p. 2.

<sup>105</sup> *Historical Records of New South Wales: Phillip 1783–1792 Vol 1, Pt 2* (Sydney, 1892) Lord Sydney to the Lords Commissioners of the Treasury, 18 August 1786, pp. 14–20; Sean McConville, *A history of English prison administration. Volume 1, 1750–1877* (London, 1981), p. 50.

<sup>106</sup> May, ‘Innocence and Experience’ p. 10.

Prison reform passed through several stages. In 1820 some 13,700 people were committed for trial for serious offences, and by the 1830s a ‘crisis’ had emerged over the direction of penal policy. The number almost doubled by 1840, to 27,200, and the range of punishments, especially transportation and the hulks, had little effect in reducing numbers. In seeking a solution, reformers turned to the familiar argument that the inadequately reformed prison was the source of trouble. Prisoners supported each other, and hardened offenders contaminated the younger, less-experienced prisoners.<sup>107</sup> In England between 1822 and 1830 there were forty-three executions for horse-stealing, and none between 1830 and 1838. A similar result was observed for burglary and house-breaking, with forty-six between 1826 and 1830 and only two between 1834 and 1838. In total, between 1831 and 1834 in England and Wales, 124 criminals were hanged, while in France, by the penal code of 1832, capital punishment was almost exclusively limited to crimes of treason, murder and setting fire to an inhabited dwelling.<sup>108</sup>

The size of the prison population forced several prisons to classify prisoners into ‘wards’ depending on the offences for which they were convicted, and also forced the establishment of prison schools. Young people were separated and first offenders from habitual criminals, but a lack of satisfactory classification led to a concerted campaign to find a solution.<sup>109</sup> In the 1835 Report of a Committee of the House of Lords the ‘separate’ system was promoted, and five Inspectors of Prisons were selected to visit all English prisons. Two of these, William Crawford (1788–1847) and Reverend Whitworth Russell (1792–1847), cousin of Whig politician Lord John Russell, used their reports to coerce local authorities to make changes favourable to their system of choice. In 1836 Russell and Crawford investigated the ‘Separate’ and ‘Silent’ systems in America.<sup>110</sup> Both systems aimed at eliminating corruption, the former by physical separation, the latter, by enforced silence. As a result of the Inspectors’ Report, in 1839 the separate system was adopted. Pentonville Prison in London, which opened in 1842, was the first of the separate correctional establishments. It held 520 prisoners

<sup>107</sup> R McGowen, ‘The Well-Ordered Prison. England, 1780–1865’, in Norval Morris and David J Rothman (eds) *The Oxford History of the Prison: The Practice of punishment in Western Society* (New York, 1995), p. 99.

<sup>108</sup> Criminal Returns issued by the Committee of the Society for the diffusion of information on Capital Punishments in 1838, see *Leamington Spa Courier*, 25 August 1838, p. 3; England’s last gibbeting was in 1832, see Richard Davis, *The Tasmanian Gallows. A Study of Capital Punishment* (Hobart, 1974), p. 35.

<sup>109</sup> May, ‘Innocence and Experience’, p. 10.

<sup>110</sup> Crawford’s Report on penitentiaries of the United States see *BPP Prisons Vol 2 1834* (593). The building of a Separate Prison at Port Arthur began 1848 during the administration of Eardley-Wilmot’s successor, Sir William Denison; see Bill Forsythe, ‘Crawford, William (1788–1847)’, *ODNB* Jan 2008 [<http://www.oxforddnb.com/view/article/6646>] for details on Crawford.

in separate cells, and was intended to be (as Parkhurst was for juveniles offenders) a prison, not of punishment, but of instruction and probation.<sup>111</sup>

Over time, incarceration methods were questioned. The system was modified, with Major Joshua Jebb (1838–63), Surveyor-General of Prisons and later Chairman of the Directors of Convict Prisons, responsible for the construction of new gaols.<sup>112</sup> Efforts at classification were initiated in a convict hulk in London in 1823, and at Parkhurst Prison which opened in 1838 to train boy transportees before embarkation.<sup>113</sup> Many of these boys were transported to Van Diemen's Land and served the remainder of their sentence at Point Puer (founded by George Arthur in 1834), a similar establishment and the first British purpose-built reforming institution for criminal boys.<sup>114</sup> Millbank Prison (commenced 1813, completed 1821 closed 1886) also operated under the separate system. A building of an irregular octagon-shaped design on the banks of the River Thames, Millbank was intended for the confinement of offenders convicted in London and Middlesex, but a clause was inserted in the Act in its passage through the House of Commons empowering the Crown to send convicts of the same description there 'from every part of England and Wales, until provision should be made for convicting such offenders in penitentiary-houses elsewhere'.<sup>115</sup> The developing drive for accurate classification of convicts in this system later gave meaning to William Ewart Gladstone's official reason for recalling Eardley-Wilmot — that he had failed to report on the mental and moral state of the convicts.

### Juveniles and the judiciary

There is little evidence about the character of juveniles who appeared before the judiciary, but according to Sir Richard Birnie, chief magistrate at Bow Street, Police Justice, and acting magistrate of Middlesex in 1828, imprisonment had a 'most unfortunate effect' on boys. They were known to commit crime again the day they were discharged, at which point they became impertinent, thanked the Bench if they were ordered to be transported, and sometimes used

<sup>111</sup> McConville, *A history of English prison administration. Vol 1*, pp. 208–10; McGowen, 'The Well-Ordered Prison'. England, 1780–1865', p. 99; *The Annual Register, or a view of the History and Politics of the year 1844. Volume 86* (London, 1845), pp. 466–70.

<sup>112</sup> McConville, *A history of English prison administration. Vol 1*, pp. 208–10; McGowen, 'The Well-Ordered Prison'. England, 1780–1865', p. 99.

<sup>113</sup> May, 'Innocence and Experience', p. 11.

<sup>114</sup> Joan C Brown, *Poverty is not a Crime': Social Services in Tasmania 1803–1900* (Hobart, 1972), p. 24.

<sup>115</sup> The Act, 52<sup>nd</sup> Geo. III; *From the Third Report of the Inspectors of Prisons for the Home District; addressed to the Right Honourable the Secretary of State for the Home Department* (London, 1838), pp. 89–90.

‘improper language’.<sup>116</sup> Transportation was ‘no punishment at all’ because of ‘excellent accounts of the climate and country’. Despite this, it was still the favoured punishment.<sup>117</sup>

Birnie thought it was a ‘great evil’ committing young boys to prison for simple larceny, so his usual punishment was to send those aged younger than fifteen to either a hulk or a depot. If sent to a hulk, the boys would be ‘bound’ to the gentleman in command and be instructed in seamanship as a carpenter or gunner.<sup>118</sup> Birnie explained how an Act from the reign of Queen Anne authorised a magistrate, with the consent of the churchwardens of the parish where the ‘delinquent’ was found who ‘begs’, or ‘his parents beg’, and who was unable to ‘give a proper account of himself’, to bind the boy to sea service — but nobody would take them. Another of his punishments for boys aged between eight and twelve years-old was an asylum where they would be ‘trained up to industry’, yet, Birnie believed it was an advantage to recommend a ‘little flogging’ for these boys and discharge them. Ideally, those younger than fifteen should be sent to a hulk or depot to remove them from the streets of London.<sup>119</sup>

In 1835 William Augustus Miles (1796–1851), future Police Magistrate and Commissioner of Police, presented a paper on prison discipline to the ‘Select Committee into the Present State of Gaols and Houses of Corrections in England and Wales’.<sup>120</sup> Between June and October 1835 Miles collected information on major prisons, gaols and houses of correction in London. He also visited the hulk *Euryalus*, moored near Chatham, which housed convicted boys intended for transportation to Australia. After examining and interviewing 146 boys Miles delivered two reports to the committee, one public, one ‘secret’, setting out his views on the causes of crime and the best methods of punishment. The committee also examined him about Point Puer, but, according to his biographer, Miles’ report was based on a letter dated December 1834, as he had not visited Australia.<sup>121</sup>

<sup>116</sup> An example of this occurred in London. Thomas King, an errand or kitchen boy, aged 16, was ‘transported for seven years with many others for picking pockets, see L L Robson, *The Convict Settlers of Australia* (Melbourne, 1973), p. 19; Several of the prisoners then said: ‘Thank your Lordship; we are much obliged to you’, see *Times*, 17 September 1832, p. 4.

<sup>117</sup> *BPP Police of the Metropolis 1828, Crime and Punishment. Volume 4* (Shannon, 1968), pp. 38–40, 45.

<sup>118</sup> *BPP Police of the Metropolis 1828, Crime and Punishment 4*, pp. 38–45, in evidence to the 1828 Select Committee which enquired into the ‘Cause of the Increase in the Number of Commitments and Convictions in London and Middlesex’.

<sup>119</sup> *BPP Police of the Metropolis 1828, Crime and Punishment 4*, pp. 39–40. Queen Anne reigned 1702–14.

<sup>120</sup> D Philips, *William Augustus Miles (1796–1851) Crime, Policing and moral Entrepreneurship in England and Australia* (Melbourne, 2002), pp. 8, 65.

<sup>121</sup> PRO HO 73/16 contains a printed ‘Secret’ Report for the *SC of Gaols* ‘who ordered it to be printed for the Use of Members of the Committee; but they are of opinion that the making of it public might be detrimental to Society’, in which Miles sets out his views ‘that Prisons neither reform nor deter; but on the contrary they harden and corrupt’, see Philips, *William Augustus Miles*, p. 85. Point Puer opened early that year.

The impact of a widespread increase in juvenile crime resulted in local inquiries — notably London in 1816, and Surrey and Warwickshire in 1828. The increase was primarily attributed to parental neglect.<sup>122</sup> The high level of petty theft, simple larceny, felony and common assault in the Metropolis, Middlesex, Surrey, and the city of London during the early 1820s decreased by mid-1826 and further still by 1828, for which, Birnie suggested, there were two main reasons. The establishment of a day patrol which supplemented the night patrol was the first, and the second was greater vigilance by householders.<sup>123</sup> Despite the decrease in London, the extent of pilfering was still disproportionate in Lancashire, Yorkshire and Warwickshire. These counties, as well as Staffordshire, transported comparatively high numbers of second and subsequent offenders to Australia, while from Yorkshire and Warwickshire many textile and metal workers were transported, but few farm labourers. Labourers predominated in all counties except Eardley-Wilmot's home county of Warwickshire, where metal workers were the largest single group. Warwickshire was also one of five main counties of trial for men transported for burglary and housebreaking.<sup>124</sup>

Leonard D Johnson has analysed records from Lancashire's Salford Hundred Quarter Sessions. Similar to sentences ordered by Eardley-Wilmot, Johnson found a link between those previously convicted of a felony and transportation to Van Diemen's Land, the sentence mainly being decided by each offender's criminal record.<sup>125</sup> Between 1828 and 1834 a total of 5,209 offenders were committed to Salford. Of these, 1,138 had previous convictions, of whom 432 (37.9 per cent) were sentenced to imprisonment, and 706 (62 per cent) to transportation. This was almost three times the rate of all offenders. Although not previously convicted, another 583 were sentenced to transportation. Some offences involved the theft of large quantities of property which attracted long sentences, while other crimes were compounded by aggravating circumstances such as street and highway robbery; burglary; breaking and entering; violence; assault with intent to rob; breaking machinery; receiving stolen property and 'privately' stealing from the person. Magistrates were obliged to sentence in accordance with Peel's consolidation acts of 1827 and 1828 without reference to previous behaviour on the part of the accused.<sup>126</sup>

<sup>122</sup> May, 'Innocence and Experience', p. 15.

<sup>123</sup> *BPP Police of the Metropolis 1828, Crime and Punishment 4*, pp. 34, 45, 40. However, the decrease might also have been partly due to new methods of acquiring data, a reason not suggested by Birnie.

<sup>124</sup> The others: London, Lancashire, Yorkshire and Somerset and from where 16 per cent of those tried were transported, see Robson, *The Convict Settlers of Australia*, pp. 20, 43.

<sup>125</sup> L D Johnson, 'An Analysis of the Penal Experiences and social outcomes of Salford Hundred convicts transported from Britain to Van Diemen's Land between 1828 and 1837', PhD thesis, University of Tasmania, 2002.

<sup>126</sup> Johnson, 'An Analysis of the Penal Experiences', pp. 290–93.

Adolescent offenders were also transported to Australia from the Scottish county of Lanarkshire and the Irish county of Cork.<sup>127</sup> In Dublin, boys brought to trial for the second time were transported, while at Leeds in Yorkshire, third time convicted young felons were sentenced to transportation. In London, it was not as much the offence as their record which brought the guilty to Australia, whilst in Warwickshire a second offence was enough to result in transportation.<sup>128</sup> In similar situations Eardley-Wilmot ordered offenders be transported.

### **Magisterial experience**

In 1815 Eardley-Wilmot became eligible to chair the Warwickshire Quarter Sessions as he had been appointed a Justice under the Commission of Peace at the Epiphany Session.<sup>129</sup> In this position the county countryside came under his control. He could dispense the simple forms of justice and administration in his own parlour, and with another brother justice sitting in Petty Sessions they could deal with an extensive range of business. The more serious crimes were tried four times a year at the Quarter Sessions of the county with all county justices present. The timing of Sessions was controlled by Edward III's statute, which required quarter sessions to be held at the ecclesiastical seasons — Epiphany (January), Easter (March or April), Translation of the Bones of Saint Thomas (July or Midsummer) and Michaelmas (October).<sup>130</sup> The national body of Justices of the Peace, of which Eardley-Wilmot was one, represented a powerful group of wealthy hereditary landowners who held conservative views, those of the 'established' order of society.<sup>131</sup>

Justices maintained the authority of the Crown, ensured the execution of laws, punished offenders, had wide discretion, and developed policies of their own in administrative questions.<sup>132</sup> By the latter half of the eighteenth century the larger landowners began to take public responsibilities more seriously, and the Benches were dominated by the wealthy, but during the Reform agitation of the 1830s the class exclusiveness of the justices caused

<sup>127</sup> Robson, *The Convict Settlers of Australia*, pp. 18–9; other counties: London, Lancashire, Dublin, Yorkshire and Surrey, for detailed tables see Robson, pp. 76–88.

<sup>128</sup> Leeds: *PP* 1828 Vol 6, p. 484; Dublin: *PP* 1819 Vol 7, p. 218; London: *PP* 1819 Vol 7, p. 284; Warwickshire: *PP* 1828 Vol 6, p. 463 cited in Robson, *The Convict Settlers of Australia*, p. 37.

<sup>129</sup> WCRO QS1/2/2 List of Justices pers comm with archive assistant [[www.warwickshire.gov.uk](http://www.warwickshire.gov.uk) 14 August 2009]; Justice-of-the-peace was an ancient appointment originating in the first year of King Edward III's reign, see Johnson, 'An Analysis of the Penal Experiences', p. 54.

<sup>130</sup> 25 Edw. 3 CAP VII (1350) 'The Justices shall hold ... and at all Times needful. Servants which flee from one country to another shall be committed to prison.' *The Statutes at Large, from the Fifteenth Year of King Edward III to the Thirteenth Year of King Hen. IV. Inclusive*, Vol 2 (Cambridge, 1762), p. 35.

<sup>131</sup> J H Plumb, *England in the Eighteenth Century* (Middlesex, 1972), pp. 34–35.

<sup>132</sup> L L Woodward, *The Age of Reform 1815–1870* (Oxford, 1962), p. 457.

widespread criticism, and the Lords Lieutenants were instructed to choose from a wider category of people.<sup>133</sup> The jury, the ‘supposed guarantee’ that an Englishman would be tried by his equals, had a property qualification, and a panel of the poor would probably not convict a labourer who stole a sheep from a farmer’s fold, or corn from a merchant’s yard.<sup>134</sup>

Eardley-Wilmot was appointed Sheriff for Warwick in February 1819,<sup>135</sup> by which time the administrative functions of the Sheriff and those of the Deputy Lieutenant and Lord Lieutenant, had largely disappeared. The Lord Lieutenant though, was politically important because he was usually a peer of ministerial rank or high court official, and as such, was the local agent of Crown patronage and controlled the appointment of Justices of the Peace.<sup>136</sup>

### **Attitudes to crime and sentencing**

By the 1820s as an outcome of various penal and legal strategies, a substantial public debate had developed as to how to deal with juvenile offenders. Consequently, associated literature was published, and Eardley-Wilmot was one of the pamphleteers who believed that, because the courts were authorised to pay expenses in felony cases where the accused was convicted, this encouraged prosecutions.<sup>137</sup> These strategies may have had an indirect tendency to increase crime because greater numbers were sent to gaol where they were open to corruption by other prisoners.

In extensive correspondence which seems to have been uncommon for the time, Eardley-Wilmot published letters about punishment of juvenile offenders, and in 1820, concerned over the increase of crime in the county, he wrote to the magistrates of Warwickshire.<sup>138</sup> One month later he followed with another letter, which particularly addressed the problem of juvenile delinquency.<sup>139</sup> His concerns in relation to juvenile crime did not lessen. In *A Letter to the Magistrates of England on the Increase of crime* published in 1827, he lamented how during the previous seven years he had tried more than 2,000 criminals for ‘petty offences

<sup>133</sup> Selection of Justices of the Peace. Royal Commission Report, p. 5; 1910 Cd. 5250, xxxvii cited in P G Richards, *Patronage in British Government* (London, 1963), p. 156.

<sup>134</sup> Thomas Gisborne, *An Enquiry into the Duties of Men in the Higher and Middle Classes of Society in Great Britain*, 1794, p. 284 note ‘b’ cited in Douglas Hay, ‘Property, Authority and the Criminal Law’, in Douglas Hay et al, *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975), p. 38.

<sup>135</sup> *Times*, 16 November 1818, p. 2 (nomination), 12 February 1819, p. 3 (appointment).

<sup>136</sup> Plumb, *England in the Eighteenth Century*, p. 36.

<sup>137</sup> John Eardley Eardley-Wilmot, *A second letter to the Magistrates of Warwickshire, on the increase of crimes in general, But more particularly of Juvenile Delinquency: With a few Observations on the Causes and Remedies of this Increasing Evil* (London, 1820), p. 10.

<sup>138</sup> John Eardley Eardley-Wilmot *Observations on a Letter by John Eardley Eardley-Wilmot ... to the magistrates of Warwickshire (with regard to the increase in crime in the county)* (London, 1820).

<sup>139</sup> Eardley-Wilmot, *A second letter to the Magistrates of Warwickshire*.

alone', for which, he partly blamed the law, which held 'out little or no terrors'.<sup>140</sup> His second edition of the letter followed in 1828. 'Seven years had elapsed', he wrote, since he first addressed the public on the increase of crime, particularly among juvenile offenders. He reminded the reader he had 'predicted that crime would increase' despite any improvements the legislature 'either in theory or practice' would enact, and stressed that problems should be stopped at their foundation rather than wait until they became a 'torrent'.<sup>141</sup>

Eardley-Wilmot resolved to 'exert every effort' to save juvenile delinquents from 'great' and 'fatal ... moral degradation' before they became a 'public spectacle' at a criminal court. He saw the primary causes of juvenile crime as 'Ignorance and Early Imprisonment', from which evils bad company and bad example originated, and imprisoned juveniles left prison 'fully instructed in all the mysteries of crime'. The remedy seemed simple — parental instruction and a 'rigid observance of the Sabbath'. The 'petty offences and habitual pilferings' of juveniles would stop once they were engaged in the discipline of observance. Allied to this was the 'admonition of the parent' and the 'authority of the master'.<sup>142</sup>

Most committees enquiring into the causes of crime and pauperism in the 1820s concentrated on agricultural districts and identified a breakdown of master-servant relations in the manufacturing areas. Similarly, Eardley-Wilmot blamed juvenile crime in Birmingham on the erosion of paternal supervision of masters over their young workers. Formerly the apprentice:

was taken in to the house of the master; he was considered one of the family, and he was boarded, lodged, and educated by the master, who was answerable for his conduct; now [1827] the master has ten or a dozen apprentices and perhaps never sees them. They work ... then are allowed to go where they please and we know at that time of night with boys it is exactly the worst time that they could be their own masters and the consequence is that they are all thieves.<sup>143</sup>

<sup>140</sup> John Eardley Eardley-Wilmot Bart, *A Letter to the Magistrates of England on the Increase of crime; and an efficient Remedy suggested for their consideration, by Sir John Eardley Eardley Wilmot, Bart, FRFL and FSA One of his Majesty's Justices of the Peace for the County of Warwick* (London, 1827), see *British Museum General Catalogue of Printed Books to 1955 Volume 27*, p. 228; Roe, 'Eardley-Wilmot, Sir John Eardley (1783–1847)', [<http://www.adb.online.aau.edu.au/biogs/A010329b.htm>]; *Morning Chronicle*, 12 December 1827, p. 2.

<sup>141</sup> Eardley-Wilmot Bart, *A Letter to the Magistrates of England on the Increase of crime; and an efficient Remedy suggested for their consideration, by Sir John Eardley Eardley Wilmot, Bart, FRFL and FSA*. Second Edition 1828, pp. 1–2; *Times*, 8 February 1828, p. 2. There is no mention of this publication or Eardley-Wilmot, *A second letter to the Magistrates of Warwickshire* (1820), in Chapman, 'Wilmot, Sir John Eardley Eardley-, first baronet (1783–1847)', [<http://www.oxforddnb.com/view/article/52438>] nor in Roe, 'Eardley-Wilmot, Sir John Eardley (1783–1847)', [<http://www.adb.online.aau.edu.au/biogs/A010329b.htm>].

<sup>142</sup> Eardley-Wilmot, *A second letter to the Magistrates of Warwickshire* (1820), pp. 4–6, 9–10.

<sup>143</sup> J E Wilmot, *A Letter to the Magistrates on the increase of Crime* (1827) cited in M Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750–1850* (London, 1978), p. 182.



While prison discipline, penitentiary asylums, and philanthropic institutions produced ‘good’ outcomes, Eardley-Wilmot knew that, while the ‘most efficient and primary cause of the evil remained untouched, crime would increase’. Growth in population; poor laws; poaching; uncertainty of punishment; indiscriminate payment of expenses to those who brought offenders to justice; and increased efficiency of the police for the detection of crime were other causes. Between 1818 and 1828 the population only increased one-fifth, while committals for felony doubled.<sup>144</sup> He gave figures for the number of convictions in England and Wales between 1810 and 1826, the increase between 1817 and 1820 clearly illustrated in Table 1.1, with the high number of Warwickshire’s 1824 criminal youth shown in Table 1.2.

**Table 1.1:** Convictions in England and Wales between 1810 and 1826.<sup>145</sup>

DATE	CONVICTIONS	DATE	CONVICTIONS	DATE	CONVICTIONS
1810	3158	1816	5797	1822	8209
1811	3163	1817	9056	1823	8204
1812	3913	1818	8958	1824	9425
1813	4422	1819	9510	1825	9964
1814	4025	1820	9318	1826	11095
1815	4823	1821	8788		

In the County of Warwick nearly half the prisoners charged with theft were under-age, and annual expenses of prosecutions averaged £5,000 apart from expenses before and after court appearances. Eardley-Wilmot suggested if two-thirds were promptly charged the cost of prosecutions would decrease by £1,500 per annum as well reductions in other expenses.<sup>146</sup> In Warwick nearly half the prisoners were younger than twenty-one, one in seven under seventeen, and if the number of those imprisoned could be reduced, county expenses would also decrease.<sup>147</sup>

Once more Eardley-Wilmot suggested measures to reduce the number of imprisoned juveniles. His main recommendation was that petty offences be heard before an intermediate

<sup>144</sup> John Eardley Eardley-Wilmot Bart, *A Letter to the Magistrates of England on the Increase of crime; and an efficient Remedy suggested for their consideration, by Sir John Eardley Eardley Wilmot, Bart, FRFL and FSA One of his Majesty’s Justices of the Peace for the County of Warwick* (London, 1828), p. 9.

<sup>145</sup> Eardley-Wilmot, *A Letter to the Magistrates of England* (1828), p. 1; *House of Commons Parliamentary Papers* (hereafter *PP*) 1828, *Volume VI*, evidence to ‘Select Committee on Criminal Commitments and Convictions’, 18 March 1828, p. 444.

<sup>146</sup> The gaol was the ‘lock-up’ at Stretton-on-Dunsmore, which in 2006 was the Moor Farmhouse, Brookside. The Warwick County Asylum for Boys was the Hill Farmhouse, Frankton Lane, Stretton-on-Dunsmore. Both are ‘Listed Buildings’ in the ‘Conservation area’, see *Stretton-on-Dunsmore Parish Plan* (2005), p. 18.

<sup>147</sup> Eardley-Wilmot, *A Letter to the Magistrates of England* (1828), pp. 11, 28, 9, 28.

tribunal. Those found guilty would be instantly proceeded against and punished without having to undergo the ‘stigma and contamination of a public prison, the publicity of a trial’ and ‘evils which infallibly result from early imprisonment’. He also recommended a change to the law of simple larceny as it affected young offenders. The offence should be changed to one of a minor nature, the same as the Malicious Trespass Act. Magistrates needed the power of immediate conviction to be empowered to punish young culprits by whipping; putting in the stocks; confining in a house of correction or asylum; and to discharge juveniles. Magistrates should also have the power to appoint a guardian in cases where, by the loss of his natural guardians or neglect of the master to whom he was apprenticed, the youthful delinquent was thrown upon the world without any guide to direct or befriend him. Eardley-Wilmot called on magistrates to consider his proposals, and he implored them to unite to alter the law as ‘appeared most fit and expedient’.<sup>148</sup> On 14 January 1828 at the General Quarter Sessions of the Peace for the County of Warwick, resolutions were passed that a petition be presented to Parliament founded on the resolutions and be signed by the magistrates present at the sessions.<sup>149</sup>

**Table 1.2:** Population and numbers committed in 1824.<sup>150</sup>

ENGLISH COUNTIES	COUNTY POPULATION	TOTAL COMMITMENTS	YOUNGER THAN 17 YEARS-OLD	17 YR-OLDS AS PERCENTAGE OF TOTAL COMMITMENTS
<b>Warwick</b>	274,392	1,257 (.46%)	164	13%
<b>York</b>	1,173,187	2,685 (.23%)	25	.93%
<b>Lancaster</b>	1,052,859	5,606 (.52%)	158	2.82%
<b>Leicester</b>	174,571	465 (.27%)	7	1.5%
<b>Derby</b>	213,333	536 (.25%)	11	2%
<b>Nottingham</b>	186,873	680 (.37%)	5	.74%
<b>Stafford</b>	341,040	961 (.28%)	11	1.14%
<b>Suffolk</b>	270,542	1,085 (.4%)	15	1.38%
<b>Gloucester</b>	335,843	1,331 (.38%)	17	1.27%

In his position as Chairman of the Criminal Court of the Quarter Sessions in Warwickshire, he gave evidence to the Select Committee on Criminal Commitments and Convictions in 1828.

<sup>148</sup> Eardley-Wilmot, *A Letter to the Magistrates of England* (1828), pp. 17, 16, 25, 29.

<sup>149</sup> Eardley-Wilmot, *A Letter to the Magistrates of England* (1828), pp. 34–36; ‘Since the Above Resolution passed ... average expenses of each boy is £16.7.7 for 63 weeks.’ p. 36.

<sup>150</sup> Eardley-Wilmot, *A Letter to the Magistrates of England* (1828), p. 20.

He stated how the previous year he had adopted a successful plan to deal with juveniles who repeatedly appeared before him and others who re-committed the day they were discharged. His strategy was to order boys aged between nine and twelve or fourteen years to be flogged and discharged instead of being imprisoned, and he told them if they appeared before him again they would probably be transported.<sup>151</sup> He also proposed a separate house of correction with various trade instructors where boys would be sent after their first offence. If his scheme was implemented, the increase in crime among boys, and offenders generally, would ‘greatly’ diminish.<sup>152</sup> Evidently his intention was for a larger and similar institution to the House of Correction at Stretton-on-Dunsmore, which he had been active in establishing.

Eardley-Wilmot claimed Birmingham was the worst crime area in Warwickshire due to the ‘great neglect’ of parents who permitted their children to ‘go about the town’. During the previous seven years he had tried between 2,000 and 3,000 cases of felony,<sup>153</sup> at least half were under the age of twenty. Some were as young as nine years-old who ‘may come back twice, three times, and four times before they are 17 or 18 years-old’, and if they spent time in gaol they grew ‘Infinitely’ worse. Those charged were obliged to be committed for trial, and if convicted, it was then at the court’s discretion whether to order imprisonment or transportation for seven years, but punishment ‘greater than imprisonment’ was only ordered for ‘old’ offenders or an ‘aggravated offence’.<sup>154</sup>

After ‘long’ presiding in the second court as Deputy Chairman of the Quarter Sessions, on 11 January 1830 Eardley-Wilmot was elected Chairman to succeed Sir Gray Skipwith. The *Leamington Spa Courier* claimed no one was ‘better qualified’. He had assiduously studied law, and then attained ‘long and practical’ knowledge of administration as a country magistrate.<sup>155</sup> Addressing the grand jury of the Warwickshire Midsummer Sessions six months later, the new Chairman expressed regret that he and the jury were accustomed to seeing a calendar of ‘lamentable length’ filled with minor charges committed by citizens, one

<sup>151</sup> *House of Commons PP 1828, Volume VI*, evidence to ‘Select Committee’, 18 March 1828, pp. 448–49.

<sup>152</sup> *House of Commons PP 1828, Volume VI*, evidence to ‘Select Committee’, 18 March 1828, pp. 445–57.

<sup>153</sup> *House of Commons PP 1828, Volume VI*, evidence to ‘Select Committee’, 18 March 1828, pp. 446–47. As Chairman of the Quarter Sessions he was permitted to try offences for which the maximum sentence was seven years’ transportation. Capital offences were tried at the Assizes.

<sup>154</sup> *House of Commons PP 1828, Volume VI*, evidence to ‘Select Committee’, 18 March 1828, pp. 445–457. William Crawford’s beliefs were similar. The foundation of crime lay in a lack of parental control and religious and educational neglect. After the placement of young offenders in severe disciplinary and educative reformatory institutions, they should be transported to the colonies to begin a new life based on ‘experience in a fresh and natural environment’, see Forsythe, ‘Crawford, William (1788–1847)’, *ODNB* [<http://www.oxforddnb.com/view/article/6646>].

<sup>155</sup> *Leamington Spa Courier*, 16 January 1830, p. 1.

half of whom were under age. The situation was such that it ‘almost ceased to interest as well as to astonish’, and of 128 prisoners at the session, sixty-two were younger than twenty-one. Despite hundreds of useless statutes having been ‘expunged from the statute-book’, the severity of punishment giving way to milder enactments, and the whole criminal code having been reviewed, crime had increased. Attention had been directed to effects rather than causes, to palliatives rather than remedies, and to punishing rather than preventing crime. Legislation in the previous eleven years had done more to improve the criminal code than had been done for centuries, but achieved little towards the prevention of crime.<sup>156</sup>

He claimed, that particularly in large manufacturing towns, temptation to vice and criminality continued in ‘unabated force’, sustained because no shame was attached to the crime apart from any lack of skill which led to detection. Gaols were comparatively comfortable, while the homes of the destitute and outcast were ‘dreary’, and the thoughtlessness of the depredator of thirteen or fourteen turned him into a ‘hardened thief’ of sixteen or seventeen and older. Of thousands over whose trials Eardley-Wilmot had presided, less than five in 100 had stolen from necessity. They stole to ‘supply the cravings of want, vice and profligacy’. The cost of crime prevention had increased to such an extent in Warwickshire that if masters would adopt stricter vigilance over their journeymen and apprentices, if parents would pay attention to the morals and habits of their children, if tradesmen would not leave property exposed and unattended, and if an extra police force for the detection of offenders was established in Birmingham, Eardley-Wilmot was ‘perfectly certain’ more would be achieved in one year than in all the enacted legislation for punishment. Criminals felt no compunction, shame or remorse, and a sentence of confinement was, by 1830, ‘jest and a subject of merriment’.<sup>157</sup>

Future prospects were not encouraging. No decrease in convictions had occurred by 1832. During March, except for Yorkshire, Lancashire and Middlesex, there were more commitments in Warwickshire than any county other than Middlesex, and Warwickshire had the most commitments in proportion to population. The guilty had generally been servants in ‘good places’ with ‘adequate wages’, robbing their masters to gratify their profligate expenditure, or ‘tender age’ boys, loose upon the town of Birmingham. In March there were nearly 100 awaiting trial, and another 100 would remain in gaol for trial at the Assizes for

<sup>156</sup> *Leamington Spa Courier*, 17 July 1830, p. 1.

<sup>157</sup> *Leamington Spa Courier*, 17 July 1830, p. 1; *House of Commons PP 1828, Volume VI*, evidence to ‘Select Committee’, 18 March 1828, p. 448; In 1834 he repeated how no more than 5 in 100 boys charged were ‘in want or difficulty’, and a great majority were from manufacturing towns, see *Leamington Spa Courier*, 15 March 1834, p. 1.

serious crimes (murder; manslaughter; grand larceny; burglary; rape; robbery or arson), and Eardley-Wilmot feared another fifty would appear before these courts. Again he said education and moral discipline would solve the problem. This time he included the need for greater control by workmen, and vigilance similar to that provided by a parent over a child, was required for outdoor apprentices.<sup>158</sup>

Sometimes Eardley-Wilmot blamed parents for their children's crimes. Such a case was 'Patsey Brown, a lad 8 years of age', who pleaded guilty to a charge of stealing 5s 0d (in penny pieces). The lad cried bitterly and 'exhibited every symptom of contrition'. His conduct had been 'very disorderly' while in gaol, and was known to be a boy of 'very depraved habits'. The 'best thing' was to send him 'where those habits might perhaps be corrected, and where he would be well taught, well fed, and well clothed'. As a result, Eardley-Wilmot ordered him to the hulk *Euryalus* at Chatham which was fitted up for the reception of juvenile convicts. The boys were taught reading, writing and a trade, and the 'greatest attention was paid to the correction of their morals'. To give Patsey 'those advantages' he 'should be sentenced to transportation'. Despite the boy falling on his knees, begging to be sent to the asylum and calling out to his father in the gallery, Eardley-Wilmot sentenced Patsey to seven years' transportation and stated his father should be transported, as he was 'really to blame for the vicious courses of his son'.<sup>159</sup> Where there was no record of parents being liable for their children's behaviour, Eardley-Wilmot sometimes chose the County Asylum, as in the case of eleven year-old Henry Wootton found guilty of stealing a case of surgeon's instruments.<sup>160</sup>

In Birmingham property crime dominated, but one particular crime was atypical — the high incidence of counterfeiting of coins, a practice arising from skilled metalworkers in the workforce.<sup>161</sup> Statistically, the police performance after 1839 in Birmingham was impressive with a new centrally-controlled force. During November 6,150 people were taken into custody (an increase of 220 per cent from 1838), while the number of cases immediately dealt with by the magistrates, ranging from drunkenness to assaults, increased by 264 per cent. More serious cases remanded for trial increased by 135 per cent and by 1841 the number

<sup>158</sup> *Leamington Spa Courier*, 10 March 1832, p. 3. The assizes were staged twice a year in most counties, and Quarter Sessions four times, see Hay, 'Property, Authority and the Criminal Law', p. 30.

<sup>159</sup> *Leamington Spa Courier*, 12 March 1831, p. 4; for some of his sentencing see Appendix C.

<sup>160</sup> *Leamington Spa Courier*, 18 October 1828, p. 3.

<sup>161</sup> Weaver, 'The New Science of Policing: Crime and the Birmingham Police Force, 1839–1842', pp. 289–91.

arrested dropped to 5,556. While not enjoying complete success, Birmingham police made substantial gains.<sup>162</sup>

Records of 152 people (11 females and 134 males)\* tried at the Warwickshire Epiphany Sessions in 1835 indicate that over 50 per cent (sixty-one) were unable to read and write or 'could read, but very little'. Of these 152 prisoners, eight were aged fourteen or less, and sixty-one were between fourteen and twenty years-old.<sup>163</sup> Similar numbers of prisoners appeared at each session, and three years later 170 were tried. In 1839, of 138 prisoners for trial, 102 stated they lived in Birmingham, at which time Warwick gaol held 207 prisoners with 185 in the House of Correction.<sup>164</sup> The average number of offenders under sixteen years-old in Warwickshire was one in seven, Kent one in eight, Middlesex one in six; and in all England one in ten. Responding to this in 1840, Eardley-Wilmot stated he used age as a criterion for education, not a criterion for punishment.<sup>165</sup>

Taking advantage of another opportunity to detail the situation for juveniles, in 1836 Eardley-Wilmot wrote the introduction to *A Narrative of Twenty-three years' superintendence of the Women and Boys' Wards in the Gaol at Warwick*, by Esther Tatnall, wife of the Governor of the gaol.<sup>166</sup> Many years had passed since he advocated 'the necessity of an intermediate tribunal, to dispose of minor offences by juvenile delinquents'. Grand juries had 'echoed his sentiments', judges had approved them, the 'magistracy of various counties had petitioned on the subject', committees of both Houses had recommended a trial. All 'persons and all parties' had acknowledged the 'ruinous consequences of the present system' and the advantages to be gained from a change. The situation, therefore, indicated that improvements had been due to pressure from Eardley-Wilmot. Yet, he lamented, they seemed as far as ever from attempting any changes, and he hoped 'sooner or later', as new causes produced 'new and unusual consequences', new remedies would be adopted and applied.<sup>167</sup>

<sup>162</sup> Weaver, 'The New Science of Policing: Crime and the Birmingham Police Force, 1839–1842', p. 306.

\* The figures do not equal the total given, *Leamington Spa Courier*, 17 January 1835, p. 2.

<sup>163</sup> *Leamington Spa Courier*, 17 January 1835, p. 2. The chairman was not identified.

<sup>164</sup> Thomas Armes was sentenced to 7 yrs' transportation for stealing a hive of bees at Sutton Coldfield and Thomas Tasker to 10 yrs for stealing a bay gelding, the property of George Harris, at Eathorpe, *Leamington Spa Courier*, 5 January 1839, p. 1; *Leamington Spa Courier*, 6 January 1838, p. 1 and 5 January 1839, p. 1 also for Quarterly Report of the County Prison.

<sup>165</sup> *Times*, 27 February 1840, p. 4, he was speaking in the House of Commons.

<sup>166</sup> Eardley Wilmot (ed) Esther Tatnall, *A Narrative of Twenty-three years' superintendence of the Women and Boys' Wards in the Gaol at Warwick* (London, 1836), *Leamington Spa Courier*, 21 May 1836, p. 2; After Mr Tatnall's death in 1826 Harry Adkins was appointed 'prison keeper' at the County Gaol, Northgate Street, a position he still held in 1835, 1841 and 1850 see *Trade Directories* for 1835, 1841, 1850 cited by Anne Langley, Secretary, Stretton-on-Dunsmore History Society, April 2006.

<sup>167</sup> Tatnall, *A Narrative of Twenty-three years' superintendence*, see Eardley-Wilmot's introduction, pp. ix-x.

His concerns were well founded. Warwickshire was one of six counties responsible for the trial of 39 per cent of prisoners, and was also where large numbers of convicts aged nineteen years or younger were ordered to be transported to Australia.<sup>168</sup> It is reasonable to assume that his education, legal training and court experience developed his belief that education was the only ‘true groundwork’ for ‘mental, moral, and religious improvement’. The system had, to some degree, produced effects opposite to those intended. The mind was capable of improvement through knowledge, people were keen for information, and at the ‘critical moment’ when everything depended on the ‘purity and wholesomeness of the knowledge’, the scholar was left to choose his future. This sometimes involved corrupt companions. The children of artificers and labourers, who had commenced education, were often required to forego education to work in the work-shops or fields to either supplement the family income or save it from poverty.<sup>169</sup> It was a ‘lamentable fact’ that ‘commitment to gaol of the *boy*’ was generally followed by the ‘commitment of the *man*’. Those at the bar for their second and third time were first committed at the age of puberty. The increased difficulty of reforming those sent to the county asylum after gaol compared to those sent to the asylum without under-going the ordeal of gaol was ‘most conclusive’. Among the former, the result of some had been unsuccessful, but of the latter not a single instance had occurred in the asylum.<sup>170</sup>

In July 1829 after finding five juveniles guilty of robbery, Eardley-Wilmot typically sentenced one boy, who had a previous conviction, to transportation for life, and the other four to fourteen years’ transportation. The prisoner sentenced to transportation for life became violent, ‘spurred with his fists at the prosecutor’ and ‘uttered the most violent threats and imprecations’ against the prosecutor. Another prisoner seized one of the hob-nailed boots which had been evidence in the case and ‘hurled it at the prosecutor’s head’.<sup>171</sup> Sentences for guilty prisoners who appeared at the 1831 Epiphany Sessions followed a similar pattern. Those with former convictions were sentenced to transportation, while first offenders were imprisoned in the House of Correction. John Oakley and Joseph Woodcock were found guilty of stealing eight and one half pounds of beef from John Perry. Characteristically, Woodcock received a one-month imprisonment term, while Oakley, who had a former guilty verdict, was

<sup>168</sup> Eardley-Wilmot sentencing, *Leamington Spa Courier*, 8 January 1831, p. 3; 2 July 1831, p. 3; 7 January 1831, p. 1 (two of whom departed Woolwich 15 April for VDL), see appendix C; 21 January 1837, p. 2; 14 October 1838, p. 3; 20 October 1838, p. 3.

<sup>169</sup> Tatnall, *A Narrative of Twenty-three years*, Eardley-Wilmot’s introduction, pp. vii–viii.

<sup>170</sup> Tatnall, *A Narrative of Twenty-three years*, from Eardley-Wilmot’s introduction, his emphasis, pp. viii–ix.

<sup>171</sup> *Times*, 25 July 1829, p. 3.

sentenced to fourteen years' transportation.<sup>172</sup> Likewise, when Eardley-Wilmot found three males guilty of stealing five tame rabbits, he ordered the two with previous convictions to fourteen years' transportation, while the other one was sent to the House of Correction for six months.<sup>173</sup>

As illustrated, Eardley-Wilmot split the sentences of those guilty of the same crime depending on their criminal records. Yet, the reasons for the sentences he imposed were not always obvious. Nineteen year-old Job Constable was convicted of stealing a drill, a scraper and various articles, the property of his master. The prosecutor offered to re-employ Constable if Eardley-Wilmot ordered a lenient punishment, to which, Eardley-Wilmot asked why he was brought before the court. Then, despite telling the prosecutor it was a mistake to suppose that Constable would be improved by being sent to gaol, Eardley-Wilmot sentenced him to nine months' imprisonment with hard labour.<sup>174</sup> This was in the aftermath of the agricultural riots, when severity might be expected.

Despite his background as a landowner, no evidence has been located to indicate this influenced Eardley-Wilmot's attitude in sentencing, which was typically harsh. He ordered John Hunt and William Wilkes to ten years' transportation when he found them guilty of killing a lamb at Coleshill, the property of John Piper, with 'intent to steal the carcass'.<sup>175</sup> Joseph Smallwood was sent to the House of Correction for one year after being found guilty of stealing fowls, while in 1838 John Ashmore was ordered to seven years' transportation for stealing one live tame rabbit, one cock fowl, five hen fowls, five pullet fowls, one duck and one bag.<sup>176</sup>

Convicted females were not exempt from transportation. In July 1830 Eardley-Wilmot ordered Emma Crisp to seven years' transportation. Crisp, whose previous conviction for felony was proved, was found guilty of having stolen, with George White, a shoulder of mutton, the property of William Gardener of Birmingham.<sup>177</sup> Crisp, who arrived at Hobart

<sup>172</sup> *Leamington Spa Courier*, 8 January 1831, p. 3

<sup>173</sup> Samuel James (13) and John Baker (18) were transported and Benjamin Ryland to House of Correction. William Perks (20) was convicted of stealing a pig's head from a butcher. Perks said a dog stole the head, but the jury found no marks of a dog's teeth on the head. Perks sentenced to one month with a private whipping on one of his last three prison days, *Leamington Spa Courier*, 8 January 1831, p. 3.

<sup>174</sup> *Leamington Spa Courier*, 8 January 1831, p. 3.

<sup>175</sup> *Leamington Spa Courier*, 6 January 1838, p. 1; for more examples see Appendix C.

<sup>176</sup> *Leamington Spa Courier*, 17 July 1830, p. 1, 20 October 1838, p. 3.

<sup>177</sup> *Leamington Spa Courier*, 17 July 1830, p. 1; see Appendix C for details of sentences.



Town on 9 May 1831 on the *America*, was sent to the Crime Class at the Cascades Female House of Correction at least three times for ‘absconding from her service’.<sup>178</sup>

### **Institutional treatment of juveniles**

British ‘public’ schools offered classical education for boys, and Eardley-Wilmot’s beliefs in juvenile education and rehabilitation were probably influenced by his schooling at Harrow. His thinking was typical of the Enlightenment, or Age of Reason, in which ideas of human dignity and worth were formulated. Philosophers concentrated on the advancement of knowledge, and argued that ‘experience and experiment, not a *priori* reason’, were the keys to true knowledge.<sup>179</sup> Their efforts may explain why so many scientific institutes, including the Royal Society, were founded during this time.

The Warwick County Asylum was established in 1818 at Stretton-on-Dunsmore for the reclamation of juvenile delinquents. Warwick was, according to Eardley-Wilmot in 1828, the only county where an ‘institution of this most benevolent nature’ had been founded. The asylum, supported by voluntary contributions, was under the direction of a committee of magistrates, and the building, which resembled a farm, appears to have been purpose built. The Honorary Secretary of the institution was the local vicar, and the Master, who lived in with his family, with his wife acting as Matron, effectively ran the institution until 1856 when it closed due to financial difficulties.<sup>180</sup>

The Asylum, the first such reformatory in the United Kingdom outside London, was largely inspired by the pioneering reforms of Esther Tatnall, while a ‘prime mover’ was the chaplain of Warwick Gaol, the Reverend Coker Adams, curate of Shilton and member of the board of visiting magistrates. After the establishment of the asylum, it received teenage boys in trouble with the law (or in danger of being so), who were thought capable of reformation. They were sent for two years to learn tailoring or shoemaking. The asylum was less expensive than a prison, and the boys re-offended less often than prisoners, though it might be argued the asylum took more promising boys in the first place.<sup>181</sup> Should a young offender have no

<sup>178</sup> TAHO *Tasmanian Convict Records* [www.archives.tas.gov.au/database](http://www.archives.tas.gov.au/database) CON 40/1/1 convict no 17479 image 320/380; The *America* left the Downs 6 January 1831 with 189 female convicts, three of whom died on the voyage, see Charles Bateson, *The Convict Ships 1787–1868* (Sydney, 1988), pp. 360–61, p. 387.

<sup>179</sup> Roy Porter, *The Enlightenment* (Hampshire, 1990), p. 3 with emphasis in original.

<sup>180</sup> Eardley-Wilmot, *A Letter to the Magistrates of England* (1828), p. 12; In April 1843 the asylum received £100 which had been bequeathed in the will of the late Mr John Williams of Denby Villa, Leamington. Also during April, Mr Baron Gurney donated £20 see *Leamington Spa Courier*, 8 April 1843, p. 3.

<sup>181</sup> Anne Langley, *Warwick County Asylum: The first Reformatory outside London*. (Warwickshire, 2006), p. 2. Some asylum boys re-offended. One was George Wolfe, later transported to VDL, see letter of Rev H T

family or employer, rather than commit him to prison, the Birmingham magistrates had the option of sending him to the asylum.<sup>182</sup> The experiment to ‘reform’ the boys was not always successful, but at least a ‘quarter came out perfectly reformed’. Typical of his reformist nature, Eardley-Wilmot thought the system should be extended to allow the magistrates, in the case of young offenders, to ‘overlook the felony and send them to similar asylums’.<sup>183</sup>

In 1834 the success of religious instruction in this process was recognised when thirteen boys from the asylum were admitted to the ‘rite of Confirmation at Rugby by the Bishop of the Diocese’.<sup>184</sup> During the first ten years eighty-one boys were discharged, of whom thirty-nine had been ‘permanently reformed’, twenty-one had been ‘since tried’ and sixteen remained. Eardley-Wilmot compared the expense of sentencing juveniles to the asylum with that of gaol. In 1828 the annual cost of each boy in the asylum was £16 7s 7d. The average prison term was six months, and adding £12 for the expense of each prosecution meant imprisonment cost £16 11s 0d for six months.<sup>185</sup> This indicates the success of Eardley-Wilmot’s belief in the remedies of education, religion and training.

In late 1837, in referring to William Williams, who attempted to poison his wife, Eardley-Wilmot disclosed he was satisfied with the substitution of a minor punishment in place of the death sentence in this and ‘a great many cases’. At the time there were 229 prisoners in the county gaol and 202 in the House of Correction.<sup>186</sup> Two years later numbers had reduced to 138 and 215. ‘Constant employment at needle-work’ had been provided for the ‘untried female prisoners’, and in the asylum seventeen boys were in the ‘course of education and instruction in different trades’.<sup>187</sup> By January 1840 numbers had increased, the gaol held 230 prisoners with 242 in the House of Correction, and three years later the gaol held 132 males and 49 females, and there were 210 in the House of Correction and 68 in Coventry Gaol.<sup>188</sup>

Other institutions pursued similar ideologies to the Warwick County Asylum. It appears that ‘Houses for the Reception of Insane Youths’ in Warwickshire were managed by ministers of

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Powell (1827) *A Memoir of the Warwick County Asylum*, Rivington, London (Birmingham Library D/5 L97 10284) cited in Langley, *Warwick County Asylum*, p. 7.

<sup>182</sup> *House of Commons PP 1828, Volume VI*, evidence to ‘Select Committee’, 18 March 1828, p. 445.

<sup>183</sup> *Hansard Parliamentary Debates Third Series Volume XLII* (London, 1838), cols. 609–10.

<sup>184</sup> *Leamington Spa Courier*, 19 July 1834, p. 1, the institution is described as the ‘Asylum for reformation of juvenile offenders’.

<sup>185</sup> Eardley-Wilmot, *A Letter to the Magistrates of England* (1828), p. 12.

<sup>186</sup> *Leamington Spa Courier*, 21 October 1837, p. 1.

<sup>187</sup> *Leamington Spa Courier*, 19 October 1839, p. 4.

<sup>188</sup> Keeper of the Prisons Quarterly Report, see *Leamington Spa Courier*, 8 April 1843, p. 3.

religion and surgeons.<sup>189</sup> One problem was the failure of state legislation, while the Act of 1800 providing for the custody of criminals found insane was not enforced, and inmates were inappropriately confined under ‘disgusting’ conditions.<sup>190</sup> Esther Tatnall recounted the situation for unskilled females. In 1815 mothers of ‘large families were as ignorant of needlework as the young’, the mothers acknowledging ‘they never used a needle’. When they had money they bought ready-made clothes, but when ‘resources failed’, they turned to ‘unlawful methods of supplying their necessities’. This was, Mrs Tatnall believed, the reason for the great increase in female prisoners in subsequent years.<sup>191</sup>

An event of particular future relevance to Van Diemen’s Land was the formation of the ‘national penitentiary for juveniles’ at Parkhurst which opened in 1838 when Robert Woolcombe took 102 boys to the Isle of Wight and became its first governor.<sup>192</sup> Originally built as a military hospital in 1838 a Bill was passed ordering the transformation of Parkhurst into a prison for re-offending youths awaiting transportation to Australia.<sup>193</sup> At Parkhurst the initial treatment was based on spiritual and reformist theories adapted to the age of the youths. Young criminals were separated for four months, although ‘little boys’ were excused from separation; instead, they were included in the junior group. The prison, which accommodated 500, was divided into wards for the older and younger age groups, each being further divided into three sub-classes. The majority of boys were aged between thirteen and eighteen, although in 1845 two inmates were younger than ten.<sup>194</sup> In London alone, each year 3,000 boys were tried, and in England the number exceeded 11,000. Consequently, in 1838 Eardley-Wilmot realised that to build a gaol to hold only 400 or 500 boys was ‘useless’.<sup>195</sup>

At Parkhurst, one of the inducements to correct behaviour and attitude was the prospect of improved conditions, such as a better diet, but also early release. During the first fifteen years this was where boys served the reformatory phase of their transportation sentence. If they behaved appropriately, they would be released as apprentices to colonial families, and later,

<sup>189</sup> *Leamington Spa Courier*, 19 October 1839, p. 4. Licence renewals were granted to surgeons T J P Burman and Samuel Brown of Henley-in-Arden and Mrs Mary Gibbs of Wootton. Reverends P S Ward, J Ellis, P Palmer and J B Freer Esq. and Dr Staunton were re-appointed visitors. Surviving records do not indicate if Eardley-Wilmot sentenced anyone to this institution.

<sup>190</sup> Macnab, ‘Aspects of the History of Crime in England and Wales between 1805–1860’, p. 17.

<sup>191</sup> Tatnall, *A Narrative of Twenty-three years’ superintendence*, pp. 13–14. Mr Tatnall was Governor 1814–26, and died 1830, *Leamington Spa Courier*, 21 May 1836, p. 2.

<sup>192</sup> Convicts to Australia: Parkhurst Boys 1842–1862 [<http://members.iinet.net.au/~perthdps/conviccts/park.html>]; Convicts sent to New Zealand: The Boys from Parkhurst Prison [<http://homepages.ihug.co.nz>].

<sup>193</sup> Macnab, ‘Aspects of the History of Crime in England and Wales between 1805–1860’, p. 17.

<sup>194</sup> Parkhurst Papers for 1845, *PP*, 1846, vol xx, p. 4 and *PP* 1847–48 vol xxxiv, p. 3 cited in W D Forsyth, *The Reform of Prisoners 1830–1900* (New York, 1987), p. 125.

<sup>195</sup> *Leamington Spa Courier*, 7 July 1838, p. 4.

on a ticket-of-leave in eastern or Western Australia, Van Diemen's Land or New Zealand. The assumption was that the boys had been reformed at Parkhurst. Between 1842 and 1853, 1,500 boys were sent from Parkhurst to the colonies, while some of the younger prisoners were released in England under the control of the Philanthropic Society, which, in the early 1850s sought to arrange apprenticeships in the colonies. If it was deemed that boys had strong prospects of success in Britain, they were released into the care of friends and relatives.<sup>196</sup> As will be discussed in chapter six, of the 527 boys sent to Van Diemen's Land, most went to Point Puer, 125 during Eardley-Wilmot's administration.<sup>197</sup> The reformer Mary Carpenter condemned the harshness of penalties applying to children at Parkhurst, and launched an attack against the prison as part of her promotion of reformatory schools. Even so, Parkhurst had been designed as a reformatory prison for young men and was not intended to be regarded as a school or non-penal institution.<sup>198</sup>

### **Reform of young offenders**

The situation of juvenile offenders was a popular topic in the late 1830s, and in the House of Commons in 1838 Sir John Russell moved to bring in a Bill for establishing a prison for juvenile offenders.<sup>199</sup> Eardley-Wilmot agreed with Russell's motive, although he thought it unnecessary to erect more buildings for the purpose. Instead, he recommended that 'summary conviction' and 'summary punishment' be tried on young offenders, and explained that at least a quarter of the boys charged with offences and sent to the Warwick Asylum left 'perfectly reformed'.<sup>200</sup> Sir Robert Peel thought contamination occurred before trial, and the best way to treat the majority was to rapidly pass them to an organisation which would save them from the publicity of trial and gaol.<sup>201</sup>

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<sup>196</sup> Forsyth, *The Reform of Prisoners 1830–1900*, pp. 126–27; At this time William Crawford, Joshua Jebb, J P Kay, Lord Yarborough were official Parkhurst visitors, Rena Lohan, 'The Treatment of Women sentenced to Transportation and Penal Servitude, 1790–1898', M.Litt. thesis, University of Dublin 1989, p. 112.

<sup>197</sup> P. Buddee, *Fate of the Artful Dodger: Parkhurst Boys Transported to Australia and New Zealand 1842–1852* (Perth, 1984), Table 5, p. 164 and Table 6, p. 165; Forsyth, *The Reform of Prisoners 1830–1900*, pp. 125–26.

<sup>198</sup> Forsyth, *The Reform of Prisoners 1830–1900*, p. 127; Harriet Warm Schupf, 'Single Women and Social Reform in Mid-Nineteenth Century England: The Case of Mary Carpenter', *Victorian Studies* 18:3 (March 1974), pp. 301–17.

<sup>199</sup> In 1834 George Arthur founded a boys' establishment at Point Puer with the aim of avoiding 'contamination' in Hobart Town, see A G L Shaw, *Convicts and the Colonies: A Study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (London, 1966), p. 244.

<sup>200</sup> *Hansard Third Series XLII* (1838), cols 609–10.

<sup>201</sup> *Hansard Third Series XLII* (1838), cols 611–14.

Russell agreed with the idea of confinement in an asylum if followed by emigration or removal to a non-penal colony.<sup>202</sup> There were settlers in the colonies willing to take such apprentices, but he also issued a warning — the number of offenders would need to be limited so other colonists would not object to the idea.<sup>203</sup> Pertinent comments on Russell's proposed Bill were made by Sergeant John Mirehouse. Under the *Offences against the person* law those summarily convicted of common assault were liable to a fine of £5 or were committed to the House of Correction for a term not exceeding two months.<sup>204</sup> Russell's Bill proposed that two justices would be able to convict a defendant younger than sixteen years-old and commit him to the common gaol or the House of Correction for six months with hard labour. They would also be able to sentence a convicted juvenile to be privately whipped once. To Mirehouse, the only hope of preventing crime was to find its cause, but there would be no progress while those who led and directed the public remained silent.<sup>205</sup>

It is noteworthy, that influential men agreed with the omission of certain formalities usually required by law to enable minor offences by young offenders to be dealt with promptly as bad behaviour, and not as a crime. It was thought magistrates should provide punishments appropriate to the child's age and avoid a public trial and possible imprisonment. In February 1840 Eardley-Wilmot introduced the Summary Jurisdiction Bill which placed no variation of sentence for the amount of property stolen.<sup>206</sup> It dealt with the age of the parties so that in cases of larceny, where the accused was younger than sixteen, he might be dealt with immediately before a magistrate who would be given moral authority (similar to a master over his apprentice or a father over his son), to prevent the accused being sent for trial and branded a criminal. In support of his Bill, Eardley-Wilmot referred to the situation in France. When young boys were brought to trial, if satisfactory evidence was given that they had not reached the age of legal responsibility, they were acquitted.<sup>207</sup> *The Leamington Spa Courier* 'loudly' protested against Eardley-Wilmot's 'experiment in legislation'. He had 'lost sight' of the

<sup>202</sup> In 1845 Eardley-Wilmot echoed Russell's sentiments by pleading that juvenile prisoners be segregated from the influence of adult prisoners, see CO280/184 (AJCP 536) Eardley-Wilmot to Stanley (No. 164) 25 October 1845, pp. 82–83.

<sup>203</sup> *Hansard Third Series XLII* (1838), cols 611–13.

<sup>204</sup> J Mirehouse, *Crime and its Causes: with observations on Sir Eardley Wilmot's Bill, authorizing the summary conviction of juvenile offenders in certain cases of larceny and misdemeanour* (London, 1840), p. 9; 9 Geo. IV. C. 31, s. 27, 29 (27 June 1828) 'An Act for consolidating and amending the Statutes in England relative to offences against the person', *The Statutes of the United Kingdom of Great Britain and Ireland. 9 George IV 1828*. Volume 68 (London, 1828), pp. 107, 109.

<sup>205</sup> Mirehouse, *Crime and its Causes*, pp. 9–10.

<sup>206</sup> *Leamington Spa Courier*, 8 February 1840, p. 4. On 16 January he gave notice that in a fortnight he would move for leave to bring in a Bill authorising the summary conviction of juvenile offenders before magistrates, and a Bill to authorise the Masters of Free Grammar Schools to enlarge the foundations and extend the system of education under certain restrictions, see *Leamington Spa Courier*, 18 January 1840, p. 3.

<sup>207</sup> *Times*, 27 February 1840, p. 4.

value of impartial justice. The jurisdiction of magistrates had, according to the *Spa*, already been increased by ‘imperceptible degrees’ to an extent which should not be enlarged.<sup>208</sup> The passage of his Bill was unsuccessful once it reached the House of Lords. The main objections were that offenders would be tried in the absence of the public, the press and the ‘salutary check of the bar, and it was not stated how ‘how long’, with ‘what instrument, or at whose discretion whipping was to be ‘inflicted’. Yet, some members did admit that Eardley-Wilmot’s object was to provide, after ‘conviction’, for ‘improvement and reform’.<sup>209</sup>

This chapter has analysed Eardley-Wilmot’s influential family background, his patronage, his understanding of the legal system, his experience and his writings. These were suitable qualifications for appointment to a convict colony where some of the criminals he ordered to transportation were sent. Concurrently in Britain, assisted by industrialisation and urbanisation, easier communication and a cheaper press, the basis for both political and public debate had much expanded. All these developments offered new opportunities for political activity to the increasingly politically-sensitive nation. His endeavours to end all forms of slavery (as with juvenile crime and improvements in conditions for the agricultural labourer) was a commitment to which Eardley-Wilmot was dedicated, even at the cost of serious clashes with Sir Robert Peel, Lord Stanley and Sir James Graham.

Arguments over religion and Irish affairs led to the resignation of four Cabinet ministers, including Stanley in 1834. His Majesty King William IV then dismissed the government, claiming it too weak to continue as a viable administration.<sup>210</sup> Peel was appointed Prime Minister for a brief period until a new election was called, but, as will be disclosed in the next chapter, Peel’s appointment did not please Eardley-Wilmot who, by this time, was a favourite with the anti-slavery reformers.

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<sup>208</sup> *Leamington Spa Courier*, 28 March 1840, p. 3.

<sup>209</sup> *Hansard Third Series Vol LIV*, cols 656–62; *Hansard Third Series Vol LV*, cols 767–68; *Times*, 27 May 1840, p. 3 and 10 August 1840, p. 4.

<sup>210</sup> *Leamington Spa Courier*, 17 January 1835, p. 3; Norman McCord, *The Short Oxford History of the Modern World: British History 1815–1906* (Oxford, 1991), pp. 140–41.

## Chapter Two

### Prelude to Van Diemen's Land: House of Commons, slavery and financial insecurity

Chapter one concentrated on John Eardley Eardley-Wilmot's influential family background and associated patronage, his experience as a magistrate, his publications, and his experience in legal and prison reforms, which were suitable qualifications for appointment to Van Diemen's Land. This chapter will consider another phase in his life — his political experience and anti-slavery activity prior to appointment.

Following parliamentary reform in 1832, Eardley-Wilmot was elected a member for Warwickshire's Northern Division in the House of Commons, where he remained until his departure for Van Diemen's Land in 1843. In the House he presented many petitions and spoke on his most passionate subjects, in particular, his determination to end apprenticeship of slaves in British colonies, for which he received much publicity in his home county of Warwickshire.<sup>1</sup> He also continued his interest in agriculture, raising the subject of the distress caused by the agricultural depression and increasing unemployment in industries competing with overseas manufactures. A little known aspect of his personal life, his alleged financial insecurity, and his repeated requests for employment will also be examined in this chapter.

An economic depression in Britain in 1815 which followed the war with France, brought demands for radical social reform, and for much of the eighteenth and nineteenth centuries the movement for parliamentary reform was one of agitation. The 1830 elections, at which Earl Grey led a Whig government into office, marked a return to denominational politics. The vast majority of Anglicans voted for the Government, while dissenters supported the opposition. The ecclesiastical legislation of 1828–29 had undermined the logical basis of Anglican

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<sup>1</sup> The sources for the history of slavery are vast, and include Hugh Thomas, *The Slave Trade: The History of the Atlantic Slave Trade 1440–1870* (London, 2006); Thomas' 'Abolition and Anti-Slavery: Britain', in Seymour Drescher and Stanley L Engerman (eds), *A Historical Guide to World Slavery* (Oxford, 1988), pp. 10–15 which is a useful synopsis of the anti-slavery debate; Christine Bolt and Seymour Drescher (ed), *Anti-Slavery, religion, and reform: essays in memory of Roger Anstey* (England, 1980); James Walvin (ed), *Slavery and British society 1776–1846* (London, 1982) and Howard Temperley's *British Antislavery 1833–1870* (London, 1972); Although of less relevance to this study, Diana Paton, in *No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780–1870* (Durham and London, 2004) pays particular attention to gender as do several of the authors of articles in Pamela Scully and Diana Paton (eds), *Gender and Slave Emancipation in the Atlantic World* (Durham and London, 2005).

privilege by granting suffrage to Roman Catholics.<sup>2</sup> The new Government soon began pushing a measure through Parliament to modernise the electoral system. The House of Commons, which itself had been subject to reformist pressure, was part of the rapid social change of the period. Prior to the Reform Bill of 1832 the qualification to vote varied greatly. Limited male suffrage was variously awarded to freemen, freeholders and in some instances to every male householder, while the ownership of freehold land rentable at £2 a year for men over the age of twenty-one was required. Voting took place at hustings (public platforms) where contestants were nominated by patrons.<sup>3</sup>

The views of Irish Catholics and English Protestants could not be reconciled. Corruption occurred among the lower classes of voters, and inadequate representation of the larger manufacturing and commercial towns, and the expense of elections and the unequal and inequitable distribution of voting powers between the middle and lower classes made bribery and intimidation of voters possible. Each county and borough returned two members, some represented rotten boroughs — towns that had become greatly reduced in population, while others represented pocket boroughs, where one landowner controlled the votes.<sup>4</sup>

Public concern over the need for Parliamentary reform increased throughout the country, and by March 1831 between 10,000 and 12,000 petitions had been presented to the House of Commons, many signed by 10,000, 15,000 or 20,000 people.<sup>5</sup> At Warwick, money competed with the direct territorial influence of the Earl of Warwick; at Penryn and Falmouth with the influence of government; and at Leicester and Southampton with the restraining influence of a relatively free and incorrupt section of the electorate. Wealthy towns such as Manchester, Birmingham, Leeds and Sheffield which had been small villages, were not boroughs, therefore had no Parliamentary representative.<sup>6</sup> As Woodward suggested, the demand for reform might have been less urgent if, since the seventeenth century, borough representation

<sup>2</sup> John Pound, 'The 1832 Reform Act', in *Family Tree* 26.5 (March 2010), pp. 28–30; Boyd Hilton, *A Mad, Bad, and Dangerous People? England 1783–1846* (Oxford, 2006), pp. 414, 464.

<sup>3</sup> Norman Gash, *Politics in the Age of Peel* (London, 1953), pp. 13–14; Llewellyn L Woodward, *The Age of Reform 1815–1870* (London, 1971), pp. 95–98.

<sup>4</sup> Woodward, *The Age of Reform 1815–1870*, pp. 95–98; There were many boroughs with small electorates such as Malmesbury with 13 votes, Gatton 22, Whitchurch 85, see Jeremy Black, 'The Rotten Borough Commons, 1734–1832', in Smith, and Moore (eds), *The House of Commons*, p. 109.

<sup>5</sup> *Leamington Spa Courier*, 5 March 1831, p. 1; Hilton, *A Mad, Bad, and Dangerous People?* pp. 420–21.

<sup>6</sup> V Cromwell, 'The Victorian Commons, 1832–1884', in R Smith, and J S Moore (eds), *The House of Commons: seven hundred years of British tradition* (London, 1996), pp. 118, 126–27; Gash, *Politics in the Age of Peel*, p. 154. In 1872 secret ballots ended the publication of poll books. John Wilson Croker estimated that of the 658 seats in parliament in 1827, 276 were at the disposal of landed patrons, 203 of whom were under Tory control, and eight peers alone controlled 57, *The Croker Papers* i. 368–72 (ed L H Hennings, 3 vols, 1884) cited in Woodward, *The Age of Reform 1815–1870*, p. 25. Croker was Secretary of the Admiralty 1809–30, see p. 640.



had been adjusted to accommodate changes in the distribution of wealth, interests and population.<sup>7</sup>

Reform meetings were held across the country, and in February 1831, 6,000 people attended an evening meeting at Leeds.<sup>8</sup> Electoral injustice disenfranchised many in large towns with no representation of the sense and feeling of the people in parliament. Even so, one third of the members of the House of Commons, the ‘locust cloud of place-holders’ who lived off the pension were told that discontent would lead to decay of agricultural, commercial and manufacturing interests and to the unparalleled distress of the labouring classes of society.<sup>9</sup>

The Tories, led by the Duke of Wellington, were staunchly Anglican, supported the monarchy, had conservative interests and opposed reform, treating those who dissented from the established Church severely. They thought abolition of parliamentary boroughs would render the House of Commons ‘uncontrollable’ and administration unworkable, and would undermine members’ independence. In contrast, the Whigs tended to represent the ‘interests of the aristocracy, wanted to limit the powers of the monarchy’, and were interested in furthering new industries.<sup>10</sup> Under Charles Grey, they pledged to reform the system. The vested interest of those against reform was considerable, as the wealthiest of the peers could, and did, pay vast sums to buy their right to control elections in a particular place. Even smaller boroughs could be bought on occasions.<sup>11</sup> The basic argument was the need to eliminate corruption and the claim that the existing political system no longer had any worthwhile advantages. Politicians wanted their supporters to be enfranchised, with a division of seats to reflect the distribution of power in the country.<sup>12</sup>

In 1831 Lord John Russell, leader of the House of Commons, introduced a Bill for the reform of Parliament.<sup>13</sup> The Bill passed through the House of Commons, but consent was refused in the House of Lords, and the Bill was rejected. Riots followed, houses were burnt and men

<sup>7</sup> Woodward, *The Age of Reform 1815–1870*, p. 25.

<sup>8</sup> *Leamington Spa Courier*, 19 February 1831, p. 2.

<sup>9</sup> *Leamington Spa Courier*, 5 February 1831, p. 2.

<sup>10</sup> Hilton, *A Mad, Bad, and Dangerous People?* pp. 429–30; John Tooth, *Humane and Heroic; The life and love of a 19<sup>th</sup> century country doctor* (Hobart, 2007), p. 15.

<sup>11</sup> Pound, ‘The 1832 Reform Act’, pp. 28–30; Hilton, *A Mad, Bad, and Dangerous People?* pp. 429–30.

<sup>12</sup> H J Hanham, *The Reformed Electoral System in Great Britain, 1832–1914 Impartially stated, constituting a complete political gazetteer*. Originally published as *Electoral Facts from 1832 to 1853. Impartially stated, constituting a complete political Gazetteer by Charles R Dod, Esq* (London, 1972), p. 11.

<sup>13</sup> The conservative party owes its name and origin to those who proclaimed themselves as conservators of the traditional institutions of the state against the reforming ministry of 1830–32, see E Halévy, *The Triumph of Reform 1830–1841* (London, 1965), p. 66.

killed. In June 1832, when the Representation of the People Act ('First Reform Act') was brought in for the third time, the Duke of Wellington and 100 Tory peers left the House of Lords, and the Bill passed. It was a modest reform of the electoral law. It extended the franchise to those paying annual rent of £10 and more in the towns, with a proportionate increase in the counties and distributed seats on the basis of population. It also abolished some small boroughs and reduced the number of members for others.<sup>14</sup> The passing of the Bill demonstrated that members of the House of Commons were receptive to outside opinion. The significance, though, was largely symbolic, while for the reformers, it opened the door to wider representation. On 7 June 1832 the Reform Bill received Royal assent.<sup>15</sup>

### **House of Commons' candidate**

The Reform Act had minimal immediate effect on the composition of Parliament. The new Parliament met in 1833 with 217 sons of peers or baronets, while the landed interest with 500 in 1833 had about 400 representatives by 1865.<sup>16</sup> In reality, there was no statistical decline of the landed interest, but the power to influence legislation diminished. This occurred because the number of Government days increased, with a resulting reduction in private members' Bills, and the development of a 'club government' resulted in effects especially marked on the conservative side.<sup>17</sup> This climate of reform paved the way for Eardley-Wilmot's entry into politics in 1832.

By the 1830s, accelerating industrialisation and urbanisation, easier communication and a cheaper press, all offered new opportunities for wide-scale political activity to an increasingly politically-sensitive nation.<sup>18</sup> Eardley-Wilmot took advantage of the new technology, and was not the only optimistic electoral candidate who solicited Warwickshire's electors in the local newspaper. He portrayed himself as an 'uncompromising Enemy to extravagance and abuse in the Public Expenditure of the Country'. He claimed he had been active in 'proposing and obtaining Retrenchment and Reform' in 'Public Business', and would 'faithfully, fearlessly, and independently' do his duty if elected to Parliament.<sup>19</sup>

<sup>14</sup> Parliamentary Acts of 1867 and 1884 extended the vote to nearly all adult males. In 1928 women received voting rights, see F W S Craig, *British Parliamentary Election Results 1832–1885* (Dartmouth, 1989), p. 179.

<sup>15</sup> Cromwell, 'The Victorian Commons, 1832–1884', pp. 118–131. Until now there had been no documentation of electors in England and Wales. Therefore, this was one of the first tasks.

<sup>16</sup> Woodward, *The Age of Reform 1850–1870*, p. 92.

<sup>17</sup> Hilton, *A Mad, Bad, and Dangerous People?* pp. 513–15.

<sup>18</sup> Woodward, *The Age of Reform 1815–1870*, p. 25.

<sup>19</sup> *Leamington Spa Courier*, 30 April 1831, p. 2; 27 December 1834, p. 3; 10 January 1835, p. 2.

Warwickshire, with a population of 336,988 in 1832, had extensive manufactories of iron at Birmingham, while manufacturing industries included worsteds, calico, cotton goods, flax and linen yarn, with watches, silk and ribbons at Coventry. The county had two elected members to the House of Commons from 1295 until the Reform Act of 1832 gave it four, two for each division. Including the boroughs, Warwickshire was represented by ten members. The northern division consisted of Hemlingford with the Rugby and Kirby divisions of the hundred of Knightlow, the boundaries containing the large manufacturing towns of Coventry and Birmingham. The southern division was the hundreds of Barlichway and Kingston with the Kenilworth and Southam divisions of the hundred of Knightlow, including the most fertile portions of the country.<sup>20</sup>

Nevertheless, Eardley-Wilmot's situation was not as simple as it appeared. A number of years later he admitted to Sir Robert Peel how his 'domestic comfort & family privacy' had been 'destroyed' because of his wife's 'ill health & religious turn'. This situation had 'induced' him to stand for Parliament in 1832 and 'live 10 months' each year in London.<sup>21</sup> The stress of his domestic life would have been a complication in the forthcoming election, as would 'A Brother Freeholder', who wrote to the press when the news of Eardley-Wilmot's intention to stand became public. According to the long letter, directed to 'BROTHER FREEHOLDERS', 'Sir E Eardley Wilmot' had addressed a county meeting 'without condescending in his first Address to explain his opinions or pledge his votes' on the subject of the 'ministerial measures of Parliamentary Reform!' The correspondent then questioned if Eardley-Wilmot feared a 'manly Declaration of his sentiments on Reform', and if he might offend the 'Aristocrats of the County, whose hostility' he might wish to dispel, or 'whose support he would fain seek? In either case HE ought not to be YOUR Representative.'<sup>22</sup>

Eardley-Wilmot, proposed by acting magistrate Charles Holt Bracebridge, was one of three contestants in the northern division of 3,730 electors. A Conservative, he received 2,237 votes. William Stratford Dugdale, Conservative in the previous parliament, with 1,666 votes,

<sup>20</sup> Hanham (ed), *Charles R Dod Electoral Facts 1832–1853*, pp. 326–28. In the 1874 elections for the southern division Eardley-Wilmot's son (Sir John Eardley Eardley-Wilmot Bart) was elected a conservative with 2801 votes and re-elected 1880 (until 1885) with 2644. He was also a barrister, Recorder Warwick 1852–74, Co Ct Judge Bristol 1854–63 and Marylebone 1863–71, see F W S Craig, *British Electoral Facts 1832–1987* (Dartmouth, 1989), p. 477 and *Burke's Peerage, Baronetage and Knightage Vol 1* (2003), pp. 1259–62.

<sup>21</sup> *The Papers of the Prime Ministers of Great Britain, Series Two. The Peel Papers General Correspondence. The Papers of Sir Robert Peel* (hereafter BL) BL Mss. 40486, Eardley-Wilmot from Athenaeum Club London to Peel, 12 September 1841, pp. 273–74; MPs did not receive payment, see Brock, *The Great Reform Act*, p. 322.

<sup>22</sup> *Leamington Spa Courier*, 30 April 1831, p. 2.

was also elected.<sup>23</sup> The electoral division of Warwickshire was in the diocese of Worcester, a county almost in the centre of England, watered by the Avon with about one third arable land of which one half was pasture and meadow.<sup>24</sup> A letter in *The Times* gave one contemporary voter's retrospective opinion of the results:

When Mr. Dugdale was first elected for the Northern Division of Warwickshire in 1832, he was opposed by a Mr. Hemming, a whole hog Radical, who had just then returned from India, and having to contend against the wealth of this nabob, and the excitement occasioned by the passing of the Reform Bill, he only defeated the Radical by the small majority of 90. Sir Eardley Wilmot, his colleague, then calling himself a Reformer, being at the head of the poll.<sup>25</sup>

There was no contest in forty-eight boroughs in this first election after the passing of the Reform Bill, but the radicals who entered the House of Commons in 1833 soon pressed for a number of legal and social reforms.<sup>26</sup> In the 1820s and 1830s the country had passed acts on factories and on the Metropolitan Police. The Catholic Emancipation Bill, which passed both houses in April 1829 opened all Irish offices of state except those of viceroy and chancellor to Catholics. In addition to the Reform Acts of 1832 (one for England and Wales, one each for Scotland and Ireland), the New Poor Law was also passed. The debate about juvenile crime was one component in a series of debates around the problems of the poor, particularly relating to criminal trials, policing, prisons and industrial schools.<sup>27</sup>

In 1834 the New Poor Law passed through both Houses of Parliament. The Poor Law Commissioners sought to stimulate migration to the mills of Lancashire and Yorkshire and labourers were encouraged to migrate from village to town and county to county, while those who migrated to Van Diemen's Land were later balanced, to a certain extent, by settlers who left for the new colonies of Port Phillip and South Australia.<sup>28</sup>

<sup>23</sup> Craig, *British Parliamentary Election Results 1832–1885*, p. 474; *Times*, 1 January 1833, p. 3; for Dugdale's estate, see Geoffrey Tyack, *Warwickshire Country Houses* (Sussex, 1994), pp. 130–34.

<sup>24</sup> John Britton, James Norris Brewer, John Hodgson, Francis Charles Laird, *The Beauties of England and Wales, or: Delineations, topographical, historical, and descriptive, of each county. Volume XV Wilts Warwick* (London 1814), p. 18.

<sup>25</sup> *Times*, 14 August 1837, p. 5 Letter to the Editor from 'A voter for North Warwickshire'.

<sup>26</sup> Cromwell, 'The Victorian Commons, 1832–1884', pp. 118–31.

<sup>27</sup> Heather Shore, *Artful Dodgers: Youth and crime in early nineteenth-century London* (Suffolk, 1999), p. 14; Gash, *Politics in the Age of Peel*, p. 34; Woodward, *The Age of Reform 1815–1870*, pp. 343–44. The verdict of the 1834 inquiry into Poor Laws was that there should be a new rigour in the treatment of the poor, and consequently in the lives of most of the labouring population who could expect to be dependent at some time in their lives on public assistance, see S G and E O A Checkland (eds), *The Poor Law Report of 1834* (originally published 1834), (Middlesex, 1974), pp. 9–10.

<sup>28</sup> E P Thompson, *The Making of the English Working Class* (London, 1992), pp. 233–346, esp pp. 246–48.

As already detailed in chapter one, one of Eardley-Wilmot's first initiatives was to improve the situation for juveniles who were charged with simple larceny. In April 1833 he asked for leave to bring in a Bill to alter and amend the 1827 Act of Larceny as it related to proceedings in indictments against offenders previously convicted of felony; and as it related to persons younger than seven years-old charged with simple larcenies.<sup>29</sup> In supporting his proposal, he explained how during the previous seven years in the county of Warwick 1,300 individuals younger than eighteen had been tried, half of whom were younger than fifteen.<sup>30</sup>

Eardley-Wilmot was also concerned for residents. In a positive move, on 23 May 1834 he presented a petition from Bedworth and other places 'complaining of the distressed state of persons employed in the riband trade'. English manufacturers were unable to compete with 'foreign' rivals because of taxation and other circumstances, and he had personally observed the 'distress' caused by the terrible state of the agricultural depression. The Bill before the House would provide relief.<sup>31</sup> As will be discussed in chapter nine, to relieve this 'distressed state', he let small allotments at Berkswell Hall.

### Political changes

As already detailed, many changes had taken place. The year 1832 was the beginning of a redefinition of parties, and secessions and regroupings marked the political uneasiness of the first twenty years of the reformed era. This included the defection of Lord Stanley from the Whigs in 1834, and the splitting of the Conservative party in 1846.<sup>32</sup> The foundation for the two-party system was laid by the divisions of politicians into reformers and conservatives over the 1831 Bill. The initial effect of the Reform Act was to weaken party divisions. Radical rejoicing between 1830 and 1832 over the approaching demise of Whigs and Tories as political parties arose mainly from a wish to see them replaced by another form of political government. According to Norman Gash, it was a naïve but popular outlook to expect that a regenerated electorate would return 'good men' to the legislature, and that a 'good legislature'

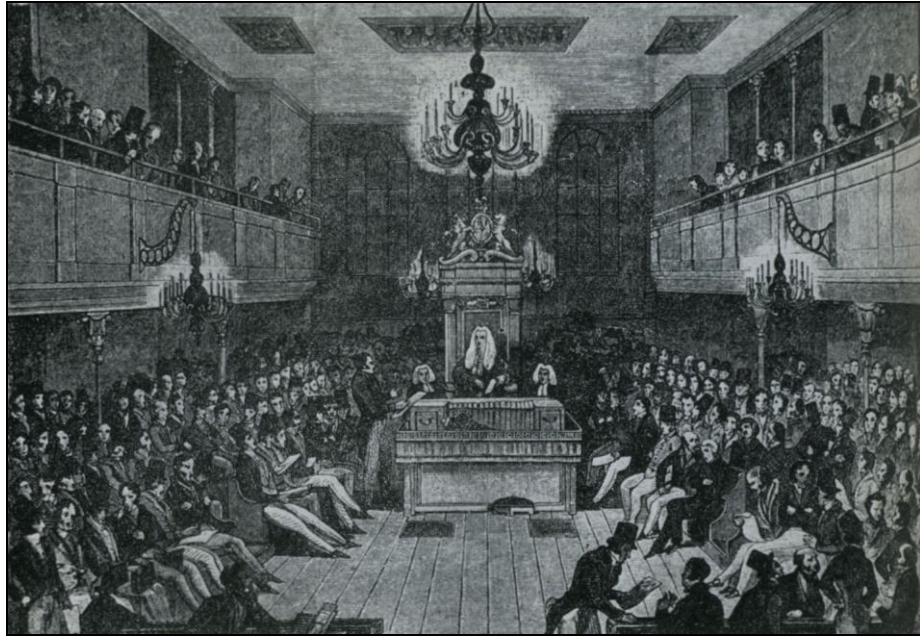
<sup>29</sup> 7<sup>th</sup> and 8<sup>th</sup> of Geo. IV c. 29, An Act for consolidating and amending the Laws in England relative to Larceny and other offences connected therewith [21 June 1827], *The Statutes of the United Kingdom of Great Britain and Ireland 7 & 8 George IV, 1827* Volume 67 (London, 1827), pp. 168–190; See Figure 2.1 for the House of Commons around this time.

<sup>30</sup> *Leamington Spa Courier*, 16 April 1833, p. 3; *Morning Chronicle*, 17 April 1833, p. 2.

<sup>31</sup> *Hansard's Parliamentary Debates Third Series Volume XVIII* (London, 1833), cols 1273–274, 23 May 1834.

<sup>32</sup> This was Edward Geoffrey Stanley who after 1834 became Lord Stanley, and succeeded as 14<sup>th</sup> Earl of Derby in 1851, see Angus Hawkins, *The Forgotten Prime Minister The 14<sup>th</sup> Earl of Derby* (Oxford, 2007), preface; Angus Hawkins, 'Stanley, Edward George Geoffrey Smith, fourteenth earl of Derby (1799–1869)', *ODNB*, May 2009 [<http://www.oxforddnb.com/view/article/26265>].

would instruct the executive on ‘good measures’.<sup>33</sup> The extension of the franchise and a redistribution of seats in 1832 added 217,000 voters to 435,000 in England and Wales, and there would have been more had the register of voters included all those qualified to vote.<sup>34</sup>



**Figure 2.1:** The House of Commons in 1834 by George Hayter.<sup>35</sup>

In 1835 Viscount Melbourne resigned as Prime Minister. He was succeeded by Sir Robert Peel who immediately asked for the dissolution of Parliament which resulted in an election in February 1835.<sup>36</sup> There were 4,779 electors in Warwickshire’s northern division. Eardley-Wilmot headed the poll with 2,600 votes while William Stratford Dugdale with 2,513 votes was also returned.<sup>37</sup> Eardley-Wilmot and his supporters Charles Bracebridge and Captain Lake celebrated the win when 170 ‘gentlemen sat down to dinner’, where the health of the ‘Honourable Baronet was proposed in a long and eloquent speech by the Rev. Mr. Docker’. The newly elected member ‘acknowledged the honour in a feeling and appropriate address’.<sup>38</sup>

<sup>33</sup> Norman Gash, *Reaction and Reconstruction in English Politics 1832–1852* (Oxford, 1965), pp. 122–23, see p. 165 that Liberal Party developed from the Whigs, and Liberal Democrats from merger of Liberal and Social Democratic parties.

<sup>34</sup> Woodward, *The Age of Reform 1815–1870*, p. 88.

<sup>35</sup> S G Checkland, *The Gladstones: A Family Biography 1764–1851* (Cambridge, 1971), facing p. 241, W E Gladstone, Sec of State and future PM is on the right of painting in the second back row under the gallery, the second man on the right of the right-hand pillar. His brother Thomas (1804–89) is on his right.

<sup>36</sup> Sir Robert Peel (1788–1850) held office for a few months in 1834–35, and not again until 1841.

<sup>37</sup> Craig, *British Parliamentary Election Results 1832–1885*, p. 474; The ‘patriotism of the Conservative supporters’ of Dugdale split their votes with Eardley-Wilmot ‘to keep out’ Captain Gregory (1840 votes), *Leamington Spa Courier*, 24 January 1835, p. 1.

<sup>38</sup> *Leamington Spa Courier*, 24 January 1835, p. 1, no more of Docker’s comments were reported.

The fundamental features of political life were disclosed by the 1835 election. Support for the Whigs, who were essentially aristocratic and conservative, declined, and they lost twenty-nine seats. This pattern was repeated in 1837 and 1841.<sup>39</sup> In the June 1837 election which followed the death of King William IV, William Dugdale headed the division's poll with 1,036 votes more than Eardley-Wilmot, while Liberals Sir Gray Skipwith and Charles Bracebridge were unsuccessful.<sup>40</sup> Following the Conservative victory, about 200 freeholders attended a dinner 'on an extensive scale' at Nuneaton to commemorate Eardley-Wilmot's 'glorious triumph'.<sup>41</sup>

A letter to the press provides a possible explanation for Eardley-Wilmot's relegation in the poll: 'Since Mr Dugdale has been in Parliament he has invariably advocated Tory principles, and has been always at his post whenever any of those great questions of spoliation [sic] and revolution were about to be agitated.' According to the correspondent, this was 'not so' with Eardley-Wilmot, and while 'professing Conservatism' for the previous two or three years, he had often been absent from the House. When he was present he 'declined to vote against the Ministry' or had 'actually voted for some of their infamous measures, particularly the one for admitting Dissenters into the Universities'. Eardley-Wilmot's actions offended a 'large portion' of constituents and a great number decided not to support him. Apparently realising the situation, he acknowledged that he:<sup>42</sup>

owed his election to the Conservatives, and that in future he thought we should find but little difference between him and Mr Dugdale. I trust the result will prove that Sir Eardley is determined to support those great principles which have in fact now returned him to Parliament, and that henceforth we shall have no complaints to make of him.<sup>43</sup>

Following a defeat in the House of Commons in 1841, the Prime Minister called another election. Eardley-Wilmot was re-elected unopposed (the publicity he received through his anti-slavery agitation might have helped his re-election), and in July 1841 a 'respected correspondent' to the *Times* was confident Eardley-Wilmot would be elected speaker of the new parliament.<sup>44</sup> Such confidence, however, did not reap rewards. The incumbent, Charles Shaw Lefevre, retained the position which he had held since 27 May 1839.<sup>45</sup> The general

<sup>39</sup> Hanham (ed), *Charles R Dod Electoral Facts 1832–1853* on which this calculation is based; Gash, *Reaction and Reconstruction in English Politics*, pp. 164–65.

<sup>40</sup> Hanham, *Charles R Dod Electoral Facts 1832–1853*, p. 327; Craig, *British Parliamentary Election Results 1832–1885*, p. 474. William IV was succeeded by his niece, Queen Victoria.

<sup>41</sup> *Leamington Spa Courier*, 28 October 1837, p. 3 and 11 November 1837, p. 3.

<sup>42</sup> *Times*, 14 August 1837, p. 5, Letter to the Editor from 'A voter for North Warwickshire'.

<sup>43</sup> *Times*, 14 August 1837, p. 5, Letter to the Editor from 'A voter for North Warwickshire'.

<sup>44</sup> Dugdale also elected unopposed, see Craig, *British Parliamentary Election Results 1832–1885*, pp. 151, 474; *Times*, 22 July 1841, p. 5.

<sup>45</sup> P Laundry, *The Office of Speaker* (London, 1964), p. 462. Charles Manners-Sutton was speaker 1815–33, Lefevre until 21 March 1857 and succeeded by Abercromby.

feeling was in favour of Lefevre, but there was also disagreement, as it was claimed he had shown bias in the choice of election committees. One of Eardley-Wilmot's key rivals was Sir John Tyrell, described by Peel as 'that blockhead Sir John Tyrell'. Clearly, Eardley-Wilmot had not endeared himself to Peel either, as Peel then described him as an 'even greater blockhead who talked of putting himself up for the chair'.<sup>46</sup> This statement made by Peel in response to Eardley-Wilmot's endeavour to be elected speaker is significant, especially when considering his repeated approaches to the Colonial Office for an appointment. Future chapters examine the implications of these requests.

Peel's comment might be an indication that he was not interested in re-organisation if Eardley-Wilmot's comment six years earlier that he could see 'no public grounds for confidence in Peel as a reformer ... [and] the sooner he is expelled from office the better for my country', is any guide.<sup>47</sup> It was a remark not likely to commend him to the future Prime Minister. When Eardley-Wilmot resigned from the House of Commons in 1843 he was replaced by Charles Newdigate Newdegate of the Protestant Unionist Party.<sup>48</sup>

### **Attitudes to slavery**

By the late 1750s slavery was a popular topic for poetry and journalism, an issue which disturbed the educated in both England and North America, but did not directly affect many Britons, as slavery was mainly confined to the colonies. There were several thousand dark-skinned people in Britain, some of whom were treated as slaves, an arrangement which the average Briton accepted until the last quarter of the eighteenth century, and, as shown in figure 2.2, they were occasionally bought and sold. As well as the British — the Spanish, Dutch, Portuguese and French purchased slaves from Africa to meet immediate labour demands created by mining and agriculture.<sup>49</sup>

It was also British practice to ship many convicts to its North American colonies where they were employed on planters' estates. The Piracy Sea Act (1717) gave the person who contracted to transport them, his heirs and successors, and assigns, a 'property and interest in

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<sup>46</sup> N Gash, *Sir Robert Peel. The Life of Sir Robert Peel after 1830* (Great Britain, 1972), p. 267; Following the 1841 election Eardley-Wilmot hoped Peel would offer him 'some occupation ... out of importance & eminence', see BL Mss. 40505, Eardley-Wilmot to Peel, 22 March 1842, pp. 31–32.

<sup>47</sup> *Leamington Spa Courier*, 17 January 1835, p. 3.

<sup>48</sup> Hanham (ed), *Charles R Dod Electoral Facts 1832–1853*, p. 327; *Leamington Spa Courier*, 18 March 1843, p. 1.

<sup>49</sup> Temperley, 'Abolition and Anti-Slavery: Britain', pp. 10, xv.



the service of such offenders' for the period of their sentences.<sup>50</sup> In the English parliament Horace Walpole (1717–97) spoke against the 'horrid traffic' of selling Negroes, 46,000 of whom were sold annually in the English colonies.<sup>51</sup>

**FOR SALE,  
THE THREE FOLLOWING  
SLAVES,**

VIZ.  
HANNIBAL, about 30 Years old, an excellent House Servant, of Good Character.  
WILLIAM, about 35 Years old, a Labourer.  
NANCY, an excellent House Servant and Nurse.  
The MEN belonging to "LEECH'S" Estate, and the WOMAN to Mrs. D. SMIT

**TO BE LET,**  
On the usual conditions of the Hirer finding them in Food, Clo<sup>t</sup> in<sup>s</sup>, and Medical ance,  
THE FOLLOWING

**MALE and FEMALE  
SLAVES,**  
OF GOOD CHARACTER.

ROBERT BAGLEY, about 20 Years old, a good House Servant.  
WILLIAM BAGLEY, about 18 Years old, a Labourer.  
JOHN ARMS, about 18 Years old.  
JACK ANTONIA, about 40 Years old, a Labourer.  
PHILIP, an Excellent Fisherman.  
HARRY, about 27 Years old, a good House Servant.  
LUCY, a Young Woman of good Character, used to House Work and the Nursery.  
ELIZA, an Excellent Washerwoman.  
CLARA, an Excellent Washerwoman.  
FANNY, about 14 Years old, House Servant.  
SARAH, about 14 Years old, House Servant.

**Also for Sale, at Eleven o'Clock,  
Fine Rice, Gram, Paddy, Books, Muslins,  
Needles, Pins, Ribbons, &c. &c.**

**AT ONE O'CLOCK, THAT CELEBRATED ENGLISH HORSE  
BLUCHER,**

ADDISON PRINTER GOVERNMENT OFFICE

**Figure 2.2:** Notice of auction for hiring of slaves 1829.<sup>52</sup>

There were major advances in 1787 with Thomas Clarkson's formation of the Society for the Abolition of the Slave Trade (1787–1807), which integrated with non-Quakers to gather

<sup>50</sup> 4 Geo. 1, c. 11 (1717) (*Piracy: Sea*) 'An Act for the further preventing robbery, burglary, and other felonies, and for the more effectual transportation of felons, and unlawful exporters of wool; and for declaring the law upon some points relating to pirates', *The Statutes at Large from the Twelfth Year of Queen Anne, to the Fifth Year of King George I* Volume XIII (Cambridge, 1764), pp. 471–75.

<sup>51</sup> Hugh Thomas, *The Slave Trade: The History of the Atlantic Slave Trade 1440–1870* (New York, 1997), p. 467 estimated that slave prices in the years 1700–50 were £28–£35 in Virginia, and averaged £40 between 1750–1800. In 1750 in Africa the cost was 500 livres, see Thomas, *The Slave Trade: The History of the Atlantic Slave Trade 1440–1870* (2006), p. 808 Horace Walpole MP (1741–68) was a son of Sir Robert Walpole, the country's first Prime Minister (Whig).

<sup>52</sup> <http://nlj.cdmhost.com/u?p4042document.191> National Library of Jamaica Online Collection, Handbill publisher: Great Britain: Addison Printer Government Office, 18 May 1829.

evidence against slavery.<sup>53</sup> In 1819, as an outcome of ‘the efforts’ of the younger James Stephen (1789–1859),<sup>54</sup> parliament passed the Registry, etc. of colonial slaves Act which tightened registration by requiring that duplicates of the registers be sent to London, and also ordered that the sale or mortgage in England of any slave not entered in a slave register would be invalid.<sup>55</sup> By January 1820 a more uniform system of compulsory slave registration was operating in all British slave colonies.<sup>56</sup>

### Legislation against slavery

The Abolition of the Slave Trade Act passed by the British parliament on 25 March 1807 imposed a fine of £100 for every slave found aboard a British ship, but, it later failed.<sup>57</sup> In 1820 the Colonial Office took the first step by forbidding slavery in the new South African settlement of Albany. In 1821, at the age of sixty-two, William Wilberforce (1759–1833), slavery abolitionist, politician and philanthropist, secured Thomas Buxton as his ‘coadjutor’ (and eventual successor in the House of Commons) for the campaign to free slaves.<sup>58</sup> Buxton, well-connected to a wide range of influential businessmen, politicians and church leaders, married Hannah Gurney in 1807. His brothers-in-law included the wealthy Quaker brothers Sam and Joseph Gurney and Samuel Hoare, and one of his sisters-in-law was Elizabeth Fry.<sup>59</sup>

In 1823 Buxton asked the House of Commons to abolish slavery in British possessions by freeing all children born of slaves. The policy of ‘melioration’ was begun by recommending the West Indian colonies abolish both the flogging of women and the lash in field work. The planters, whose interests were represented in the unreformed parliament, protested against this interference. They alleged the emancipation of slaves would mean a shortage of labour, higher costs of production, and the talk of emancipation would excite Negroes and cause uprising.<sup>60</sup>

<sup>53</sup> Furneaux, *William Wilberforce* pp. 70, 227 cited in R Smandych, “To Soften the Extreme Rigor of Their Bondage”: James Stephen’s Attempt to Reform the Criminal Slave Laws of the West Indies, 1813–1833’, *Law and History Review*, Vol. 23 No. 3 (Fall 2005), p. 544.

<sup>54</sup> Paul Knaplund, *James Stephen, and the British Colonial System 1813–1847* (Canada, 1953), pp. 101, 11, see pp. 95–130 for full details of Stephen’s involvement in slavery.

<sup>55</sup> ‘An Act for establishing a Registry of Colonial Slaves in Great Britain, and for making further Provision with respect to the Removal of Slaves from British Colonies’, 59 Geo. III, c. 120 (12 July 1819), *The Statutes of the United Kingdom of Great Britain and Ireland*, 59 George III. 1819. Volume 59. London, His Majesty’s Statute and Law Printers, 1819, pp. 645–50.

<sup>56</sup> Smandych, “To Soften the Extreme Rigor of Their Bondage”, p. 544.

<sup>57</sup> ‘Private letter of Captain Elliot (1832)’ (Howick Papers) Protector of Slaves in British Guiana, cited in Kenneth N Bell and W P Morrell (eds), *Select Documents on British Colonial Policy 1830–1860* (Oxford, 1928), p. 382.

<sup>58</sup> John Wolffe, ‘Wilberforce, William (1759–1833)’ *ODNB* May 2009 [<http://www.oxforddnb.com/view/29386>]

<sup>59</sup> A F Madden, ‘Attitude of the evangelicals to the empire and imperial problems (1820–1850)’, DPhil thesis, University of Oxford, 1950, p. 13 cited in Zoë Laidlaw, *Colonial connections 1815–45 Patronage, the information revolution and colonial government* (Manchester, 2005), p. 28.

<sup>60</sup> Woodward, *The Age of Reform 1815–1870*, p. 371.

As heir to the ‘Clapham Sect’ leadership, Buxton’s important evangelical contacts included James Stephen senior and Wilberforce, while his network with Stephen and Charles Grant (Lord Glenelg in 1835) gave him personal connections inside the 1830s Colonial Office.<sup>61</sup>

In 1827 Britain declared that participation in the ‘slave trade’ was piracy and punishable by death. It was necessary for Britain to persuade other nations to follow its example, but despite promises from France, Portugal and Spain, and payments from the British taxpayers, trafficking continued. Slaves were smuggled across the Atlantic, traders crammed Negroes into their ships, and the abolitionists in Britain recognised the need to work for the ending of slavery itself.<sup>62</sup> New emancipation societies were formed during the 1830s. Among these were the British and Foreign Society for the Universal Abolition of Negro Slavery and the Slave Trade (1834). In 1839, the Central Negro Emancipation Committee (1837–39), concerned with Negroes in British possessions and organised by Joseph Sturge, became the British and Foreign Anti-Slavery Society.<sup>63</sup>

Despite arguments against slavery, it provided financial benefits for England, for example, the success of manufactured products exported to Portugal depended on Brazilian gold and sugar produced by African slaves.<sup>64</sup> While strengthening their social and economic systems on the principle of civil freedom, the British were also expanding their overseas settlements based on slavery. Hence, as Drescher and Engerman later pointed out, taken broadly, slavery contributed to the growth of large-scale industrial production in England between 1650 and 1850.<sup>65</sup> Such ideas and evidence of the profitability and viability of slavery helped shape interpretations of slave economies.

<sup>61</sup> Sir James Stephen’s diary (1 January–6 September 1846) Cambridge University Miscellaneous Collections M2591 (AJCP M2591), Stephen saw Wilberforce at Athenaeum Club, 21 January 1846, p. 20; 6 May 1846 for contact with Wilberforce family, p. 62; Laidlaw, *Colonial connections 1815–45*, p. 28.

<sup>62</sup> Woodward, *The Age of Reform 1815–1870*, pp. 369–70. The years 1806 and 1807 had been distinguished by two enactments, with which the name of Wilberforce is connected, the Acts for the Suppression of the Slave Trade (46 Geo 3, ch. 52; and 47 Geo 3, ch. 36), see Sir J E E Wilmot Bart., *An Abridgement of Blackstone’s Commentaries on the Laws of England ... from a father to his daughter by Sir John Eardley Eardley-Wilmot, Bart.* Originally published 1822. New edition brought down to the present day, by his son, Sir John Eardley Eardley-Wilmot, Bart. (London, 1853), Letter XXXII, p. 310.

<sup>63</sup> The Society for the Extinction of the Slave Trade and the Civilization of Africa (1839–43) was established by Buxton, Mary Olwyn Blouet, ‘Buxton, Sir Thomas Fowell, first baronet (1786–1845)’, *ODNB*, May 2009 [<http://www.oxforddnb.com/view/4247>]; The Aborigines Protection Society (1839) merged with the British and Foreign Anti-Slavery Society in 1909. The Society for the Mitigation and Gradual Abolition of Slavery was the only major emancipation society to end in the decade, see C Bolt, *The Anti-Slavery movement and Reconstruction: A Study in Anglo-American Co-operation 1833–77* (London, 1969), p. 1.

<sup>64</sup> Immanuel Wallerstein, *The Modern World System* (London, 1974), p. 87.

<sup>65</sup> S Drescher and S L Engerman (eds), *A Historical Guide to World Slavery* (Oxford, 1988), pp. xx–xxi.

Almost immediately after his appointment as Under-Secretary for the Colonies in 1830, Lord Howick (1802–94), the twenty-nine year-old son of Lord Grey (Whig Prime Minister 1830–34) was required to confront the slavery question. He proposed freeing slaves with a loan of £15,000,000 to their owners. He also proposed vagrancy laws to keep Negroes on the estates, plus a tax of £2 per acre on land which they might use for growing food. This set of proposals was found to be unacceptable, satisfying neither Cabinet nor the West Indian interests, including William E Gladstone's father John (1764–1851), a major slave-owner and leading advocate of the planters.<sup>66</sup>

Missionary societies had contact with the Colonial Office through Sir James Stephen, a member of the committee of the Church Missionary Society, and whose father was a close friend of Wilberforce.<sup>67</sup> A non-Quaker, Wilberforce became the Quaker movement's principal parliamentary spokesman, because, as dissenters, Quakers were not eligible to become members of parliament. Quaker Thomas Clarkson's role was to gather information and mobilise support throughout the country.<sup>68</sup> A large response to the Quakers' campaign of regular meetings, which provided the structure for a network of local committees and much of its funding, resulted in about 100 petitions with perhaps 60,000 names. The Quakers' campaigns culminated in the emancipation effort of 1833, with 5,000 petitions and almost 1,500,000 signatories.<sup>69</sup>

Buxton began a parliamentary campaign against colonial slavery, by introducing a motion in the House of Commons for the gradual abolition of slavery, by providing that all children of slaves, born after a certain date, be free.<sup>70</sup> This action would have greatly interested Eardley-Wilmot. The motion was carried with the addition of words to protect planters' interests. The government recommended 'ameliorative reforms', but the proposals needed the support of colonial legislatures. This was not forthcoming. Buxton collected demographic statistics, public meetings were held, and more petitions were presented to Parliament. On 15 April 1831 after the government declined to raise the issue, Buxton introduced his resolution for the

<sup>66</sup> On 2 January 1828 John Gladstone valued his slavery investments in Jamaica at £200,000. On 2 March 1833 he valued those in Demerara and Jamaica at £336,000, and 30 October 1843 at £52,850, see Checkland, *The Gladstones*, p. 269 and Appendix II, pp. 414–15.

<sup>67</sup> Stephen's mother died when he was 7 years-old and four years later his father married Wilberforce's sister see Knaplund, *James Stephen and the British Colonial System 1813–1847*, pp. 11, 101, 132–34.

<sup>68</sup> In 1804 Sir James Stephen, was elected to the committee, Smandych, "To Soften the Extreme Rigor of Their Bondage", pp. 543–44.

<sup>69</sup> Temperley, 'Abolition and Anti-Slavery: Britain', pp. 10–11.

<sup>70</sup> *Hansard Third Series* vol xvii (17) 14 May 1833, speech by Stanley cols 1222–23, see also vol ix (9) cols 268–70. Howick spoke 'very ably' for two hours on colonial slavery, see M R D Foot (ed), *The Gladstone Diaries Volume II, 1833–1839* (Oxford, 1968), 14 May 1833, p. 29.

abolition of slavery. Supported with statistics, he showed a decline in the number of slaves in the West Indies from 800,000 to 700,000 between 1807 and 1830. His initiative was unsuccessful, but he continued to push for abolition.<sup>71</sup>

By 1832 Howick had prepared his first official plan.<sup>72</sup> When younger, Stanley had toured the United States of America where he gained an ‘unfavourable impression’ of slavery. Maybe it was a result of this visit, that on 14 May 1833 he presented ‘a mighty experiment’ to the House of Commons. He considered the ‘practice of slavery was a damning reproach to the ideals of nation’, and slavery, as a legal status, should end in the Empire.<sup>73</sup> Children younger than six years-old were to be freed, and as compensation, planters would be offered a loan of £15,000,000.<sup>74</sup> Howick immediately attacked Stanley’s plan, describing it as a modified form of slavery, and he used Sir John Gladstone’s estates as an example. One of the main factors contributing to the death of slaves on plantations was that men like Gladstone were absent and ignorant of what was done in their names. Between May 1829 and May 1832 on Gladstone’s Demerara estate eighty-one of his 805 slaves died. His estates averaged 516 slaves, and the average weight of sugar produced was 1,009,916 lbs.<sup>75</sup>

John Gladstone drew up a plan bearing his name and that of John Moss, his fellow Demerara estate owner.<sup>76</sup> Outraged by the charges, he urged the government to pay compensation for the emancipation of the slaves; and to also provide a loan of £10,000,000 (part not repayable) to the extent that planters’ losses exceeded the £20,000,000. Thus, John Gladstone wanted the government to underwrite the planters to £30,000,000 in total. This proposal was presented to the House.<sup>77</sup> William E Gladstone, in defending his father against Howick’s charges that lives had been ‘destroyed in calculated fashion’, struggled with the dilemma hanging over his family, but confessed ‘cases of wanton cruelty had occurred’.<sup>78</sup> This admission was no doubt difficult for him because of the evangelical atmosphere of the Gladstone home.<sup>79</sup> William Gladstone had read *Three Months in Jamaica in 1832*, a pamphlet in which Henry Whitely

<sup>71</sup> Blouet, ‘Buxton, Sir Thomas Fowell, first baronet (1786–1845)’, [<http://www.oxforddnb.com/view/4247>].

<sup>72</sup> ‘Memorandum of Lord Howick’, 31 December 1832 (*Howick Papers*) cited in Bell and Morrell, *Select Documents on British Colonial Policy 1830–1860*, pp. 383–89.

<sup>73</sup> Stanley 14<sup>th</sup> Earl of Derby, Edward, *A Journal of a Tour in North America, 1824–1825* (private, 1930), p. 335 cited in Hawkins, *The Forgotten Prime Minister The 14<sup>th</sup> Earl of Derby*, p. 36; Stanley, who is shown in Figure 2.3, was appointed Secretary four months earlier, in March 1833.

<sup>74</sup> Checkland, *The Gladstones*, p. 273.

<sup>75</sup> *Hansard, Third Series* vol xvii (17), 14 May 1833, cols. 1249–252, averaging 1,955 lbs for each slave.

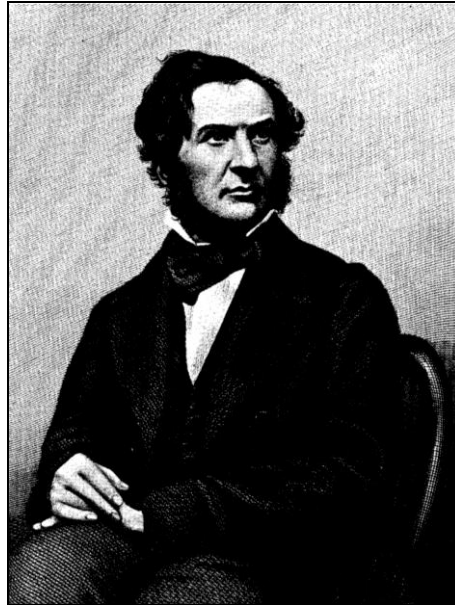
<sup>76</sup> Checkland, *The Gladstones*, pp. 169, 175 for John Moss.

<sup>77</sup> Checkland, *The Gladstones*, p. 274. Gladstone was MP for Newark.

<sup>78</sup> Checkland, *The Gladstones*, pp. 274–75.

<sup>79</sup> H C G (Colin) Matthew, *Gladstone 1809–1874* (Oxford, 1986), pp. 6–7.

presented the anti-flogging argument. Gladstone was, therefore, aware of objections to the punishment of slaves.<sup>80</sup>



**Figure 2.3:** Lord Stanley 14<sup>th</sup> Earl of Derby.<sup>81</sup>

In England in early July 1833 with Wilberforce near death,<sup>82</sup> Sir James Stephen was assigned by newly-appointed Secretary of State, Lord Stanley, to draft the Abolition of Slavery Bill after Stanley ‘gave up the task of drafting’ it.<sup>83</sup> Stanley introduced the Bill to Parliament on 5 July 1833 to abolish slavery within the British Empire, replacing it with an ‘apprenticeship’ system and offering slave-owners compensation.<sup>84</sup> In its original form the Bill provided that from 1 August 1834 slavery, as a legal status, would cease to exist throughout the British colonies and 800,000 slaves, the backbone of the economies of the West Indies and Mauritius, would become free. Children younger than six years-old at the time the Act came into force, or born subsequently, would be free. All other slaves were to be registered as apprenticed labourers and were required to devote three-quarters of their time to the service of their master in return for food and clothing. Their remaining time was free.<sup>85</sup>

<sup>80</sup> Foot, *The Gladstone Diaries Volume II, 1833–1839*, pp. 23–24 confirming he read it on 18 April 1833.

<sup>81</sup> Arnold Wright and Philip Smith, *Parliament Past and Present* (London, 1902), p. 496.

<sup>82</sup> Wilberforce ‘breakfasted’ with Gladstone on Friday 26 April 1833 see Foot, *The Gladstone Diaries Volume II, 1833–1839*, 26 April 1833, p. 25.

<sup>83</sup> A G L Shaw, ‘Stephen, Sir James (1789–1859)’ *ODNB* Jan 2008 [<http://www.oxforddnb.com/view/article/26374>]; According to Stephen’s biographer, he entered the Colonial Office in order to help those in bondage in the British colonies, Knaplund, *James Stephen, and the British Colonial System 1813–1847*, p. 11.

<sup>84</sup> Knaplund, *James Stephen, and the British Colonial System 1813–1847*, p. 98.

<sup>85</sup> Smandych, “To Soften the Extreme Rigor of Their Bondage”, pp. 545–46; *Hansard Third Series* vol xvii (17), House of Commons, 14 May 1833, cols 1226–32 esp col 1230–31.

On 28 August 1833 the Bill for the Abolition of Slavery in British Colonies and compensation for those entitled to the services of slaves received Royal assent, became law, and applied to the Cape Colony, Mauritius and British West Indies (which, after 1815 included Jamaica, Trinidad, Tobago, Barbados, British Leeward, Windward Island and British Guiana).<sup>86</sup> W E Gladstone, referring to slaves becoming free apprentices, described 1 August 1833 as ‘A momentous day in the West Indies’.<sup>87</sup>

Apprenticeships were to last until 1 August 1838 for non-*praedial*s (domestic workers) and 1 August 1840 for *praedial*s (agricultural workers).<sup>88</sup> According to Stanley, Negroes would be subject to corporal punishment if they violated the contracts into which they entered with their masters, with the power of punishment placed in the hands of stipendiary magistrates.<sup>89</sup> While magistrates were encouraged to use flogging as punishment for male apprentices brought before them, the Abolition Act prevented them ordering corporal punishment of women.<sup>90</sup> The compensation to be paid to the slave-owners was undecided, so a blank was left in the 25<sup>th</sup> clause for later insertion of an agreed amount.<sup>91</sup> On 30 July the House voted that the slave-owners be granted £20,000,000.<sup>92</sup>

This development motivated Eardley-Wilmot’s intervention in the debate, and in the House of Commons he immediately moved that this amount be reduced to a loan of £15,000,000.<sup>93</sup> Although having sought the immediate abolition of slavery and freedom for all slaves, he had also supported Stanley’s original Bill, including apprenticeship, as it was an improvement on previous conditions. However, a rift occurred between the two once Stanley asked for the £5,000,000 increase.<sup>94</sup> To Eardley-Wilmot, it was ‘mockery’ to say to a slave that freedom

<sup>86</sup> 3 and 4 Wm. IV, c. 73 (28 August 1833), ‘An Act for the Abolition of Slavery throughout the British Colonies; for promoting the industry of the manumitted Slaves; and for compensating the persons hitherto entitled to the Services of such Slaves’ *The Statutes of the United Kingdom of Great Britain and Ireland, 3 & 4 William IV. 1833* Volume 73 (London, 1833), pp. 666–91; Izhak Gross, ‘Parliament and the Abolition of Negro Apprenticeship 1835–1838’, *The English Historical Review*, Vol. 96 No. 380 (July 1981), p. 560.

<sup>87</sup> Foot, *The Gladstone Diaries Volume II, 1833–1839*, 1 August 1833, p. 121.

<sup>88</sup> Alex Tyrrell, ‘The “Moral Radical Party” and the Anglo-Jamaican campaign for the abolition of the Negro apprenticeship system’, *The English Historical Review*, Vol. 99, No. 392 (July 1984), p. 483.

<sup>89</sup> Stanley in reply to a question from Peel, see *Hansard Third Series* vol xvii (17), 14 May 1833, col 1231.

<sup>90</sup> Paton, *No Bond but the Law*, p. 7.

<sup>91</sup> *Hansard Third Series* vol xvii, 14 May 1833, cols 1226–227. According to Eardley-Wilmot, Stanley asked for a loan of £15,000,000 and then for a grant of £20,000,000 to conciliate the West India interest, see *Leamington Spa Courier*, 3 August 1833, p. 3.

<sup>92</sup> *Hansard Third Series* vol xx, 30 July 1833, cols 129–30; *Leamington Spa Courier*, 3 August 1833, p. 4.

<sup>93</sup> *Hansard Third Series* vol xx, 30 July 1833, cols 129–30; *Hansard Third Series* vol xliii, 28 May 1838, cols. 387–88; *Times*, 30 July 1833, p. 1; *Leamington Spa Courier*, 3 August 1833, p. 4. On 29 July 1833 Eardley-Wilmot gave notice that he would move to insert £15 million in place of £20 million.

<sup>94</sup> *Hansard Third Series* vol xx, cols 129–30, 30 July 1833; *Times*, 26 July 1833, p. 5; *Leamington Spa Courier*, 27 July 1833, p. 3.

was his birthright when he had been ‘cruelly and unjustly’ deprived of his freedom by apprenticeship, and he could not agree to give £20,000,000 for what was ‘another name for slavery’. He realised Stanley’s proposal was altered from a loan of £15,000,000 to a gift of £20,000,000 to secure the West Indian interest. Eardley-Wilmot, in further demonstrating his concern for minority groups, and possibly influenced by his legal training, objected to the payment. He was troubled by the want and distress of thousands of ‘ribbon weavers of Nuneaton, Foleshill, Bedford &c’ who were ‘totally destitute’ and out of work while the ‘foreigner was protected and encouraged’. Also, 1,000 people in Foleshill only had 2d per day to live on. He asked the House to ‘pause’ before adding ‘£5,000,000 to be paid by the ‘oppressed and starving population’.<sup>95</sup> The escalating Industrial Revolution also contributed to the situation, as social cohesion diminished with the departure of village artisans and craftsmen to new industrial cities.

The £20,000,000 had been approved for a ‘real abolition of slavery and not a fictitious one’, and as slavery was to exist for seven years under another name, Eardley-Wilmot was determined to continue with his amendment. He moved that the words ‘fifteen millions’ replace ‘twenty millions’ in the clause.<sup>96</sup> His motion was defeated by eighty-one votes. The Slavery Act, which received Royal assent on 28 August 1833 and applied to the Cape Colony, Mauritius and British West Indies, would commence in four calendar months in the Cape of Good Hope and six in Mauritius.<sup>97</sup> So Buxton proposed the full grant not be paid to those entitled to it until the completion of each apprenticeship, and until all requirements had been ‘complied with’. Stanley opposed this, and after some debate Buxton’s proposal was lost 144 to 93.<sup>98</sup> A rift was clearly developing in the House of Commons between Stanley and Peel, and on the other side, members including Eardley-Wilmot, Buxton and Howick.

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<sup>95</sup> *Leamington Spa Courier*, 3 August 1833, p. 4.

<sup>96</sup> *Hansard Third Series* vol xx, 30 July 1833, cols 129–30; *Leamington Spa Courier*, 3 August 1833, p. 4. Lord Howick, parliamentary under-secretary pressured the government to end slavery. Unsuccessful in his demands he resigned in April 1833 over Stanley’s planned scheme, see Peter Burroughs, ‘Grey, Henry George, third Earl Grey (1802–1894)’ (Howick after 1807) (1802–94)’, *ODNB*, 2004 [<http://www.oxforddnb.com/view/article/11540>].

<sup>97</sup> *Hansard Third Series* vol xlii, 28 May 1838, col 387; Voting 132 for £20,000,000, and 51 against, see *Leamington Spa Courier*, 3 August 1833, p. 3; 3 & 4 Wm. IV, c. 73 (28 August 1833) ‘An Act for the Abolition of Slavery throughout the British Colonies; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves’, *The Statutes of the United Kingdom of Great Britain and Ireland*, vol 73 (London, 1833), pp. 666–91; *Northcroft’s Parliamentary Chronicle, Volume 1* (London, 1833), pp. 607–08.

<sup>98</sup> *Leamington Spa Courier*, 3 August 1833, p. 3.



To Stanley, apprenticeship was part of the ‘compensation’ to be paid to proprietors, and he and the slave owners would not alter their position.<sup>99</sup> On 1 August 1834 the new system was inaugurated, undisturbed by any of the turbulence which critics had forecast for Jamaica, the home of half the apprentices. That evening Buxton and other members of the London Anti-Slavery Society sat down to a ‘hearty feast of good food and self-congratulation’.<sup>100</sup> Their rejoicing was premature. It was claimed Stanley’s Act had been ‘hastily thrown together’, and reports of unchecked abuses soon reached Britain.<sup>101</sup> The Act recognised, but failed to include ‘deep religious’ feelings and did not allow for relevant negotiations. No longer could Buxton (as Wilberforce before him) depend on support from the abolitionists to approve policies offered by Cabinet ministers. So, on 19 June 1835, Buxton moved a motion that ‘a Select Committee be appointed to inquire whether the conditions on which the £20,000,000 were granted for the abolition of slavery have been complied with’. In responding, Lord Grey stated that satisfactory progress had been made in the colonies, and there would be an increase in the number of magistrates to supervise apprenticeship.<sup>102</sup>

It is relevant and no surprise, given Eardley-Wilmot’s strong stance on slavery matters, that antagonism between he and Stanley again surfaced at this time. Peel did not agree with Stanley either. He had ‘serious objections’ to the Bill, and thought slaves should obtain their freedom by completing a certain amount of work, but, as the Bill had been approved by both Houses of Parliament, he said he would vote in favour. Even though the anti-slavery supporters had been defeated earlier in the month, they achieved some success when Stanley agreed to reduce the apprenticeship periods from twelve years to seven years for praedial workers and from seven years to five years for non-praedial workers.<sup>103</sup>

The action of the early 1830s eased, but petitions were still regularly presented to parliament. Eardley-Wilmot was active in this respect, especially on 20 April 1833 when he presented petitions from at least five towns.<sup>104</sup> He continued to attend anti-slavery meetings, and in 1833 was chairman at the Warwickshire and Exeter Hall London, the centre of English missionary

<sup>99</sup> *Hansard Third Series* vol xliii, col 412; on 28 May 1838 Peel said this was Stanley’s 24 July 1833 opinion.

<sup>100</sup> Tyrrell, ‘The “Moral Radical Party’’, pp. 483–84.

<sup>101</sup> W L Burn, *Emancipation and Apprenticeship in the British West Indies* (London, 1937), pp. 117–18, 377 cited in Tyrrell, ‘The “Moral Radical Party’’, p. 484.

<sup>102</sup> Charles Wesley, ‘The Abolition of Negro Apprenticeship in the British Empire’, *The Journal of Negro History*, 23.2 (April 1938), p. 160; John Morley, *The Life of William Ewart Gladstone Volume 1 (1809–1859)* (London, 1903), pp. 145–46.

<sup>103</sup> *Times*, 26 July 1833 p. 3. *Leamington Spa Courier*, 27 July 1833, p. 3.

<sup>104</sup> *Leamington Spa Courier*, 20 April 1833, p. 2, including Hartshill, Atherstone, Chilvers, Coton and Rugby.

activity.<sup>105</sup> After this the movement lost much of its support from men of noble lineage, but Eardley-Wilmot remained active — a figurehead and leader of deputations for a movement that increasingly became the preserve of the middle class.<sup>106</sup>

By June 1835 philanthropist and wealthy Quaker, Joseph Sturge (1793–1859),<sup>107</sup> was certain the new apprenticeship system was slavery under another name, and he started examining the possibility of requiring 350 people to honour their ‘immediatist pledge’. These 350 had attended a meeting at Exeter Hall and signed a memorial to Prime Minister Earl Grey, warning him that, while any form of slavery remained, the anti-slavery movement would pursue ‘all legitimate means’ to achieve its ‘immediate and entire abolition’.<sup>108</sup> Appointed secretary of the Birmingham Anti-Slavery Society, Sturge organised mass meetings against apprenticeship. Within months, the Society, of which Eardley-Wilmot was a supporter, became the leading extremist body in the country and the main initiator of abolitionist public pressure.<sup>109</sup>

### Harshness of ‘apprenticeship’

According to special magistrate John Daughtrey at St Elizabeth, apprenticeship worked well for a time. There were indications of ‘real improvement’, and complaints had decreased. Sir James Carmichael-Smyth, Governor of British Guiana 1833–38, seemed to agree. He thought if apprenticeship was permitted to run its full course it would achieve its objects.<sup>110</sup> Any chance of this soon disappeared. In 1836 Buxton successfully moved for a committee of the House of Commons to inquire into apprenticeship, and he gathered data showing that ex-slaves ‘behaved well under trying circumstances’.<sup>111</sup> Yet, Buxton was placed in an embarrassing situation, as he was unable to deny that the evidence collected by the committee

<sup>105</sup> *Hansard Third Series* vol xliii, 28 May 1838, cols 387–88; *Morning Chronicle*, 24 November 1837, p. 4.

<sup>106</sup> Temperley, *British Anti-Slavery 1833–1870*, pp. 68, 127–28; Frank Upward, ‘The Dismissal of Sir John Eardley-Wilmot Lieutenant-Governor of Van Diemen’s Land 1843–46’, MA thesis, University of Melbourne, 1974, p. 3.

<sup>107</sup> Alex Tyrrell, ‘Sturge, Joseph (1793–1859)’ *ODNB* May 2009 [<http://www.oxforddnb.com/view/article/26746>].

<sup>108</sup> John Rylands University Library of Manchester, Rylands Eng. MSS 741 (89), *Memorial to the Right honourable The Earl Grey, KG*, 18 April 1833 cited in Tyrrell, ‘The “Moral Radical Party”’, p. 484.

<sup>109</sup> H Richard, *Memoirs of Joseph Sturge* (London 1864), pp. 125–26 cited in Gross, ‘Parliament and the Abolition of Negro Apprenticeship 1835–1838’, p. 563.

<sup>110</sup> Daughtrey 30 June 1835, and Despatch from Smyth to Glenelg’ (PP 1836, xlix) in Bell and Morrell, *Select Documents on British Colonial Policy 1830–1860*, pp. 395–401.

<sup>111</sup> Blouet, ‘Buxton, Sir Thomas Fowell, first baronet (1786–1845)’ *ODNB*, May 2009 [<http://www.oxforddnb.com/view/4247>].

tended towards the conclusion that the operation of apprenticeship had gradually improved.<sup>112</sup> As expected, the reaction of most abolitionists to this report was hostile.

During 1836 and 1837 Joseph Sturge and three associates visited six British possessions to compare Antigua with Jamaica and other colonies which had accepted Stanley's scheme. They spoke throughout the country, emphasising the 'horrors' observed in Jamaican prisons and collected some 'shocking instances of cruelty and other materials' to substantiate their claims.<sup>113</sup> Sturge concluded that planters and officials had violated the rights of apprentices, and details in his report, a book, *The West Indies in 1837*,<sup>114</sup> were, no doubt, used by anti-apprenticeship supporters such as Eardley-Wilmot.

In June 1837 a twenty-four page pamphlet by James Williams, an apprentice who arrived in England in September 1827 with Sturge, was published in London and Glasgow. *A Narrative of Events, since the first of August, 1834* was widely circulated as a pamphlet and also in newspapers.<sup>115</sup> The *Narrative* contained extensive descriptions of harsh punishment on Jamaican treadmills, a point emphasised by Sturge. One of the most vivid critiques of the treadmill was an abolitionist engraving showing the treadmill in operation, as shown in figure 2.4, which was circulated individually and bound in later editions. Sturge provided the money for Williams to purchase his freedom and passage to England, and also organised for him to produce the *Narrative* and to return to Jamaica.<sup>116</sup>

Pressure on the Colonial Office intensified during 1837 as the British campaign to end apprenticeship began focusing on prison abuse. Issues raised included apprentices being worked on treadmills with their wrists shackled, whipping, and cutting women's hair.<sup>117</sup> In November a delegation from the Central Negro Emancipation Committee presented a memorial to the government, and Eardley-Wilmot presided at a meeting of British delegates at Exeter Hall.<sup>118</sup> Unwillingness by the government to take action provoked even greater activity, and the abolitionists' plans advanced with momentum. Another meeting held in

<sup>112</sup> Gross, 'Parliament and the Abolition of Negro Apprenticeship 1835–1838', p. 564.

<sup>113</sup> Joseph Sturge to Rev John Clark, Browns Town, 30 May 1837, Sturge Papers, Fenn Collection, Angus Library, Regents Park College, Oxford cited in Paton, *No Bond but the Law*, p. 116; Sturge and Harvey, *The West Indies In 1837*, p. 371 cited in Tyrell, 'The "Moral Radical Party"' pp. 489–90.

<sup>114</sup> Tyrell, 'The "Moral Radical Party"', pp. 489–90.

<sup>115</sup> Diana Paton (ed), James Williams, *A Narrative of Events, since the first of August, 1834 by James Williams, an Apprenticed Labourer in Jamaica* (Durham & London, 2001), p. xiii.

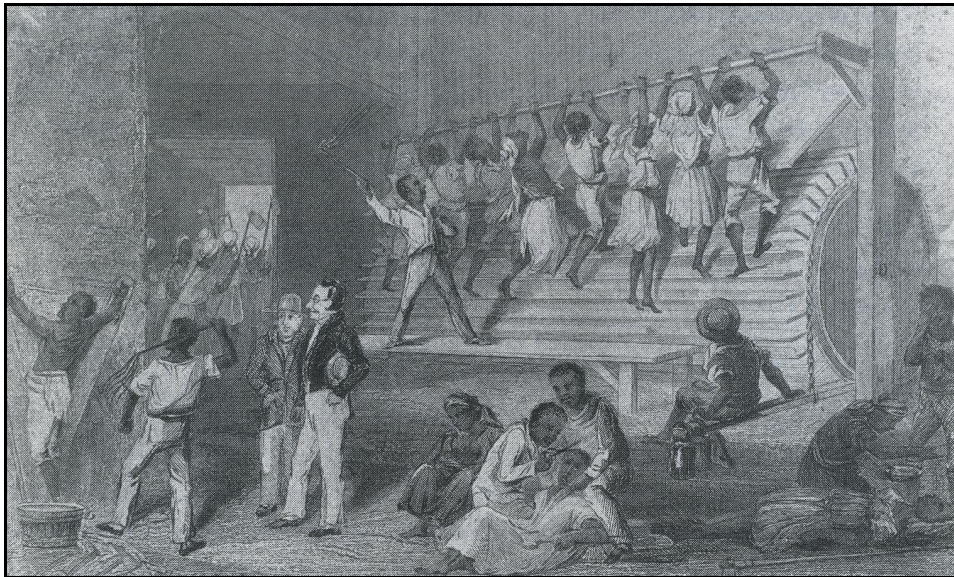
<sup>116</sup> Paton (ed) Williams, *A Narrative of Events, since the first of August, 1834*, pp. xiv–xv, p. 155.

<sup>117</sup> Paton, *No Bond but the Law*, p. 116.

<sup>118</sup> *Times*, 23 November 1837, p. 2; the press did not report Eardley-Wilmot's comments.

March 1838, and depicted in figure 2.5, where Eardley-Wilmot was ‘called to the chair amidst general cheering’, was attended by an estimated 5,000 people, and resulted in a flood of petitions to Parliament.<sup>119</sup>

By 1838 Peel and Stanley were politically united. Stanley had been part of an independent group of some fifty members of parliament, but, when group members abandoned the idea of forming an independent party, Peel united with Stanley’s ‘progressive party’. Peel had built up his party’s fortunes and was supported by Stanley, who was a leading figure at a banquet held on 12 May 1838 showing ‘regard for and admiration’ of Peel. In view of Eardley-Wilmot’s anti-slavery actions it is no surprise he did not attend.<sup>120</sup>



**Figure 2.4:** An Interior view of a Jamaican House of Correction.<sup>121</sup>

According to *The Emancipator*, before Eardley-Wilmot’s 22 May 1838 motion, 3,501 petitions praying for the ‘immediate abolition’ of apprenticeship with signatures ‘exceeding one million!!’ had been presented to the House of Commons.<sup>122</sup> For several days before the

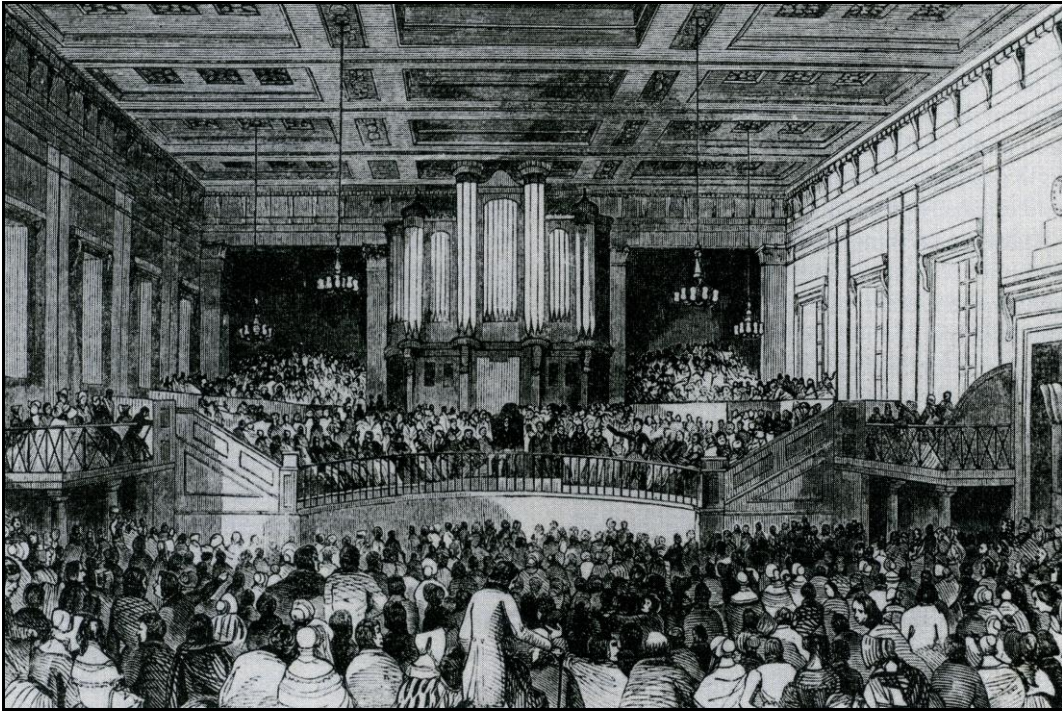
<sup>119</sup> *Morning Chronicle*, 1 August 1838, p. 3; Wesley, ‘The Abolition of Negro Apprenticeship in the British Empire’, pp. 181–82, 189.

<sup>120</sup> Thomas Seccombe, ‘Edward George Geoffrey Smith (Lord Stanley) 1799–1869’, *The compact Edition of the Dictionary of National Biography* (Oxford, 1975) Vols x–xxii, p. 1984 (943) for ‘United with Stanley, Peel might well form and maintain an administration’ and when eventually Stanley’s more independent group (some 50 MPs) abandon their idea of an independent party Peel now unites with this ‘progressive party’ (Stanley’s) and on 1 July 1835 Stanley and others ‘take their seats with the followers of Peel and at the banquet to Peel at the Merchant Tailors’ Hall he figured as one of Peel’s chief Lieutenants’; *Times*, 14 May 1838, p. 5; see *Leamington Spa Courier*, 19 May 1838, p. 4 for a report on the banquet. Gladstone attended, see Foot, *The Gladstone Diaries Volume II, 1833–1839*, p. 370.

<sup>121</sup> Photo from National Library of Jamaica, Kingston, cited in Paton, *No Bond but the Law*, p. 106.

<sup>122</sup> *The Emancipator* (New York) 19 July 1838, p. 47.

apprenticeship system was due for debate, Eardley-Wilmot was part of the action of anti-slavery campaigners in pursuing members of Parliament. Their action intimidated members, and they became very unpopular. Also around this time Eardley-Wilmot was elected president of the Central Negro Committee.<sup>123</sup>



**Figure 2.5:** British anti-slavery meeting at Exeter Hall, London.<sup>124</sup>

### **Abolition of ‘modified slavery’**

It is significant that in the House of Commons in May 1838 Eardley-Wilmot proposed the abolition of the apprenticeship system of contract labour in the West Indies, a system of ‘modified slavery under the guise of liberty’. Though the British Parliament had completed conditions from the 1833 motion and given the promised £20,000,000 to the West Indian proprietors, they had ‘not faithfully performed their part of the contract’, and Eardley-Wilmot called on the House to complete the ‘noble act’ they began and make the Negroes free.<sup>125</sup> In opposition, the argument was that the government had done all in its power to carry out the contract of the 1833 Act; there were only minor violations in its implementation; and no adequate case had been presented against existing working conditions. The House divided

<sup>123</sup> *Hansard Third Series* vol xlii, 30 March 1838, col 256; *Leamington Spa Courier*, 19 May 1838, p. 1; *Times*, 24 May 1838, p. 7; 26 May 1838, p. 7; 19 April 1838, p. 5; Wesley, ‘The Abolition of Negro Apprenticeship in the British Empire’, pp. 181–82.

<sup>124</sup> Temperley, ‘Abolition and Anti-Slavery: Britain’, ‘engraving from *The Illustrated London News*, nineteenth century’, p. 13.

<sup>125</sup> Seven members spoke on the Bill. C Blackett was the only one to speak against.

early while most members were dining. An impulsive result in the poorly-attended house advantaged Eardley-Wilmot, and the government was defeated ninety-six to ninety-three.<sup>126</sup>

The ministers' reaction to their defeat was restrained. It was feared if Eardley-Wilmot's resolution was not instantly repealed, two things would happen. The maintenance of the apprenticeship law 'would be rendered ... in a moral sense unjust and in a parliamentary one impracticable', and in the West Indies the apprentices would regard Eardley-Wilmot's resolution as law and refuse to work for their masters unless coerced.<sup>127</sup> After voting against an immediate end to Negro apprenticeship, Gladstone 'urged as strongly' as he could that Stanley, Peel, Sir George Grey and others revoke Eardley-Wilmot's resolution.<sup>128</sup> A few days later, on 28 May 1838, Grey, Under-Secretary for the Colonies, moved that Eardley-Wilmot's resolution should be repealed; all means should be adopted for securing the Negroes the privileges to which the Slavery Abolition Acts entitled them; and all attention directed to their situation once they had been freed. Such action was 'necessary' because of the 'discreditable conduct' of Ministers 'allowing themselves to be defeated' on Eardley-Wilmot's resolution of 22 May by the absence of their 'own retainers'. Grey's motion was carried 250 to 178.<sup>129</sup> Despite the amended legislation, the colonial legislatures decided apprenticeship was, in fact, unworkable, and it was abolished by 1 August 1838.<sup>130</sup>

The Act 'to amend the Act for the Abolition of Slavery in the British Colonies' which passed in 1838 meant it was unlawful to place any female apprentice on a treadmill or in the chain or penal gang. It was also against the law to punish any female apprentice by whipping, beating or cutting her hair off. After 15 August 1838 it was unlawful, in any colony except Mauritius, to punish any male apprentice labourer by whipping or beating. In Mauritius the law was effective from 15 February 1839.<sup>131</sup>

<sup>126</sup> *Hansard Third Series* vol xliii (43), 22 May 1838, cols 87–126, 149–52; cols 376–433 (2<sup>nd</sup> reading); pp. 430–33 (3<sup>rd</sup> reading); *Times*, 23 May 1838, p. 3.

<sup>127</sup> *The Papers of the Prime Ministers of Great Britain, Series Eight: The Papers of William Ewart Gladstone*. British Library (hereafter BL) BL Mss. 44777, pp. 55–56 and 'Apprenticeship' by W E Gladstone 24 May 1838, both cited in Gross, 'Parliament and the Abolition of Negro Apprenticeship 1835–1838', p. 574.

<sup>128</sup> Foot, *The Gladstone Diaries Volume II, 1833–1839*, 22–24 May 1838, pp. 372–73.

<sup>129</sup> *Hansard Third Series* vol xliii (43), cols 428–34, cols 376–89 for the full speech; *Times*, 29 May 1838, p. 5.

<sup>130</sup> *Hansard Third Series* vol xliii (43), 22 May 1838, col. 118. E L Bulwer MP was concerned they would be turned 'loose on society, thousands and thousands of men absolutely and abruptly made free'.

<sup>131</sup> 1 & 2 Victoria c. 19 s. 18 (11 April 1838) 'An Act to amend the Act for the Abolition of Slavery in the British Colonies', *The Statutes of The United Kingdom of Great Britain and Ireland 1 & 2 Victoria. 1838* Volume 78 (London, 1838), pp. 71–80.

The day of freedom, 1 August 1838, passed without public upheaval in most of the East Indies. News of the passage of the amending Act reached Jamaica in September, a few weeks after apprenticeship had been abolished in the colony.<sup>132</sup> The Jamaican elite united in opposition to the Act, which caused the British Whig government to consider abolishing the Jamaican House of Assembly and organise direct rule from London. The Governor, Sir Lionel Smith, was recalled and replaced by Sir Charles Metcalfe.<sup>133</sup> The Jamaican Assembly denounced the Imperial Government and the English. Finally, the assembly refused to perform its functions though the attempt of the Whigs to suspend the constitution for five years was frustrated by Peel. Meanwhile, work almost ceased on the estates of Jamaica.<sup>134</sup> Lord John Russell and Metcalfe generated an improvement in feeling, but the labour problem in Jamaica and other colonies remained acute. Metcalfe, who, in 1812 prohibited the sale and purchase of slaves in Delhi, realised the difficulty in Jamaica, and admitted immigration might be necessary, though the West Indies might not regain their status as exporters.<sup>135</sup>

The abolition of slavery led to a change in the function of prisons in the West Indies. In a move symbolising this swing, in Jamaica on 1 August 1838 Smith ordered the release of 176 former slaves who were serving prison sentences for offences committed under the slave codes.<sup>136</sup> There was no decline in the use of the penal system, but consolidation occurred around 1840. The pursuit of West Indian prison reform persisted after 1838, prisons received substantial investment and were rebuilt and reorganised. The Kingston penitentiary in Jamaica, with no flogging and no treadmill, was intended to symbolise Jamaica's new status as a 'free' society yet, the penitentiary was built by convicted prisoners.<sup>137</sup>

<sup>132</sup> In June 1838 the Jamaican House of Assembly passed legislation abolishing the apprenticeship system from 1 August 1838. According to Paton, *No Bond but the Law*, p. 118 historians have attributed the early abolition of apprenticeship to a number of factors including: fear that the emancipation of the non-*praedial* apprentices would lead to the violent resistance of *praedial*s who remained as apprentices; a desire on the part of the planters to escape the supervision of stipendiary magistrates and a belief by planters in the growing British campaign.

<sup>133</sup> *Morning Journal*, n.d. reporting meeting of the Kingston Common Council in June 1839, enc in Smith to Normanby no. 153, 1 August 1839, CO137/239 cited in Paton, *No Bond but the Law*, pp. 118–19.

<sup>134</sup> Protest of Assembly of Jamaica (June 1838)' (PP 1839, xxxv), Sir Lionel Smith (Gov of Jamaica) to Glenelg 3 December 1838 (PP 1839, xxxv), 'Resolutions of Parish of Portland, Jamaica' 2 February 1839 (PP 1839, xxxv), both cited in Bell and Morrell, *Select Documents on British Colonial Policy 1830–1860*, pp. 402–09.

<sup>135</sup> Russell to Metcalfe 17 September 1839 (PP 1840, xxxv) and 'Despatch from Russell to Light' 15 February 1840 (PP 1840, xxxiv) cited in Bell and Morrell, *Select Documents on British Colonial Policy 1830–1860*, pp. 410–15; Metcalfe to Bengal Government, 4 September 1812, Bengal Criminal Judicial Consultations cited in D N Panigrahi, *Charles Metcalfe in India: ideas & administration 1806–1835* (Delhi, 1968), p. 14.

<sup>136</sup> CO137/231 Encs in Smith to Glenelg no. 149, 13 August 1838, cited in Paton, *No Bond but the Law*, p. 123.

<sup>137</sup> Paton, *No Bond but the Law*, pp. 123, 193.

Despite advances, anti-slavery agitation continued while slavery remained in other areas of the British Empire.<sup>138</sup> The ten-day long General Anti-Slavery Convention, held in London from 12 June 1840 was attended by about 400 people from the United Kingdom, France and as far as America. Eardley-Wilmot was one of the ‘distinguished’ English members who attended and contributed to discussions where debate centred on means of combating slavery, including the role of the church and approval of free labour. Strong anti-slavery feelings and aristocratic patronage created widespread interest.<sup>139</sup> Resolutions addressed to the British government outlined a ‘mopping up’ campaign against the vestiges of slavery in the Empire, and a series of motions directed attention to the Colonial Secretary about British North America.<sup>140</sup> Eardley-Wilmot seconded the motion which resolved that slave systems existed by ‘disregarding justice’ and extinguishing rights. Slavery was also ‘unchristian’, absurd and disrespectful to ‘mankind’.<sup>141</sup> Exposure given to the convention, publicity of Eardley-Wilmot’s anti-slavery actions and subsequent appeals to government would have exasperated Stanley and Peel, and may have been the impetus for Stanley’s description of him as ‘a muddle brained blockhead’.<sup>142</sup>

The influence of ‘Exeter Hall’ views on West Indian policy declined after 1840, and despite opposition from anti-slavery supporters, in 1842 a Committee of the House of Commons favoured Government supervision of African immigration as the best solution to the planters’ distress. These resolutions were, to some extent, a compromise.<sup>143</sup> The history of the next few years is mainly one of unsuccessful attempts to act on this recommendation, but in 1844, as compensation for the admission to the British market of foreign sugar grown by free labour, the planters were permitted to introduce coolies from India as those in Mauritius had already done. This arrangement continued for some years, and added thousands of men to the labour force.<sup>144</sup> By this time Eardley-Wilmot was no longer active in the anti-slavery movement in Britain — he was Lieutenant-Governor of Van Diemen’s Land.

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<sup>138</sup> Some places where slavery remained: Barbados, Leeward Islands, British Guiana and Grenada, see Bridget Brereton, ‘Family Strategies, Gender, and the Shift to Wage Labor in the British Caribbean’, in Scully and Paton (eds), *Gender and Slave Emancipation in the Atlantic World*, pp. 146–47.

<sup>139</sup> *Emancipator* (New York) 23 July 1840, p. 50; *Morning Chronicle*, 28 July 1840, p. 7.

<sup>140</sup> Douglas H Maynard, ‘The World’s Anti-Slavery Convention of 1840’, *The Mississippi Valley Historical Review*, Vol. 47 No. 3 (December 1960); *Times*, 16 June 1840, p. 5.

<sup>141</sup> *Times*, 16 June 1840, p. 5.

<sup>142</sup> *Peel Papers* BL Mss. 40467, Stanley to Peel n.d. (late 1842?), pp. 315–16.

<sup>143</sup> ‘Resolutions of House of Commons Committee on the West India Colonies’ (PP 1842, xiii), Bell and Morrell, *Select Documents on British Colonial Policy 1830–1860*, pp. 421–423, p. 371.

<sup>144</sup> Bell and Morrell, *Select Documents on British Colonial Policy 1830–1860*, p. 371.



### Financial situation, destitute and idle

In late December 1842 while in London pursuing parliamentary duties, Eardley-Wilmot wrote to Sir Robert Peel from the Athenaeum Club. He reminded Peel how the previous year he had revealed how ‘totally unoccupied’ and ‘isolated’ he felt in London and how he was ‘anxious’ to be employed in a public position. He again ‘most earnestly & respectfully’ applied to Peel on the ‘same subject’:<sup>145</sup>

... in my public life I have performed ... without expectation of reward ... without any promise or expectations of future patronage. ... spent a very large sum of money in these three contested elections ... in addition to all this, twelve children to educate & provide for ... I urge these circumstances as reasons which compel me to apply to you, not only as Prime Minister of the crown, but as a neighbour in the county, & as a generous friend to those who stand in need of assistance ... for what may be held by me with service to the public, equally as with assistance to myself. ... To Lord Stanley, & Sir J Graham, I have mentioned these wishes ... hoping I shall meet with your favor & sympathy.<sup>146</sup>

It was after the Tories gained government in 1841 that Eardley-Wilmot began writing to Peel, Stanley and Sir James Graham begging for patronage.<sup>147</sup> His debts were such, he told Peel, that he was willing to accept any paid position with ‘adequate emoluments, however moderate’; eight of his twelve children were sons and it was his paternal duty to assist them in establishing themselves.<sup>148</sup> He had contested elections at ‘great cost & expense to support constitutional principles’ and spent ‘much more’ than he ‘could afford’ keeping out ‘radical opponents’ from representing the county. Being ‘destitute of occupation’ he was left to face his ‘solitary hours in idleness’.<sup>149</sup>

After his election to the House of Commons in 1841, Eardley-Wilmot confided to Graham and Stanley that he was ‘pressed by money matters’. To ease the situation he hoped to be considered for the vacant position of Chairman of the Ways and Means. His credentials included habits of business, knowledge of law and constant attendance in the House, and he requested they use their ‘interest and assistance’ and ask Peel to appoint him.<sup>150</sup>

<sup>145</sup> *Peel Papers* BL Mss. 40521 Eardley-Wilmot to Peel, 27 December 1842, pp. 133–34; see *Peel Papers* BL Mss. 40486 Eardley-Wilmot to Peel 12 September 1841, pp. 273–74 for his original request.

<sup>146</sup> *Peel Papers* BL Mss. 40521 Eardley-Wilmot to Peel, 27 December 1842, pp. 133–34.

<sup>147</sup> *Peel Papers* BL Mss. 40486 Eardley-Wilmot from the Athenaeum Club, London, to Peel, 12 September 1841, pp. 273–74; BL Mss. 40505, Eardley-Wilmot to Peel, 22 March 1842, pp. 31–33; BL Mss. 40521 Eardley-Wilmot to Peel, 27 December 1842, pp. 133–34.

<sup>148</sup> BL Mss. 40521, Eardley-Wilmot to Peel, 27 December 1842, pp. 133–34. His surviving children were aged between about 16 and 33 years-old, see Appendix A.

<sup>149</sup> BL Mss. 40505, Eardley-Wilmot to Peel, 22 March 1842, pp. 31–32.

<sup>150</sup> BL Mss. 40486, Eardley-Wilmot to Sir J Graham ‘Private’ 30 August 1841, p. 271 from Athenaeum Club which was founded 1824 as a meeting place for men who enjoyed ‘life of the mind’. Peel, Stanley, Russell and Wilberforce were all members <http://www.athenaeumclub.co.uk> (24 April 2007). ‘Ways and Means’ is revenue principally provided by the imposition of taxation to meet national expenditure and to forward the

After conferring with several members in whose judgments he ‘placed reliance’, and finding they ‘unanimously’ gave preference to another applicant, Peel told Eardley-Wilmot that employment was ‘absolutely’ out of his power. He was unable to give ‘any satisfactory assurances’ as it was his ‘painful and invidious duty’ of selecting a few from a numerous body of candidates for office.<sup>151</sup> His ‘uniform rule’ was to postpone the ‘consideration of the qualification of candidates’ until the office itself (particularly if a judicial character) had been ‘constituted’.<sup>152</sup> No appointment was forthcoming for Eardley-Wilmot and he continued his campaign. In letters of a ‘private & domestic nature’ he sought a position which would particularly suit his ‘habits and wishes’, ‘fill’ his time and ‘reconcile’ his ‘private disappointments’.<sup>153</sup>

The positions — justice of the peace, magistrate, sheriff and Member of Parliament which Eardley-Wilmot held were principally unpaid. By 1815 (or earlier) he was a Justice under the Commission of Peace. Justices had to be ‘of the most sufficient knights, esquires and gentlemen of the law’, and needed to own estate within the county of their appointment of not less than £100 a year ‘clear of incumbrances’.<sup>154</sup> As a magistrate for the County of Warwick, it is unlikely he received income, as most posts were honorary. Traditionally, magistrates were assumed to be gentlemen enforcing the law as part of their civic duty on the assumption they had landed estates and did not need paying.<sup>155</sup> In 1832 the only paid magistrates in England and Wales were in London and Manchester where they were necessary to control

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objectives of economic policy. Chairman of the Committee is Deputy Speaker of the House of Commons appointed on a motion tabled at the beginning of each Parliament by the Leader of the House. He presides over the House in the Speaker’s absence, takes over the chair when the House is sitting as a committee of the whole house, and does not vote or involve in party political matters.

<sup>151</sup> BL Mss. 40486, Peel to Eardley Wilmot, 18 September 1841, p. 275. Mr Greene was appointed.

<sup>152</sup> BL Mss. 40505 Peel to Eardley Wilmot, 28 March 1842, pp. 33–34; BL Mss. 40521 Peel to Eardley Wilmot, 28 December 1842, pp. 135–35.

<sup>153</sup> BL Mss. 40486, ‘Private’ 8 August 1841 Eardley-Wilmot to Peel, pp. 59–60; BL Mss. 40486 Eardley-Wilmot to Peel, 12 September 1841, pp. 273–74; BL Mss. 40521 E Eardley Wilmot to Peel, 27 December 1842, pp. 133–34.

<sup>154</sup> 5 Geo II c 18 (1732) (*Justices of the Peace*) ‘An Act for the further qualification of justices of the Peace’ see *The Statutes at Large* (London 1765), vol 16, pp. 292–93. The requirement commenced on 25 March 1733.

<sup>155</sup> Warwick County Record Office staff have been unable to locate any records which indicate he received payment; Clergy acted as magistrate where there was a shortage of ‘resident gentry’, see Paton, *No Bond but the Law*, p. 64.

urban areas considered exceptionally disorderly.<sup>156</sup> In these cities the innovation was introduced in the face of significant hostility to centralised state control of the judiciary.<sup>157</sup>

There was a requirement that members of the House of Commons were qualified by franchise, and, until 1911 when paid a salary, were expected to have an independent means of financial support.<sup>158</sup> In the early nineteenth century contesting elections was very expensive, as potential parliamentarians were faced with election costs.<sup>159</sup> Philanthropic interests were also expensive. As patron of various institutions, natural history and archaeological societies, Eardley-Wilmot was expected to attend events, donate to funds and entertain distinguished visitors. His situation and costs associated with educating his children and the expenses incurred by his wife also required him to seek paid employment. As will be discussed in chapter nine, he received income from ‘cottage allotments’, but was not sufficient to support a family.<sup>160</sup>

Eardley-Wilmot’s parliamentary background, his determination to end slavery and the lengths to which he went to achieve this has been extensively explored in this chapter. His financial predicament was a significant factor in his repeated requests to both Stanley and Peel for employment, and emerged as the main reason he sought a parliamentary career.

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<sup>156</sup> Thomas Gisborne, *An Enquiry into the Duties of Men in the Higher and Middle Classes of Society in Great Britain*, 1794, p. 284 note ‘b’ cited in Douglas Hay, ‘Property, Authority and the Criminal Law’, in Douglas Hay, Peter Linebaugh, John G Rule, E P Thompson, Cal Winslow, *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975), p. 38.

<sup>157</sup> Stipendiary magistrates were introduced in Liverpool in 1836 and Birmingham in 1856, legislation in 1835 having made it possible for any municipality to them. The reform of the judiciary took place as part of the introduction of professional policing, Paton, *No Bond but the Law*, p. 64.

<sup>158</sup> At the time no detailed information about MPs was recorded, and ‘definitely no equivalent’ of the December 2006 Register of Members’ Interests, [HCINFO@parliament.uk](mailto:HCINFO@parliament.uk) [House of Commons Information Office and the UK Parliamentary Archives Officer 17 and 18 December 2006].

<sup>159</sup> Woodward, *The Age of Reform 1815–1870*, p. 91. In 1854 The Corrupt Practices Act required an audit of accounts payable by a candidate, and also defined the various forms of corrupt practice, including intimidation of voters. The Act did not put an end to bribery, such as the payment of election expenses, but the adoption of ballots lessened the chances of corruption.

<sup>160</sup> *Leamington Spa Courier*, 31 May 1834, p. 3.

## Chapter Three

### Appointment and reception: 'a strong & steady hand'<sup>1</sup>?



**Figure 3.1:** Sir John Eardley Eardley-Wilmot.<sup>2</sup>

As already detailed, Sir John Eardley Eardley-Wilmot was well educated and competent to be appointed Lieutenant-Governor of Van Diemen's Land in 1843. The advantages he gained from living among the landed gentry, his legal and parliamentary experience, his concerns for slaves in British colonies, his magistracy skills, his judging and sentencing of convicted criminals and his attempts to rehabilitate juveniles through religion and trade training made him a suitable administrator for a penal colony.

In seeking a government post he alleged he needed financial assistance, and appealed to Lord Stanley, Sir Robert Peel and Sir James Graham for any paid position.<sup>3</sup> The implication in the *Australian Dictionary of Biography* that he 'denied having sought the position' in Van Diemen's Land, is inaccurate. As shown in the previous chapter, he had, on several occasions,

<sup>1</sup> *The Papers of the Prime Ministers of Great Britain, Series Two. The Papers of Sir Robert Peel*, British Library (hereafter BL) Mss. 40467 Stanley 'Private' despatch to PM Peel 12 October 1842, pp. 247–48.

<sup>2</sup> J W Beattie, photograph Allport Library and Museum of Fine Arts, Tasmanian Archive and Heritage Office.

<sup>3</sup> BL Mss. 40486 Eardley-Wilmot to Peel, 12 September 1841, pp. 273–74; BL Mss. 40505, Eardley-Wilmot to Peel, 22 March 1842, pp. 31–33; BL Mss. 40486 Eardley-Wilmot to Sir James Graham, 30 August 1841, p. 271.

actively sought any paid position with ‘adequate emoluments’.<sup>4</sup> However, if he did in fact, deny seeking the position, he may have had personal reasons (such as prestige and self pride) for such denial.

It is apparent from this study that Eardley-Wilmot’s colonial appointment was due to a number of factors. Frank Upward suggested that sympathy for Eardley-Wilmot’s financial situation, or weariness with turning down his repeated requests for employment, might have been one aspect.<sup>5</sup> Eardley-Wilmot had been rejected for a number of appointments, and was not the dutiful supporter of the Conservatives that he claimed to be when seeking patronage. In 1838, after he embarrassed Stanley on the slavery question, he claimed he ‘could not conscientiously and truly say that political feeling did not operate with him’.<sup>6</sup>

Stanley first offered the position in Van Diemen’s Land to John Pakington, who declined it. As Sir John Franklin had neither completed his term, nor been recalled, Stanley considered waiting a ‘month or six weeks’ before again attempting to fill the post. As Franklin’s successor, Stanley wanted a ‘sensible man’, and he knew that Eardley-Wilmot, a ‘very plausible country gentleman’, would ‘jump at it’. Yet, Stanley reminded Peel that he knew Eardley-Wilmot as well or ‘better’ than he did, and ‘that he is a muddle brained blockhead’.<sup>7</sup>

The Colonial Office was keen to replace Franklin with someone to assume responsibility for the new probation system of convict management. Colonial appointments were not always easy to fill and Van Diemen’s Land, distant from Britain, was unattractive.<sup>8</sup> Peel and Stanley would be able to justify Eardley-Wilmot’s appointment because of his legal qualifications and interest in criminal matters, in particular that of keeping juvenile first offenders out of prison.<sup>9</sup> However, the recent political embarrassment Eardley-Wilmot had caused Stanley with his interest in the anti-slavery movement would still be in their recent memory. A posting to Van Diemen’s Land was a legitimate way of removing him from Britain, where he would no

<sup>4</sup> Michael Roe, ‘Eardley-Wilmot, Sir John Eardley (1783–1847)’, *Australian Dictionary of Biography* (hereafter *ADB*) [<http://www.adb.online.anu.edu.au/biogs/A010329b.htm>]; BL Mss. 40521, Eardley-Wilmot to Peel, 27 December 1842 pp. 133–34.

<sup>5</sup> Frank Upward, ‘The Dismissal of Sir John Eardley Eardley-Wilmot Lieutenant-Governor of Van Diemen’s Land 1843–46’, MA thesis, University of Melbourne, 1974, p. 8.

<sup>6</sup> *Hansard’s Parliamentary Debates Third Series* Volume xliii (43) (London, 1838), House of Commons, 28 May 1838, col 387.

<sup>7</sup> BL Mss. 40467 Stanley to Peel n.d [December 1842?] pp. 315–16. Sir John Somerset Pakington was Secretary of State 27 February 1852–28 December 1852.

<sup>8</sup> Upward, ‘The Dismissal of Sir John Eardley-Wilmot’, p. 8; BL Mss. 40467 Peel to Stanley n.d. [December 1842?] pp. 315–316.

<sup>9</sup> *The Annual Register, or a view of the history and politics of the year 1847, Volume 89* (London 1848), Appendix to Chronicle, p. 204.

longer be able to pressure the Colonial Office and intimidate members of parliament over the remaining vestiges of slavery. Eardley-Wilmot had no specific reasons to stay in England and saw a chance to gain public positions for three of his sons.

In view of Eardley-Wilmot's later public claim that he was in financial difficulties, the salary (£3,500) for the position of Lieutenant-Governor, would, it must be assumed, have been the main factor in his acceptance. His personal economic situation was revealed in later correspondence to Secretary of State William E Gladstone. After serving three years in the colony he explained to Gladstone how, in 1843, he had separated from his wife and family to undertake a 'difficult and irksome office in another hemisphere', and had calculated that six years of 'sufficient income would remove' all his 'difficulties'.<sup>10</sup> Determining Eardley-Wilmot's financial problems is, in part, speculation, as he did not provide precise details, although, as early as 1825 he asked Peel for an appointment in India, a request which could feasibly have been for the salary.<sup>11</sup> He incurred a further financial liability when he sent at least two of his sons to Rugby, though this action could also be seen as a demonstration of his belief in education, which, as will be shown in this thesis, he often recommended as a means of juvenile rehabilitation.<sup>12</sup> As a landowner of Berkswell Hall, both the house and its vast grounds were expensive to maintain. No doubt, these expenses as well as those detailed in the previous chapter reduced his means 'very immeasurably'.<sup>13</sup>

When considering his requests for paid employment, his experience and possible support from influential patrons, it is no surprise that Eardley-Wilmot, a man of public affairs with an interest in crime, was appointed to oversee the new probation system under which convicts were employed as gang labour, while others were completing their sentences under assignment. Yet his acceptance can be seen as a contradiction considering his opposition to slavery and comments such as that made in the late 1840s by Louisa Anne Meredith, writer, artist and settler. She observed how it had 'of late been fashionable to attach the term "white slavery" and other appropriate epithets' to the convict system.<sup>14</sup> As early as the late 1780s, according to Arthur Phillip, the New South Wales Governor, there would be 'no slavery in a

<sup>10</sup> *Hansard Third Series* vol xciii (93), House of Commons 7 June 1847, cols 195–96. Seven months later he was replaced. In 1832 he had 'separated' from his wife; see also *British Parliamentary Papers* (hereafter *BPP*) *Correspondence and papers relating to Crown Lands settlement and other affairs in Australia 1847–48. Colonies Australia Volume 10* (Shannon, 1969), Eardley-Wilmot to Gladstone, 5 October 1846, p. 47.

<sup>11</sup> BL Mss. 40382 Eardley-Wilmot to Peel, 8 November 1825, pp. 321–23 cited in Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 154.

<sup>12</sup> John Eardley Wilmot and Frederick Marow Eardley Wilmot attended Rugby, see Appendix A.

<sup>13</sup> BL Mss. 40521, Eardley-Wilmot to Peel, 27 December 1842, pp. 133–34.

<sup>14</sup> Louisa A Meredith, *My Home in Tasmania during a residence of nine years, Vol One* (Swansea, 2003), p. 41.

free land, and consequently no slaves'.<sup>15</sup> Despite Phillip's optimism, by the 1830s New South Wales was described by former anti-slavery advocates as 'a slave society which had been corrupted as much by transportation as the West Indies had been by slavery'.<sup>16</sup>

Particulars of Eardley-Wilmot's appointment to Van Diemen's Land, reactions to the appointment and his arrival and commissioning will follow a short analysis on Franklin's 1836 arrival. Eardley-Wilmot's arrival at the River Derwent, and the recall of Franklin, will then be discussed, before briefly concluding with the difficult conditions in the colony in 1843, aggravated by the earlier influx of 2,426 free immigrants and 4,699 male and 681 female convicts.

### **Franklin: Eardley-Wilmot's predecessor**

In 1836 Eardley-Wilmot's predecessor, Sir John Franklin (1786–1847), Knight of the Royal Guelphic Order of Hanover, Doctor of Civil Law, Fellow of the Royal Society and Gold Medallist of the Geographical Society of Paris, was appointed to succeed Sir George Arthur. Prior to his appointment, Franklin had a long period of service in the Navy and nearly ten years in Arctic exploration and survey work on the North American coast. He was accompanied to Hobart Town, where he arrived on 6 January 1837, by his second wife Jane (née Griffin) and her companion Sophy Cracroft (daughter of Franklin's sister Isabella), and his private secretary Captain Alexander Maconochie (1787–1860) who resigned the secretaryship of the Royal Geographical Society London after accepting the colonial position.<sup>17</sup>

In 1834 at the age of fifty, Franklin had returned to England following naval duties off the coast of Greece during the 1830–33 war of independence. Not prepared to retire, Franklin called at the Admiralty as he was 'anxious for immediate employment'. As well as speaking with Sir James Graham, he wrote to his wife, then in Egypt, and told her he could not look upon the prospect of inactivity with any 'complacency' and was ready 'for any service'.<sup>18</sup> In 1836 Lord Glenelg, Secretary of State for the Colonies, offered Franklin the position in Van

<sup>15</sup> *Historical Records of New South Wales: Phillip 1783–1792 Vol 1, Pt 2* (Sydney, 1892) 'Phillip's Views on the Conduct of the Expedition and the Treatment of Convicts', notes made on small sheets of paper [February 1787?] p. 53.

<sup>16</sup> J B Hirst, *Convict society and its enemies* (Sydney, 1983), p. 21.

<sup>17</sup> George Mackaness (ed), *Some Private Correspondence of Sir John and Lady Jane Franklin (Tasmania 1837–1845) Part I* (first published 1947) (Dubbo, 1977), p. 8; see *Times*, 4 July 1829, p. 3 for DCL; E Morris Miller, *Pressmen and Governors: Australian Editors and Writers in Early Tasmania* (Sydney, 1973), p. 187.

<sup>18</sup> L Robson, *A History of Tasmania: Volume I Van Diemen's Land from the Earliest Times to 1855* (Melbourne, 1983), p. 317; Sir John to Lady Franklin 29 January 1834 and 27 February 1834 (Lefroy Bequest, Scott Polar Research Institute, Cambridge) cited in Kathleen Fitzpatrick *Sir John Franklin 1837–1843* (Melbourne, 1949), pp. 27–28.

Diemen's Land. This he accepted. It was his first and only civil appointment, which, according to his near contemporary John West, was at the 'instance of [King] William IV, by whom he was greatly esteemed'.<sup>19</sup> His appointment might also, in part have been a reward for his 'valuable services' — a common practice at the time (all governors of New South Wales from Sir Thomas Brisbane to Sir Charles Fitzroy were officers of Wellington's armies with the ability to command), and to the desire to replace Arthur, 'a great but autocratic ruler' by a man who believed more in 'humanitarian and politically liberal ideas'.<sup>20</sup>

Franklin had the disadvantage of succeeding the politically-experienced Arthur, and was soon aware of the existence of a strong 'party feeling'. Franklin also found the main influential positions filled by Arthur's relatives and friends who were bound to their late chief by 'ties of obligation and gratitude', for example, the positions of Chief Police Magistrate and Colonial Secretary were filled by the husbands of Arthur's nieces, the former by Matthew Forster and the latter by John Montagu.<sup>21</sup>

### **Details of appointment and first instructions**

Eardley-Wilmot was not the only hopeful candidate for the position due to become vacant in 1843. Captain Frederick Polhill (1798–1848), who had served in the 1<sup>st</sup> King's Dragoon Guards and represented Bedford in the House of Commons was a contender.<sup>22</sup> According to Peel in mid-October 1842, Polhill was 'misinformed' there would be a vacancy in January, yet Peel did admit to Stanley 'there probably' would be one soon. Peel did not share Polhill's 'perfect confidence' in his own capacity for administering 'our great Convict Colony', which had 'lately got into some confusion', owing to Franklin's 'mismanagement'. The colony would need a 'strong & steady hand to put it in order again', but Peel had 'no one immediately in view'.<sup>23</sup>

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<sup>19</sup> John West, *The History of Tasmania with copious information respecting the Colonies of New South Wales Victoria South Australia*, first published Launceston 1852. A G L Shaw (ed) (Sydney, 1981), p. 174 and Robson, *A History of Tasmania: Volume I*, p. 318 for William IV; Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843*, p. 28.

<sup>20</sup> Mackaness (ed). *Some Private Correspondence, Part I*, p. 8.

<sup>21</sup> Sir John Franklin, *Narrative of some passages in the History of Van Diemen's Land, during the last three years of Sir John Franklin's administration of its government* (Hobart, 1967), pp. 6–8.

<sup>22</sup> H J Hanham (ed), *Charles R Dod Electoral Facts 1832–1853* originally printed 1853 (England, 1972), pp. 19–20. In 1830 Polhill contested Bedford as an Independent and defeated Lord John Russell by one vote. He was elected for Bedford as a Conservative in 1835, 1837 and 1841 and died 1848 aged 50 without receiving a colonial appointment, see All Saints Church, Renhold Bedfordshire [<http://www.all-saints-church-renhold.org/history/polhill.htm>] cited 5 August 2009].

<sup>23</sup> BL Mss. 40467, Lord Stanley 'Private' despatch 12 October 1842 to PM Sir Robert Peel, pp. 247–48.



It seems Lord Stanley, Secretary for the Colonies, first interviewed Eardley-Wilmot at the Colonial Office on 28 January 1843. This was followed by ‘frequent interviews’, and Eardley-Wilmot’s Official Appointment Notice dated 21 March 1843 was published on 28 March 1843.<sup>24</sup> His authorisation to ‘assume and execute’ the office of the Lieutenant-Governor of Van Diemen’s Land and its dependencies in a ‘Warrant under Her Majesty’s Sign Manual’ was dated 11 April 1843.<sup>25</sup>

In accepting the office, Eardley-Wilmot expressed his deep loss at separating from a constituency with which he had been ‘so long connected’ and from those who had shown him ‘the greatest kindness and support’. He issued two parting addresses, one to the electors of North Warwickshire and the other to the magistrates of the county over whom he presided.<sup>26</sup> Although, in the broader context of his appointment, Eardley-Wilmot had, for at least two years, requested such a posting, and although most of his family would remain in England, it must be assumed he was genuinely pleased to be offered the position.

On 24 April, six days before Eardley-Wilmot’s departure from Plymouth, Stanley addressed him with miscellaneous instructions about convict discipline, and for a ‘complete explanation’ of his duties and powers he was advised to refer to the ‘Commission under the Great Seal’ previously addressed to Sir George Gipps, Governor of New South Wales and to the general instructions accompanying it. Eardley-Wilmot was also required to administer the colony under the instructions sent to Franklin in 1842. His annual salary was set at £3,500 and it was necessary he renounce every other ‘pecuniary advantage or source of Emolument’ other than his official residence in Hobart Town. His immediate predecessors, while receiving £2,500, enjoyed additional benefits: a country residence at New Norfolk (Turriff Lodge), a house at Launceston, and a government farm with an extensive kitchen garden. They also received £800 annually to assist with the Launceston house and the farm, and convicts to work at Government House, the farm, and garden. Although Eardley-Wilmot was permitted to occupy both the farm and the country residence, he was required to pay associated costs from his own

<sup>24</sup> *Leamington Spa Courier*, 4 February 1843, p. 3; *Times*, 27 February 1843, p. 5; Lord Chamberlain’s Office 21 March (Official Appointments and Notices) *Times*, 29 March 1843, p. 6 from the *London Gazette* 28 March; CO280/160 (AJCP 521) Eardley-Wilmot’s appointment (No. 1) 17 April 1843, pp. 1–14.

<sup>25</sup> HRA I, xxii Stanley to Eardley-Wilmot, 24 April 1843, pp. 709–12 enc in Stanley to Gipps (No. 67), 7 May 1843, pp. 709–12.

<sup>26</sup> *Times*, 27 February 1843, p. 5. Charles Newdigate Newdegate of Arbury-hall, near Nuneaton was ‘on all hands admitted to be a fit successor ... it was unanimously agreed to present a requisition to [him] to be nominated as a candidate for the ... northern division.’ The following month he took the oaths for his seat, see *Times*, 14 March 1843, p. 3.

income if he chose to occupy them.<sup>27</sup> In September 1843 Sir James Stephen admitted ‘great difficulty’ in obtaining ‘competent’ governors for situations like Van Diemen’s Land, therefore inducements should not be ‘diminished’. A salary of £4,000 for Eardley-Wilmot would not be ‘at all excessive’.<sup>28</sup>

Twelve months later Stanley authorised Eardley-Wilmot to introduce a Bill into council to ‘fix the Salary of the Lieutenant-Governor at £4000 per annum instead of £3500’, an amount not ‘disproportioned’ to the office. It seems Stanley reconsidered the situation of the New Norfolk cottage. He maintained his earlier instruction about the payment of repairs, but had no objections to a ‘moderate and reasonable sum’ being paid from public funds for the first repairs on the ‘express’ undertaking that no more public funds would be used on the cottage.<sup>29</sup>

As already established, appointment to any official position was shaped by the appointee’s experience, and one aspect of Eardley-Wilmot’s exposure was his representation in the House of Commons. Once news of his appointment was known, attendees at a Warwickshire Conservative Association meeting praised the ‘great services he had rendered the county’.<sup>30</sup> The most public aspects of Eardley-Wilmot’s knowledge were his legal experience, perhaps as Chairman of the Quarter Sessions and his comments arising from contact with juvenile criminals and his anti-slavery measures. The Warwickshire press listed his experience in criminal law and efforts at reforming prisoners as reasons for his appointment.<sup>31</sup> His writing, his comments to the court and his support for the establishment of the Stretton-on-Dunsmore Asylum would also have been perceived as relevant experience for a position in a British penal colony where many prisoners he ordered to transportation had been sent. Therefore, his appointment was probably due, in part, to his criminal law experience and his efforts to reform offenders, in particular juvenile delinquents and his plea that those younger than twenty-one years-old be segregated from older prisoners.<sup>32</sup>

<sup>27</sup> *HRA* I, xix pp. 295–301 for Gipps’ Commission; Governor Darling, Sir Richard Bourke and Gipps, as well as holding commissions as governors of NSW, each held a commission as governor of VDL. The Lt-Governors in VDL held office under these commissions by a clause which provided that the government should be administered by the Lt-Governor who was independent in civil matter, see *HRA* I, xxii, p.852, n. 60; *HRA* I, xxii Stanley to Eardley-Wilmot 24 April 1843 pp. 709–12, enc in Stanley to Gipps 7 May 1843, pp. 709–12; see also *HTG* Vol XXVIII no. 1436, 17 November 1843, pp. 1263–64 for salary.

<sup>28</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley 15 September 1843, a note written on the side of the despatch signed ‘James Stephen’, pp. 48–54.

<sup>29</sup> UTA RS49/18 (GO1/54), Stanley to Eardley-Wilmot (No. 193) 6 September 1844, pp. 56–61.

<sup>30</sup> *Worcester Chronicle* cited in *Austral-Asiatic Review*, 4 August 1843, p. 2.

<sup>31</sup> *Leamington Spa Courier*, 12 June 1847, p. 1 that he was accompanied by two sons.

<sup>32</sup> Esther Tatnall, *A Narrative of Twenty-three years’ superintendence of the Women and Boys’ Wards in the Gaol at Warwick*. Edited by Sir E Eardley Wilmot. (London, 1836), pp. ix-x. These issues have been covered in depth in chapters one and two.

To Eardley-Wilmot's law qualifications, Reverend John West, writing in 1852, added the significance of his motion that apprenticeship of slavery was finally terminated. His papers on prison discipline and his initiation of a Bill for the summary trial of juvenile offenders qualified him to preside in a colony where 'penal institutions were the main business of government, and where many religious opinions divided the population'.<sup>33</sup> Likewise, Lloyd Robson noted his interest in legal and prison reforms, his publications, and his opposition to government interference in the revenue of the established Church in Ireland as endearing him to Stanley.<sup>34</sup> Similarly, Eardley-Wilmot's entry in the *Oxford Dictionary of National Biography* suggests interest in penal and imperial matters and his 'association' since 1841 with Stanley 'might seem' to have made him an 'acceptable candidate' for the position.<sup>35</sup>

The news of Eardley-Wilmot's appointment received varied press reactions. The *Morning Herald* suggested he 'owed' his appointment in Van Diemen's Land 'to the hearty good-will of King William'.<sup>36</sup> This is possible, as Sir Robert Chester, father of his second wife Eliza, was Master of Ceremonies to the King. Chester had held the same position for King George III and King George IV; and Eliza's brother (also Sir Robert Chester) later became Master of Ceremonies to Queen Victoria.<sup>37</sup> It is possible Sir James Stephen also influenced Eardley-Wilmot's appointment, because he, like Eardley-Wilmot, was a barrister and also attended Trinity Hall and Lincoln's Inn.<sup>38</sup>

The editor of the *Times*, who was possibly less partial towards Eardley-Wilmot than editors of provincial papers, could not 'pretend to guess' the reason Stanley conferred the office. That Eardley-Wilmot was selected from 'all persons in the world' was 'one of those strange truths which are far stranger than fiction'. His appointment was 'so unexpected, and so unaccountable', that the editor 'hesitated to believe it at first'. He then compared Eardley-

<sup>33</sup> West, *The History of Tasmania*, pp. 176–77; West also supported Eardley-Wilmot's official successor, Denison, who gained experience in the English dock-yards, surveying public works, and in 'a department connected with the employment of prisoners'. West thought this experience and Denison's 'respectable connexions' led to his appointment, see pp. 200, 610 n 1, p. 177.

<sup>34</sup> Robson, *History of Tasmania: Volume I*, p. 386.

<sup>35</sup> Chapman, 'Wilmot, Sir John Eardley Eardley-, first baronet (1783–1847)', *ODNB* [<http://www.oxforddnb.com/view/article/52438>].

<sup>36</sup> TAHO NS988/1 *Morning Herald* (n.d.) April 1843 p. 5.

<sup>37</sup> *Burke's Peerage, Baronetage and Knightage Volume I*. 107<sup>th</sup> edition (Delaware, 2003), pp. 1259–62. Reigning: George III (1760–1820); George IV (1820–30); William IV (1830–37); Victoria (1837–1901).

<sup>38</sup> In 1806 Stephen entered Trinity Hall (Eardley-Wilmot 1799). In 1812 Stephen became a barrister (Eardley-Wilmot 1806). Stephen called to the Bar at Lincoln's Inn in 1811 (Eardley-Wilmot 1806), see J E Egerton, 'Stephen, Sir James (1789–1859)' *ADB* [<http://www.adb.online.anu.edu.au/biogs/A020439b.htm>]; No evidence has been located to conclude that Stephen personally knew Eardley-Wilmot.

Wilmot's appointment to that of Sir Charles Metcalfe to Canada. It 'would almost appear that the Government was so much ashamed of having conferred one important office properly' that members decided to 'confer another with the utmost disregard of propriety'.<sup>39</sup> If Metcalfe's appointment was 'the best', then the appointment of Eardley-Wilmot, who had only 'performed' services at home, and 'only those which the country could easily have dispensed with', was 'the worst'. What had he done? 'Nothing — no, not exactly ... he introduced a bill for — the summary conviction of little boys and girls before two Justices of the Peace!' The editor had not finished finding fault. Having criticised Eardley-Wilmot's Summary Punishment Bill in 1840, he was unrelenting:<sup>40</sup>

He may be a great man ... dealing out random imprisonments on the guilty ... he may 'poke fun' at those 'dangerous fellows' ... but, as for governing a colony, a remote colony, a lately penal colony, a colony made up in great measure of the convicted cuteness and clever wickedness of England — consisting of double-distilled rogues white-washed into transmarine 'respectability' ... rife with the bustle of what was here felony, but there is only speculation — a colony where society, to be purified and purged from its worst elements, requires the active operation of some great superintending mind.<sup>41</sup>

Warwick's inhabitants regretted that by the 'wise selection' of such an 'eminently gifted' person to Van Diemen's Land, they were being disadvantaged.<sup>42</sup> The gratitude of the inhabitants of Sutton Coldfield was shown to Eardley-Wilmot by the presentation of a 'handsome gold snuff box' made by Mr Haines of New Street Birmingham.<sup>43</sup> The staff of the Warwickshire courts appreciated Eardley-Wilmot's talents and powers of 'no ordinary character', and thought it was his 'high and unimpeachable' character during many years, his 'able and energetic conduct' on questions affecting the reclamation of juvenile offenders, and his knowledge of criminal law which persuaded Stanley to request he undertake the governorship. One press report even elevated him to the rank of 'Governor-General of Van Diemen's Land'.<sup>44</sup> Such extensive praise indicates widespread acknowledgement of his qualifications, experience and his service to the county.

Eardley-Wilmot departed England on 30 April 1843. In January 1843, just days before one of his interviews with Lord Stanley, he spent some time with Lady Wilmot at St Leonard's-on-

<sup>39</sup> *Times*, 1 March 1843, p. 5.

<sup>40</sup> *Times*, 1 March 1843, p. 5. Metcalfe was a recent appointee as Governor-General of Canada, provisional Governor-General of India 1833–38 and Governor of Jamaica 1839–42 see C A Bayly, 'Metcalfe, Charles Theophilus, Baron Metcalfe (1785–1846)', *ODNB*, Jan 2008 [<http://www.oxforddnb.com/view/article/18617>] see also *Dictionary of Canadian Biography* Vol VII (1988), pp. 603–08.

<sup>41</sup> *Times*, 1 March 1843, p. 5.

<sup>42</sup> *Leamington Spa Courier*, 1 April 1843, p. 3.

<sup>43</sup> *Leamington Spa Courier*, 1 April 1843, p. 3; a presentation gift may have been a custom.

<sup>44</sup> *Leamington Spa Courier*, 22 May 1847, p. 3 and 8 April 1843, p. 3.

Sea, Sussex.<sup>45</sup> She remained in England, although there were reports in the Hobart Town press in November 1843 that the Lieutenant-Governor was expecting ‘the early approaching’ arrival of Lady Wilmot.<sup>46</sup> Seven months later another paper reported she was expected to arrive.<sup>47</sup> Before Eardley-Wilmot’s departure, and even in modern historical publications, there are discrepancies in how many, and which son or sons travelled with him. According to the *Oxford Dictionary of National Biography* he ‘sailed for the colony with his three sons’,<sup>48</sup> while in 1847, the *Leamington Spa Courier* reported he was accompanied by two sons.<sup>49</sup>

As indicated by Eardley-Wilmot’s correspondence to both Sir Charles Hope and Sir John Barrow in March 1843, he originally intended three sons and two servants would travel with him, and he understood ‘there was plenty of room’ on the *Cressy*.<sup>50</sup> On 20 March he again wrote to Hope. Even though ‘two cabins on the *Cressy*’ were at his disposal, and the *Cressy* would sail on 25 March, it was ‘impossible’ for him ‘in so short a notice’ to avail himself of ‘the opportunity’.<sup>51</sup> In fact, only one son travelled with him.<sup>52</sup> A second arrived in December, and a third some time after 31 August 1844.<sup>53</sup>

### Arrival at ‘another hemisphere’

The 720 ton *Cressy* left Plymouth on 30 April 1843, with Captain Morrison in charge and Dr Lawrence the surgeon superintendent, and travelled via the Cape of Good Hope. After 112 days Eardley-Wilmot arrived at the River Derwent. Others on board included: ‘Mr Wilmot’ (his Excellency’s son Captain Wilmot of the Royal Artillery); Lieutenant Dearing of the 99<sup>th</sup> Regiment; Quarter Master McDonald, Mrs McDonald; Miss McDonald and two children. There were also 295 male convicts, 50 crew, 50 rank and file, cargo and government stores.<sup>54</sup>

<sup>45</sup> He stayed at ‘St Leonard’s-on-Sea’ East Sussex, see *Leamington Spa Courier*, 21 January 1843, p. 3.

<sup>46</sup> *Hobart Town Courier*, 17 November 1843, p. 2.

<sup>47</sup> *Austral-Asiatic Review*, 1 July 1844, p. 4.

<sup>48</sup> Chapman, ‘Wilmot, Sir John Eardley Eardley-, first baronet (1783–1847)’ *ODNB* [<http://www.oxforddnb.com/view/article/52438>]; Robson, *A History of Tasmania: Volume I*, p. 386 that he was ‘accompanied by his three youngest sons’; Michael Roe, ‘Eardley-Wilmot, Sir John Eardley (1783–1847)’, *ADB* [<http://www.adb.online.aau.edu.au/biogs/A010329b.htm>]; ‘His three youngest sons ... went with him’; He was the father of at least eight sons, see Appendix A.

<sup>49</sup> *Leamington Spa Courier*, 12 June 1847, p. 1.

<sup>50</sup> CO280/160 (AJCP 521) E Eardley Wilmot to Sir C Hope MP [date shown as] ‘March’, p. 31 and E Eardley Wilmot to Sir John Barrow Bt, 15 March 1843, pp. 28–31.

<sup>51</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Hope, 20 March 1843, pp. 32–33.

<sup>52</sup> TAHO MB2/39/1/7 Report of shipping arrivals and lists of passengers, Brig *Cressy*, p. 205; TAHO CSO92/1/11 Port Officer’s Report of Barque ‘*Cressy*’ 20 August 1843, p. 47

<sup>53</sup> It was expected a third son would arrive ‘any day to hold the office of Private Secretary which will be vacant by Mr Charles Wilmot joining his regiment the 96<sup>th</sup> under the command of Colonel Cumberland’, *Austral-Asiatic Review*, 31 August 1844, p. 3. In fact, it was Augustus Hillier [Henry] who joined the regiment, see *Austral-Asiatic Review*, 17 April 1845, p. 4 and *Leamington Spa Courier*, 12 June 1847, p. 1

<sup>54</sup> MB2/39/1/7 ‘Report of shipping arrivals and lists of passengers, Brig *Cressy*’, p. 205; CSO92/1/11 ‘Port Officer’s Report of Barque *Cressy* 20 August 1843’, p. 47.

While acknowledging that Eardley-Wilmot was accompanied by his son, ‘Capt. Wilmot R.A., Private Secretary’, the *Austral-Asiatic Review* reported the remaining family members were travelling on the *Psyche*.<sup>55</sup> Despite this optimism, no family members were aboard.<sup>56</sup>

The frigate *Cressy* arrived off South Cape on Thursday 17 August and ‘ran up the river a short distance’ mistaking the opening for d’Entrecasteaux Channel. The captain then anchored in Lagoon Bay and ‘hoisted her colours’.<sup>57</sup> The news reached Government House at 3.00 a.m. the following morning, and Harbour Master Captain Moriarty proceeded immediately, in the hope of preventing His Excellency from a journey overland, but Eardley-Wilmot and his son had landed. They were at Captain Bailey’s residence.<sup>58</sup> That morning Port Arthur Commandant Captain Booth paid his respects. Captain Bailey supplied horses, and the three men rode to the Sounds, from where they continued in Booth’s whaleboat to Hobart Town. They arrived late in the evening and Eardley-Wilmot and his son stayed at the home of Colonial Secretary, James Ebenezer Bicheno (1785–1851). When the *Cressy* reached the harbour Eardley-Wilmot returned on board for the purpose of landing publicly.<sup>59</sup>

To some colonists Eardley-Wilmot’s appointment seemed a blessing. To the pro-Eardley-Wilmot *Austral-Asiatic Review* (at least during his early days), he arrived with ‘primordial advantages’. Having presided over Warwickshire’s magistracy and in possession of a ‘princely estate’, to a man of the highest honor, and above all ‘a gentleman’, the government of the colony would be no ‘noviciate’.<sup>60</sup> The *Hobart Town Advertiser* had similar ideas: ‘Nothing could exceed the respect paid to him, and every succeeding day’ added to the ‘good feelings entertained towards him’. He had a ‘high standing’ in England among the ‘best

<sup>55</sup> *Austral-Asiatic Review*, 18 August 1843, p. 3; *Colonial Times*, 22 August 1843, p. 2; According to Clark, *A History of Australia Vol 111*, p. 283 it was ‘dandy’ and ‘lady-like’ Augustus in Hobart Town on 21 August. Charles Octavius was in VDL on 4 June 1844, see BL Mss. 40521 Eardley-Wilmot to Peel 4 June 1844, pp. 120–21 that one of his sons had been placed in the Legacy Department in Somerset House ‘nearly two years ago’ and ‘as in the event of my youngest son’ [Charles Octavius Eardley-Wilmot] had ‘advised him [the one in Legacy Department] to embark for this country to take his place here’; He appointed ‘Captain Wilmot of the royal artillery, to be his Private Secretary’, *Caledonian Mercury* 16 March 1843, p. 3.

<sup>56</sup> The barque *Psyche* arrived 21 September 1843, from London, left the Downs 7 May with merchandise and passengers, none of whom were listed with the name of ‘Eardley’ or ‘Wilmot’, see *Colonial Times*, 26 September 1843, p. 2 and *Hobart Town Courier*, 29 September 1843, p. 2; .

<sup>57</sup> The *Cressy* built 1843 at Sunderland by Laing was owned by Duncan Dunbar. One male convict died on the voyage, see Charles Bateson, *The Convict Ships 1787–1868* (Sydney, 1988), p. 293, pp. 299–300, pp. 366–67 and p. 392; *Hobart Town Courier*, 25 August 1843, p. 2; CO280/159 (AJCP 521), Franklin to Stanley (No. 159) 21 August 1843, pp. 120–33; *Cornwall Chronicle*, Vol 8 No. 455 19 August 1843 [p. 2].

<sup>58</sup> *Hobart Town Advertiser* 22 August 1843, p. 2.

<sup>59</sup> *Hobart Town Courier*, 25 August 1843, p. 2; CO280/159 (AJCP 521) Franklin to Stanley (No. 159) 21 August 1843, pp. 120–33; *Austral-Asiatic Review*, 18 August 1843, p. 3; D A Herbert [?], ‘Bicheno, James Ebenezer (1785–1851)’, *ADB* [<http://www.adb.online.anu.edu.au/biogs/A010091b.htm>].

<sup>60</sup> *Austral-Asiatic Review*, 22 September 1843, p. 2.

portion of the aristocracy', and was respected by those competent to test both his 'probity and his abilities'. He would conduct government according to what was 'right'.<sup>61</sup>

The excitement of Eardley-Wilmot's arrival extended through the colony, as he promised to keep the colonists' interests and welfare in mind by seeing with 'his own eyes' and hearing 'with his own ears'. Mr Ellis, proprietor of the 'Commercial Inn' at Green Ponds, was so impressed, that in 'permanent commemoration' he planned to name his new house 'The Wilmot Arms'. The 'character and appearance' of the building rendered it worthy of the arms of the new Lieutenant-Governor with his year of arrival 'handsomely cut in stone' on the frieze of the portico.<sup>62</sup> The colonists may not have been impressed had they known he left unpaid accounts in England. He owed William Ellis, a creditor, £22 'plus interest'.<sup>63</sup>

Reverend John Philip Gell's first impression of the sixty year-old was of 'a tall broad-faced grey-haired country gentleman, with plenty of talk'.<sup>64</sup> G T W B Boyes, the colonial auditor, and sometimes harsh diarist, privately noted that the colony's first civilian governor 'looks very well and like a Governor'.<sup>65</sup> According to Marian Smith, daughter of Philip Smith MLC, Captain Low thought him a 'good-natured man ... A battered old Beau'. Marian, though, was more impressed with Eardley-Wilmot's son who was 'about 22, a dandy, lady-like man, tall, thin, blue eyes, light hair'.<sup>66</sup> This would be twenty-five year-old Augustus (Henry), who arrived with his father. Despite such approval, less than three years later, Chief Justice John Pedder expressed a dislike for Eardley-Wilmot. As a governor Pedder did 'not like' him 'at all', nor 'his character'. He was 'tyrannical, intensely selfish ... heartless, and very capricious', and in private life, the 'meanest man of the world'.<sup>67</sup> Pedder's reaction may have been because Eardley-Wilmot was senior in age and call to the Bar, and his progressive attitudes to law reform and liberal views were opposite to Pedder's Tory principles. Despite

<sup>61</sup> *Hobart Town Advertiser* 25 August 1843, p. 2.

<sup>62</sup> *Colonial Times*, 3 October 1843, p. 3. I thank Alex Green for alerting me to this article. No evidence has been located to establish that Ellis did name his house after the Lieutenant-Governor.

<sup>63</sup> William Ellis' letters to Eardley-Wilmot were unanswered, see CO280/202 (AJCP 548) William Ellis, Whittall Street, Birmingham to Colonial Office, 1 April 1846 p. 283; CO280/202 (AJCP 548) Gladstone did 'not think it his duty to interfere in this matter', 6 April 1846, p. 285.

<sup>64</sup> J P Gell to W E Nairn, 22 August 1843, cited in F J Woodward, *The Doctor's Disciples* (Oxford, 1954), p. 103; Gell married Eleanor, daughter of Franklin and his first wife Eleanor (née Porden).

<sup>65</sup> UTA RS 25/2 (7) Boyes Diary 30 August 1843.

<sup>66</sup> UTA Rare 'Extracts from Journal of P T Smith's daughter Marian, 2 September 1843', in *Report on the Historical Manuscripts of Tasmania Number 2. The Smith Papers (1831-1900) Diaries and Letterbooks of Philip Thomas Smith MLC (1800-80) and his daughter Marian Ann Smith (1821-1931)* (Hobart, 1959), p. 6.

<sup>67</sup> *Papers of Sir George Arthur Volume 10 Letters of Chief Justice Pedder 1832-46* (A2170) [microform] Pedder to Arthur, 18 February 1846.

these differences, as will be shown in chapter ten, Pedder proved to be an ally in 1846 when the Lieutenant-Governor's character was attacked.<sup>68</sup>

### Procession and commissioning

In preparation for Eardley-Wilmot's commissioning, 'hustings' were erected in Macquarie Street in front of Government House.<sup>69</sup> On 21 August, dressed in the 'uniform of a Civil Governor', His Excellency entered the 'Council-room at the Custom-house'. He was received by the chief public officers, including: Chief Justice Sir John Pedder; Mr Justice Montagu; Colonel Elliott Commander of the Forces; Bishop Francis Nixon; Colonial Secretary James Bicheno; Comptroller-General of Convicts Captain Forster; Chairman of the Magistrates Mr Hone; Deputy Commissary-General Maclean; Assistant Commissary-General Fletcher; O S K Douglas; Captain Mackay and the Port Officer, Captain Moriarty.<sup>70</sup>

The Guard of Honour with the Queen's colours and the 'fine Band of that distinguished regiment' preceded the procession. His Excellency, with Sir John Pedder and Colonel Elliott on either side, walked past the Court House to the hustings. Crown Solicitor A C Stonor read the Commission of Her Gracious Majesty appointing Sir John Eardley-Wilmot Lieutenant-Governor of the Island of Van Diemen's Land and its dependencies. The 'usual oaths of Allegiance and Supremacy' were administered by Dr Turnbull, Clerk of Councils, a Royal Salute was fired and then a *feu de joie* by the 51<sup>st</sup> King's Own Light Infantry. The streets and house windows were crowded with 'respectable inhabitants', and 'elegantly dressed females' stood on the Waterloo Hotel balcony. Ships in the harbour were decorated, and houses illuminated. The 'tumultuous exultation' did not extend to Sir John and Lady Franklin. They did not attend the ceremony or celebrations<sup>71</sup>

The reason for Franklin's non-attendance is speculation, as he does not seem to have made the reason public. His absence was, though, according to the *Colonial Times*, 'in keeping' with his attitude.<sup>72</sup> Even so, there are several possible motives. Earlier disputes with Colonial Secretary John Montagu (1797–1853) might have been one of these, especially as Montagu had official duties. Maybe Franklin decided not to attend because he had not received the

<sup>68</sup> J E Egerton, 'Stephen, Sir James (1789–1859)' *ADB* <http://www.adb.online.anu.edu.au/biogs/A020439b.htm>; J M Bennett, *Sir John Pedder: First Chief Justice of Tasmania 1824–1854* (Sydney, 2003), pp. 6–8, 86–89; as previously detailed, in London he was also opposed to Tory principles.

<sup>69</sup> *Austral-Asiatic Review*, 10 May 1844, p. 5.

<sup>70</sup> Government Notice No 197, *Hobart Town Gazette* (hereafter *HTG*) *Extraordinary*, vol XXVIII no. 1423, 19 August 1843, p. 957; *Colonial Times*, 29 August 1843, p. 2.

<sup>71</sup> *Colonial Times*, 29 August 1843, p. 2, *Austral-Asiatic Review*, 10 May 1844, p. 5.

<sup>72</sup> *Colonial Times*, 29 August 1843, p. 2.



original official notice of his replacement, even though he admitted the prison-ship *Gilmore* arrived the previous day, 20 August, with Stanley's 'duplicate' despatch with details of his successor. The day following Eardley-Wilmot's commissioning, the merchantman *Eamont* arrived with Stanley's original despatch of 10 February 1843 recalling Franklin.<sup>73</sup> The local newspapers had also, for several years, expected the arrival of Franklin's successor, and at the end of February, they reported that Eardley-Wilmot would 'sail immediately'.<sup>74</sup>

During the second week of July, Franklin had read the *Gazette* notice in the *Times* on 24 February of Eardley-Wilmot's appointment. Franklin claimed this caused him 'some surprise' as he had not received anything official from the Colonial Office on the 'subject'. He thought it 'natural' to conclude, that, as in the case of his own predecessor he would be given 'several months' notice to organise matters before the arrival of his successor. In February 1843 Stanley had advised Franklin that he expected a new appointee to leave England within six weeks or two months, an interval, which Stanley hoped, would be 'sufficiently long' to enable him to make arrangements in readiness to transfer to the new appointee. As Franklin's term had exceeded six consecutive years, Stanley thought the 'general expectation' would be for him to anticipate the 'appointment of his successor'.<sup>75</sup> Bicheno, who arrived in Hobart Town in April 1843, had a letter of introduction for Franklin. The letter advised that as soon as Bicheno and his assistant Colonial Secretary were 'initiated into their new duties', they would be followed by the new Lieutenant-Governor. Bicheno also carried despatches regarding changes in prison discipline which Stanley was soon to introduce.<sup>76</sup>

Franklin was definitely aware of the imminent arrival of his successor, but still he made no preparations to vacate Government House. The Franklins remained in Government House for ten days after Eardley-Wilmot's arrival. He was 'unable, in spite of the exertion of the utmost diligence', to move his family and 'dispose' of his 'effects in less time'.<sup>77</sup> Eardley-Wilmot soon realised Franklin 'had taken no steps whatever', to prepare for his arrival.<sup>78</sup> During this

<sup>73</sup> *Colonial Times*, 29 August 1843, p. 2; *Colonial Times*, 22 August 1843, p. 2 how the *Gilmore* arrived on 19 August 'from London 16th April'; and the 'barque' *Eamont* arrived on 21 August 'from London 15th Feb., and Cork the end of April'; CO408/21 (AJCP 884), Stanley to Franklin 10 February 1843, pp. 258–59

<sup>74</sup> *Colonial Times*, 15 August 1843, p. 2; *Colonial Times*, Vol 26, No. 1207, 24 September 1839, p. 308; *HTG* Vol XXVIII No. 1412, 23 June 1843, p. 698, also Vol XXVIII No. 1425, 1 September 1843, p. 988.

<sup>75</sup> Franklin, *Narrative of some passages*, p. 87, see also CO 408/21 (AJCP 884) Stanley to Franklin 10 February 1843, pp. 258–59.

<sup>76</sup> Franklin, *Narrative of some passages*, pp. 84–87, 52.

<sup>77</sup> Franklin, *Narrative of some passages*, p. 87.

<sup>78</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley 15 September 1843, pp. 48–54; and CO280/159 (AJCP 521) Franklin to Stanley (No. 159) 21 August 1843, pp. 120–33 Franklin had read of the appointment in the *Times* 29 March 1843.

time Eardley-Wilmot and his entourage resided with Bicheno, and took advantage of the situation and visited areas including Launceston, where there was an official residence.<sup>79</sup> Early in July, the *Tyne* arrived with a newspaper dated 2 March 1843 in which Sir Eardley Wilmot's appointment was 'gazetted!' On learning the news, Franklin wished Eardley-Wilmot 'joy' with what was 'in store for him'.<sup>80</sup>

After being 'literally turned out' of Government House, the Franklins were guests of Major Ainsworth of the 51<sup>st</sup> Regiment King's Own Light Infantry where they remained for two months while they arranged for their passage to Port Phillip.<sup>81</sup> Despite claiming he had no knowledge of his successor, Franklin would have known that from 1828 the normal term for colonial governors was six years, unless there were 'some especial reasons' for retaining any particular governor.<sup>82</sup> He had served his appointed tenure of six years, and he should, even by deduction, have expected his recall.

### Franklin's recall and departure

Franklin's final departure was hastened by the scheming of some colonists, including Montagu, the 'ruthlessly efficient nephew of Arthur by marriage who continued to prosper financially under the patronage originally bestowed on him by Arthur'.<sup>83</sup> Montagu singled out Lady Franklin as a troublesome influence on her husband's administration. She was not the meek, indifferent governor's wife Montagu and others would have preferred. As such, she was a small part of the problems which 'soon began to put Franklin's administration in jeopardy'.<sup>84</sup> Franklin dismissed Montagu for insubordination. Montagu then travelled to England where, in his defence, he told Stanley he was a 'victim of Lady Franklin's hatred, and she alone was the cause of his suspension'.<sup>85</sup> Franklin defended Montagu's dismissal to Stanley by claiming he was 'actuated solely by a desire of the public good, and not by personal or private motives'. His defence was necessary to 'meet the assertion made by

<sup>79</sup> *Austral-Asiatic Review*, 18 August 1843, p. 3; *Austral-Asiatic Review*, Friday 1 September 1843, p. 2.

<sup>80</sup> Fitzpatrick, *Sir John Franklin 1837–1843*, p. 360.

<sup>81</sup> *Austral-Asiatic Review*, 10 May 1844, p. 5 emphasis in original. The dispute between Franklin and Elliott, might in part explain Franklin's absence at Eardley-Wilmot's commissioning.

<sup>82</sup> It was thought expedient that governors of colonial possessions should fall under the same rule of restriction which existed in the Indian governments and various public functionaries, *Historical Records of Australia* (hereafter *HRA*), *HRA* I, xiv Sir George Murray to Governor Darling, 31 May 1828, pp. 219–20; an exception was made for Gov Lachlan Macquarie in NSW, and Lt-Gov George Arthur in VDL, see *HRA* III, vii, Arthur to Murray 5 November 1828, pp. 637–43 for Arthur's appeal to extend his term of service beyond six years.

<sup>83</sup> Castles, *Lawless Harvests or God Save the Judges*, p. 167.

<sup>84</sup> Castles, *Lawless Harvests or God Save the Judges*, pp. 167–68.

<sup>85</sup> Franklin, *Narrative of some passages*, pp. 53, 59; Robson, *A History of Tasmania: Volume I*, p. 378; see also Craig R Joel, 'Party, Politics and Penalism 1836–1845: An analysis of the role of John Montagu in the penal politics of Van Diemen's Land', unpublished MA thesis, University of Tasmania, 2004.

Montagu, and not repudiated by Stanley, that his suspension was solely attributable to Lady Franklin's hatred' of Montagu and her influence.<sup>86</sup>

It is possible Lady Jane's alleged interference in Franklin's administration was partly responsible for his recall, and she understood there were some 'mysterious documents' in the Colonial Office which might prove her interference in the affairs of government.<sup>87</sup> Franklin thought his replacement was because he dismissed Montagu, and felt he had been left with little more than a 'nominal government', while Montagu had Stanley's 'unlimited confidence'.<sup>88</sup> After Eardley-Wilmot's arrival, Franklin told Stanley the path ahead was going to be 'comparatively smooth'.<sup>89</sup> However, contrary to Franklin's comment, the colony was in trouble. This was a situation Eardley-Wilmot was soon to realize.

One of Lady Jane's final acts was to leave over 400 acres with a small classical temple on the outskirts of Hobart Town, into the hands of trustees for the benefit of a future college. On 12 March 1842 Franklin had laid the foundation stone of the museum on land (one of two blocks, one 400 acres, the other 10 acres) which Lady Jane had purchased to form the 'Acanthe' estate at Kangaroo Valley (now the Hobart suburb of Lenah Valley).<sup>90</sup> She originally intended that the Tasmanian Society of Natural History should be the trustees of this property, but as that body had no legal or chartered existence it was threatened with termination, and her wish was not realised.<sup>91</sup>

On Friday 3 November 1843 about 4.30 p.m. dressed in the uniform of Captain of the Royal Navy, Franklin prepared to depart. That evening Lady Jane and family joined him on the schooner *Flying Fish*, and at dawn the vessel departed.<sup>92</sup> They sailed in the *Rajah* from Port Phillip on 10 January 1844 and landed at Portsmouth on 6 June.<sup>93</sup> Within nine months Franklin set sail for the North Polar Seas in his search for the north-west passage, but he and

<sup>86</sup> Franklin, *Narrative of some passages*, p. 108.

<sup>87</sup> West, *The History of Tasmania*, p. 173; Fitzpatrick, *Sir John Franklin 1837–1843*, p. 344.

<sup>88</sup> John Reynolds, 'Montagu, John (1797–1853)', *ADB*, 2006 [<http://www.adb.online.anu.edu.au/biogs/A020214b.htm>]; Franklin, *Narrative of some passages*, p. 80.

<sup>89</sup> CO280/159 (AJCP 521) Franklin to Stanley (No. 109) 21 August 1843, pp. 120–26.

<sup>90</sup> The trustees were: Bishop Nixon, J E Bicheno (Colonial Secretary), Rev T J Ewing (Principal Queen's Orphan Schools), Rev J P Gell and Ronald C Gunn.

<sup>91</sup> E L Piesse, *The foundation and early work of the Society. Royal Society of Tasmania Seventieth Anniversary* (Hobart, 1913), pp. 131–32; Franklin, *Narrative of some passages*, p. 78; The Lady Franklin Museum and Acanthe Park, Lenah Valley Road is still in use in 2009. Only 4 ha of the original 400 acres (166 ha) remain in public ownership forming 'part of a wildlife corridor for native animals including wallabies, potoroos, and the eastern barred bandicoot', *Mercury* 29 August 2006, p. 10.

<sup>92</sup> *Hobart Town Advertiser*, 7 November 1843, p. 2; *Examiner*, 18 November 1843, p. 3.

<sup>93</sup> Franklin, *Narrative of some passages*, pp. 96–98; *Hobart Town Advertiser*, 7 November 1843, p. 2.

his supporters mysteriously disappeared in 1847.<sup>94</sup> Lady Jane spent her remaining life indulging in her love of travel and organising rescue expeditions for her husband.

Eardley-Wilmot soon travelled around the colony. Just thirteen days after arrival, the day following his first levee (and as already mentioned), while waiting for Franklin to vacate Government House, he left for Launceston. He and his party, 'Bicheno, young Wilmot, his private secretary, and Bagot' left Hobart Town on 31 August 1843.<sup>95</sup> They stayed overnight at 'Mount Vernon' the 'hospitable seat of the father of the colony' Anthony Fenn Kemp, and at 'Mona Vale', the 'residence of Mr Kermode'. They were away twelve days.<sup>96</sup>

A little over one month later, on 29 September, with the 'officers composing his family' — Eardley-Wilmot visited Tasman's Peninsula. In view of his background in law, his subsequent sentencing of criminals to transportation and his insistence on improving situations for slaves in British colonies, this visit, so soon after arrival in the colony, was highly significant. They stayed at Port Arthur from where they travelled to inspect the stations, and returned to Hobart Town on 3 October.<sup>97</sup> The extent of Eardley-Wilmot's inspection and future plans for the area will be addressed in chapter six. In April 1844, attended by his son in his 'travelling carriage (relays of horses sent forward)' Eardley-Wilmot started out 'to honour Mr O'Connor with a visit at Connorville', Forster having gone ahead.<sup>98</sup> At times, residents joined Eardley-Wilmot in his travels. In March 1845 with a party of friends and 'the usual suite and Mr Eardley-Wilmot and Mr and the Misses Dunn', he visited Launceston. He was 'highly gratified' with his stay, having accomplished the reason for his excursion — to complete arrangements for the engineer to supply water under the 'same liberal terms' as in the 'metropolis' — arrangements 'perfectly equitable' to both England and the colony'.<sup>99</sup>

Eardley-Wilmot inherited a penal colony where prisoners had been assigned for forty years to both government and private settlers. In the 1840s many free settlers disapproved of probation, the new system of control, because of the loss of their previous supply of cheap

<sup>94</sup> Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843*, pp. 371–74.

<sup>95</sup> Franklin, *Narrative of some passages*, p. 87; RS 25/2 (7) Boyes Diary 30 August 1843; *Austral-Asiatic Review*, 18 August 1843, p. 3; *Hobart Town Courier*, 25 August 1843, p. 2; *Wood's Van Diemen's Land Almanack, and Law and Commercial and Daily Remembrancer for 1846* (Launceston, 1846), p. 9.

<sup>96</sup> *Austral-Asiatic Review*, 1 September 1843, p. 2 and 15 September 1843, p. 2.

<sup>97</sup> *Austral-Asiatic Review*, 29 September 1843, p. 2 and 6 October 1843, p. 2; *Hobart Town Courier*, 6 October 1843, p. 2; UTA RS 25/2 (7) Boyes diary 28 September 1843, The Lt-Gov 'starts tomorrow for Port Arthur.'; RS 25/2 (7) 29 September 1843, 'Sir Eardley and his party sailed, as I understand at 7 this morning.'

<sup>98</sup> *Austral-Asiatic Review*, 5 April 1844, p. 3.

<sup>99</sup> *Austral-Asiatic Review*, 29 March 1845, p. 3, 10 April 1845, p. 4.

labour. They also objected to paying police and judicial expenses, arguing it was Britain's use of the colony as a convict dump which created such costs and the British Treasury should pay all associated expenses. Under probation convicts in service needed to be paid wages, whereas with assignment, the only outlay to settlers had been convict maintenance.<sup>100</sup>

Apart from the negative aspects of the colony, Eardley-Wilmot took advantage of his experience and family connections and developed encouraging features and recreational activities for the population. These issues will be addressed in chapter nine, before then the politics of the convict system and how the cost of the failing system became a political issue will be addressed, as will details and implications of the report from the Select Committee on Transportation.

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<sup>100</sup> R M Hartwell, *The Economic Development of Van Diemen's Land 1820–1850* (Melbourne, 1954), pp. 77–78; A C V Melbourne, *Early Constitutional Development in Australia* (St Lucia, 1972), pp. 229–31.

***PART 2: The Convict System***

## Chapter Four

### Opposition to the established scheme: assignment to probation

To understand Sir John Eardley Eardley-Wilmot's administration of the probation system, under which newly-arrived men were sent to work in gangs, rather than being assigned to settlers as free labour, it is first necessary to identify the situation he found on arrival in Van Diemen's Land. The Select Committee on Transportation of 1837–38 (known as the Molesworth Commission after its chairman, Sir William Molesworth) had delivered its Report, and the results impacted on the new Lieutenant-Governor. Sir John Franklin received various instructions before the Report became public, much of which he implemented, but it was not until November 1842 that Lord Stanley sent official instructions of a change from the 'assignment' system of convict control to 'probation'. The increasing number of convicts sent to the colony after the transportation ceased in New South Wales in 1840, required Eardley-Wilmot to administer a rapidly expanding system. The background to these matters will be the major area of discussion in this chapter.

The assignment system was widely regarded in both New South Wales and Van Diemen's Land as an effective system of punishment and reform which matched the economic interests of the colonists who wanted cheap labour, but the system was opposed in Britain. As A G L Shaw commented, assignment was not considered 'sufficiently severe', and in many cases conditions for convicts in the colonies were 'better than those of the free labourer in England' — therefore, transportation with assignment was 'no deterrent to crime'.<sup>1</sup> Rather than the treatment and punishment of each convict being determined by the nature of each crime, the severity of treatment under assignment was thought to vary because of the different masters to whom the convicts were assigned.<sup>2</sup> Despite not having travelled to Australia, in 1833 Richard Whately, the Anglican Archbishop of Dublin made a similar comment. He claimed transportation failed to prevent crime, and that it corrupted both the convict and his master. The *Edinburgh Review* repeated Whately's belief.<sup>3</sup> The Quaker missionaries James

<sup>1</sup> A G L Shaw, 'The Origins of the Probation System in Van Diemen's Land', *Historical Studies Australia and New Zealand*, Vol. 6 No. 21 (November 1953), p. 17.

<sup>2</sup> Shaw, 'The Origins of the Probation System in Van Diemen's Land', p. 17.

<sup>3</sup> Richard Whately DD Archbishop of Dublin, *Remarks on Transportation and on a Recent Defence of the System; in a Second Letter to Earl Grey* (London, 1834), pp. 35–36, 91–92; *Edinburgh Review*, Vol. lviii, No. cxviii, January 1834 (Edinburgh, 1834), p. 357.

Backhouse and George Walker who spent time in the Australian colonies held similar views.<sup>4</sup> Comments made to the 1831 Select Committee on Secondary Punishment indicated convicts held no fear of transportation, and John Capper, a hulk superintendent, knew prisoners would rather be transported than remain on the hulks — the more educated, the more they looked forward to transportation.<sup>5</sup>

Following the British elections of 1830, the Liberals welcomed the new Whig government and greeted its reforms, but the Liberals were ‘mortified and embarrassed’ in 1833 when Lord Stanley, the Whig Secretary of State for Colonies, who even then was moving to abolish slavery in the British Empire, announced that transportation was too light a punishment, and he intended to ‘tighten up the system to make it worse than death itself’. In making such a statement, Stanley was playing into the hands of the ‘slave drivers’ of New South Wales and Van Diemen’s Land where the assignment system was in operation.<sup>6</sup> His statement is particularly significant when considering Eardley-Wilmot’s anti-slavery stance, his sentencing to transportation, and that Stanley later appointed him to Australia’s second colony where European settlement was first established in 1803 with transported labour.

Locally, in December 1838 Franklin defended assignment. A ‘punishment of considerable severity’, it was the system in which the convict was the ‘least removed from the natural condition’. It prepared the convict for return to freedom and a life ‘useful to his country’, and was the only system which could be ‘conducted without great difficulty in a new colony’.<sup>7</sup> The editor of the *Austral-Asiatic Review*, Robert Lathrop Murray, also advocated assignment. Even though assignment could be ‘easily abused locally’, probation was ‘too easy a way out for British politicians’. Murray’s preference was for assignment combined with free grants of land to approved settlers who would employ offenders undergoing sentence.<sup>8</sup>

At the 1861 Select Committee on Transportation, Thomas Frederick Elliott, Assistant Under-Secretary for Colonies, explained how it was due to ‘residents in the United Kingdom’ that

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<sup>4</sup> Backhouse and Walker thought assignment ‘engendered feelings’ in the ‘minds of servants and of masters, nearly allied to those produced by slavery’, see James Backhouse, *A Narrative of a visit to the Australian Colonies*, originally published 1843 (New York, 1967), p. 485.

<sup>5</sup> Select Committee on Secondary Punishment 1831, pp. 54, 16 cited in David Meredith, ‘Full Circle? Contemporary Views on Transportation’, in S Nicholas (ed), *Convict Workers Reinterpreting Australia’s past* (Melbourne, 1988), pp. 18–19.

<sup>6</sup> J B Hirst, *Convict society and its enemies* (Sydney, 1983), p. 186, this attitude to crime and punishment was to confront Eardley-Wilmot later in his career in Van Diemen’s Land.

<sup>7</sup> *True Colonist*, 21 December 1838, p. 6.

<sup>8</sup> E Morris Miller, *Pressmen and Governors: Australian Editors and Writers in Early Tasmania* (Sydney, 1952), p. 16; *Austral-Asiatic Review*, 20 April 1841, p. 2.



transportation to New South Wales had ended in 1840. The colonists were ‘pretty well satisfied with what was going on’, although some did object to the ‘presence of so many convicts’, but it was the Molesworth committee and ‘many intelligent persons’ in England who ‘agitated the subject ... and objected to transportation on moral grounds’.<sup>9</sup> Ian Brand suggested another objection was as a result of the demand for convict labour for naval installations in the United Kingdom, Gibraltar and Bermuda.<sup>10</sup>

As John Ritchie acknowledged, it has generally been accepted by historians that the decision to abolish convict transportation to New South Wales was a result of the recommendations of the Molesworth Committee.<sup>11</sup> Yet, Ritchie considered this to be an example of historians making an error by concluding that because the Committee recommended the abolition of transportation to New South Wales, and because regular transportation did, in fact, cease some twenty-four months later, the ‘latter occurred as a result of the former’.<sup>12</sup> A C V Melbourne agreed. It ‘seems to be quite clear’ that the Colonial Office had decided to abolish transportation even before the Molesworth Committee was appointed.<sup>13</sup>

Indeed, the Whig Government under pressure from reformist opinions largely anticipated Molesworth’s enquiry and therefore was ‘relatively’ uninfluenced by their recommendations. As Ritchie noted, the government chose Molesworth to head the Committee as a means to conciliate the Radicals and as an attempt to silence Molesworth, one of its major critics in the House of Commons, by keeping him ‘otherwise engaged’. There is also support for the idea that the decision to abolish transportation to New South Wales and to continue it to Van Diemen’s Land was the result of consultations between Lord John Russell, Viscount Howick and the Colonial Office prior to, during, and after the Molesworth committee sat and reported.<sup>14</sup> Yet, according to Sir George Grey, former Parliamentary Under-Secretary, the decision was a result of complaints received from New South Wales.<sup>15</sup>

<sup>9</sup> *British Parliamentary Papers* (hereafter *BPP*) *Reports from Select Committees on Transportation ... Crime and Punishment. Transportation 3 (1837–38) (669) Volume XXII and 1861 (286) Volume XXIII* (Shannon, 1968) ‘Report from the Select Committee on Transportation 1861’, p. 16.

<sup>10</sup> Ian Brand, *Port Arthur 1830–1877* (West Moonah, 1979), p. 11.

<sup>11</sup> John Ritchie, ‘Towards ending an unclean thing: The Molesworth Committee and the abolition of transportation to New South Wales 1837–40’, *Historical Studies*, Vol. 17 No. 67 (October 1976), pp. 144–64. As examples, Ritchie uses: M Clark, *A Short History of Australia* (New York, 1963), p. 85 see also M Clark, *A Short History of Australia* (Ringwood, 1992), p. 80; Russel Ward, *Australia* (Sydney, 1967), p. 49; John Ritchie, *Australia as once we were* (Melbourne, 1975), p. 48.

<sup>12</sup> Ritchie, ‘Towards ending an unclean thing’, p. 144.

<sup>13</sup> A C V Melbourne, *Early Constitutional Development in Australia* (St Lucia, 1963), p. 231.

<sup>14</sup> Ritchie, ‘Towards ending an unclean thing’, p. 144, see also Hirst, *Convict society and its enemies*, p. 26.

<sup>15</sup> *BPP Crime and Punishment. Transportation 7*, Sir George Grey to Earl Grey, 20 January 1847, p. 650.

The ‘stereotype of women convicts’ was another issue which, according to Michael Sturma, owed as much to historians as contemporaries, because they too ‘simply reiterated the conclusion’ of the Molesworth committee that ‘women were “with scarcely an exception, drunken and abandoned prostitutes”.’<sup>16</sup> Women convicts appear in a ‘favourable light’ in some contemporary accounts, with condemnations ‘seldom so generalized or exaggerated’ as those in the Molesworth report. To ‘support its recommendation that transportation be abolished’, it was in the committee’s interest to make conditions ‘appear as bad as possible’.<sup>17</sup> In examining why convict women were portrayed as ‘abandoned prostitutes’, Michael Sturma concluded that in the first half of the nineteenth century the ‘term “prostitute” was bandied about rather loosely’. The female to whom this applied was not necessarily a ‘professional harlot, nor even promiscuous’, and might have been guilty of ‘no more than cohabitation’.<sup>18</sup> A similar conclusion was reached by Dianne Snowden in a recent study into Irish female arsonists transported to Van Diemen’s Land.<sup>19</sup> Snowden concluded these 248 women were ‘survivors, persistently adapting to and exploiting the situations in which they found themselves ... [and] had to be “active and manipulative in order to survive”’.<sup>20</sup>

Between 1837 and 1840 the British Government was equally preoccupied with a range of major challenges. The New Poor Law and the Corn Laws were arousing Whig opposition,<sup>21</sup> as was the topic of foreign affairs, especially troubles in Spain and Portugal, the Chinese Opium War and the fear of an imminent war against Louis Philippe over Syria. The government was also grappling with an economic depression leading to a series of social and economic problems.<sup>22</sup> As Ritchie explained, surrounded by domestic problems, the issue of whether convicts ‘should or should not be transported’ to the Australian colonies, would not have been an issue of ‘high priority’ to the Whig government.<sup>23</sup>

In December 1837, in acknowledging Lord Glenelg’s despatch of 30 May in which he noted he was ‘contemplating the early discontinuance’ of assignment, Franklin claimed that funds available for immigration to the colony were not sufficient to defray charges which would ‘be

<sup>16</sup> Michael Sturma, ‘Eye of the Beholder: The Stereotype of Women Convicts, 1788–1852’, *Labour History* Vol. 34 (1978) p. 5; *BPP Crime and Punishment. Transportation 3*, p. ix.

<sup>17</sup> Sturma, ‘Eye of the Beholder: The Stereotype of Women Convicts, 1788–1852’, p. 5.

<sup>18</sup> Sturma, ‘Eye of the Beholder: The Stereotype of Women Convicts, 1788–1852’, p. 6.

<sup>19</sup> Dianne Snowden, “A White Rag Burning”: Irish women who committed arson in order to be transported to Van Diemen’s Land’, PhD thesis, University of Tasmania, 2005. pp. 9–12, 541.

<sup>20</sup> Maria Luddy and Cliona Murphy, ““Cherchez la femme”: The Elusive Woman in Irish History’, in Maria Luddy and Cliona Murphy (ed), *Women Surviving. Studies in Irish Women’s History in the 19<sup>th</sup> & 20<sup>th</sup> centuries* (Dublin, 1989), pp. 1–14 cited in Snowden, “A White Rag Burning”, p. 542.

<sup>21</sup> Ritchie, ‘Towards ending an unclean thing’, pp. 155, 158.

<sup>22</sup> See for example, *Times*, 4 July, 1837, p. 5; 7 July 1837, p. 3; 12 July 1837 and 13 July 1837, p. 6.

<sup>23</sup> Ritchie, ‘Towards ending an unclean thing’, pp. 155, 158.

incurred' if the British Government started the 'rapid introduction' of free labourers (who had been arriving since 1831) to replace convicts in private assignment.<sup>24</sup>

Franklin favoured the retention of assignment following the gang period, but as an alternative, he had developed a probation pass scheme in which pass-holders would be hired to settlers on short-term contracts until they had completed their sentences or earned a ticket-of-leave. No doubt aware of the direction in which the deliberations in London were heading, Franklin anticipated the major features of the system that Secretary of State for the Colonies, Lord Stanley, was to detail in his despatch of 25 November 1842.<sup>25</sup>

### Transportation Commission and report

On 24 November 1837 the House of Commons '*Ordered, THAT a Select Committee be appointed 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 was susceptible of Improvement'.*<sup>26</sup> The committee of fifteen members represented a broad base of political opinion, and was headed by twenty-six year-old Sir William Molesworth, depicted as a political satirist by some, as shown in figure 4.1.<sup>27</sup> Molesworth, a radical minister of parliament, had earlier 'provoked opposition' to the system of transportation and punishment, and in an address to the electors in June 1832, promised to support 'every species of just and salutary Reform in Church and State'.<sup>28</sup> Four years later the House of Commons accepted Molesworth's proposal for an inquiry into the state of transportation and appointed him chairman. Thomas Hobbes Scott (1782–1860), who, in October 1824 was appointed Archdeacon of New South Wales (which included Van Diemen's Land) and who had visited the colony and reported on the state of religion and education in 1825–28, was appointed Molesworth's secretary.

The others on the original committee were: Lord John Russell; Sir George Grey; Viscount Howick; Sir Thomas Fremantle; Sir Robert Peel; Sir Charles Buller; Viscount Ebrington; Sir Charles Lemon and Messrs Leader, Ward, Hawes, Ord, Francis Baring (Thretford) and

<sup>24</sup> *BPP Crime and Punishment Transportation 3*, Franklin to Glenelg, 9 December 1837, pp. 262–63.

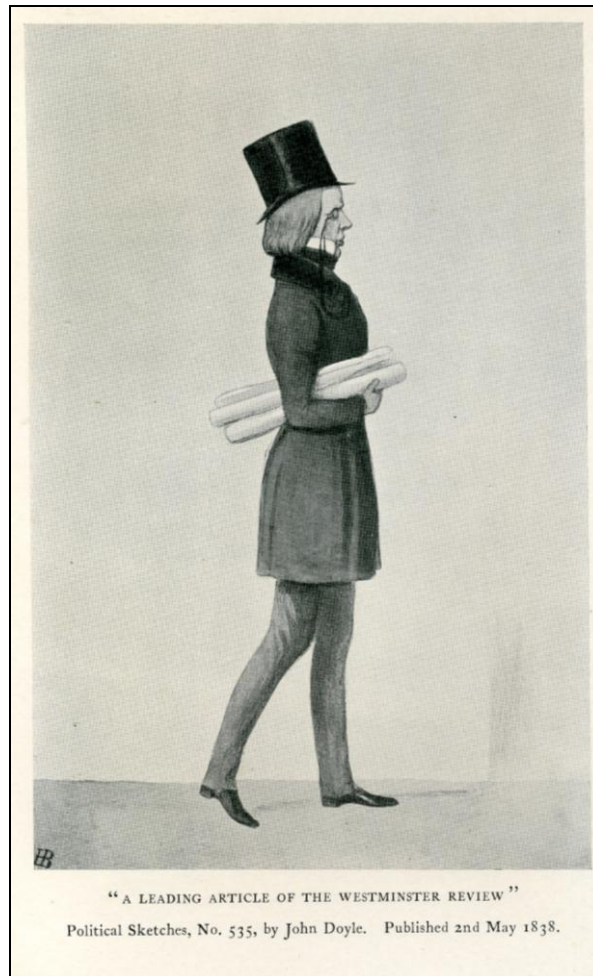
<sup>25</sup> Kathleen Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843* (Melbourne, 1949), pp. 233–34.

<sup>26</sup> *BPP Crime and Punishment Transportation 3*, p. ii, emphasis in original.

<sup>27</sup> *BPP Crime and Punishment Transportation 3*, pp. ii–iii. On 24 November 1837 Molesworth moved and carried the appointment of the Transportation Committee in the House of Commons, see *Times*, 25 November 1837 p. 3; Peter Burroughs, 'Molesworth, Sir William, eighth baronet (1810–1855)', *Oxford Dictionary of National Biography* Jan 2008 [<http://www.oxforddnb.com/view/article/18902>].

<sup>28</sup> John West, *The History of Tasmania with copious information respecting the Colonies of New South Wales Victoria South Australia &, &c, &c.* A G L Shaw (ed), (Sydney, 1981), p 475; Mrs Fawcett LL.D., *Life of the Right Hon. Sir William Molesworth MP, FRS* (London, 1901), p. 39.

French.<sup>29</sup> These reformers were intent on a fundamental revision of colonial policy. Grey and Howick had been Parliamentary Under-Secretary and later became Secretary of State. Russell and Howick thought of New South Wales as a slave society, felt assignment to private masters had to cease, and saw the new more ‘scientific’ system of probation more acceptable. Over time, some committee members were unavailable, so the composition of the committee, which sat in 1837 and 1838, changed.<sup>30</sup>



**Figure 4.1:** Sir William Molesworth Bart., MP at the age of 28.<sup>31</sup>

An analysis of the evidence provided by some of the witnesses, most of whom were hand-picked by Molesworth (and who, according to Ritchie, in some cases Molesworth had attempted to coach to ensure they gave the required line of testimony), reveals some relevant

<sup>29</sup> *BPP Crime and Punishment Transportation 3*, pp. ii–iii.

<sup>30</sup> Hirst, *Convict Society and its enemies*, p. 25; J C Sainty, *Office-Holders in Modern Britain. VI. Colonial Office Officials* (London, 1976), pp. 41–42; Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843*, p. 222; Russell and Howick’s comments are significant when considering Eardley-Wilmot’s later appointment.

<sup>31</sup> ‘A LEADING ARTICLE OF THE WESTMINSTER REVIEW’, *Political Sketches*, No. 535, by John Doyle. Published 2 May 1838 cited in Fawcett, *Life of the Right Hon. Sir William Molesworth*, facing p. 38.

and interesting details.<sup>32</sup> Alexander Maconochie, Franklin's secretary, repeated the assertions he made in his earlier report, that the 'practice of assigning convicts to masters was cruel, uncertain, prodigal, ineffectual either for reform or example'.<sup>33</sup> However, no Van Diemen's Land settler was called to give evidence, even though W H Hamilton, a wealthy settler, former manager of the Derwent Bank and government official, was living in London.<sup>34</sup> Sir George Arthur defended the assignment system before the Committee. As pointed out by A G L Shaw, in their report, the committee 'somewhat unscrupulously' quoted the 'single despatch in which for a special purpose', Arthur mentioned some of the difficulties. Yet, the committee 'ignored his actual evidence'.<sup>35</sup>

Arthur had emphasised the severity of assignment, and described how the assigned convict was 'deprived of liberty' and exposed to every whim of the family to whom he was assigned. The condition of the convict was in 'no respect different from that of the slave', the exception being that 'his master cannot apply corporal punishment by his own hands' and only had property in his convict for a 'limited period'.<sup>36</sup> Similarities could be found with claims about apprenticed slaves in British colonies where, in 1837 issues raised against slavery included apprentices being worked on treadmills with their wrists shackled, whipping, and cutting of women's hair.<sup>37</sup> Significantly, as Shaw noted, the only time Arthur mentioned 'drawbacks to assignment' was in June 1832 when he was anxious to 'squash a proposal to tax convict labour'. At the time he wrote to Lord Goderich about the difficulties some masters had in controlling assigned servants, and of 'daily trouble, expense, and disappointment' caused by these servants.<sup>38</sup>

In telling the committee that if all 'transported convicts were to be employed by the government ... the expense of Transportation would be excessively increased', Arthur was, unknowingly, predicting financial problems which emerged under Eardley-Wilmot, and which will be scrutinised in chapter eight. Arthur detailed the average expense of an assigned convict as approximately £4 per year, while that of a convict in the employment of

<sup>32</sup> Ritchie, 'Towards ending an unclean thing', p. 149.

<sup>33</sup> *BPP Crime and Punishment Transportation 3*, pp. viii, xxxiii; also Fitzpatrick, *Sir John Franklin in Tasmania 1837-1843*, p. 126.

<sup>34</sup> Fitzpatrick, *Sir John Franklin in Tasmania 1837-1843*, pp. 224, 255-57.

<sup>35</sup> Shaw, 'The Origins of the Probation System in Van Diemen's Land', pp. 17-18.

<sup>36</sup> *BPP Crime and Punishment Transportation 3*, p. vii.

<sup>37</sup> Diana Paton, *No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870* (London, 2004), p. 116.

<sup>38</sup> Shaw, 'The Origins of the Probation System in Van Diemen's Land', p. 18; *BPP Crime and Punishment. Transportation 3 (1837-38) Vol. XXII*, p. vii.

government was around £14,<sup>39</sup> but his figures did not include transportation costs. By the end of 1836, 96,558 convicts had been transported to New South Wales and Van Diemen's Land, at an average cost of £28 per head. The various expenses for residence and punishment once in the colonies were 'at least' £54 per head, totalling over £82 per convict. Yet to suit the Committee's perceptions, Molesworth took up Arthur's point by comparing slavery with the convict system, and referred to the 'convict slave'.<sup>40</sup> This comparison made by Molesworth is noteworthy when considering Eardley-Wilmot's efforts to end assignment of slaves, and his subsequent appointment to administer a convict colony.

Molesworth described how a criminal might be sentenced to New South Wales, Van Diemen's Land, Bermuda or Norfolk Island. In each colony a 'different fate would await him' and his chance of 'enduring pain would be different'. According to Molesworth, in these colonies there were 'innumerable gradations of good and evil' between the extremes of 'well fed, well clothed' and well treated by a 'kind and indulgent master' to the 'wretched praedial slave of some harsh master'.<sup>41</sup> The committee reported 'most' masters paid their assigned servants wages, or gave them tea, sugar or spirits as inducement to work, and it was doubtful if any masters confined their men to government rations.<sup>42</sup> The Launceston newspaper, *Cornwall Chronicle*, took up this point, describing assignment as 'not equitable in its distribution of rewards and punishment.'<sup>43</sup>

In 1838 Molesworth addressed his constituents in Leeds with a pamphlet which reproduced the Report of the Select Committee, to which he added a 'very powerful' letter on the subject written by Whately.<sup>44</sup> Father William Ullathorne was aware of the contents of Whately's letter, because his pamphlet, *The Catholic Mission in Australia* had circulated in Britain from late 1837. (Molesworth might have read Ullathorne's pamphlet which prompted an invitation to appear before the Committee.) Ullathorne read 'about 1,000 pages' of the 'horrors brought forward' by those examined and attested to its 'general accuracy'. He could 'see clearly', that many who gave evidence had not understood the 'effect' of the system on the mind and

<sup>39</sup> *BPP Crime and Punishment Transportation 3*, p. xl; see Meredith, 'Full Circle? Contemporary Views on Transportation', pp. 17–19 for the costs of transportation particularly between 1816 and 1836.

<sup>40</sup> *BPP Crime and Punishment Transportation 3*, 'Report from the Select Committee of the House of Commons on Transportation', pp. xxxvi–xx.

<sup>41</sup> *BPP Crime and Punishment Transportation 3*, 'Report from the Select Committee', pp. xx–xxi, vi.

<sup>42</sup> *BPP Crime and Punishment Transportation 3*, 'Report from the Select Committee', p. vi; W D Forsyth, *Governor Arthur's Convict System Van Diemen's Land 1824–36. A Study in Colonization* (Sydney, 1970), p. 113.

<sup>43</sup> *Cornwall Chronicle*, Vol. 10 No. 507, 27 January 1844 n.p. [p. 2].

<sup>44</sup> Fawcett, *Life of the Right Hon. Sir William Molesworth*, p. 143.

feelings of prisoners and the ‘specific result’ in their ‘moral’ habits.<sup>45</sup> Ullathorne’s evidence consolidated accusations that transportation spread homosexuality, particularly in penal settlements and on Norfolk Island. Where practiced on board ships from England it had ‘commonly’ been introduced from the hulks in England, and he thought the crowding together ‘even of boys’ to be a ‘cause of much crime of that kind’. So distressed by what he had seen, Ullathorne would do anything ‘lawful’ — even ‘deliberately’ give his life if it would contribute towards removal of the ‘evil’.<sup>46</sup>

Attendance at the Molesworth Commission was irregular. Of thirty-eight meetings held between 10 April 1837 and 3 August 1838, only four committee members attended one-half or more. Twenty-three witnesses were examined, a ‘relatively small number’ considering the committee heard oral evidence over four and one-half months.<sup>47</sup> The Committee found transportation to be an ‘ineffective instrument of reform’, and recommended the establishment of penitentiaries in both Britain and abroad, those in Britain to be used for the serving of short sentences. Transportation would still be necessary until British penitentiaries were built. Norfolk Island and Tasman’s Peninsula would be retained as penal settlements under an ‘altered system of discipline’, and until colonial penitentiaries were built the convicts could be employed erecting their own quarters, cultivating land and felling timber.<sup>48</sup>

After receiving a copy of the Molesworth Report, Edward Gibbon Wakefield wrote to his ‘friend’ Molesworth. He was satisfied the ‘un-clean thing’ had its ‘death-warrant’. The Report was the death warrant for transportation to New South Wales, but not Van Diemen’s Land. The last time Molesworth broached the subject in the House of Commons was 20 May 1851, when he moved an address to the Queen to discontinue transportation to Van Diemen’s Land.<sup>49</sup> On 3 August 1838 the House of Commons ordered the Transportation Committee to submit its Report and evidence. The evidence from witnesses was ‘45 pages long, some 40,000 words, the minutes of the oral evidence totalled 139 pages and the documents in the appendix 182 pages’.<sup>50</sup>

<sup>45</sup> Frances O’Donoghue, ‘The Vicar-General and Norfolk Island’, *The Push from the Bush, A Bulletin of Social History* No. 17 (April 1984), Father William Ullathorne to Dr Brown of Downside, 10 January 1838, p. 61.

<sup>46</sup> *BPP Crime and Punishment Transportation 3*, ‘Report from the Select Committee’, Ullathorne 8 and 12 February 1838, pp. 24–25.

<sup>47</sup> Ritchie, ‘Towards ending an unclean thing’, pp. 148–49, Molesworth 38; Grey 23; Howick 19; Leader 19.

<sup>48</sup> Ian Brand, *The Convict Probation System: Van Diemen’s Land 1839–1854* (Hobart, 1990), p. 11.

<sup>49</sup> Ritchie, ‘Towards ending an unclean thing’, p. 151; Fawcett, *Life of the Right Hon. Sir William Molesworth*, pp. 153, 346; Molesworth died 22 October 1855.

<sup>50</sup> Ritchie, ‘Towards ending an unclean thing’, p. 149

The Report left an almost overwhelming impression of brutality and degradation as it resorted to the emotional language of the anti-slavery movement, yet, there was no mention that transportation meant different things to different assigned convicts. When a convict was between the extremes of welcoming a new life and fearing it, it was in his master's economic interest to treat him well. However, the Committee did concede 'extreme variations were possible', but did not make the 'logical conclusion that the experiences of the majority provided a more realistic idea of assignment'. The Committee used 'selected examples, half-truths, even inaccuracies in its determination to prove that the system was evil, corrupting and incapable of improvement'.<sup>51</sup>

To claim the system had defects is not surprising — nor is the claim that many convicts were abused. Despite these claims, the average convict 'undoubtedly bettered his lot', served his or her sentence without incurring serious punishment, lived an outwardly honest life in a stable, married relationship and achieved respectability.<sup>52</sup> All a man had to do, according to Henry Tingley in 1837, was to:

keep a still tongue in his head, and do his masters' duty, and then he is looked upon as if he were at home; but if he don't he may as well be hung at once, for they would take you to the magistrates and get 100 of lashes, and then get sent to a place called Port Arthur to work in irons for two or three years, and then he is disliked by everyone.<sup>53</sup>

Women convicts were assigned to settlers under the same general arrangements, although problems arose over the proportion of females to males. This was, according to Sir (William) Edward Parry (commissioner for the Australian Agricultural Company in New South Wales 1829–34),<sup>54</sup> about one to ten, and in country districts, one to seventeen, assignment being the punishment for both groups. Parry criticised female convicts, whose behaviour was 'as bad as anything could well be'. He could 'hardly conceive anything worse', and with barely an exception, they were 'drunken and abandoned prostitutes'. Marriage was encouraged between female convicts and male ex-convicts. Females were permitted to marry free men, but remained under the surveillance of the police and were liable to be sent back to the female houses of correction in cases of misconduct. Convicts in assigned service were

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<sup>51</sup> Norma Townsend, 'A "Mere Lottery": The Convict System in New South Wales through the eyes of the Molesworth Committee', *The Push from the Bush. A Bulletin of Social History* No. 21 (October 1985), pp. 62–63.

<sup>52</sup> Townsend, 'A "Mere Lottery"', p. 80

<sup>53</sup> Henry Tingley (at Mr Lyne's, Apsley Lagoon, Molter's Bay, Great Swan Port VDL) to Thomas Tingley, Newick, near Uckfield, Sussex. Printed in Appendix to Report of Select Committee on Transportation, pp. 354–45, *Parliamentary Papers* 1837, XIX, p. 517 in C M H Clark, *Select Documents in Australian History 1788–1850* (Sydney, 1968), pp. 131–33.

<sup>54</sup> Brian H Fletcher, *Ralph Darling. A Governor Maligned* (Melbourne, 1984), pp. 160–61.



permitted to marry providing the master's permission was obtained and security given that the offspring would not become chargeable to the colony.<sup>55</sup> If Parry's estimate is correct, the high proportion would partly explain the increase in homosexuality, and such an imbalance can be seen as a point in support of the anti-transportationists, with a need to increase the population of free women. In spite of Parry's estimate, Charles Bateson's convict arrival figures, as shown in table 4.1, indicate the highest ratio of female to male convicts was in 1842, with almost one to seven. A G L Shaw's ratio is similar.<sup>56</sup>

In other evidence to the Transportation Committee, witnesses stressed how 'unnatural crime' was far more common in penal colonies than it would appear if only referring to the number of convictions. There were twelve convictions for this crime in the Supreme Court and Quarter Sessions in New South Wales between 1829 and 1835, and thirty-five for 'rape'. Under a similar listing for Van Diemen's Land, unnatural crime was not a category while there were eleven convictions for 'Carnally knowing' and three for 'Bestiality'.<sup>57</sup> The Catholic Chaplain in New South Wales, Father William Ullathorne, who called at Hobart Town in 1833 on route to Sydney, thought the reason was the disproportion of sexes among the convicts and the consequent difficulties for male convicts to find a marriage partner.<sup>58</sup>

As a means of remedying the 'evil' of unnatural crime among convict women, Alexander Maconochie proposed that convict women whose husbands refused, after a given time, to join them should become free to form other 'connexions'. His evidence included a 'fearful picture of the social evils' of assignment, and 'several horrible cases' of the corruption of settlers' young children by convict servants.<sup>59</sup> John Barnes, former surgeon at Macquarie Harbour, presented similar evidence. In families where a convict schoolmaster was employed 'it often happened' that 'improper intercourse' took place between the 'prisoner and the female branches of a family'. Barnes detailed a case where a convict clerk 'seduced the daughter of his employer'. She became pregnant by him, and the matter 'hushed up'.<sup>60</sup>

<sup>55</sup> Edward Parry's sister Elizabeth (died 1818), was Eardley-Wilmot's first wife; *BPP Crime and Punishment Transportation 3*, 'Report from the Select Committee', pp. ix, 62 evidence of Parry, Lang and Forbes and p. xxxi for proportion of females.

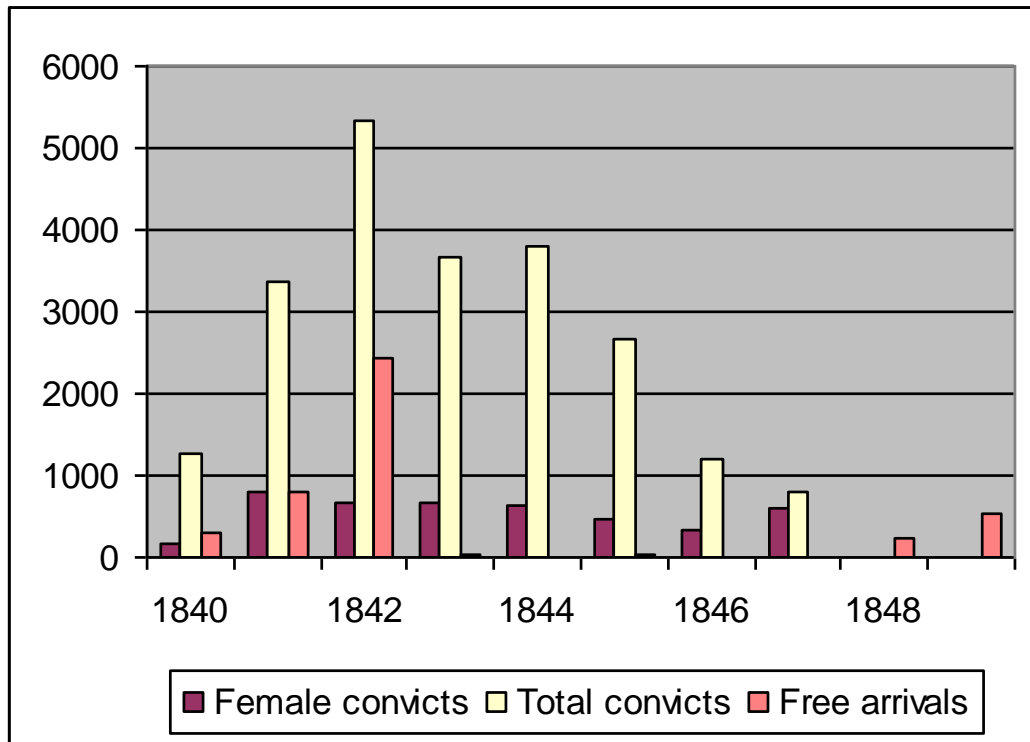
<sup>56</sup> Charles Bateson, *The Convict Ships 1787-1868* (Sydney, 1988), pp. 391-95; R B Madgwick, *Immigration into Eastern Australia 1788-1851* (Sydney, 1969), p. 225; A G L Shaw, *Convicts and the Colonies* (London, 1966), pp. 147-48, 367-68.

<sup>57</sup> *BPP Crime and Punishment Transportation 3*, 'Tables of Grave Crimes', pp. xxv-xxvi.

<sup>58</sup> Ullathorne arrived in Sydney in February 1833. He also spent time at Norfolk Island; Ullathorne's background see Frank Clune, *The Norfolk Island Story* (Sydney, 1967) especially p. 144 and chapter 19; *BPP Crime and Punishment Transportation 3*, 'Report from the Select Committee', pp. 25-26.

<sup>59</sup> *BPP Crime and Punishment Transportation 3*, 'Report from the Select Committee', p. xxvii.

<sup>60</sup> *BPP Crime and Punishment Transportation 3*, 'Report from the Select Committee', John Barnes, pp. 37, 47.

**Table 4.1:** Convict and free arrivals in Van Diemen's Land 1840–49.<sup>61</sup>

	1840	1841	1842	1843	1844	1845	1846	1847	1848	1849
Ships	6	16	23	18	16	14	7	6		
Female convicts	183	803	678	654	641	479	333	616		
Total convicts	1267	3362	5327	3677	3790	2668	1193	791		
Ratio females to males	1:5.9	1:3.2	1:6.9	1:4.6	1:4.9	1:4.6	1:2.6	More females		
Free arrivals	299	806	2448	24	1	20	0	8	218	535

John Russell, assistant-surgeon with the 63<sup>rd</sup> Regiment 1829–33, surgeon to the civil hospital at Launceston, and who later ‘formed the penal settlement’ of Port Arthur where he was commandant for ‘about a year’, was convinced government employment of convicts did not improve their character. They tended to congregate in large groups and engage in the ‘mutual interchange of bad qualities’, but crimes of violence against the person were ‘much more rare’ than previously. Russell detailed petty theft, larceny, acts of violence among the convicts and a ‘great many crimes of an unnatural nature in the colony’. Serving on juries he heard ‘many trials for unnatural offences, with animals particularly’. As Barnes had, Russell also described ‘very improper intercourse’ between convict domestic servants and females in free settler

<sup>61</sup> Discrepancies occur in figures between references. These are from Bateson, *The Convict Ships 1787–1868*, pp. 391–95 and Madwick, *Immigration into Eastern Australia 1788–1851*, p. 225.

families. It was common practice for seduction cases to be ‘hushed up’, some incidents of which he had personally observed.<sup>62</sup> As will be shown, especially in chapter five, such incidents later became a problem for Eardley-Wilmot, and, concerned for the convicts soon after arrival, he notified Stanley about the ‘horrible practices’ in the probation gangs.<sup>63</sup>

Ministers of religion had been to the forefront since the beginning of European settlement in Australia. At Sydney Cove in November 1788, Reverend Richard Johnson, chaplain to the First Fleet, despaired that ‘so little good’ had been done among the ‘poor souls’, who seemed ‘destitute both of eyes & ears ... They prefer their Lust before their Souls, yea, most of them will sell their souls for a Glass of Grogg, so blind, so foolish, so hardened are they.’<sup>64</sup> Clerical witnesses were not unusual. Richard Whately had campaigned against transportation since his *Thoughts on Secondary Punishments* was published in 1832.<sup>65</sup> He degraded Botany Bay from every possible angle, including the risk posed for Britons: ‘If only five out of every fifty’ convicts should return they would bring a ‘mass of depravity’ which was ‘more infectious’ than the fifty took with them. By publishing a further letter from the Archbishop in the same volume as the Committee’s report, Molesworth ensured Whately’s views reached a wide audience including parliamentarians (of whom Eardley-Wilmot was one), the press, and also legions of clergymen, priests and missionaries.<sup>66</sup>

### **An ‘amazing blunder’**

Surprisingly, Molesworth was provided with a bonus in October 1837 when, without having read them, Franklin forwarded a questionnaire and various reports on assignment and transportation by Alexander Maconochie, his private secretary, to London.<sup>67</sup> Maconochie asserted that assignment was ineffective for reform, and was ‘cruel and uncertain’. His reports were printed in the London press and tabled in the House of Commons before Franklin knew

<sup>62</sup> *BPP Crime and Punishment Transportation 3*, John Russell, p. 49, p. 60.

<sup>63</sup> TAHO GO25/1/11 ‘Lieut-Governor: Letterbook of Despatches to Secretary of State 14 September 1843–28 November 1845’, Eardley-Wilmot to Stanley, 2 November 1843, pp. 15–19.

<sup>64</sup> George Mackaness (ed), *Some letters of Rev Richard Johnson etc., Part I* (Sydney, 1954), Reverend Richard Johnson to Henry Fricker, Esq., 15 November 1788, pp. 23–25.

<sup>65</sup> Shaw, *Convicts and the Colonies*, p. 251; Hirst, *Convict Society and its Enemies* p. 25; also Whately, *Remarks on Transportation and on a Recent Defence of the System..*

<sup>66</sup> Richard Whately, ‘Substance of a Speech on Transportation Delivered in the House of Commons on 19 May 1840 in G D Page, ‘An Analysis and Exploration of the Varying Opinions, between 1788 and 1960, on the Character of the Convicts Transported to the Eastern Australian Colonies’, BA thesis, University of New England, 1961, p. 28 cited in Smith, *Australia’s Birthstain*, p. 213.

<sup>67</sup> *BPP Correspondence returns ... relating to transportation and secondary punishments with appendices 1810–41. Crime and Punishment. Transportation 6* (Shannon, 1971), Maconochie to Russell, 30 September 1837 with appendix (six letters pp. 426–29), pp. 417–29; also Franklin to Glenelg (No. 104), 7 October 1837 with 14 enclosures (pp. 431–540) and appendix (eleven reports), pp. 431–726.

of their existence.<sup>68</sup> This was a bonus to Molesworth and the Philosophic Radicals, as this type of data could assist Molesworth to become established on the political scene. The papers were also published as a Parliamentary Paper and used by the Molesworth Committee in formulating their Report. As Kathleen Fitzpatrick, Franklin's biographer explained, Maconochie was not to blame for failing to inform Franklin of the report's publication: it was 'an amazing blunder' of the Home Secretary's office to make Maconochie's private opinion public.<sup>69</sup> Nevertheless, Franklin later dismissed Maconochie.

The Molesworth Report was complete in August 1838, but copies were not immediately sent to Franklin and Gipps — the people most concerned. Following submission of the Report, Lord Glenelg assured Gipps that the British Government did not intend to withdraw convicts already assigned to settlers, but Britain would discontinue assignment in future.<sup>70</sup> In February 1839 Franklin had still not received a copy of the Report, but having read it in the *Times*, he thought it a 'one-sided view of the subject'.<sup>71</sup> He also read Lord Howick's minute and other printed papers on the subject in the English papers, and proposed convicts be sent to primary gangs on arrival before the implementation of the Report. These gangs would be conducted as much as possible on the separate system with 300 men in each at 'a distance from the settled districts' in 'opening communications to, and in clearing and draining, lands for sale'. He proposed that a superintendent and a clergyman be in charge of each gang, and that a visiting magistrate be appointed to attend several gangs to dispense the law to offenders.<sup>72</sup>

Franklin also suggested each convict's conduct be recorded and credits or debits entered daily, and settlers to whom convicts were to be assigned should be 'deemed qualified by the quarter sessions, with reference to character, or the possession of land'. Assigned convicts would be paid a maximum of £12 per annum with tickets-of-leave granted for good behaviour after specified periods. Female domestic servants would only be assigned after they had

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<sup>68</sup> *Times*, 6 May 1840, p. 2.

<sup>69</sup> Maconochie's letter to Russell and summary of the papers he sent to London, see *BPP Crime and Punishment Transportation* 6, pp. 417–29; Gipps forwarded Franklin's report dated 7 October 1837 to Glenelg on 6 July 1838, see *BPP Crime and Punishment Transportation* 6, p. 769; Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843*, p. 158.

<sup>70</sup> *HRA* I, xix Glenelg to Gipps 16 November 1838, p. 679.

<sup>71</sup> Franklin to Gipps, 9 February 1839, Lefroy Bequest, Scott Polar Research Institute, Cambridge cited in Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843*, pp. 224–25.

<sup>72</sup> *BPP Crime and Punishment Transportation* 6, Franklin to Lord Glenelg, two despatches both dated 15 February 1839, pp. 840–47 and pp. 847–50; The later appointment of clergymen to probation stations created dissension between Eardley-Wilmot and Bishop Nixon. This will be examined in chapter seven.

obtained a ticket-of-leave.<sup>73</sup> Thus, Franklin suggested the basic format which was later used for the operation of the probation system in place during Eardley-Wilmot's administration.

The same month, May 1839, and more than nine months after Molesworth reported, Sir George Gipps, Governor of New South Wales, was finally sent details of the changes which Lord John Russell wanted implemented 'immediately', and from which, Gipps would learn the 'general intentions' of the British Government.<sup>74</sup> Lord Russell directed Under-Secretary Fox Maule to explain that it was the government's intention to reduce the number of convicts to be transported during the year with a view to the 'ultimate abandonment' of assignment. In future, those convicted in the colonies were to be confined in road gangs.<sup>75</sup> The number of convicts employed in the hulks in Great Britain would be increased to 3,500 and in Bermuda to 1,000, while in the United Kingdom penitentiaries, numbers would be increased by 250 to 800. It was also proposed to build a new prison on the separate system for 500 prisoners.<sup>76</sup> Franklin and Gipps were told to prepare for the 'immediate' reduction and 'approaching discontinuance' of assignment. It was possible that 2,000 convicts would be transported that year with no decrease in the number sent from Ireland.<sup>77</sup> It was only when Gipps sent Franklin a copy of this enclosure that he received official advice of changes.

Because of the 'healthiness of the Climate', the 'fertility of the Soil', and the 'entire separation' of Norfolk Island, Britain planned to make the island the 'reception of a large number' of convicts, for whom a 'regular means of employment' would need to be provided. To ensure supervision, a prison to house as many convicts as could be 'conveniently and profitably employed' on the island would need to be constructed. Gipps was instructed, at his 'earliest convenience', to send an estimate of costs and a plan of the proposed prison which, 'as far as possible', would house British convicts, while those convicted of offences in New South Wales would be confined in another part of the colony or employed on the roads.<sup>78</sup>

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<sup>73</sup> *BPP Crime and Punishment Transportation 6*, Franklin to Lord Glenelg, 15 February 1839, pp. 847–50.

<sup>74</sup> *Historical Records of Australia* (hereafter *HRA*) *Series I, Governors' Despatches to and from England, Volume xx* (Sydney, 1924), Marquess of Normanby to Sir George Gipps (No. 46) 11 May 1839, pp. 152–55 with encs Fox Maule (Russell's Under-Secretary) to Sir George Grey, 30 January 1839, Normanby to Gipps, 'Separate' 11 May 1839 and Normanby to Gipps 'Confidential', 11 May 1839, p. 152.

<sup>75</sup> *HRA* I, xx, Maule to Grey, 30 January 1839, p. 154 enc in Normanby to Gipps (No. 46) 11 May 1839, pp. 152–55.

<sup>76</sup> *HRA* I, xx Normanby to Grey, 11 May 1839, pp. 152–54.

<sup>77</sup> *HRA* I, xx, Maule to Grey, 30 January 1839, p. 154 enc in Normanby to Gipps (No. 46) 11 May 1839, pp. 152–55.

<sup>78</sup> *HRA* I, xx, Normanby to Gipps (No. 46) 11 May 1839, pp. 152–53 and enc Maule to Grey, 30 January 1839, p. 154.

A British Order in Council of 22 June 1840 confirmed how, after 1 August 1840, it was no longer lawful to send convicts to New South Wales and to the settled districts of Van Diemen's Land. Russell then notified Franklin that the Home Government had decided on changes to the system of transportation, the new method to be known as the probation system, and assignment, once abolished, was, 'in no shape' to 'be revived'. Franklin was further advised that prisoners on Norfolk Island, whose sentences would soon expire, were to be sent to Van Diemen's Land.<sup>79</sup> As soon as it became known in Hobart Town that the colony was to be the receptacle for these 'desperadoes', meetings were held and petitions sent to Britain. Earl Grey's hasty order was modified, and a Commission was appointed to enquire into the state of penal discipline on the island. However, some time elapsed before Norfolk Island was disbanded and the convicts shipped to Port Arthur.<sup>80</sup> The British government had decided to treat New South Wales as a settlement and not a convict colony.

In reply to Russell's request of September 1840 that Franklin take 'immediate measures' for the reception of a 'greater number' of convicts at Tasman Peninsula,<sup>81</sup> the latter pointed out the 'almost total absence' of 'properly qualified' superintendents and overseers of probation gangs.<sup>82</sup> This meant convicts and ex-convicts would be employed in such roles. These were, according to John Frost, the transported Chartist leader, 'the worst men they can find to fill the Government situations'.<sup>83</sup> Franklin suggested that suitable people for these positions, such as retired sergeants and soldiers, and ministers of religion, of whom there was a similar shortage, should be sent to the colony. As for the separate confinement penitentiaries envisaged for the colony, Franklin feared these would be very expensive, and he asked for guidance about their locations. His final query related to the disposal of convicts on completion of their gang labour. He also had grave doubts about any return of Norfolk Island men to the Van Diemen's Land probation gangs, the idea having been proposed before Maconochie's appointment as commandant at Norfolk Island. The 'small military force and

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<sup>79</sup> *HRA I*, xx Russell to Gipps, 6 July 1840, p. 700 that to give legal effect to arrangements, Order in Council issued 22 May 1840; *BPP Crime and Punishment Transportation 6*, Franklin to Lord John Russell acknowledging Russell's despatch, 18 November 1840, pp. 870–71 and 23 November 1840, p. 872; L Robson, *A History of Tasmania: Volume I. Van Diemen's Land from the Earliest Times to 1855* (Melbourne, 1983), p. 329.

<sup>80</sup> James Fenton, *A History of Tasmania from its discovery in 1642 to the present time* (Hobart, 1884) facsimile edition (Hobart, 1978), pp. 162–65.

<sup>81</sup> *BPP Crime and Punishment Transportation 6*, Russell to Franklin, 10 September 1840, pp. 873–74.

<sup>82</sup> *BPP Crime and Punishment Transportation 6*, Franklin to Russell, 18 November 1840, pp. 870–72.

<sup>83</sup> John Frost, *The Horrors of Convict Life. Two lectures delivered in the Oddfellow's Hall Padiham August 31<sup>st</sup> 1856 by Mr John Frost*. Originally published London 1856 (Hobart, 1973), pp. 27–28.

the mixed character of the population' made Franklin fear there would be 'danger to life and property' if convicts returned from Norfolk Island.<sup>84</sup>

Within five years of its report, the Molesworth committee was exposed as a failure. In December 1843 James Stephen, permanent Under Secretary at the Colonial Office, admitted assignment had been abolished 'inadvisedly', the decision was taken 'rashly, hastily and ignorantly'. To Stephen, every fresh report seemed to show how 'little' the Transportation Committee understood the subject, and a return to assignment was inevitable.<sup>85</sup> There was no return, despite earlier claims of links between assignment and slavery. Franklin and Eardley-Wilmot were required to administer the probation system by following Stanley's instructions.

Even though Franklin had not received full details of the probation system, by April 1842 he had established outstations on Tasman's and Forestier's Peninsula — at Saltwater Creek (later Saltwater River) about four miles from the later convict punishment station at the Coal Mines on Tasman's Peninsula and Wedge Bay (Nubeena) for agriculture, and at Flinders Bay, Impression Bay (Premaydena) and Cascades (Koonya) for timber working.<sup>86</sup> Apparently Franklin was satisfied with his choice of Tasman's and Forestier's Peninsula, because at these two locations he proposed 'establishing agricultural, and therefore productive labour', and he asked Charles O'Hara Booth, the Commandant of Port Arthur, to prepare temporary accommodation for about 200 convicts. His plan was for buildings on the 'separate system' to be introduced first at Point Puer, arrangements which Lord Russell approved in July 1841.<sup>87</sup> Franklin also prepared for prisoners to seek private work through government employment services or hiring stations. Commissariat expenditure continued at approximately £250,000 per year to the satisfaction of colonists accustomed to this annual injection of capital, but they were unwilling to pay police and gaol costs.<sup>88</sup>

The concept of the 'separate system' had been advanced by the Quakers, who envisaged the solitary prisoner contemplating his wrongs and his soul, and being led by such

<sup>84</sup> *BPP Crime and Punishment Transportation 6*, Franklin to Russell, 18 November 1840, pp. 870–72.

<sup>85</sup> Shaw, *Convicts and the Colonies*, pp. 302–03; Smith, *Australia's Birthstain*, p. 220.

<sup>86</sup> 'Cascade', conventionally known as 'Cascades', in reference to the stream which tumbled through the nearby valley, was at Newman's Bottom, see Richard Tuffin, 'Cascades Probation Station: Prison Built on Timber', *THRA P&P*, 51. 2 (June 2004), pp. 71–73 and Tuffin, "'Where the vicissitudes of day and night are not known": Convict Coal Mining in Van Diemen's Land, 1822–1848', *Tasmanian Historical Studies* Vol. 13, 2008, pp. 35–61 for the 'mass of variable experiences' in the coal mines.

<sup>87</sup> *BPP Crime and Punishment Transportation 6*, Franklin to Russell 19 January 1841, pp. 881–82 and enc 1, Forster to Booth, 12 January 1841, pp. 882–83; Brand, *The Convict Probation System*, p. 15.

<sup>88</sup> *BPP Crime and Punishment Transportation 7*, Franklin to Stanley (No. 41), 1 April 1842, p. 84–87; Brand, *The Convict Probation System*, p. 17; Robson, *A History of Tasmania: Vol. I*, p. 388; J A Fletcher, *A Brief History of Port Arthur and the Tasman Peninsula Out-stations 1804–1877* (Hobart, 1947), p. 11.

reflection to salvation. Pentonville, near London, was based on the idea of total separation of prisoners using a layout which simplified supervision.<sup>89</sup> Matthew Forster, the Comptroller-General of Convicts in Van Diemen's Land, expected to have the new system in operation by 1 July 1841. In drawing up regulations which related to the treatment and discipline of probationary convicts, he gained many ideas from the reports of Reverend Whitworth Russell and William Crawford. Despite his optimism, Forster soon discovered a considerable difference between formulating principles and operating the system, and was forced to continue employing convicts in supervisory roles as there were insufficient free men willing to undertake these arduous duties at the salaries offered.<sup>90</sup>

Under Forster's proposed regulations, each gang would have a superintendent; three assistant superintendents; a storekeeper; three overseers and a messenger. The first superintendents appointed under these arrangements were John White at Jerusalem and Thomas E Chapman at Brown's River. James Pringle was appointed to Salt Water Creek in April 1841, where the first probation prisoners from the *British Sovereign* had arrived on 18 March.<sup>91</sup> Another small probation party was located at New Town. At the time only newly-arrived men were being sent to the gangs, the earlier arrivals remaining under assignment.<sup>92</sup> In July when Franklin reported these developments he listed the stations in operation: Brown's River; Jerusalem; Rocky Hills and Salt Water Creek, with barracks ordered to be prepared on Slop Island and at Flinder's Bay.<sup>93</sup> He repeated his plea for 'the great want of proper religious instruction for the large bodies of convicts not under the superintendence of the local government at Tasman's Peninsula', and also an earlier call for a minister of religion.<sup>94</sup>

Passing in transit with Stanley's instructions to Franklin of November 1842, was a report from Franklin about changes to the probation gangs and the convict system. He explained that he was 'by no means prepared' for such a rapid 'influx of criminals', not only from the United Kingdom but from the Australian colonies as had happened. He intended holding the worst convicts on Tasman's Peninsula, the others, depending on their character and sentences,

<sup>89</sup> Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750–1850* (London, 1978), chapter 3, esp pp. 56–59 and between pp. 82–83 for sketches of Pentonville.

<sup>90</sup> Brand *The Convict Probation System*, p. 15 see pp. 224–26 for a list of probation stations, dates of operation and map of locations. The list excludes male penitentiaries, hiring depots, Cascade Female Factory and establishments on Norfolk Island and Port Arthur which all predated and outlasted the probation system.

<sup>91</sup> *BPP Correspondence and papers ... convicts ships convict discipline and transportation 1843–47. Crime and Punishment. Transportation 7* (Shannon, 1969), Franklin to Lord John Russell (No. 68), 15 April 1841, pp. 40–44; Bateson, *The Convict Ships 1787–1868*, pp. 364–65; Brand *The Convict Probation System*, p. 16.

<sup>92</sup> Brand *The Convict Probation System*, p. 15.

<sup>93</sup> *BPP Crime and Punishment Transportation 7*, Franklin to Russell enclosing Regulations of the Probation System, 9 July 1841, pp. 48–54.

<sup>94</sup> *BPP Crime and Punishment Transportation 7*, Franklin to Lord John Russell (No. 104), 10 July 1841, p. 66.



in labour gangs ‘more or less distant from the densely populated districts’.<sup>95</sup> Franklin’s efforts to establish a probation system continued. Significantly, he also anticipated some of the key problems which later confronted Eardley-Wilmot. One was his repeat of an earlier request for ex-military and naval personnel to alleviate the growing shortage of people qualified to ‘work out any system of penal discipline’. Although the ultimate effect on the prisoners’ characters was unknown, discipline had improved with less crime than previously.<sup>96</sup> It was another seven months before Stanley detailed the organisation of the new system.

### **Stanley and the probation system**

Stanley’s final instructions for the new system were dated 25 November 1842, the basis being the five stages through which a convict was required to pass. Detention at Norfolk Island was first, followed by probationary gangs, probation passes, tickets of leave and pardons.<sup>97</sup> It was this system, with Franklin’s adaptations and modifications, which Eardley-Wilmot was to administer. It is therefore necessary to examine these instructions next.

Punishment for the most aggravated cases of convicts sentenced to any term not less than fifteen years, meant detention at Norfolk Island. The convicts were required to remain between two and four years on the island, the settlement only to be used for convicts transported directly from the United Kingdom. Stanley anticipated no more than 1,000 convicts would be sent to the island, and did not expect many more than 3,000 residing at any one time. The governors of New South Wales and Van Diemen’s Land had the discretion to transport those convicts serving similar colonial sentences to Norfolk Island and Port Arthur.<sup>98</sup> An officer to be known as the ‘superintendent or commandant of Norfolk Island’ would proceed as ‘soon as practicable’. He would be under the ‘immediate authority of the Governor of Van Diemen’s Land’, the island to be ‘detached’ from the government of New South Wales and become ‘annexed to Van Diemen’s Land’.<sup>99</sup> Control of Norfolk Island was transferred from New South Wales to Van Diemen’s Land in September 1844.

On arrival in Van Diemen’s Land all convicts were to be placed in probation gangs composed of convicts who had passed through detention at Norfolk Island, and of convicts sentenced to

<sup>95</sup> CO280/147 (AJCP 512) Franklin to Stanley (No. 123) 17 November 1842, pp. 171–82.

<sup>96</sup> *BPP Crime and Punishment Transportation 7*, Franklin to Stanley (No. 41), 1 April 1842, p. 84–87; Brand, *The Convict Probation System*, p. 17.

<sup>97</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, p. 107; also *HRA Series I, Governors’ Despatches to and from England*, Vol xxii (Sydney, 1924) Stanley to Franklin, enc No. 1 pp. 514–23 in Stanley to Gipps 26 January 1843, pp. 514–29.

<sup>98</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, pp. 108–09.

<sup>99</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, p. 109.

transportation for any term less than ‘life’ who were considered by the Secretary of State as ‘proper to be placed in this class’. Probation gang convicts were to be employed in government service in unsettled districts for a period of time in proportion to their length of service, usually between one and two years, the gangs to be ‘employed in hard labour’. The ‘labour of all should not be equally hard’.<sup>100</sup> Stanley stated every gang should be broken into two or three divisions ‘distinguished by mitigations of toil or other petty indulgencies’, such a transfer between divisions would establish an ‘effective system of rewards and penalties’. Stanley also acknowledged such a system was already in operation in the colony, where the regulations seemed ‘well adapted to their object’.<sup>101</sup>

The next instruction stipulated that probation gangs must be under the superintendence of a new official, a Comptroller of Convicts, who would grant ‘relaxations and indulgences’. Arrangements were required for a maximum of 8,000 convicts in probation gangs, the gangs to be divided into groups of 250–300 men. The men would be ‘huted or quartered’ where they would be employed in public works, the locations close enough to each other to facilitate co-operation in supervision and control, but not too close to allow ‘easy communication’ between the various gangs to allow the men to arrange to resist authority.<sup>102</sup> Such housing arrangements, as will be shown in chapter five, provided opportunities for ‘unnatural crime’, which became a key problem for Eardley-Wilmot.

Each gang would have an overseer, as ‘many subordinate officers as required’, and a religious teacher — a clergyman of the Established Church, Wesleyan Methodist or a Roman Catholic Priest. Each overseer and religious teacher was required to report weekly to the Comptroller on the conduct of every man, the reports to be used to compile an account of each man’s character reduced to a scale of ‘numerical notation’ from which an ‘estimate’ of his ‘claims’ could be drawn and used for indulgences or punishment.<sup>103</sup>

The third class in Stanley’s system was the probation pass, with the holders of these passes divided into three classes. The holders of first, or lowest class, were required to obtain consent from the Lieutenant-Governor for any ‘contract of service’, and would receive half their wages from their employers which was to be paid into the savings bank. Those in the second

<sup>100</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, pp 109–10.

<sup>101</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, pp 109–10.

<sup>102</sup> Brand, *The Convict Probation System*, p. 19; *BPP Crime and Punishment. Transportation 7* Stanley to Franklin (No 176) 25 November 1842, p. 110, Stephen to Trevelyan 28 February 1843, pp. 128–131 for 8,000.

<sup>103</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, p. 110.

and third classes were permitted to engage in service provided it was ‘immediately reported’ to the Lieutenant-Governor. The second class holders would receive two-thirds of their wages, paid into the bank, while the third class holders were permitted to retain their earnings. It was necessary that any probation holder paid wages was able to account to the Comptroller of Convicts for his expenditure. Bank deposits from wages were to remain until the convict had earned a ticket-of-leave, and, if his probation pass was withdrawn because of misconduct the balance would be ‘forfeited to the Queen’.<sup>104</sup>

Any pass-holder unable to find private employment was to be returned to government service where he would receive the ‘ordinary rations of food and clothing’ and kept separate from those in gangs. Pass-holders were permitted to resume private employment if it became available, and until such times, were required to work on the roads or be hired to private settlers in ‘jobbing parties’ engaged in ‘rural works by contracts’. Any wages earned from this employment was to go to the Commissariat Chest.<sup>105</sup>

The ticket-of-leave was the fourth stage, the essential condition being that holders possess a ‘probationary and revocable pardon’ valid only in the colony where it was granted. To obtain a ticket it was necessary a convict had served at least half his sentence (for this calculation a ‘life term’ was twenty-four years), and to have held a probation pass for a term ‘equal to the difference between half the sentence and the shortest period at which, under that sentence, the convict might have arrived at the stage of a probation pass holder’. The fifth was the pardon, conditional or absolute. This ‘act of pure grace and favour’, could ‘be granted either by the Queen or the Governor in the exercise of the Royal Prerogative delegated to him’.<sup>106</sup>

The transition from one stage of punishment to one of less severity would be denied any convict who misbehaved. Stanley alleged that, while this highly regulated system was a means of reform, it would also uphold an ‘invigorating hope’ and a ‘salutary dread’ at each stage of punishment — thereby, a similarity can be seen with Eardley-Wilmot’s comments when sentencing juveniles. The system therefore acted as a deterrent to ‘would-be’ criminals in England. Stanley’s plan was for the Comptroller to draw up periodical reports with the required statistical information. He was also required to support any recommendations for

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<sup>104</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, pp. 110–11; see *HRA III, vii Despatches and Papers relating to the History of Tasmania* (Canberra, 1997), Arthur to Huskisson 9 June 1828, pp. 343–44 for proposed formation of a savings bank for the ‘disposal of the Money and property’ which convicts possessed on arrival.

<sup>105</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, p. 111.

<sup>106</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, pp. 112–13.

‘amendment’ to the system, with clear explanations of the reasons, and an estimate of any financial and or other consequences affecting any such change.<sup>107</sup>

The change in convict management from assignment to probation was made at the beginning of the economic depression of the 1840s. The upkeep for police and gaols and the revenue derived from land sales were unequal, the economy became unstable, and many sheep farming settlers relocated to Port Phillip.<sup>108</sup> The difficulties were made worse by constant orders from the Colonial Office to reduce costs while still increasing the number of convicts following the cessation of transportation to New South Wales. In 1841 Franklin learnt 1,000 more prisoners were to be sent to the colony, and he was instructed to prepare for a further 3,000. As he frantically sought to reorganise the administration and dispersal of convicts, in 1842, at least 5,633 more, including 783 women left Britain for Van Diemen’s Land.<sup>109</sup>

After the ending of transportation to New South Wales the colony gained elective institutions, while Van Diemen’s Land was specifically disqualified. The ‘sole reason’, according to Stanley, was that Her Majesty’s Government was not ‘justified in proposing to Parliament the extension to Van Diemen’s Land of similar’ elective institutions due to ‘the incompatibility which they consider [ed] to exist between the grant of such a form of constitution and the continuance of transportation to the colony’.<sup>110</sup> This situation later led to political controversy under Eardley-Wilmot. The ending of transportation to New South Wales, the increased number of convicts to Van Diemen’s Land and the recommendations of the Molesworth Report created major problems for Eardley-Wilmot. He was required to manage large groups of convicts and at the same time organise a new system of convict control. The resources of Van Diemen’s Land as a receptacle for convicts were severely strained, and the British decision to send more than 20,000 convicts between 1840 and 1844 was a constant dilemma.

### **Plans for the ‘unhappy women’**

Another despatch from Stanley dated 25 November 1842 detailed the system for females. Assignment of female convicts was prohibited, and Franklin was authorised to hire buildings

<sup>107</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No 176) 25 November 1842, pp. 108, 113, despite Eardley-Wilmot obeying the order to have the Comptroller draw up periodical reports with the required statistical information, Stanley complained this was not done.

<sup>108</sup> Robson, *A History of Tasmania: Vol. I*, p. 327; the background to quit rent will be covered in the next chapter.

<sup>109</sup> CO408/19 (AJCP 883), Stanley to Franklin (No.13), 8 November 1841, pp. 315–16; Bateson, *The Convict Ships 1787–1868*, pp. 364–67; Robson, *A History of Tasmania Vol. I*, p. 329.

<sup>110</sup> Stanley to Franklin 5 September 1842 in Edward Sweetman, *Australian Constitutional Development* (Melbourne, 1925), p. 398 Stanley also transmitted a copy of Statute 5 and 6 Vict., c.76.

to hold future arrivals. If necessary, he was to detain the transports in which the women arrived until accommodation was ready. The basis of the system was the separation of new from old convicts at the Female Houses of Correction (Female Factories) in Hobart Town and Launceston, buildings which, according to reports received by Stanley, were 'extremely discreditable' and so crowded that not all the women were able to lie down at one time.<sup>111</sup>

The British government intended, with the 'least possible delay' to construct a penitentiary capable of holding 'at least 400 female prisoners' in a 'healthy situation, inland' at least twenty miles from Hobart Town. The Inspectors of Prisons had been instructed to 'prepare the plans of such a building', which would be sent to the colony as soon as approval was received from Her Majesty's Government. A suitable person to supervise the erection of the building would also be sent.<sup>112</sup> In selecting a site, Franklin was instructed to consider the 'healthiness of the situation' with access to water, stone and timber and also easily accessible for transporting building materials. The cost of the penitentiary was to be borne by the British government, and the labour by a probation party. Before he received approval, Franklin was permitted to commence any preparations for which he did not need a plan. He was also authorised to remove as many convicts from the probation gangs he could accommodate and usefully employ in felling timber, quarrying stone and 'all the more laborious work' needed before construction could commence.<sup>113</sup>

Once the penitentiary was complete, this is where, on arrival, all female convicts would be sent for 'not less than six months'. Those who conducted themselves properly on board ship and at the penitentiary, where 'constant reports would be made on their behaviour', would be granted probation passes, as happened with male convicts. The exception was that any contract of service which had been entered into by female convicts was to be concluded at the penitentiary. Stanley was confident the success of the new venture depended on the division of new arrivals from the old, and was optimistic the 'unhappy women' in the factories would not remain much longer in their 'hopeless condition'.<sup>114</sup> Here too are sentiments which Eardley-Wilmot later expressed many times as he attempted to maintain separation between 'old' and 'new' convicts. Stanley further instructed, that after the establishment of probation, female factories were to be used as places of punishment for

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<sup>111</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No. 176) 25 November 1842, p. 115; also *HRA I*, xxii Stanley to Franklin, enc No. 1 pp. 514–23 in Stanley to Gipps 26 January 1843, pp. 514–29.

<sup>112</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No. 176) 25 November 1842, pp. 114–15.

<sup>113</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No. 176) 25 November 1842, pp. 115–16.

<sup>114</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No. 176) 25 November 1842, pp. 115–16.

those forfeiting probation passes or tickets-of-leave, while the penitentiary was to be retained solely for new arrivals, anticipated to be about 600 each year.<sup>115</sup>

The gradual implementation of probation meant a reduction in labour available to settlers of about 1,000 convicts annually. Public meetings urged the temporary suspension of the new regulations and requested the ‘extensive importation of free emigrant labour’.<sup>116</sup> Assignment was abolished in November 1843, and assigned convicts were required to continue in service until 1 March 1844 unless eligible for a ticket-of-leave beforehand.<sup>117</sup>

In February 1843 Franklin could not understand why, under probation, the colony had to pay for police and gaols, costs which should ‘revert to the Commissariat Chest’ from where they had been paid until 1836. Transportation expenses should be a charge on the Home government and not borne by ‘this young colony ... subservient’ to Great Britain by the ‘mere fact of it being rendered the almost sole depository of British felons’.<sup>118</sup> Nevertheless, Stanley’s object was that the ‘great ends of punishment’ should be attained with the ‘least possible charge’ to Britain.<sup>119</sup> Franklin was also concerned about so many convicts being sent to the colony and the difficulties handling them. Later this situation had dire consequences for Eardley-Wilmot, as the numbers transported doubled, averaging between 4,000 and 5,000 annually.<sup>120</sup> In January 1843 there were 6,046 convicts in probation stations, and Stanley instructed that work stop on the new stations under construction. As gangs were to be increased from 250–300 men in each, to 300–400, fewer stations were required.<sup>121</sup>

In May 1845 in a ‘Draft’ despatch to Sir James Stephen, Gladstone admitted errors in the probation system. He realised that to ‘pour these fresh accessions into Probation Parties of the present faulty organisation would likewise defeat all reasonable hope of their reformation’.<sup>122</sup> Convict organisation and employment posed major problems for Eardley-Wilmot, made even more difficult by Stanley’s emphatic and reiterated orders for economy. Van Diemen’s Land could not afford to pay for convicts employed on public works, and the depressed state of the private sector did not allow settlers to pay for labour.<sup>123</sup>

<sup>115</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No. 176) 25 November 1842, p. 114.

<sup>116</sup> *Hobart Town Courier*, 26 June 1840, p. 2.

<sup>117</sup> *Hobart Town Gazette*, Government Notice Vol. XXVII No. 1435, 10 November 1843 pp. 1238–39.

<sup>118</sup> Franklin to Stanley 24 February 1843 cited in Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843*, p. 328.

<sup>119</sup> *BPP Crime and Punishment Transportation 3*, J Stephen to C E Trevelyan, 28 February 1843, p. 130.

<sup>120</sup> *BPP Crime and Punishment Transportation 3*, ‘Report from the Select Committee’, p. 322.

<sup>121</sup> *HRA I*, xxii Stanley to Gipps 26 January 1843, p. 518.

<sup>122</sup> CO280/199 (AJCP 546) Gladstone’s ‘Draft’, p. 265 of J Stephen to S M Phillips, 13 May 1845, pp. 260–73.

<sup>123</sup> *HRA I*, xxiv, p. 649 Eardley-Wilmot to Gipps 8 November 1845 and p. 353, Stanley to Gipps 26 May 1843.

In 1840, the final year of transportation to New South Wales, the colony received 1,836 convicts, while Van Diemen's Land was sent 1,267.<sup>124</sup> The following year in Van Diemen's Land this increased to 3,362, and peaked at 5,327 in 1842 when twenty-three ships berthed at the Derwent.<sup>125</sup> In 1842 the convict population was 20,323, which was 34.1 per cent of the colony's total population of 58,902.<sup>126</sup> Seven years earlier, in 1835, the 'criminal population' of Van Diemen's Land had been 14,914 male and 2,054 female convicts, a ratio of 7.3 males to every female, while in New South Wales in 1836, with a convict population of 25,254 men and 2,566 women, the ratio was 9.8 males to every female.<sup>127</sup>

As was shown in table 4.1, between 1 April and 20 July 1842 six convict transports arrived in Hobart Town with 190 women and 1,206 men (a ratio of 6.86 males to every female), numbers much higher than Franklin had been led to expect.<sup>128</sup> He justifiably complained how useless it was to devise an elaborate system unless it was well administered. As the figures in the table indicated, Stanley's figures given for expected arrivals were inaccurate. Inefficient superintendence was one of the great complaints against the old road-gangs, and the colony had 'very few persons properly qualified to work out any system of penal discipline', yet, Stanley did not provide suitable overseers and officials.<sup>129</sup>

Between 1817 and 1850 Van Diemen's Land received 60,000 convicts and 20,000 free settlers. The terms under which convict labour was allowed into private service varied. 'First it was given as a bonus — then in exchange for the land fund — and finally it was offered at a price', declared John West, writing in 1847 under a pseudonym as colonist Jacob Lackland.<sup>130</sup> Also, for the first time Irish convicts landed in Van Diemen's Land, being one third of the

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<sup>124</sup> Transportation was resumed to New South Wales in 1848 for three years, 'by sending out that particular class of men called exiles', evidence of Thomas F Elliott, Assistant Under-Secretary for the Colonies to the Select Committee of Transportation 1861, *BPP Crime and Punishment Transportation 3 (1837–38) (669) Vol. XXII and 1861 (286) Vol. XXIII 1861*, p. 15.

<sup>125</sup> Bateson, *The Convict Ships 1787–1868*, pp. 391–92.

<sup>126</sup> *Statistics of Van Diemen's Land for 1842–1844* (Hobart Town, 1845), Table No. 21, p. 9 for 1839–42.

<sup>127</sup> *Times*, 6 May 1840, p. 2.

<sup>128</sup> *BPP Crime and Punishment Transportation 7*, Franklin to Stanley (No. 79), 22 July 1842, pp. 87–88; Bateson, *The Convict Ships 1787–1868*, pp. 364–67.

<sup>129</sup> *BPP Crime and Punishment Transportation 7*, Franklin to Stanley (No 41), 1 April 1842, p. 84.

<sup>130</sup> Jacob Lackland, *Common sense: an enquiry into the influence of transportation on the colony of Van Diemen's Land*. Henry Dowling (Launceston 1847), pp. 5, 6, 9; see P F Ratcliff, *The Usefulness of John West* (Launceston, 2003) p. 377 for West writing as Lackland; R M Hartwell, 'The Van Diemen's Land Government and the Depression of the Eighteen Forties', *Historical Studies Australia and New Zealand*, Vol. 4 No. 15 (November 1950), p. 189.

1842 contingent. Their presence raised the problem of the availability of Catholic priests and places of worship, matters which became the business of government.<sup>131</sup>

### Port Arthur

The Tasman's Peninsula penal station of Port Arthur, already mentioned as a major site of secondary punishment during Franklin and Eardley-Wilmot's administrations, was established by Lieutenant-Governor George Arthur in September 1830. The expansion of the site and its convenience and security allowed Arthur to abandon the settlement on Maria Island in 1832, which he had set up only seven years earlier. He could also abandon Macquarie Harbour on the rugged west coast the following year.<sup>132</sup> Port Arthur was usually reached by boat from Hobart Town across Storm Bay, the Peninsula joined to the mainland by the narrow, easily guarded Eaglehawk Neck. A 'hummocky sandy isthmus' at the extreme of a deep bight, the isthmus was about one quarter of a mile in length, and 300 yards in breadth. Sentries were posted day and night at the isthmus with a chain of thirteen ferocious dogs at intervals across its breadth. At night a row of lamps in the same direction as the dogs helped prevent escape. This formation was the 'secure key' of Tasman's Peninsula.<sup>133</sup>

David Burn recorded his visit to Port Arthur in 1842. Instead of travelling by sea he landed at the railway (tramway) jetty at the head of Norfolk Bay from where the tramway, which ran more than five miles, made a fast and easy means of travel between the Head of Norfolk Bay and Long Bay, the latter leading to Port Arthur.<sup>134</sup> The tram, as shown in figure 4.3, propelled by three convicts to each wagon, was capable of conveying half a ton in weight. The visitor described the 'harrowing' picture of the 'unhappy, guilty creatures toiling and struggling along, their muscular powers exerted to the utmost, and the perspiration bursting profusely from every pore'. Then, in reflection, Burn recalled how it was possible to 'find hundreds of free British labourers whose drudgery is fully equal to that' of the tramway. Work on the tramway was a step in the probationers' advancement. It was not suitable though, Burn thought, for any convict unable to resist the opportunity for 'pilfering or absconding', or any convict who was not to be trusted in the less restricted parts of the island.<sup>135</sup>

<sup>131</sup> Robson, *A History of Tasmania Vol. I*, p. 330.

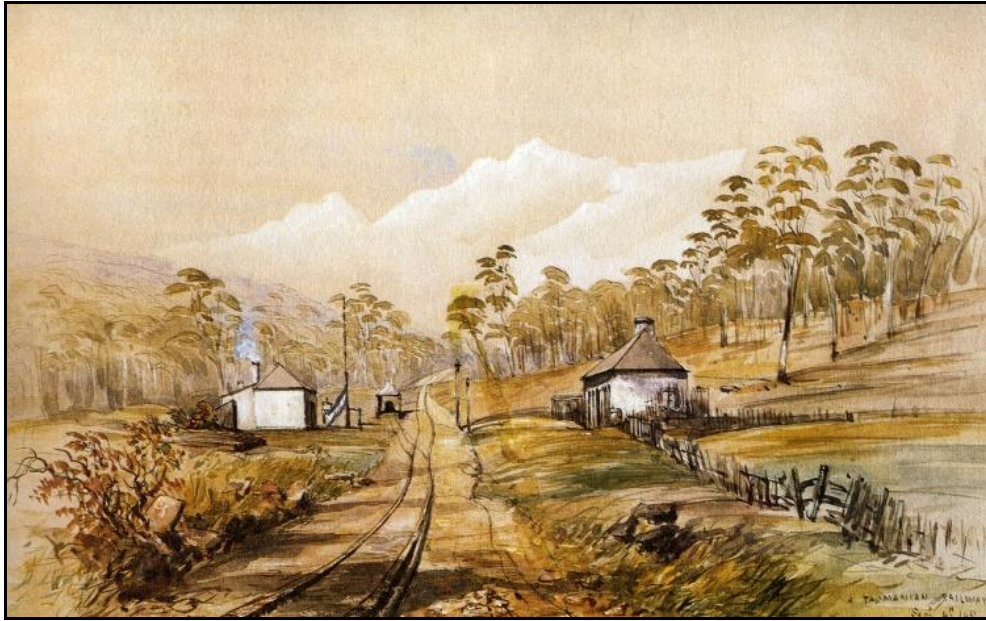
<sup>132</sup> Shaw, *Convicts and the Colonies*, p. 211.

<sup>133</sup> David Burn, *An Excursion to Port Arthur in 1842* (Hobart, 1892), p. 15; also in J W Beattie, *Port Arthur, the British penal settlement in Tasmania: glimpses of its stirring history* (Hobart, 1962?), pp. 29–44.

<sup>134</sup> Burn, *An Excursion to Port Arthur in 1842*, p. 5, see Figure 4.2 for a station on this line.

<sup>135</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 5–6.





**Figure 4.2:** A Tasmanian Railway Station.<sup>136</sup>

The Station was on the Convict railway (tramway) between Little Norfolk Bay (at Taranna) and Long Bay on Port Arthur, probably the half-way rest station, 4 September 1848.<sup>137</sup>

Other comments made by Burn indicate success with the agricultural system on the Peninsula. In 1842 there were 100 convicts at Impression Bay, and at Salt Water River 400 convicts had cultivated more than fifty acres in cabbages, potatoes and turnips. Building of the Cascades probation station had commenced, while at the Coal Mines the main shaft was fifty-two yards deep, the winch manned by convicts under sentence. The mines were the ‘most irksome punishment’ the convict encountered, labouring night and day, for eight hour shifts.<sup>138</sup> When probationary terms for convicts expired at Flinders Bay they were moved to Slop Island, from where, in turn, they were ‘otherwise disposed of’.<sup>139</sup> With a dramatic increase in the number of convicts, these outstations, including Norfolk Bay; Long Bay; Garden Point; Safety Cove; Point Puer; Wedge Bay and Woody Island — fourteen sites of agriculture and horticulture production, became the ‘bread basket’ for the settlement.<sup>140</sup>

<sup>136</sup> Terry Newman, *Becoming Tasmania. Renaming Van Diemen’s Land* (Hobart, 2005), especially chapter 3 for early use of the name ‘Tasmania’.

<sup>137</sup> Max Angus, *Simpkinson de Wesselow Landscape Painter in Van Diemen’s Land and in the Port Phillip District 1844–1848* (Hobart, 1984), p. 163. Dust-jacket: Francis Guillemard Simpkinson (1819–1906) added ‘De Wesselow’ to his name 1869; was a nephew of Lady Jane Franklin; appointed to the staff at Rossbank Magnetic Observatory and lived in the colony September 1844–December 1848, and travelled and sketched with John Skinner Prout. He left the colony in 1848 and took his 200 drawings and paintings to England. Almost half a century later, responding to a request from the Royal Society of Tasmania, he presented his colonial collection to the Society. This is now housed in the Tasmanian Museum and Art Gallery, Hobart.

<sup>138</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 20–22.

<sup>139</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 14–15.

<sup>140</sup> Eleanor Cave, ‘Pleasure or Punishment? The importance of food gardens to secondary penal settlements’, BA (Hons) thesis, University of Tasmania, 2007, p. 49; see J Thompson, *Probation in Paradise: The Story of Convict Probationers on Tasman’s and Forester’s Peninsulas, Van Diemen’s Land 1841–1857* (Melbourne, 2007) for detailed information on probation stations.



**Figure 4.3:** The human drawn tramway.<sup>141</sup>

At Port Arthur each convict was assigned to labour proportionate to his strength, and was allocated to a gang. The carrying gang was deemed the most severe, with ‘sometimes 60 or 70 in number’. On their shoulders, these men transported ‘immense spars’ (for example, the masts and yards of a 300 ton ship) from the forest to the dockyards, and those in the dockyard were frequently immersed in water to their neck while securing naval timber to the launches for the purpose of transport to the arsenal. Men were removed from the more laborious gangs when their behaviour was reported ‘good’, or as their sentence expired.<sup>142</sup> No beasts of burden were permitted at Port Arthur or at probation stations, the drudgery of labour borne by convicts. The chain gangs were employed in carting stone, firewood or drawing water for general use. Each convict was given a weekly medical inspection, and after any indication of being overworked, was either removed to lighter labour or admitted to hospital.<sup>143</sup>

As well as artisans at Port Arthur, there were sawyers; splitters; quarrymen; masons; grubbers; gardeners; watermen and tramway men, while bricks, tiles, gutter tiles and flower pots were manufactured. The brick kilns, in addition to supplying the needs of the settlement and Point Puer, sent bricks to Hobart Town. Excess production was available for export, and

<sup>141</sup> Fletcher, *A Brief History of Port Arthur and the Tasman Peninsula Out-stations 1804–1877*, facing p. 6.

<sup>142</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 17–18.

<sup>143</sup> Burn, *An Excursion to Port Arthur in 1842*, p. 18.

provided a large credit for the penal settlement.<sup>144</sup> Communication between Port Arthur and Hobart Town was by telescope, and a chain of semaphores worked by convicts was brought to a high level of effectiveness during Charles O'Hara Booth's term of authority.<sup>145</sup>

As shown, the British insistence that Van Diemen's Land contribute largely to its own convict maintenance caused administrative difficulties, made even more complicated by the ending of transportation to New South Wales. Eardley-Wilmot was, therefore, appointed to oversee a very complicated and unpopular change in convict administration during a time of depression. The next chapter will discuss his visits to the probation stations including his administration, management and correspondence regarding the situation

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<sup>144</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 18–19; Point Puer, a juvenile establishment, will be discussed in chapter six with other related institutions including the orphan schools and Female Houses of Correction.

<sup>145</sup> Fletcher, *A Brief History of Port Arthur and the Tasman Peninsula Out-stations 1804–1877*, p. 7.

## Chapter Five

### Probation and population: the system under Eardley-Wilmot

Before leaving England for Van Diemen's Land, Sir John Eardley Eardley-Wilmot was aware of the probation system of convict management — his information coming from personal connections, British newspapers and Colonial Office briefings. As a member of the House of Commons he would also have known the findings of the Molesworth Commission of 1838 and read details in the Warwickshire press and in the *Times*. During sittings of the House he stayed at the Athenaeum Club in London, where doubtless he would have accessed newspapers and discussed the colonial situation with other fellows of the Club.<sup>1</sup> Articles about the colony were regularly published in the press, and, as he was enthusiastic for a colonial post, it must be assumed he sought relevant information.

Eardley-Wilmot's dedication to improving the situation for juveniles convicted of criminal activities and his support of the Warwick County Asylum, where boys were sent to improve their chances in life, would have been considered suitable qualifications to administer the convict system which included Port Puer, the boys' prison. As Chairman of the Warwickshire Quarter Sessions, transportation for felons was one of his punishment options. The previous chapter detailed the situation of the probation system at the time of Eardley-Wilmot's arrival in the colony in the wake of the Molesworth Report, and also orders he received before he departed England. This chapter will cover convict arrivals in the colony and the implications and problems in attempting to employ the arrival of so many to the satisfaction of settlers.

This thesis argues that Eardley-Wilmot did not receive adequate Colonial Office support, as demonstrated by his continual complaints about 'undisposed-of labour'. Distributing the convicts who served their period of probation was 'a subject of great anxiety', and he knew he must find a solution. If he was unsuccessful, the convicts would 'fall back on the Government as paupers' or 'subsist themselves by plundering the settlers'.<sup>2</sup> By January 1845 there were 3,545 unemployed pass-holders, with another 6,179 expected to 'emerge' from punishment

<sup>1</sup> *The Papers of the Prime Ministers of Great Britain, Series Two. The Peel Papers General Correspondence.* British Library (hereafter BL) BL Mss. 40509 Eardley-Wilmot to Peel, 3 June 1842, p. 265; *Peel Papers* BL Mss. 40521 E Eardley-Wilmot (Eardley-Wilmot often signed despatches as 'E Eardley-Wilmot') to Peel 27 December 1842, pp. 133–34. Chapter two noted he wrote from the club to Peel in June and December 1842.

<sup>2</sup> *BPP Correspondence and papers... convicts ships convict discipline and transportation 1843–47. Crime and Punishment. Transportation 7* (Shannon, 1969), Eardley-Wilmot to Stanley (No. 156) 18 July 1844, p. 224.

gangs during the year. As well as 7,000 in service and 9,724 in the Convict Department, he was 'afraid' of not being able to find productive employment for the majority.<sup>3</sup>

Although some details of the new system were widely known by February 1839 it was not until September 1842, following publication by the House of Commons of related correspondence, that the main details were published in the press.<sup>4</sup> Assignment of convicts to settlers was replaced by 'probation', a new system of 'punishment and reformation under the "immediate *surveillance*" of the Government'. The editor of the *Times* admitted colonial settlers 'strongly defended assignment' because it eased the 'cost of maintenance and superintendence of criminals', and the convict, once free, was able to 'obtain good wages for his labour', by which time he was 'experienced in at least one trade'.<sup>5</sup> Imperial decisions were made by Colonial Office officials at 13 and 14 Downing Street, 'inadequate, unsafe, and unworthy' premises, where the Permanent Under-Secretary, James Stephen's system of organisation remained largely unchanged until the 1870s.<sup>6</sup>

Stephen was 'meticulous, methodical' and overworked, some days reading and dealing with '112 (or more) despatches', and subsequently 'worn out with fatigue', he considered resignation.<sup>7</sup> He avoided close contact with people, no one really going near him 'from the beginning to the end of the morning'. If they did, Stephen 'certainly' did 'not invite their return'. He disliked 'much talk', it wearied and vexed him. In 'retrospect' he confided in a diary entry how he was unable to 'find something to like or to admire' about Lord Lyttelton (1817–76).<sup>8</sup> Stephen was concerned about his state of mind,<sup>9</sup> which may, in part, explain his attitude to, and continual criticism of, Eardley-Wilmot. An equally probable explanation can be inferred from a recent biography about Lord Stanley by Angus Hawkins. According to Hawkins, Stephen's 'health was eventually to pay a heavy price for his single-minded

<sup>3</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 310) 31 January 1845 and enc pp. 236–51.

<sup>4</sup> Franklin had read of the Molesworth Report in the *Times*, see Franklin to Gipps 9 February 1839, Lefroy Bequest, Scott Polar Research Institute Cambridge, cited in Kathleen Fitzpatrick, *Sir John Franklin 1837–1843* (Melbourne, 1949) pp. 224–25; *Times*, 2 September 1842, p. 6.

<sup>5</sup> *Times*, 2 September 1842, p. 6; Arthur used a similar Benthamite reference to 'surveillance' when he referred to measures to establish 'a more perfect surveillance over the Convict Population' see *Historical Records of Australia* (hereafter *HRA*) *Series III Despatches and Papers relating to the History of Tasmania*, Volume vii (Canberra, 1997), p. 233.

<sup>6</sup> John Cell, *British Colonial Administration in the Mid-Nineteenth Century: The Policy-Making Process* (New Haven, 1970), p. 1.

<sup>7</sup> Sir James Stephen's diary (1 January–6 September 1846) [microform] Cambridge University Miscellaneous Collections M2591 (AJCP M2591), 22 May 1846, p. 67; 6 May 1846, p. 62.

<sup>8</sup> Sir James Stephen's diary 24 January 1846, p. 22, 15 January 1846, pp. 15–16, 13 February 1846, pp. 33–34.

<sup>9</sup> He feared his anxieties would reach the 'pitch of a mental disease', T Barron and K J Cable. 'The Diary of James Stephen 1846', *Australian Historical Studies* Vol. 13 No. 52 (April 1969), p. 514.

dedication when, in 1848, he suffered a nervous breakdown'.<sup>10</sup> Stanley, similarly affected, was, according to Colonial Auditor G T W B Boyes, 'obstinately determined to see things in his own way however at variance with the facts',<sup>11</sup> therefore illustrating that behind his public perception lay a 'personality ... prey to periodic depression'. Despite Stanley's impact on the colony, disappointingly for Australian historians, Hawkins does not discuss Eardley-Wilmot or William Denison, and only mentions John Franklin in one paragraph.<sup>12</sup>

By 1842 Stanley had taken 'full charge' of the transportation system, and had also adopted a 'high-handed attitude' to Van Diemen's Land.<sup>13</sup> According to A G L Shaw, 'Domineering and arrogant, oblivious to the feelings of the colonists, and insistent on the importance of Imperial interests, Stanley left little discretion to his subordinates'<sup>14</sup> — Eardley-Wilmot had no alternative but to implement Stanley's November 1842 instructions to Franklin.<sup>15</sup>

Convicts were to be worked at 'hard labour' in probation gangs in the unsettled districts before earning a probation pass entitling them to employment in private service for wages. Therefore, settlers were deprived of the 'free' labour available to them under assignment. After a further period of 'good conduct' convicts were entitled to a ticket-of-leave, and in due course, a conditional pardon, but their employment depended on the demand for labour.<sup>16</sup> Long time resident Louisa Meredith claimed ticket holders were lucky, because settlers preferred these men to any other class.<sup>17</sup>

Stanley, like most of his peers and colleagues, had attended a 'public school', Eton, where his 'education' may partly explain the harsh punishment he later ordered for convicts, including instructions to treat the probation gang convicts to 'hard labour'. Stanley was a pupil at the start of the 'regime of John "Flogger" Keate' appointed headmaster in 1809.<sup>18</sup> A 'notoriously harsh disciplinarian' in response to the 'inadequacy' of his staff and the 'unruliness' of his

<sup>10</sup> Angus Hawkins, *The Forgotten Prime Minister. The 14<sup>th</sup> Earl of Derby* (Oxford, 2007), pp. 228–29; Alan Shaw, 'Gladstone at the Colonial Office 1846' Australian Studies Centre Institute of Commonwealth Studies University of London. Working Paper No. 5, 1986, p. 16.

<sup>11</sup> UTA RS 25/2 (8) G T W B Boyes Diary, 21 December 1844.

<sup>12</sup> Hawkins, *The Forgotten Prime Minister*, p. 128; for the only paragraph to mention Franklin, see pp. 236–37.

<sup>13</sup> Shaw, 'Gladstone at the Colonial Office 1846', p. 4.

<sup>14</sup> A G L Shaw, 'Sir John Eardley-Wilmot and the Probation System in Tasmania', *Tasmanian Historical Research Association Papers and Proceedings* (hereafter THRA P&P) 11.1 (September 1963), p. 5.

<sup>15</sup> *HRA I, Governors' Despatches to and from England, Vol. xxii* (Sydney, 1924) enc No. 1 Stanley to Franklin, 25 November 1842, pp. 514–23, enc No. 2 pp. 523–24 and enc No. 3 pp. 524–29 in Stanley to Gipps, 26 January 1843, pp. 514–29.

<sup>16</sup> Shaw, 'Sir John Eardley-Wilmot and the Probation System in Tasmania', pp. 5–6.

<sup>17</sup> Louisa Anne Meredith, *My home in Tasmania during a residence of nine years, Volume One* first published London 1852, (Swansea, 2003), p. 40.

<sup>18</sup> Hawkins, *The Forgotten Prime Minister*, p. 16.

pupils in teaching rooms of around 170 boys, ‘Flogger’ suffered ‘the indignities’ of his desk being smashed and the ‘occasional fuselage of rotten eggs’. His response was ‘rough and immediate’, and stories of his ‘mass floggings became legendary’.<sup>19</sup> After Keate’s ‘fagging and flogging’ Eton, Stanley attended the reformed Christ Church Oxford, where the ‘Eton men’ formed the ‘nucleus of the most prestigious’ undergraduate set.<sup>20</sup>

### Colonial Office directives

On 24 April 1843 Stanley instructed Eardley-Wilmot that if he and the public officers wished to employ convicts they were to employ those who held a pass or a ticket-of-leave, such men to be paid wages the same as private employers of ‘such Servants’.<sup>21</sup> Eardley-Wilmot was told the ‘first and most essential object’ to which convict labour should be ‘directed’ was to reduce British Treasury costs for convict maintenance and to make convicts contribute ‘very largely to their own subsistence’. He was required to consult the Colonial Secretary, the Comptroller-General of Convicts and the head of the commissariat department, and at the ‘earliest opportunity’ to send Stanley the 1844–45 estimates for convict services.<sup>22</sup>

The position of Comptroller-General had been created to supervise the entire convict department, answerable to the Lieutenant-Governor and the British government. Appointed from London and paid by the Lords of the Treasury, the Comptroller was instructed to ‘communicate directly’ with the Lieutenant-Governor rather than through the Colonial Secretary.<sup>23</sup> It was, therefore, Matthew Forster with whom Eardley-Wilmot was to consult and with whom he was to proceed with the ‘utmost practicable promptitude’ in framing the necessary rules; to determine the number of probation gangs; their locality, and the labour and officers required by each gang.<sup>24</sup> This he did.

On the ‘critical subject’ of religious instruction for convicts, Stanley admitted difficulties were possible, and he instructed Eardley-Wilmot to consult Bishop Nixon in ‘extreme’ cases requiring the dismissal of a Religious Minister of the Established Church of England. Stanley

<sup>19</sup> Hawkins, *The Forgotten Prime Minister*, p. 16.

<sup>20</sup> Hawkins, *The Forgotten Prime Minister*, pp. 18–19.

<sup>21</sup> HRA I, xxii Stanley to Eardley-Wilmot, 24 April 1843, p. 712 in Stanley to Gipps 7 May 1843, pp. 709–12.

<sup>22</sup> HRA I, xxii Stanley to Eardley-Wilmot, 24 April 1843, pp. 709–11 in Stanley to Gipps 7 May 1843, pp. 709–12.

<sup>23</sup> Ian Brand, *The Convict Probation System: Van Diemen’s Land 1839–1854* (Sandy Bay, 1990), p. 21; Sir John Franklin, *Narrative of some passages in the History of Van Diemen’s Land* (Hobart, 1967), p. 54.

<sup>24</sup> HRA I, xxii Stanley to Eardley-Wilmot 24 April 1843, pp. 709–11 in Stanley to Gipps 7 May 1843, pp. 709–12; Forster served in the Peninsula campaigns, and for a time was deputy judge advocate. He married a niece of Arthur, arrived at Hobart Town 1831 and was appointed police magistrate. He was acting colonial secretary in Montagu’s absence 1839–41, see A G L Shaw, ‘Forster, Matthew (1796–1846)’, *Australian Dictionary of Biography* [<http://www.adb.online.anu.edu.au/biogs/A010372b.html>].

thought the best way to prevent open and active rivalry between the ministrations of teachers was to form separate gangs consisting ‘exclusively’ of Protestants and of Roman Catholics.<sup>25</sup> He had canvassed the idea with Franklin the previous November, and hoped the separation could be achieved ‘silently, and without the appearance of concert and deliberation’ and without problems.<sup>26</sup>

Stanley doubted that so many people needed to be employed to supervise and manage convicts. By using ‘good and skilful management’ the convicts could raise provisions and therefore make financial savings, and the adoption and enforcement of ‘stringent regulations’ would reduce expenses on the British Treasury and assist ‘local and colonial utility and convenience’.<sup>27</sup> Referring to the ‘intended profitable’ employment of convicts maintained in the colony at the charge of the home Government, Assistant Secretary to the Treasury, Sir Charles Trevelyan, suggested steps be taken for procuring ‘some profitable’ return for the labour of those in New South Wales on colonial works or employed by private settlers.<sup>28</sup> In Van Diemen’s Land in 1842, such a situation was unlikely because money which settlers had borrowed from the banks to buy stock and land began to be called in, and borrowers were pressed to repay loans. The price of land and stock fell immediately, resulting in humiliation and disgrace for settlers.<sup>29</sup>

About six months before Eardley-Wilmot left England Stanley had predicted future convict populations. The ‘average annual’ number of male convicts in Van Diemen’s Land to be dependent on the Government would ‘never exceed 8,000’, and the females would ‘never exceed 600’, while the annual average number of convicts at Norfolk Island would never exceed 3,000. The remainder would earn an ‘independent subsistence’. It seems Stanley intended that under probation the number of convicts maintained by the Government on both Norfolk Island and Van Diemen’s Land would be between 11,000 and 12,000.<sup>30</sup> As shown in

<sup>25</sup> *HRA* I, xxii Stanley to Eardley-Wilmot 24 April 1843, p. 712 in Stanley to Gipps 7 May 1843, pp. 709–12.

<sup>26</sup> *HRA* I, xxii Stanley to Franklin ‘Private’ enc No. 2, pp. 523–24 in Stanley to Gipps 26 January 1843, pp. 514–29; no record has been located to indicate why Stanley’s proposal was not implemented.

<sup>27</sup> *BPP Crime and Punishment Transportation* 7, Trevelyan to Stephen, 18 March 1843, pp. 132–33.

<sup>28</sup> *BPP Crime and Punishment Transportation* 7, Trevelyan to Stephen 18 March 1843, p. 134; Trevelyan (1807–86) staunch liberal was appointed governor of Madras in 1859. In 1862–65 he was India’s finance minister, see G C Boase, rev. David Washbrook, ‘Trevelyan, Sir Charles Edward (1807–1886)’, *Oxford Dictionary of National Biography* [<http://www.oxforddnb.com/view/article/27716>].

<sup>29</sup> ‘Transportation to Van Diemen’s Land, 1846–1850’ (Tasmanian papers C.941 Mitchell Library) Murdoch to Earl Grey, 15 August 1846, cited in Brand, *The Convict Probation System*, p. 25.

<sup>30</sup> *BPP Crime and Punishment Transportation* 7, Stephen to Charles Trevelyan 28 February 1843, pp. 128–131.



table 5.1 this was not the case. According to Peter Eldershaw, who totalled individual entries in convict records of those known to arrive, the colony received 73,566 convicts in 1804–53.<sup>31</sup>

**Table 5.1:** Convict population Van Diemen’s Land 1841–48.<sup>32</sup>

	1841	1842	1843	1844	1845	1846	1847	1848
<b>TOTAL CONVICTS</b>	16,391	20,332	25,499	29,211	29,949	30,279	30,476	25,459
<b>PASSHOLDERS AWAITING HIRE (DECEMBER)</b>				3,179	3,268	2,025	1,194	1,091

Due to ‘various inconveniences’ associated with transportation of convicts to the British colonies in America following the War of Independence, Lord North introduced a Bill into the House of Commons to establish a hulk system in Britain. This Bill received Royal Assent on 23 May 1776, and hulks began to be introduced to replace transportation.<sup>33</sup> After 1830 those sentenced to transportation either served their sentences on the hulks, their labour being used near the dockyards, or were sent to overseas colonies. Convicts ordered overseas were usually held for a short term on hulks until a shipload was gathered.<sup>34</sup> The desire to clear the hulks of prisoners and the ending of transportation to New South Wales meant convicts arrived in Van Diemen’s Land in unprecedented numbers, the 30 June 1843 figures shown in table 5.2. The arrival of free immigrants also peaked during this time, with 2,448 in 1842.<sup>35</sup>

In the three months between August and October 1843, seven ships (six from England and one from Ireland) landed 1,634 convicts at the Derwent, while between 1 January 1841 and 26 December 1844, more than 13,500 male and 2,600 female convicts arrived from Britain, and also 155 from non-Australian colonies.<sup>36</sup> This was an annual average of over 4,000, and Eardley-Wilmot was required to absorb these arrivals into the colony’s population of

<sup>31</sup> P R Eldershaw, *Archives Office of Tasmania. Guide to the Public Records of Tasmania. Section Three. Convict Department* (Hobart, 2003), p. 61, Eldershaw used the AOT (now TAHO) records in CON 22/1–9 for all convicts who embarked for VDL from all sources, and subtracted those known not to have arrived.

<sup>32</sup> Total convicts numbers are from Eldershaw, *AOT Guide to the Public Records of Tasmania. Section Three. Convict Department*, pp. 62–63, compiled from *Statistics of Tasmania and Historical Records of Australia III*, and Comptroller-General’s reports [TAHO GO46].

<sup>33</sup> Wilfred Oldham, *Britain’s Convicts to the Colonies* (Sydney, 1990), pp. 35–37.

<sup>34</sup> Ian Brand, *Port Arthur 1830–1877* (West Moonah, 1979), pp. 10–11.

<sup>35</sup> R B Madgwick, *Immigration into Eastern Australia 1788–1851* (Sydney, 1969), p. 225.

<sup>36</sup> CO280/160 (AJCP 522), enc p. 431 in Eardley-Wilmot to Stanley 21 November 1843, pp. 428–31. The ships: *Gilmore* (3) 19 August 1843; *Cressy* 20 August 1843; *Constant* 26 August 1843 from Ireland; *Asiatic* 23 September; *Emerald Isle* 12 October; *Forfarshire* 12 October; *Lord Petre* 15 October 1843, see Charles Bateson, *The Convict Ships 1787–1868* (Sydney, 1988), pp. 362–67.

62,000.<sup>37</sup> This ‘avalanche’ in the ‘middle of an acute economic depression’ increased the convict population by over 40 per cent in four years, more of whom were expected to be employed in probation gangs than had been the case under assignment.<sup>38</sup> Employers were asked to pay wages they could not afford, and Eardley-Wilmot, who received scant sympathy or help from his superiors in London, was expected to cope.

**Table 5.2:** Population 30 June 1843  
excluding children born in the colony 1 January–30 June 1843.<sup>39</sup>

Convicts, male and female		23,922
Free by servitude and emancipists		9,872
Free people who either immigrated or were born in the colony above 21 years of age	10,900	
Free people who either immigrated or were born in the colony under 21 years of age	<u>16,944</u>	
Total free people who either immigrated or were born in the colony		<u>27,844</u>
Total population in Van Diemen’s Land, 30 June 1843		61,638

After less than four months in the colony, Eardley-Wilmot sent Stanley ‘an account of the distribution’ of convicts. There were 24,926 convicts, of whom 11,697 males and 3,385 females were ‘Old’ convicts, while a further 9,602 male and 152 female were ‘Probationary’. This was an overall ratio of one female to six males, while the ratio of probationary convicts was higher than one female to 63 males.<sup>40</sup> Confronted with 900 unemployed pass-holders, the number ‘rapidly’ increasing, and with the ‘reduced state’ of the colony’s finances, Eardley-Wilmot was skeptical that Stanley’s ‘great object’ of convict labour ‘paying its own expenses’ would be fulfilled. As a solution, he suggested the Colonial Office pay £4,000 to the Colonial Treasury for the use of unemployed convicts instead of paying in full for convicts employed

<sup>37</sup> Eldershaw, *Guide to the Public Records of Tasmania Convict Department*, Appendix 2, pp. 53–58. Between 1833 and 1840, 13,225 male and 1975 female convicts arrived; *BPP Crime and Punishment Transportation 7*, Enc F, p. 194 in Eardley-Wilmot to Stanley 5 December 1843, pp. 192–94, The 1843 population, 61,638.

<sup>38</sup> A G L Shaw, *Convicts and the Colonies: A Study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (London, 1966), p. 300.

<sup>39</sup> *BPP Crime and Punishment Transportation 7*, Population 30 June 1843 Enc F p. 194 in Eardley-Wilmot to Lord Stanley (No. 36) 5 December 1843, pp. 192–94.

<sup>40</sup> *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Stanley (No. 34) 2 December 1843 and Enc A, B and C, pp. 187–91.

in public works.<sup>41</sup> By June 1844, with 26,972 convicts, the ratio was one female to 3.5 males, while for convicts under probation it was one to 27.4 males.<sup>42</sup>

In accord with his long-held values in education and training, to improve the colonial situation and to enable the settlers to gain from the flood of labour, Eardley-Wilmot asked Stanley to relax regulations which required convicts under probation to be employed on public works. This, Stanley rejected, as it was ‘not improbable’ the depression would ‘pass away’. It would become practice that convicts would be employed on public works which would occupy them, ‘for example ... gaols, school-houses, hospitals, and the like’.<sup>43</sup> Stanley would not agree to depart from his instructions of 25 November 1842. The colony was ‘first occupied’ by convicts as a place of ‘punishment and reformation’ and ‘whatever wealth exists’ was from convict labour combined with capital from the British Government and individuals.<sup>44</sup>

The primary object of the colony was to decrease Britain’s expenses and employ convicts in raising produce for their subsistence. Convict labour was ‘important’ to the colony, but was a ‘secondary and subordinate consideration’ and Eardley-Wilmot was not to ‘lose sight’ of the principle.<sup>45</sup> Although Stanley admitted that the ‘unforeseen depression’ had ‘disturbed’ the basis and results’ of his instructions to Franklin, he reminded Eardley-Wilmot that free settlers were ‘not entitled’ to regard convicts as ‘intruders’. Any ‘small extent’ to which settlers employed convicts would be an agreement of ‘mutual advantage’. The colonists would be supplied with ‘cheap and effective labour’ and the government ‘relieved’ from an expense. Eardley-Wilmot was forbidden to employ probation gangs in colonial works unless paid from colonial revenue.<sup>46</sup> Despite Stanley’s acknowledgment that Eardley-Wilmot had been placed in a difficult situation, the British Government was advertising the service offered by its own Government Immigration Agents. As well as details about emigration and sailing,

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<sup>41</sup> *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Stanley (No. 34) 2 December 1843, and Enc A, B and C, pp. 187–91; Stanley to Eardley-Wilmot (No. 289) 31 August 1844, p. 201; see also CO280/168 (AJCP 526) Stanley to Eardley-Wilmot 5 August 1844, pp. 137–54.

<sup>42</sup> *BPP Crime and Punishment Transportation 7* Enc No. 6 ‘Abstract of Return’ 29 June 1844, from James Thomson, Registrar, p. 221 in Eardley-Wilmot to Stanley (No. 149) 14 July 1844, pp. 208–24, total was 10,124 male and 3,422 female ‘old convicts’, and 12,954 and 472 probation convicts.

<sup>43</sup> *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Stanley (No. 34) 2 December 1843 (No. 36) 5 December 1843, pp. 187–95; Stanley to Eardley-Wilmot (No. 289) 31 August 1844, pp. 202–03.

<sup>44</sup> *BPP Crime and Punishment Transportation 7* Stanley to Eardley-Wilmot (No. 289) 31 August 1844, p. 204; UTA RS 25/2 (8) Boyes diary, 21 December 1844.

<sup>45</sup> Eardley-Wilmot’s despatches of 2 December 1843; 5 December 1843; 6 January 1843; 8 January 1844 and 8 March 1844, see *BPP Crime and Punishment Transportation 7* Stanley to Eardley-Wilmot (No. 289) 31 August 1844, p. 202.

<sup>46</sup> Eardley-Wilmot’s despatches of 2 December 1843; 5 December 1843; 6 January 1843; 8 January 1844 and 8 March 1844, see *BPP Crime and Punishment Transportation 7* Stanley to Eardley-Wilmot (No. 168) 26 March 1844, p. 187 and Stanley to Eardley-Wilmot (No. 289) 31 August 1844, pp. 201–02.

the agents offered ‘every assistance’ about districts where employment could be ‘obtained most readily, and upon the most advantageous terms’.<sup>47</sup>

By March 1844 the Van Diemen’s Land economy was in a ‘depressed state’, with hundreds of pass-holders on ‘the hands’ of the imperial Government. The number was ‘daily increasing’, and would have been higher had all the convicts used for Government employment been returned to gangs. As no employment could be found for them by private settlers (as directed by Stanley) pass-holders were disgruntled, and Eardley-Wilmot found it difficult to enforce discipline. The colonial government employed ‘convict escort and barrack constables, barrack cooks, bakers, watchmen, and convicts in the marine and medical departments’. All these were ‘chargeable on convict funds’ and Eardley-Wilmot would have employed free or ticket-of-leave men had they been found. This would, though, have ‘greatly increased’ expenses.<sup>48</sup> In reply, and putting increased pressure on Eardley-Wilmot, Stanley reiterated that the priority for pass-holders was ‘the raising by them of produce necessary for their subsistence’ and also the resulting decrease in Britain’s expenses. Pass-holders were not, as the Comptroller-General assumed, to be used ‘almost exclusively for the benefit of the colony’.<sup>49</sup>

In July 1844 Stanley admitted the information the Colonial Office had relied on for his 1842 instructions to Franklin was ‘inaccurate’. The Government now realised there was no longer an ‘indefinite labour demand’ in the colony to be filled by the great numbers of convicts ‘entitled to receive the rewards of their own labours’. Therefore, if prisoners from Parkhurst and Pentonville were sent to the colony they would need to be maintained by the colonial government and would be ‘virtually placed among convicts of a lower or less advanced stage’. Consequently, it was intended those sentenced to ‘comparatively short periods’ of transportation be sent to reformatory prisons at Parkhurst and Pentonville before being sent to Van Diemen’s Land. Once in the colony the ‘better behaved’ would receive a ticket-of-leave, with the others in probation gangs or among probation pass-holders.<sup>50</sup> Eardley-Wilmot was in a difficult position having to find employment for 4,937 ticket-of-leave and conditionally pardoned men, and also 7,048 pass-holders, who, as they received ‘their indulgence’, were ‘thrown on their own resources’ and the colony subjected to a ‘thieving’ population.<sup>51</sup>

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<sup>47</sup> ML *Colonization Circular issued by Her Majesty’s Colonial Land and Emigration Commissioners* No. 1, 13 May 1843, p. 2; the VDL agent was Lieutenant A Davies RN.

<sup>48</sup> *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Stanley (No. 67) 8 March 1844, p. 200.

<sup>49</sup> GO1/ 1/53/66 Stanley to Forster (No. 168) 26 March 1844, pp. 421–24.

<sup>50</sup> *BPP Crime and Punishment Transportation 7* Stanley to Eardley-Wilmot ‘Separate’ 27 July 1844, pp. 290–93.

<sup>51</sup> *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Stanley (No. 114) 29 May 1844, p. 206.

In August 1844, Alexander Maconochie, former secretary to Franklin, provoked speculation when he proposed the establishment of a new penal colony. ‘If we could begin again’ thought Stephen, ‘the best plan’ would be to make Van Diemen’s Land a prison and forbid settlers, with New Holland drawing a ‘supply of labour from the convicts’.<sup>52</sup> Excess numbers in Van Diemen’s Land worried Stephen, and a despatch from Eardley-Wilmot written in May increased Stephen’s belief that a new convict settlement should be opened. In October 1844 he proposed Western Australia — the next year it was North Australia — and he urged that convicts be immediately given more employment opportunities. As they could not find work in Van Diemen’s Land except ‘in costly works, merely to keep them from idleness and crime’, they should be given conditional pardons tenable on the mainland where the pastoralists were short of labour and wages excessively high. Stephen welcomed the plan to send ‘reformed’ prisoners from Pentonville to Port Phillip as ‘Exiles’, to live as freemen and be free of stigma and squalor, thereby reducing numbers to Van Diemen’s Land. A depot could be established to receive them, and until hired they could grow their own food.<sup>53</sup>

In March 1845 (before Stanley’s 31 August 1844 despatch arrived) Eardley-Wilmot arranged to employ ‘numerous convicts’ who were not engaged in ‘productive’ labour. The works to benefit the colony included a pile-bridge across the River Derwent at Bridgewater, and the supply of ‘pure water’ to Hobart Town and Launceston. He also planned to irrigate land for which proprietors would pay rates on the rent of land, houses, and premises not exceeding 1s 6d in the £ (pound). This would pay for convict labour and stores including unsold Crown land, which would increase the value ‘tenfold’ with irrigation. By charging those who gained from these initiatives, Britain’s expenses would decrease, and the colony would expand.<sup>54</sup> Stephen privately agreed with Eardley-Wilmot’s plans, and thought ‘The Mark System’ should be implemented in the colony to improve the ‘Evils’. Convicts would be paid, not in cash but in ‘marks to make them work out their imprisonment & to be the better & not the worse for it’. It was a ‘good plan’ in its own way, but ‘something less than a panacea’.<sup>55</sup>

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<sup>52</sup> CO280/178 (AJCP 532) Minutes (notes) written on Maconochie to Stephen, 15 August 1844, pp. 3–8; Maconochie’s ‘Memoir on the management of Prisoners in the Australian Colonies’ pp. 10–49, and notes on Maconochie’s despatch to Stephen, 10 September 1844, pp. 51–56.

<sup>53</sup> CO280/175 (AJCP 530) Minutes (notes) on Phillips (Home Office) to Stephen 5 July 1844, pp. 294–96; A G L Shaw, ‘Three knights: Sir James Stephen, Sir John Franklin and Sir John Eardley-Wilmot’, *THRA P&P*, 36.4 (December 1989), pp. 149–50.

<sup>54</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Eardley-Wilmot (No. 10) 31 August 1844, pp. 201–04; Eardley-Wilmot to Stanley, 4 March 1845 (No. 6) pp. 252–53 and enc Minutes of Legislative Council meeting 21 February 1845, p. 253.

<sup>55</sup> Sir James Stephen’s diary (1 January–6 September 1846) Add 7511 (AJCP M2591), 7 January 1846, p. 8; According to Stephen he conveyed this to Maconochie.

Eardley-Wilmot suggested the ‘evil’ of 6,000 pass-holders annually thrown on their ‘own resources’ could be absorbed by either creating an ‘outlet’ to other Australian colonies, or by locating them in Van Diemen’s Land with ‘the means and opportunity of self support’. His earlier Warwickshire experience had shown such ‘happy results’ when labourers were given an interest in the soil. He suggested this be tried in the colony by leasing township allotments at nominal rent to the ‘most deserving’ by annual tenancy for perhaps, seven years. They could then occupy the allotment for a longer period either by a further lease, or purchase by paying quit rent (charges levied on land grants). Continued tenancy would be achieved, and pass-holders would be encouraged to improve the land, which was in their own interest.<sup>56</sup>

### Revenue loss and depression

The granting of land as a means of distribution had virtually stopped by 1832, but the problem of free land and quit rent remained. Quit rent had always been difficult to collect, and Arthur, Franklin, Eardley-Wilmot and his successor, Sir William Denison, were all unsuccessful in collecting arrears.<sup>57</sup> However, those for whom the Ripon land price regulation (introduced in 1831) was intended to benefit did not gain, essentially because the most desirable land had been sold. In 1838, despite scarcely any land worth more than 6s 0d or 7s 0d remaining, the sale price was increased from 4s 0d to 12s 0d an acre in both Van Diemen’s Land and New South Wales. A crucial source of public revenue had ended, and quit rent was no alternative because of the uncertain amounts still owed to the colony from regulations existing in earlier years. It was also difficult to enforce payment when a direct tax had, until then, been avoided and for which there were considerable arrears.<sup>58</sup> Requiring revenue, in July 1841 Franklin issued a government notice on quit rents. His intention was to collect two years’ rent annually until all arrears were paid, while arrears accumulated before 1835 were exempt.<sup>59</sup>

Two year later Franklin predicted expenditure would exceed income by £17,907. The deficit would be caused by paying police and gaol expenses from colonial funds. The understanding

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<sup>56</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 310) 31 January 1845 and enclosures pp. 236–51; see also Eardley-Wilmot to Stanley (No. 114) 29 May 1844, pp. 205–06 for his similar earlier suggestion; See chapter one where he let plots of land to the labourers of Berkswell for cottage gardens, and as a result became ‘sober and industrious’.

<sup>57</sup> R M Hartwell, *The Economic Development of Van Diemen’s Land 1820–1850* (Melbourne, 1954), p. 40.

<sup>58</sup> Ripon land price system *HRA I*, xix (Sydney, 1923), Glenelg to Gipps 9 August 1838, pp. 537–38; L Robson, *A History of Tasmania: Volume I* (Melbourne, 1983), pp. 332–33; Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843*, pp. 216–19; see Stefan Petrow, ‘Discontent and Habits of Evasion: The Collection of Quit Rents in Van Diemen’s Land 1825–1863’, *Australian Historical Studies*, 32.117 (October 2001), pp. 240–56 for details on the Crown’s legal right to collect quit rents in the colony.

<sup>59</sup> Petrow, ‘Discontent and Habits of Evasion’, p. 250.

was that the balance of the land fund, after costs of immigration had been defrayed, would be transferred to it.<sup>60</sup> Revenue from the Land Fund, formerly so healthy that police and gaol costs were transferred from the British Treasury to the colony, dried up, and the colony slid towards bankruptcy.<sup>61</sup> This situation challenged Eardley-Wilmot, and in late 1844 he decided not to pursue the collection of overdue quit rent, a decision with which Lord Stanley agreed.<sup>62</sup>

The fall in the price of wool, the ‘ruinous low price’ received for the ‘produce of the soil’ and unwise borrowing, were some of the causes of the ‘depression’ and ‘distress’ in the colony. Native cattle were of ‘little value’ because of imported cattle, and the settlers’ sheep flocks were valued for their wool, sheep meat being oversupplied from New South Wales. Export wheat was no more profitable, as New South Wales had introduced a duty on wheat from Van Diemen’s Land,<sup>63</sup> which in July 1844 was only worth 3s 6d per bushel. Despite being able to grow ‘an endless quantity’ of ‘first quality and condition’ wheat, the price received did not cover production costs.<sup>64</sup>

Exporting to England was not financially viable either, especially because of high insurance costs, and exporting was ‘hazardous speculation’. Eardley-Wilmot offered a solution. If Stanley wished to ‘confer a boon’ on the colony, he could show the ‘same favour’ to the colony as that shown to Canada and allow the colony’s wheat to be ‘imported into England duty free’. This would ‘give such an impetus’ to the colony that ‘beneficial effects’ would be felt in ‘every department’.<sup>65</sup> Despite being warned many times, Stanley did not seem to understand the colonial situation. He did, though, admit the depression had ‘disturbed’ the basis and the results of his calculations, but he claimed he could not understand why the colonists had any grievance — the Government was relieved from an expense, and the colonists were supplied with ‘cheap and effective labour’.<sup>66</sup>

In 1861 a logical explanation for the colonial situation of the 1840s was offered by Thomas Elliott, assistant Under-Secretary for the Colonies. Elliott thought it was due to the Molesworth report that, between 1841 and 1846, ‘Instead of merely making a penitentiary in

<sup>60</sup> CO280/153 (AJCP 518) Franklin to Stanley 24 February 1843, pp. 411–39.

<sup>61</sup> *Hobart Town Courier*, 15 December 1843, p. 2; also Stefan Petrow, ‘After Arthur: Policing in Van Diemen’s Land 1837–1846’, in M Enders and B Dupont (eds), *Policing the Lucky Country* (Sydney, 2001), pp. 3–6.

<sup>62</sup> CO280/188 (AJCP 539) Elliott to Hope 20 January 1845, p. 28; *Morning Chronicle*, 23 October 1844, p. 2.

<sup>63</sup> *BPP Correspondence and papers relating to Crown Lands settlement and other affairs in Australia 1845–46. Colonies Australia 9* (Shannon, 1969), Eardley-Wilmot to Stanley (No. 108) 20 May 1844, pp. 599–600.

<sup>64</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 149), 14 July 1844, p. 208.

<sup>65</sup> *BPP Crown Lands Colonies Australia 9*, Eardley-Wilmot to Stanley (No. 108) 20 May 1844, pp. 599–600.

<sup>66</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Eardley-Wilmot (No. 10) 31 August 1844, pp. 201–04.

Van Diemen's Land', Britain 'threw into that single island' 16,000 male and 3,000 female adult convicts. This drove the colonists 'to despair, and almost to revolt'. Among the 1842 population of 'about 57,000', 'only 15,000' were 'free grown men'.<sup>67</sup>

The depression deepened in mid-1844 as prices for agricultural goods fell further and imports declined. Mainland competition and restricted markets rendered almost worthless what was produced. The price of wool had increased in late 1844, but, although of 'material assistance' to the wool growers, the price of agriculture and general commerce remained depressed.<sup>68</sup> Eardley-Wilmot borrowed money from the Military Chest to boost revenue, two sums of £2,000 and £6,000 and, according to Stanley, a second loan of £15,000 then three further amounts. These borrowings, not authorised by London, brought a severe reprimand from Stanley in February 1845.<sup>69</sup>

This was Eardley-Wilmot's second rebuke for financial mismanagement within ten days. He had been censured for sending a convict to England to receive a free pardon (which he had promised the man for capturing bushrangers) and for increasing the salaries of convict officers without approval. Stanley claimed His Majesty's Government was embarrassed 'by the manner in which the [salary] case had been submitted to them'.<sup>70</sup> It may not have been sound financial management, but even Stephen acknowledged (though not to Eardley-Wilmot), that the Lieutenant-Governor had little choice while the colony was required to pay police and gaol costs.<sup>71</sup> Facing mounting opposition in the Legislative Council, in the 1845 session, Eardley-Wilmot confronted outspoken protests against 'taxation without representation'. In October, in an historic challenge to colonial authority, six unofficial members, 'the patriotic six', resigned, leaving the Council without a quorum rather than see the estimates carried by the votes of officials, who, with Eardley-Wilmot's casting vote, made a majority.<sup>72</sup> This challenge, and Eardley-Wilmot's management of it, will be discussed in chapter eight.

In late 1845 Stanley admitted it was necessary to relieve the colony of the full burden of police and gaol expenditure and also to repeal the Land Sales Act to enable land to be sold for

<sup>67</sup> *BPP Reports from Select Committees on Transportation with minutes of evidence proceedings, appendices and indices. Crime and Punishment. Transportation 3, Volume XXIII 1861* (Shannon, 1968), 'Report from the Select Committee on Transportation 1861', Thomas F Elliott to the Select Committee, pp. 16–17.

<sup>68</sup> R M Hartwell, *The Economic Development of Van Diemen's Land 1820–1850* (Melbourne, 1954), p. 230.

<sup>69</sup> GO1/1/57 Stanley to Eardley-Wilmot 8 February 1845, pp. 172–84.

<sup>70</sup> GO1/1/57 Stanley to Eardley-Wilmot 2 February 1845, pp. 123–32; GO1/1/57 Stanley to Eardley-Wilmot (No. 380) 31 January 1845, pp. 51–72.

<sup>71</sup> Shaw, *Convicts and the Colonies*, pp. 307–08; Petrow, 'After Arthur: Policing in Van Diemen's Land 1837–1846', p. 180.

<sup>72</sup> Shaw, *Convicts and the Colonies*, p. 307.



less. Unfortunately for Van Diemen's Land and Eardley-Wilmot, this note was neither transmitted to the colony, nor published in Parliamentary Papers.<sup>73</sup> In February 1846, in response to Eardley-Wilmot's despatches of 25 June, 31 July and 1 August 1845, and to the 'proceedings and deliberations' of the Executive Council, Treasury provided '£24,000 per annum' to be paid quarterly towards police and gaol expenditure.<sup>74</sup> In return, the colony was to 'surrender' the land revenue, but at the time received no income from this source because of the depression and the expansion of the mainland colonies, especially due to the land boom at Port Phillip and South Australia.<sup>75</sup>

Following a general return to prosperity after 1845, employment gradually increased until the middle of 1846, when (compared to eighteen months earlier) most available free labour had been absorbed, the working classes were in 'comparative distress' and the streets 'filled with idle and destitute people'.<sup>76</sup> 'The best of our labourers are still leaving the colony by every available opportunity', the *Hobart Town Courier* editor complained in August 1846.<sup>77</sup> When immigration was discussed in the Executive Council in 1847 it was admitted that labour was 'scarce', but further immigration would be 'useless' because free labourers would not remain.<sup>78</sup> Following colonial representations, in June 1846 the British government decided to 'suspend' male convict transportation for two years.<sup>79</sup>

### **Probation gangs and stations**

Franklin was dissatisfied with the way Matthew Forster handled unrest in the probation gangs, and in 1842 Franklin dismissed him. During Eardley-Wilmot's administration Stanley reappointed Forster, but Stanley's instructions gave Forster little scope for initiative. He was to observe and enforce regulations, was required to send prompt, regular and periodical returns on the implementation of the system and suggest improvements and report 'in a plain and methodical' way. Despite not having received Stanley's instructions (Stanley to Franklin, 25 November 1842) to 'communicate directly' with the Lieutenant-Governor, Forster

<sup>73</sup> CO280/179 (AJCP 532) Stanley's note on reverse of p. 270 of Eardley-Wilmot to Stanley 24 January 1845, pp. 262–69.

<sup>74</sup> *BPP Crime and Punishment Transportation 7*, Trevelyan to Stephen, 2 February 1846, pp. 288–90.

<sup>75</sup> Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, p. 229.

<sup>76</sup> *Hobart Town Gazette*, 7 July 1846 Vol. XXXI No. 1574, p. 685 Eardley-Wilmot to Leg Council 30 June 1846; Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, p. 82.

<sup>77</sup> Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, p. 82.

<sup>78</sup> TAHO EC4/ 1/8 Minutes of Proceedings of the Executive Council (1 July 1842–31 October 1851) 30 August 1847, pp. 470–76 esp pp. 473–74.

<sup>79</sup> *BPP Crime and Punishment Transportation 7*, Sir George Grey to Earl Grey, 20 January 1847, p. 651.

supplied Eardley-Wilmot with his first report in September 1843.<sup>80</sup> According to Stanley the previous November, his instructions would not be issued ‘until the contemplated Act of Parliament had been passed and the requisite local laws enacted’. Consequently, Forster could only detail the state of the probation gangs, their stations and the type of employment for gang members.<sup>81</sup>

Under the earlier assignment system, road gang sites had been chosen for road-making and cutting timber rather than growing food. Convicts sentenced under probation were required to serve a period of labour on the roads, the period determined by their length of sentence to transportation. Once this period of hard labour had been served, they could be hired by free settlers. It is significant for an understanding of Eardley-Wilmot’s difficulties that he was in the unenviable position of administering three classes of convicts: those transported before July 1840 under assignment; those who began service under probation, and also arrivals after Stanley’s 1842 despatch.<sup>82</sup>

Forster was concerned by the expected cost of probation, and to reduce expense for buildings and supervision, he increased the probation gangs from 300 to 400 men. This reduced their efficiency, and the number of stations required. Convicts were accommodated at twenty instead of twenty-seven stations, fifteen of which were made ‘milder’ with less supervision.<sup>83</sup> The previous month there were 6,046 convicts in labour gangs. Construction was stopped on two new stations, Leipsic and Brushy Plains, and Forster recommended the New Norfolk station be broken up and the convicts sent to other gangs.<sup>84</sup> Constantly ordered to economise, Forster was not supplied with sufficient superintendents and religious instructors. Although overwhelmed by the numbers arriving, he did not complain, and, as Shaw commented, this showed his ‘failing capacity and concern’, accentuated by personal financial worries and poor health.<sup>85</sup> It is not surprising that Eardley-Wilmot does not appear to have commented on Forster’s changes, as he had been in the colony less than two months and was instructed to consult Forster regarding the gangs. Eardley-Wilmot left decisions to Forster.

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<sup>80</sup> *HRA* I, xxii Stanley to Gipps, 7 May 1843, pp. 709–12; *BPP Crime and Punishment Transportation* 7, Stanley to Franklin (No. 176) 25 November 1842, pp. 107–13; Stanley’s despatch of 25 November 1842 was not received in the colony until August 1843.

<sup>81</sup> *BPP Crime and Punishment Transportation* 7, Eardley-Wilmot to Stanley (No. 11) 5 October 1843 with enc 1 Forster’s report, 28 September 1843, and returns A, B, C, D, F, pp. 171–79.

<sup>82</sup> *BPP Crime and Punishment Transportation* 7, Forster’s report, 28 September 1843, pp. 171–72.

<sup>83</sup> *BPP Crime and Punishment Transportation* 7 Eardley-Wilmot to Stanley (No. 11) 5 October 1843 pp. 171–79 enc Forster’s Report, 28 September 1843, pp. 171–72; Shaw, *Convicts and the Colonies*, pp. 297–98.

<sup>84</sup> *BPP Crime and Punishment Transportation* 7 Forster’s report, 28 September 1843, p. 171 enc 1 in Eardley-Wilmot to Stanley 5 October 1843, pp. 171–79.

<sup>85</sup> Shaw, ‘Forster, Matthew (1796–1846)’, *ADB* [<http://www.adb.online.anu.edu.au/biogs/A010372b.htm>].

The stations at St Mary's Vale, Fingal, Broadmarsh, Westbury and Deloraine housed convicts working on roads. To further reduce expenses, Forster proposed that stations in unsettled districts be located ten miles apart where men were employed in road making and clearing and fencing land into 100 acre blocks for sale.<sup>86</sup> His report included returns for the number of convicts in each class of either sex, distribution, localities and employment. He stated he would continue periodical returns with 'care and expedition'. He also required fifty-eight mechanics at Fingal, Rocky Hills, Jerusalem, Brown's River and Southport where buildings were under construction for the separate system, but, until the 'most necessary' buildings were complete, it was not possible to test the 'value of the probation system'.<sup>87</sup>

The work of the superintendent responsible for discipline and management of the gang, and classification were important features. Classification and regular employment were impossible without new buildings, despite which, in December 1843, after only four months in the colony Eardley-Wilmot had 'no doubt' of the prisoners' 'moral and religious improvement'. As Shaw noted, this was a 'surprising' comment because the previous month Eardley-Wilmot had written a private letter on the 'horrors ... perpetrated' in the gangs.<sup>88</sup> In December 1843 it was becoming obvious that a significant number of pass-holders were unable to obtain employment in private service, and would need to be maintained by the British Government. To ease the situation, Forster proposed two permanent hiring depots at Bridgewater (to hold 400 men) and Perth (250 men) and at each station a superintendent on an annual salary of £120, an assistant superintendent £70 and a store-keeper £75 while overseers, 'hospital assistant, &c' could be selected from men 'no longer under punishment probation'.<sup>89</sup>

In October 1843 the large numbers of convicts arriving delayed the preparation of regulations for pass-holders and for the Convict Department, but Eardley-Wilmot hoped to have the paperwork ready for the Colonial Office about the middle of November.<sup>90</sup> He had sent first stage regulations in September, including those on hiring probation pass-holders, and two returns. The first showed the distribution of convicts who had passed through first state

<sup>86</sup> *BPP Crime and Punishment Transportation 7* Forster's report, p. 172 enc 1 in Eardley-Wilmot to Stanley 5 October 1843, pp. 171–79.

<sup>87</sup> *BPP Crime and Punishment Transportation 7* Returns B and C for names of mechanics, p. 175 and Eardley-Wilmot to Stanley 5 October 1843 pp. 171 with enclosures from Forster, pp. 171–79.

<sup>88</sup> Shaw, *Convicts and the Colonies*, pp. 297–98; GO25/1/11 Eardley-Wilmot to Stanley 'Private & Confidential' 2 November 1843; *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 11) 5 October 1843 and enc 1 Forster's report, 28 September 1843, pp. 171–73.

<sup>89</sup> *BPP Crime and Punishment Transportation 7*, Report from Comptroller-General Forster, December 1843, p. 196.

<sup>90</sup> *BPP Crime and Punishment Transportation 7*, Forster to Eardley-Wilmot, 28 October 1843, pp. 179–80.

probation, and the second, the number of convicts whose first stage of probation was expected to expire monthly during the succeeding twelve months. He planned to send those for the second stage in January.<sup>91</sup> On 1 March 1844 all convicts eligible for service on wages became pass-holders and had to be paid for their labour, previously free to the public service. As Stanley insisted on payment some colonists ‘clamoured’ for the end of transportation.<sup>92</sup>

Eardley-Wilmot’s reports were the cause of regular Colonial Office complaints during 1844 and 1845, mostly from Stephen, but some blame was due to Forster who consistently failed to prepare the regular reports required.<sup>93</sup> Despite this, Eardley-Wilmot sent regular despatches. The continuing insistence on more reports and a failure to recognise Eardley-Wilmot’s correspondence by both Stephen and Stanley might have been due to illness of either or both men. Complaints about the Lieutenant-Governor embraced practically every subject, but it was what they thought to be his failure to explain things, that particularly provoked displeasure. On the collection of quit-rents he sent ‘a very obscure and inadequate statement’; he did not properly explain his expenditure, his appointments, or the colonists’ personal grievances.<sup>94</sup> He made no comment in January 1844 on the controversial report of the Board of Education, and sent it home ‘without attempting to draw any conclusion or instituting any inquiry to clear them up’. He therefore, ‘failed to discharge’ his duty.<sup>95</sup> Complaints continued.

John Morgan, editor of the *Hobart Town Advertiser*, realised there were problems with despatches. Morgan had opposed probation since its introduction, and did not condemn the ‘active, energetic, inquiring’ Lieutenant-Governor himself, who, he realised, had been ‘hampered’ with instructions from Britain, instructions either ‘impractical’ or ‘destructive’ of the interests of the colony. If it was not possible to reconcile the interests of the free settlers with probation, then the interests of the colonists should be paramount — and if the colony was to be a gaol, ‘not a home for free men’ let the British government remunerate settlers.<sup>96</sup>

As early as December 1843, Stephen and Under-Secretary of State, George Hope, regretted the abolition of assignment. They realised that Governor Gipps in New South Wales had

<sup>91</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 7) 8 January 1844, p. 195 as requested by Stanley in despatch (No. 2) and to which Eardley-Wilmot referred in despatch (No. 16) 31 October 1843, p. 179.

<sup>92</sup> Hartwell, *The Economic Development of Van Diemen’s Land 1820–1850*, p. 65.

<sup>93</sup> Brand, *The Convict Probation System*, p. 27.

<sup>94</sup> Shaw, ‘Three knights’, p. 148.

<sup>95</sup> CO280/167 (AJCP 525) Stanley’s note written on p. 157 of Eardley-Wilmot to Stanley (No. 17) 22 January 1844, pp. 151–57.

<sup>96</sup> *Hobart Town Advertiser*, 6 February 1844, p. 2; see E Morris Miller, *Pressmen and Governors: Australian Editors and Writers in Early Tasmania* (Sydney, 1952), pp. 175–78 for publication dates and editors of newspapers 1816–46.

‘been driven by necessity to a partial return to the Assignment system’, a system ‘inadvisedly abandoned’.<sup>97</sup> One year later Stephen restated that assignment had been ‘rashly, hastily and ignorantly’ ended. To George Hope, each new report proved ‘more and more’ how little the Transportation Committee understood the subject. A return to assignment was inevitable. Despite speculation, the impracticality of a return made the working of probation more important, and Stephen complained ‘it was impossible to derive any distinct impression’ of what was happening. ‘Nothing can be less satisfactory than the manner in which’ Eardley-Wilmot and Forster ‘exercise their duty of reporting’; in fact their reports could ‘not be credited in the face of the testimony we possess’. Such testimony detailed idleness, homosexuality and crime, and problems of the new system would be reduced when new huts on the separate system were built — but Stephen complained that apart from vague references to ‘future tense’ neither Eardley-Wilmot nor Forster seemed in any hurry to build them.<sup>98</sup>

In a report of 12 July 1844 Forster stated the need to encourage the agricultural interests in the colony during the succeeding twelve months, otherwise ‘large numbers’ of convicts soon to be pass-holders and those ‘already classed’ would ‘exceed the wants of the colony’.<sup>99</sup> Responding to this report in a confidential memorandum dated 3 February 1845 to Cabinet, Stanley admitted transportation was becoming ‘one of very serious embarrassment’.<sup>100</sup> Stanley thought portion of the ‘excess’ labour could be reduced by ‘the adoption of a plan’ originally considered as ‘giving validity to conditional pardons’ within the Australian colonies. He had ‘distinctly announced’ the government’s intention in his 15 November 1842 despatch to Franklin. Commenting on Forster’s report, Stanley was unable to understand what Forster considered ‘obstacles’. After communicating with Home Secretary Sir James Graham, the instructions were renewed, and Stanley ‘hoped that holders of conditional pardons’ would then ‘move imperceptibly but constantly, to the various colonies of Australia, in the south and west of which particularly there is an increasing demand for labour’.<sup>101</sup> The British government would annually send ‘4000 or 5000 adult able bodied labourers’. Instead of the government’s policy being to ‘discourage the introduction of competing free labor’ it should encourage the introduction of capital by assisting the acquisition of land on which the labour would be employed.<sup>102</sup>

<sup>97</sup> CO201/333 (AJCP 347) Stanley’s note to Hope 2 December 1843, p. 183 of Gipps to Stanley 20 May 1843, pp. 163–83 and on same page Hope signifies his agreement.

<sup>98</sup> Shaw, *Convicts and the Colonies*, pp. 302–303.

<sup>99</sup> *BPP Crime and Punishment Transportation 7*, Forster’s report 12 July 1844, pp. 209–13 enc in Eardley-Wilmot to Stanley (No. 149) 14 July 1844, pp. 208–24.

<sup>100</sup> PRO CO885/2/8 ‘Memorandum on Transportation, 3 February 1845’, p. 1.

<sup>101</sup> PRO CO885/2/8 ‘Memorandum on Transportation, 3 February 1845’, p. 6.

<sup>102</sup> PRO CO885/2/8 ‘Memorandum on Transportation, 3 February 1845’, p. 8.

Despite an improvement in the demand for labour, at the end of 1845, 3,268 pass-holders were waiting to be hired and maintained at Government expense. The following year, to provide relief, Stanley agreed conditionally pardoned convicts would be permitted to go anywhere on the Australian mainland to seek work.<sup>103</sup> This situation, which was not agreeable to Gipps, directly reflected on Van Diemen's Land, and to explain what he proposed, Gipps stated how a sentence of transportation 'fixes on a man' a character of 'which in after life he never can entirely divest himself'. If conditional pardons issued in Van Diemen's Land were valid in New South Wales, it would 'materially' affect the interests of the New South Wales colonists. His proposal to Stanley (with a copy to Eardley-Wilmot) was that holders of conditional pardons issued in Van Diemen's Land should, in New South Wales, be subjected in 'some manner to the surveillance of the Police'. If they committed crimes after arrival in New South Wales, they should be punished as if their pardons were granted in the colony.<sup>104</sup>

Depending on the severity of the crime the emancipist 'may be worked on the Roads in irons; and, if he commit a transportable offence', be 'transported to a penal settlement (either Norfolk Island or Tasman's Peninsula)' instead of a probation gang in Van Diemen's Land. These 'peculiarities of the Law' should, Gipps suggested to Stanley, apply to those arriving in New South Wales with conditional pardons from Van Diemen's Land, and be sanctioned by the 'third clause of the Local Act of New South Wales, 3<sup>rd</sup> Wm. IV, No. 3; and, by the first clause of the local Vagrant Act, 6<sup>th</sup> Wm. IV, No. 6', that those who originally came as convicts, 'though they may have become entirely free, are nevertheless required to register their place of abode, if, subsequent to their arrival may have been convicted of a transportable offence'. This arrangement would not affect expirees.<sup>105</sup>

Gipps enclosed a legal opinion from the Crown Law Officers to New South Wales Colonial Secretary Thomson about his proposed treatment of pardoned convicts from Van Diemen's Land. Reflecting Gipps' concern over any moral degradation which might affect New South Wales (and which might reflect on Eardley-Wilmot if pardoned convicts from Van Diemen's Land arrived there), law officers recommended the proviso be introduced that pardons issued in Van Diemen's Land be only valid in that colony.<sup>106</sup> Despite similar representations to

<sup>103</sup> W P Morrell, *British Colonial Policy in the Age of Peel and Russell* (Oxford, 1930), p. 390; *BPP Crime and Punishment Transportation 7*, Stanley to Eardley-Wilmot (No. 386) 5 February 1845, pp. 418–19.

<sup>104</sup> *HRA I*, xxiv Gipps to Stanley 20 October 1845, pp. 602–04.

<sup>105</sup> *HRA I*, xxiv Gipps to Stanley 20 October 1845, pp. 602–04.

<sup>106</sup> *HRA I*, xxiv Crown Law Officers (J H Plunkett Attorney General and W M Manning Solicitor-General) to Colonial Secretary Thomson, pp. 603–04 enc in Gipps to Stanley 20 October 1845, pp. 602–04

William Gladstone, on 13 May 1846 he advised Sir Charles FitzRoy, who had, by this time, replaced Gipps, that it was decided that both colonial and British convicts would be given the right to travel to ‘any place’ they desired, provided they did not return to the country or colony from which they had been transported. This was a retrospective arrangement and applied to all pardons in force. Gladstone disagreed with Gipps’ interpretation of the local acts, and understood the New South Wales; conditions only applied to persons in the ‘Convict State’, and not to those whose time had expired, or whose offences had been pardoned.<sup>107</sup>

In his despatch to Stanley on 31 January 1845, Eardley-Wilmot included Forster’s report, ‘his second on the state of the convict branch’ and six enclosures detailing the schools at probation stations; female establishments; return of pass-holders and the average number of months served in the different stages; offences and breaches listed under each transport, and convict strength at each probation station.<sup>108</sup> There are indications that sending such reports was usual, and it is difficult to understand why Stanley complained. The first stage of probation answered its purpose, and when ‘at least’ 90 per cent of convicts became pass-holders, Forster thought they would be able to read, and a ‘large proportion’ to also write. Among the pass-holders, 5,604 males and 1,492 females were married and in private service, while another 2,706 males and 743 females were unable to obtain service. He expected the first stage of probation would expire during the year (1845) for 5,698 males and 481 females, and after the ‘harvest’ another 1,000 men would be employed and chargeable on the government.<sup>109</sup>

Despite Stanley’s February 1843 estimate of a maximum of 8,000 males at any one time in the probation gangs,<sup>110</sup> in July 1844 there were 23,078 males and 3,894 females in the colony. By January 1845 totals had increased to 24,828 males and 4,367 females. Of these at the former period, 5,128 males and 809 females held a ticket-of-leave, and by the end of January 1845, so did 6,094 males and 1,298 females. The situation for pass-holders had not improved. Those moved to Government service were lodged and worked on ‘the main line of road’, their supervision paid by the convict department, with tools and stores provided by the colony.<sup>111</sup> As well as probation stations, Forster’s reports encompassed many other particulars: Point

<sup>107</sup> *HRA* I, xxv Gladstone to FitzRoy 13 May 1846, pp. 56–58.

<sup>108</sup> *BPP Crime and Punishment Transportation* 7, Forster’s report 27 January 1845, pp. 238–40 enc in Eardley-Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–51.

<sup>109</sup> *BPP Crime and Punishment Transportation* 7, Forster’s report 27 January 1845 pp. 238–40 enc in Eardley-Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–51.

<sup>110</sup> *BPP Crime and Punishment Transportation* 7, Stephen to C E Trevelyan 28 February 1843, pp. 128–131.

<sup>111</sup> *BPP Crime and Punishment Transportation* 7, Forster’s report 27 January 1845, pp. 238–40 enc in Eardley-Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–51.

Puer the boys' prison; the situation of female convicts; the houses of correction and the hiring depots for females, all of which will be addressed in the next chapter.

According to Forster, at the beginning of 1845 seventeen probation stations were operating, site preparation had commenced for a Female Factory and Invalid Depot, and Eardley-Wilmot had approved sites for another four, the location of many shown in figure 5.1. The plan to remove all convicts from the settled districts was dependent on the preparation of 'proper huts and barracks' for such a 'large body of men'. To Forster this was difficult because the 'great objects of discipline, instruction, and reformation' had to be considered, and was 'no slight task'. He also thought it his 'paramount duty' to advise Stanley that the separate system was one of 'necessity' and a matter of 'very great difficulty, not insurmountable certainly'. It required 'great attention and time' to conduct a system of 'discipline and reformation' to run 'concurrently with field labour, in large gangs of men, huttet'.<sup>112</sup>

In January 1845 Eardley-Wilmot reported that offences in the gangs were 'trivial and few' and had not increased in proportion to the convicts. A similar account was prepared by Forster in his reports of 1 January and 5 August 1845 in which he described the system as 'vastly superior' to any that preceded it. There were 4,367 female and 24,824 male convicts in the colony, only 1,209 of these at Port Arthur under punishment — a smaller proportion than under assignment ten years earlier. During the four years from July 1841, of those in the gangs 5,500 men committed offences while 4,555 earned passes without fault. Despite this improvement, two-thirds committed offences as pass-holders and were convicted in the Supreme Court and Quarter Sessions.<sup>113</sup> In July 1846 Eardley-Wilmot again addressed Stanley. Apart from deficiencies in the working of the system mentioned in his 'numerous despatches, and beyond some minor alterations' which he had adopted, he thought probation was the best system to 'obtain the end contemplated'. The 'pivot' for its success was the 'continuous employment' of pass-holders in 'transit from probation to ultimate freedom'.<sup>114</sup>

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<sup>112</sup> *BPP Crime and Punishment Transportation 7*, Forster's report 27 January 1845, p. 239 enc in Eardley-Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–51 and Eardley-Wilmot to Stanley, 31 January 1845, pp. 236–37, and in August 1846 Champ reported there were 16, see 'Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846', pp. 578–79 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>113</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Gladstone (No. 100) 10 July 1846, pp. 555–60 about Eardley-Wilmot to Stanley, 'private and confidential' 2 November 1843; CO280/171 (AJCP528) Hope's note p. 309 after Eardley-Wilmot to Stanley (No. 196), 5 September 1844, pp. 305–07; *BPP Crime and Punishment Transportation 7*, Forster's 27 January 1845 report p. 238; Shaw, *Convicts and the Colonies*, p. 302.

<sup>114</sup> *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Stanley (No. 100) 19 July 1846, pp. 555–60.



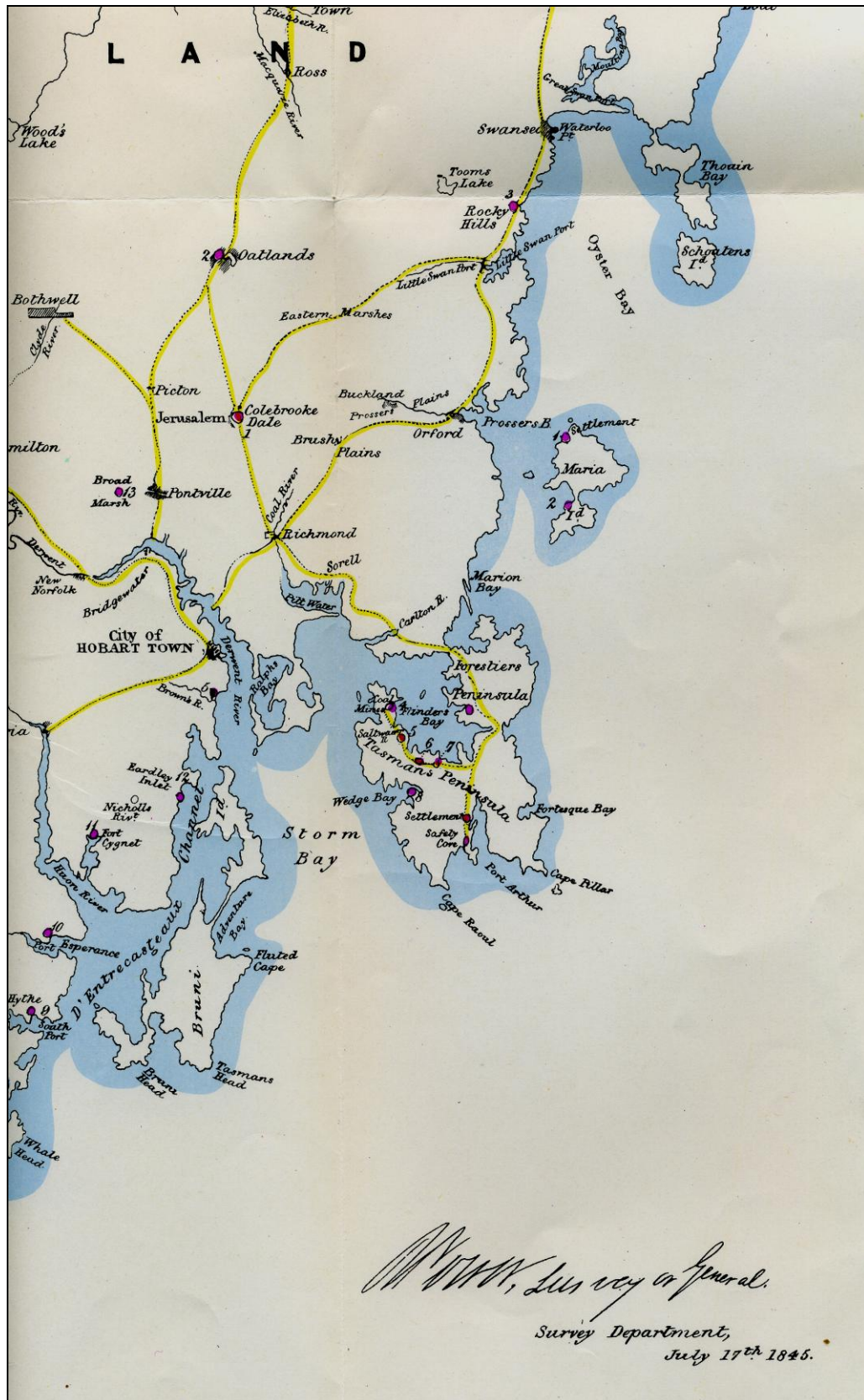


Figure 5.1: VDL south-eastern Probation Stations 17 July 1845.<sup>115</sup>

<sup>115</sup> BPP *Crime and Punishment. Transportation* 7 (Shannon, 1969) Enc 2, in No. 10 Return of Probation Stations of Convicts in the First Stage, with Explanation of labour, pp. 320–21 in Eardley-Wilmot to Stanley No. 10 (No. 113), 5 August 1845, pp. 305–22.

**Legend for Figure 5.1**

- 1 Darlington (*Maria Island*)
- 2 Long Point (*Maria Island*)
- 3 Rocky Hills (*near Swansea*)
- 4 Coal Mines (*Tasman's Peninsula*)
- 5 Salt Water River (*Tasman's Peninsula*)
- 6 Impression Bay (*Tasman's Peninsula*)
- 7 Cascades (*Tasman's Peninsula*)
- 8 Wedge Bay (*Tasman's Peninsula*)
- 9 Southport (*D'Entrecasteaux Channel*)
- 10 Port Esperance (*D'Entrecasteaux Channel*)
- 11 Port Cygnet (*D'Entrecasteaux Channel*)
- 12 Oyster Cover (*D'Entrecasteaux Channel*) site for female Penitentiary cleared; and 150 acres of very fine land preparing for wheat. Waiting for further instructions in regard to building (July 1845)
- 13 Broadmarsh (*in settled district*)

Eardley-Wilmot used the colony's 'unpaid labour' to advantage. In 1845 he planned for the Market Place in front of the Custom House to become a quay, and the Market to move behind the building. Macquarie Street would be extended through the Government Domain to Macquarie Point where a jetty would be built as a landing point for a steam boat (already under construction at Port Arthur), which would convey passengers across the Derwent. This 'easy access' across the river would be 'an immense convenience to a large and extensive district' by shortening the travelling distance from Richmond, Sorell, Hollow Tree, Clarence Plains, Muddy Plains, Carlton and as far as Prosser's Plains and Swan Port.<sup>116</sup> He had 'long recommended' the construction of 'a dock at Judge Montagu's Point, thereby avoiding a succession of sharp hills and hollows'. He planned to 'bring out the road at the Half-way Hill', which would be 'perfectly level' and shorten the water carriage and ferry distances nearly two-thirds. A causeway at Sorell would complete the work.<sup>117</sup>

Probation stations were established to provide work away from settled districts. A 'complete' station was governed by a superintendent, three assistant superintendents, competent overseers (free men), a surgeon, a catechist and a military detachment. Visiting magistrates were located to cover two or more stations.<sup>118</sup> At newly-established stations the men were first employed in the erection of buildings, roads and bridges, grubbing, fencing, clearing and cultivating land. After establishment, the work available meant most stations were only occupied for a short time, and changes in personnel, 'policy reversals, administrative inefficiency, interdepartmental jealousies and corruption' and 'poor choice of sites' were all

<sup>116</sup> *Hobart Town Courier*, 17 May 1845, p. 2; After flood damage, Richmond Bridge had been repaired by the Chief Constable and a 'few government hands, secured at uncertain intervals' to 'ensure a safe passage for man and beast, — aye, even for carriages and carts', see *Colonial Times*, 18 January 1845, p. 3.

<sup>117</sup> *Hobart Town Courier*, 17 May 1845, p. 2; the government domain will be discussed in chapter nine.

<sup>118</sup> David Burn, *An Excursion to Port Arthur in 1842* (Hobart, 1892), pp. 14–15.

likely to result in abandonment or change of use.<sup>119</sup> Convicts serving their primary term of labour were subjected to work in probation gangs during the day and were housed in separate apartments (single cells) as sleeping units. Almost all apartments were ‘in the form of a single row of cells and often arranged around a yard looking inwards’, Saltwater River and Darlington being examples. Two-storied apartments had a ‘gallery or verandah on the upper floor with an external staircase’, while solitary cells, fewer in number, were used as punishment and were usually small and dark.<sup>120</sup>

Despite Eardley-Wilmot’s efforts to employ probation convicts, by February 1845 the situation was desperate. The men ‘in the nine stations ... convicts from England’, were under punishment in stations. Stations, already ‘fixed upon’ when he arrived, were unable to be moved because Forster had ‘nowhere to put them’, and the colony had ‘no funds to pay for them’, the cost ‘being nearly’ £16,000 per annum. The colony would benefit by having the men open ‘new lines of roads’ which would ultimately lead to communications and the ‘transmission of agricultural produce’. This would not solve the problem though, because there were another 3,300 to be employed.<sup>121</sup>

Darlington was only a station for eight years. In August 1844 Forster ‘somewhat belatedly’ asked the Commanding Royal Engineer for plans and estimates for the proposed penitentiary. Plans were still being prepared in 1847 when Eardley-Wilmot abandoned the station in favour of Safety Cove, as there were other adult probation convicts on Maria Island — a detail which seems to have been overlooked in 1844. As Safety Cove was only two miles from Port Arthur Eardley-Wilmot’s explanation was ‘baffling’.<sup>122</sup> Saltwater River, established in 1841 about 3½ miles east of the Coal Mines, was built to house the first convicts sent from the United Kingdom under probation, and superintendent James Pringle was assisted by a military detachment from the 96<sup>th</sup> Regiment. Within twelve months barracks had been erected for 450 men as well as a military barracks for fourteen soldiers, roads and jetties, and over fifty acres of land was under cultivation with vegetables, hops and wheat.<sup>123</sup> In 1843, 579 convicts were employed, and by June 1846 thirty-six solitary cells and 100 separate apartments were complete, and twenty-three rooms slept 560 men.<sup>124</sup>

<sup>119</sup> James Semple Kerr, *Design for convicts. An Account of design for convict establishments in the Australian Colonies during the transportation era* (Sydney, 1984), p. 146.

<sup>120</sup> Kerr, *Design for convicts*, pp. 146–47.

<sup>121</sup> *BPP Crime and Punishment Transportation* 7, Eardley-Wilmot to Stanley (No. 322) 10 February 1845, p. 252.

<sup>122</sup> Kerr, *Design for convicts*, pp. 142–43, p. 147.

<sup>123</sup> Brand, *Port Arthur 1830–1877*, pp. 49–52, 60.

<sup>124</sup> Brand, *Port Arthur 1830–1877*, p. 57.

Invalids were for a time stationed at Wedge Bay, but a shortage of suitable accommodation and difficult access meant the station was not suitable. In 1846 it closed, and the men moved to Impression Bay, where, as well as an abundance of accommodation and suitable land for cultivation, sufficient vegetables could be grown for the station. The remainder of the land was planted in hops, ‘employment well suited for invalids’, and also yielded ‘a profitable return to the Government’.<sup>125</sup> A few miles east of Impression Bay was the Cascades Probation Station which opened in 1842 as an agricultural station, and where seventy acres were under cultivation by 1847. However, as with other locations, the soil was unsuitable for wheat, but vegetables were successfully grown. Like Impression Bay, where in late 1843 there were 400 convicts, the principal work at Cascades was timber milling and was the main timber supply point for the stations on the Peninsula. The mill operated by steam and a tram road took the timber to the jetty for shipment. Wheelbarrows, carts and wooden agricultural implements were made in the workshops.<sup>126</sup> The Flinders Bay Probation Station was built in 1841, in one of the indentations of Norfolk Bay. The station was reached by the human tramway and in 1842 there was a superintendent, 200 convicts, a sergeant and twelve privates of the 99<sup>th</sup> Regiment who slept in ‘bark huts’. These huts were later replaced by slab huts, while the superintendent, the surgeon, the catechist and several assistants slept in cottages.<sup>127</sup> A station was begun on Slopens Island in 1841, and after two years 151 convicts were clearing and cultivating land and erecting barracks, but it closed in 1844, mainly because of a shortage of fresh water.<sup>128</sup>

Matthew Forster served under Eardley-Wilmot until April 1845 when, due to poor health, he asked for leave. He died on 11 January 1846.<sup>129</sup> His mind, according to Chief Justice Pedder, ‘was gone’, he died from a ‘whole system full of gout’ which ‘flew to his head and killed him’.<sup>130</sup> William Champ was appointed to replace Forster, and in his first report in August 1846 noted sixteen operating probation stations, therefore indicating changes since the previous year. There were four on Tasman’s Peninsula — Impression Bay (now Premaydena),

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<sup>125</sup> *BPP Crime and Punishment Transportation 7* ‘Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846’, p. 578 inc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629; Brand, *Port Arthur 1830–1877*.

<sup>126</sup> *BPP Crime and Punishment Transportation 7* ‘Return of Probation Stations’ 28 September 1843, Enc A p. 174 in Eardley-Wilmot to Stanley (No. 11) 5 October 1843, pp. 171–79; Brand, *Port Arthur 1830–1877*, pp. 49–52.

<sup>127</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 14–15.

<sup>128</sup> Brand, *Port Arthur 1830–1877*, pp. 49–52, 59–60.

<sup>129</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No. 176) 25 November 1842, pp. 107–13.

<sup>130</sup> Arthur Papers [microform] by George Arthur, Sir, 1784–1854, Mitchell Library NSW, Vol. 10 (A2170) Pedder (*Newlands* near Hobart Town) to Arthur, 18 February 1846.

and shown in figure 5.2, Saltwater River, Cascades (now Koonya and named for the waterfall) and the Coal Mines. The five in the vicinity of D'Entrecasteaux Channel, easily accessible by water, 'were formed solely with a view to agriculture'. There were two on Maria Island (Darlington and Long Point), one on the east coast (Rocky Hills), and three 'in the interior' (Broad Marsh, Ross and St Mary's Pass). There were also eight hiring depots: Jerusalem; Fingal; Westbury; Woolpack; Oatlands; Brown's River; Cleveland and Ross.<sup>131</sup>



**Figure 5.2:** Impression Bay Station, Premaydena c.1850.<sup>132</sup>

### Station self-sufficiencies

As secondary penal settlements were in isolated locations and difficult to access, they needed to be self-sufficient, and the establishment of gardens was necessary for survival. Researcher Eleanor Cave compared gardening with other trades at Port Arthur, and found the skilled horticultural labour used on the officers' plots contrasted with that used for government work. Government work was 'little valued, used basic equipment and included little innovation', while the officers' plots compared favourably with private gardens in 'technology and species variance'.<sup>133</sup> Most probably the experience of other stations was similar to Port Arthur, where,

<sup>131</sup> *BPP Crime and Punishment Transportation 7* 'Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846', pp. 578–79 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>132</sup> Painting: watercolour on paper 25 x 45 cm by an unknown artist, unsigned and undated, W L Crowther Library, Tasmanian Archive and Heritage Office.

<sup>133</sup> E Cave, 'Pleasure or Punishment? The importance of food gardens to secondary penal settlements', BA (Hons) thesis, University of Tasmania, 2007, p. 68.

in May 1834, Lieutenant-Governor Arthur ordered that ground close to the settlement be cleared for potatoes and cabbages, as vegetables twice weekly would be 'beneficial'.<sup>134</sup>

Cave found a marked decrease in yield from vegetable gardens after 1837, suggesting 'soil exhaustion' from repeated cropping of the same species with little added nutrient. Over time fewer vegetables were grown per acre, which required more land to be used for production in order to maintain 'suitable harvest' levels, particularly as the settlement's population was increasing each year. At Port Arthur, as reliable vegetable harvests commenced, the scurvy rate declined dramatically, a 'fact attributed by the Medical Officer to the addition of vegetables' in the ration. By 1839 the deficiency disease re-emerged at the same time as the number of available vegetables had fallen from the 1838 peak.<sup>135</sup>

There was little innovation in gardening practices, the main focus was on punishment, which meant the settlement was soon unable to produce sufficient food for its population, and without animals on the settlement, there was 'no manure (except night soil) to improve the ground'.<sup>136</sup> There was, though, one exception to this lack of innovation. In 1841 Franklin visited Point Puer and saw 'promising' boys being taught the 'higher branches' of gardening such as 'grafting, budding, &c'. He also noted the 'increased efficiency' of boys learning trades.<sup>137</sup> The convicts confined at Port Arthur were trained in other activities too, including building dockyards and ships, the *Lady Franklin*, shown in figure 5.3, built in 1838, was one of the sixteen decked vessels and around 150 open boats were built there between 1834 and 1848. Many of those built by the shipwrights were eight-oared whale boats, generally used for general transport and communication between the penal stations on the Peninsula.<sup>138</sup> There were also as racing craft, as will be further mentioned in chapter nine.

The great increase in the convict population following the end of transportation to New South Wales stimulated higher demands for meat supplies, and a livestock trade was established in mid-1842 between Port Albert, Victoria and Van Diemen's Land.<sup>139</sup> After 1820 the colony's sheep breeders concentrated on the 'lucrative market' of fine wool rather than mutton, and

<sup>134</sup> CSO1/1/716/15655 Memorandum Arthur to Colonial Secretary (No. 119), pp. 177–92.

<sup>135</sup> Cave, 'Pleasure or Punishment', pp. 47–48, p. 61.

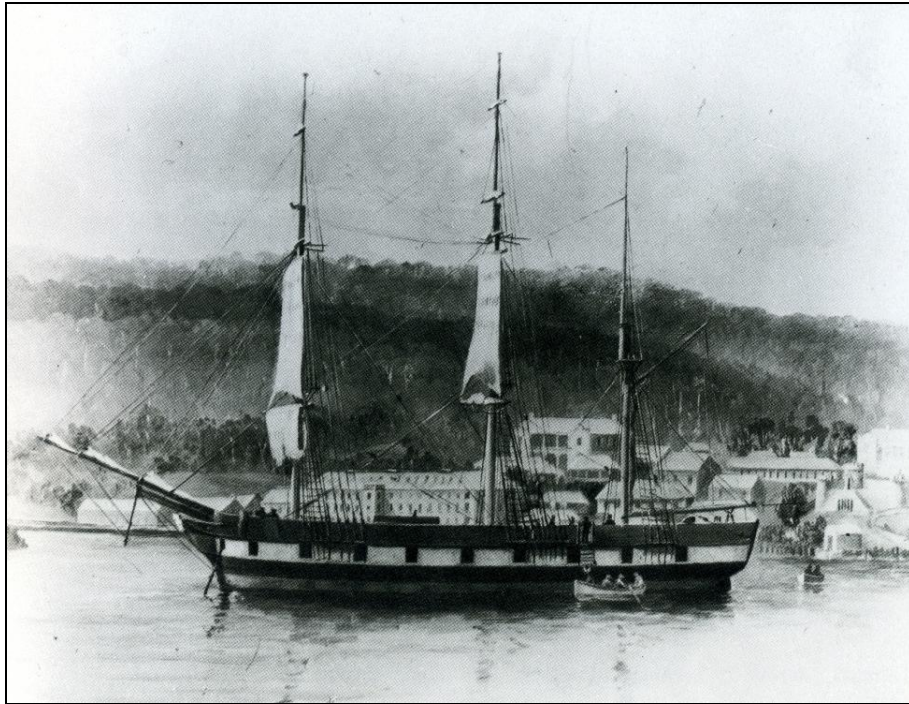
<sup>136</sup> Cave, 'Pleasure or Punishment', p. 61.

<sup>137</sup> Colonial Secretary M Forster to Captain Booth, 12 January 1841 in UTA RS 'Booth Correspondence' held in the Royal Society of Tasmania Library, University of Tasmania, Hobart campus.

<sup>138</sup> Michael Nash, 'History of the Port Arthur Dockyards', in *The Maritime History & Archaeology of Port Arthur: A Harbour Large Enough to Admit a Whole Fleet* Port Arthur Occasional Papers No 1 (Port Arthur 2004), pp. 50–51; Julia Clark, *Your Guide to Port Arthur* (Port Arthur, n.d. 2005?), p. 27.

<sup>139</sup> Jane Lennon, 'Trade and Communications across the Straits: Gipps' Land to Van Diemen's Land, 1841–1851', *The Victorian Historical Magazine* 44. 3 & 4 (August–November 1973) p. 96.

commissariat requirements were unable to be supplied locally.<sup>140</sup> Lachlan Macalister, the ‘squatter’ with the ‘largest holding’ in Gipps’ Land, intended to establish a large-scale meat salting plant but prices were low, and, because the policy of the Van Diemen’s Land Commissariat was to supply ‘fresh as well as salted meat’, it was more profitable for Macalister to send live animals. Shipping rapidly increased, mainly from Port Albert, the nearest mainland port, three days sailing from Hobart Town. Stock was also shipped from Port Phillip, Portland and Twofold Bay, but Port Albert with a ‘natural, geographic advantage’,<sup>141</sup> accounted for 30 per cent of vessels arriving at Hobart Town in 1846.<sup>142</sup>



**Figure 5.3:** Convict transport *Lady Franklin* built in 1838.<sup>143</sup>

Most vessels with livestock travelled direct to Hobart Town where cargoes were sold by auction to the butchers, some of whom had contracts with the Commissariat. Other vessels sailed to Wilmot (now Murdunna) at Lagoon Bay, where cattle were unloaded and driven to the slaughterhouse on King George’s Sound, from where fresh meat was distributed to the convict outstation and coal mines in Norfolk Bay. Live sheep and cattle were irregularly shipped to Maria Island for Commissariat contracts, and from where ships under charter took

<sup>140</sup> Hartwell, *The Economic Development of Van Diemen’s Land 1820–1850*, p. 110.

<sup>141</sup> Lennon, ‘Trade and Communications across the Straits’, pp. 96–97, between 1842 and 1843 the value of the colony’s live-stock imports rose from £41,332 to £53,669.

<sup>142</sup> Lennon, ‘Trade and Communications across the Straits’, pp. 96–99.

<sup>143</sup> M Tassell and D Wood, *Tasmanian Photographer from the John Watt Beattie Collection* (Melbourne, 1981), ‘Port Arthur and Tasman Peninsula Lantern Lecture Series: Slide 23’, pp. 26–27, 49.

cattle to Port Arthur.<sup>144</sup> An 1842 visitor to Port Arthur was impressed with the ‘ample and nutritious’ convict meals, meals which ‘would rejoice the heart and gladden the eyes of many an honest, hard-working, hungry Briton’.<sup>145</sup> Between October 1843 and December 1845 the cutter *Alpha* and schooner *Souvenir* took regular shipments of cattle to Launceston, a large number of these for John Foster who had holdings in the north-east and Campbell Town. Foster also had five Gipps’ Land holdings and owned four vessels in the Bass Strait trade.<sup>146</sup>

### Colonial Office contact

Eardley-Wilmot regularly supplied Stanley with colonial details. At the end of 1844 he detailed how education facilities had been established at twenty of the probation stations where 8,039 convicts were housed and 4,725 attended school. Wedge Bay was the probation gang station with the least number of convicts, 189, of whom 130 attended school, 125 could read and 186 were able to ‘repeat the Lord’s Prayer’. The highest number of convicts capable of reading was 347, shared by the Coal Mines (with 583 convicts) and Maria Island (627 convicts).<sup>147</sup> In February 1845 Eardley-Wilmot detailed the average daily probation station strength: Brown’s River 560 convicts; Jerusalem (now Colebrook) 347; Rocky Hills 435; Fingal 467; Broad Marsh 323; St Mary’s Pass 316; Buckland 233; Deloraine 336 and Westbury 345. The value of convict labour and the charge to be made on colonial funds for the men employed for the quarter ending 31 December 1844 was £3,687 9s 0d.<sup>148</sup>

In 1837 a church was completed at Port Arthur. St David’s, a beautiful, ‘spacious, hewn-stone edifice, cruciform in shape, with pinnacled tower and gables’, with a choir selected from convicts, afforded simple accommodation for 2,000 people. Here, the convicts, in their yellow raiment (half black, half yellow) with ‘P.A.’ and their respective numbers stamped in various parts, were mustered and marched each Sunday.<sup>149</sup> As required in every community, there was a cemetery. This was on a small island, ‘Isle des Morts’ or Dead Men’s Isle, a ‘picturesquely sorrowful spot — so soothing in its melancholy, so placid in its solitude’.<sup>150</sup> Even in death, strict social order was maintained. The lower half of the island was reserved

<sup>144</sup> Lennon, ‘Trade and Communications across the Straits’, pp. 101–03.

<sup>145</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 7–8.

<sup>146</sup> Lennon, ‘Trade and Communications across the Straits’, p. 103.

<sup>147</sup> *BPP Crime and Punishment Transportation 7*, ‘Return of the State of the Schools at Probation Gang Stations, for the Half Year’ ending 31 December 1844, enc No. 1 p. 241 in E-W to Stanley (No. 310) 31 January 1845, pp. 236–51.

<sup>148</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 322) 10 February 1845, pp. 252–53 and enc ‘Return of Labour’, Geo. Maclean, DCG p. 252. The original details were forwarded to the Lords of the Treasury.

<sup>149</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 7–8; In 1842, the Wesleyan pastor was Mr Manton.

<sup>150</sup> Burn, *An Excursion to Port Arthur in 1842*, pp. 11–12.



for convicts, lunatics, invalids and paupers, and no tombstone or other mark was to be placed on their graves, while the high ground was reserved for civil and military burials.<sup>151</sup>

Comptroller-General Champ was more critical than Forster had been. Many establishments were 'satisfactory', including two on Maria Island. The men at Port Arthur were 'employed on useful works', but of the twenty-three regular stations, six were defective, and at Brown's River 650 men were in a 'state of utter idleness'.<sup>152</sup> Eardley-Wilmot reminded Gladstone that Stanley's despatch of 25 November 1842 took nine months to arrive in the colony, and there had not been 'sufficient' time to show what 'productive labour' could accomplish. The greater portion of labour had been 'necessarily applied to the erection of new stations, and to the enlargement and improvement' of those in existence.<sup>153</sup>

Criticism of the probation system and the control and management of convicts also came from other quarters. Dr John Stephen Hampton, who between 1841 and 1845 was surgeon-superintendent on three convict ships, was one detractor.<sup>154</sup> Hampton arrived in February 1845 aboard the *George Seymour* with the first full shipload of 'exiles' after a minimum of two years in the new separate treatment penitentiary at Pentonville. As earlier envisaged by Stanley, of these arrivals 345 were sent to Van Diemen's Land and Port Phillip. Depending on their behaviour in Pentonville, on arrival they were issued with either a ticket-of-leave or probation pass. Ninety-one ticket-of-leave men and seventy-eight pass-holders remained in Hobart Town, and, to keep them apart from other convicts, they were housed in a rented building in Campbell Street with Hampton in charge. He returned to England on 25 April 1846, but his assistant, James Boyd, remained in the colony and was appointed Senior Assistant Superintendent at Darlington.<sup>155</sup>

Hampton and Boyd provided their analysis of the convict system. There was no official or private means of establishing how the 6,094 ticket-of-leave men existed, but Hampton 'generally supposed' nearly half were in a 'state of great misery or destitution'. He was

<sup>151</sup> Clark, *Your Guide to Port Arthur*, p. 28.

<sup>152</sup> *BPP Crime and Punishment Transportation 7* 'Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846', p. 577 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>153</sup> *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>154</sup> A G L Shaw, 'John Stephen Hampton (1806?–1869)' *ODNB*, Jan 2008 [<http://www.oxforddnb.com/view/article/52504>]; Hampton was Surgeon Superintendent on *Sir George Seymour* with 345 convicts direct from Pentonville prison which arrived on 3 April 1845; *BPP Crime and Punishment Transportation 7*, Hampton to Eardley-Wilmot, 3 April 1845, with Hampton's remarks on the convicts' behaviour on board, pp. 297–98.

<sup>155</sup> Brand *The Convict Probation System*, p. 29.

unable to use language ‘sufficiently strong’ to state that convicts, who had passed through Pentonville and been ‘considered deserving of any indulgence whatever’, should not to be sent to the colony. The combination of Pentonville and transportation to Van Diemen’s Land, ‘surrounded in all parts’ with ‘contaminating influences of the worst description’, was ‘destructively, disheartening and demoralizing’. He ‘most earnestly implore[d]’ the board ‘never again, if possible’ to send Pentonville convicts.<sup>156</sup> To James Boyd, the system provided ‘punishment with no reformation’. Convicts were employed as overseers; conduct was bad; criminal habits unbroken; religious instruction and ‘secular education both inadequate’.<sup>157</sup>

Despite Stanley’s criticism of Eardley-Wilmot in September 1845, the Lieutenant-Governor frequently sent despatches keeping Stanley informed about the colony’s ‘financial difficulties’. In turn, the lack of adequate finance from Britain resulted in ‘deficiencies’ in the working of the probation system. In a despatch, Stanley conceded the colony did suffer financially, but having ‘laid’ this ‘on the table of the House of Commons in February 1846’, he later admitted it was ‘not transmitted’ to Eardley-Wilmot.<sup>158</sup>

### **‘Nameless’ crime and ‘horrors’**

Just ten weeks after arriving in the colony, unable to send information in a public despatch ‘without outraging decency and creating disgust almost beyond endurance’ Eardley-Wilmot sent Stanley a ‘Private and Confidential’ despatch. He told Stanley about ‘horrors’ which ‘generally defied description’ which were being ‘perpetrated’ among the convicts.<sup>159</sup> He thought it ‘best’ to keep the details ‘as private as possible’, but if Stanley wanted more details, he could supply ‘the most incontrovertible proof’.<sup>160</sup> His information came from the ‘evidence and reports of medical men, and of Magistrates on this most interesting subject’, and the ‘great prevalence of ophthalmia’ led to medical examinations which ‘clearly’ showed the ‘men had diseased one another’.<sup>161</sup> The Norfolk Island situation was similar, and in December 1845

<sup>156</sup> *BPP Crime and Punishment Transportation 7*, Dr Hampton to ‘The Commissioners for the Government of the Pentonville Prison’, 30 April 1845, pp. 398–400.

<sup>157</sup> *BPP Crime and Punishment Transportation 7*, Boyd’s report dated 31 December 1845, pp. 409–15; *Launceston Examiner*, 30 December 1846, p. 831 and 2 January 1847, p. 7.

<sup>158</sup> Stanley’s despatch September 1845 see papers ordered by the House of Lords to be printed 9 February 1846, No. 16, p. 3 and by the House of Commons 9 February 1836 No. 36, p. 3, in *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Gladstone (No. 100) with details of the probation system, 10 July 1846, pp. 555–60.

<sup>159</sup> GO25/ 1/11 Eardley-Wilmot to Stanley ‘Private and Confidential’ 2 November 1843, p. 15.

<sup>160</sup> GO25/ 1/11 Eardley-Wilmot to Stanley ‘Private and Confidential’ 2 November 1843, p. 16.

<sup>161</sup> GO25/ 1/11 Eardley-Wilmot to Stanley ‘Private and Confidential’ 2 November 1843, p. 16.

and the following April, ‘spurred on by more and more critical accounts from the settlement’, Eardley-Wilmot sent a magistrate to investigate affairs of ‘unnatural crime’.<sup>162</sup>

Under-Secretary George Hope realised congregating convicts in ‘large gangs’ would possibly aggravate homosexuality, ‘the existence of which, unluckily, was well known before’. He took no action, and Eardley-Wilmot’s September report suggested everything was satisfactory, so Hope concluded ‘though nothing is said by the Governor directly of the system ... the inference is that he considers it to be working well’.<sup>163</sup> It seems that Hope did not consider that maybe Eardley-Wilmot had simply decided against repeating information already sent. In response, on 3 February 1845 Stanley wrote a ‘confidential’ memorandum. He realised Eardley-Wilmot thought the condition originated in ‘the congregation of large numbers of male convicts’ who were held ‘under very imperfect superintendence’. This did not provide ‘decency’ for the convicts, who were also ‘wholly destitute of anything like religious or moral instruction’.<sup>164</sup>

The first stage of probation had fully answered its object, Forster had commented in January 1845; the religious and moral instruction of the convicts was ‘strictly attended to’ (despite Eardley-Wilmot’s complaints of a shortage of clergy), the convicts’ conduct in private service was better than it had been under assignment, and the system as a whole, was ‘vastly superior’ to any that preceded it. Port Arthur, observed Forster, was an ‘effective place of punishment’, and conditions at Point Puer had improved.<sup>165</sup> Despite Forster’s satisfaction, the prison inspectors, William Crawford and Whitworth Russell, were concerned at overcrowding, a lack of separation, classification, supervision and religious instruction, and the ‘filthy and sordid practices’, which occurred when male convicts slept in dormitories. The inspectors recommended separate compartments and lighting, inspections at night, and an ‘ample’ means of solitary confinement at every station.<sup>166</sup>

By the middle of December 1845 all prisoners at Port Arthur had been examined by the medical officer for ‘incidents of disease’. Of 1,200, one only incident was found — a man

<sup>162</sup> CO280/193 (AJCP 542) Eardley-Wilmot to Stanley 16 March 1846, and Stephen’s minute Eardley-Wilmot to Gladstone, 10 July and 28 August 1846, cited in Shaw *Convicts and the Colonies*, p. 305

<sup>163</sup> CO280/171 (AJCP 528) Under-Secretary Hope’s note p. 309 after Eardley-Wilmot to Stanley (No. 196), 5 September 1844, pp. 305–07.

<sup>164</sup> CO885/2/8 CO Confidential Memorandum on Transportation [no addressee], 3 February, 1845, p. 2.

<sup>165</sup> *BPP Crime and Punishment Transportation 7*, Forster’s report, 27 January 1845 enc in Eardley-Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–40.

<sup>166</sup> CO280/164 (AJCP 523) Prison Inspectors’ Report 24 July 1843, pp. 193–97 enc in Phillips to Stephen, 27 July 1843, pp. 189–97; ‘copy’ also enc pp. 348–60 in GO1/1/51 Vol. No. 64 Phillips to Stephen 27 July 1843, pp. 346–60.

who had recently been at the Coal Mines. It was here, at the Coal Mines, Eardley-Wilmot informed Stanley, that in spite of every precaution of lights and constables, the ‘lamentable crime was committed’, and for which ‘two persons were convicted and executed’.<sup>167</sup> Those executed, according to Kirsty Reid, were Job Harris and William Collier, convicts stationed at the mines, for the rape of David Boyd.<sup>168</sup> According to convict John Frost, who witnessed the execution, a youth was sent to the Coal Mines where there were ‘so many diseased men’, and one day six men held the youth while two ‘violated his person’. Attempts to hush up the matter failed, the six men tried and found guilty. The four not executed were sent to Norfolk Island, ‘there to carry on the same practices’. On his return to England, Frost spoke about the issue in a public lecture in Manchester in 1856.<sup>169</sup> In February 1846 the solicitor Robert Pitcairn supported claims that homosexuality at Port Arthur was of ‘constant, almost universal occurrence. Every convict knows of it’, claimed Pitcairn, and Dr Motherwell was treating 300 for the disease at Port Arthur.<sup>170</sup> However, Motherwell’s enquiries revealed only twenty men ‘labouring under disease’, the reduction, he attributed to the erection of separate cells.<sup>171</sup>

‘Unnatural crime’ continued to be punished by hanging for a number of years. In 1846 Judge Algernon Montagu lamented it was partly due to discontinuing the death penalty for the crime that during the previous two or three years it had ‘exceedingly increased’.<sup>172</sup> A rival interpretation was provided by modern historian Richard Davis. Public executions appeared to do ‘more harm than good’, as spectators were likely to become ‘depraved’ by the sight of fellow men being ‘strangled to death’ for crimes as wide as murder, forgery and sodomy.<sup>173</sup> Michael Lyons, who arrived on 19 May 1845 on the *Ratcliffe*, was executed at Hobart Town on 11 November 1846 after the 19 year-old was found guilty of ‘unnatural crime (with a Goat)’. Statistical Returns for 1846 reveal one execution (Lyons) and another three convicted before the Supreme Court for ‘unnatural crime’. The other executions were for ‘arson’, ‘cutting and wounding with intent, &c’, and ‘robbing from the person with violence’, while in

<sup>167</sup> *BPP Crime and Transportation* 7 Eardley-Wilmot to Stanley (No. 33) 6 February 1846, pp. 489–98; these were the only two people convicted in the colony of ‘unnatural crime’ in 1845, see *Statistics of Van Diemen’s Land for 1844–1846* (Hobart Town, 1847), Table 39 p. 19, Table 40 p. 20.

<sup>168</sup> Kirsty Reid, *Gender, crime and empire* (Manchester, 2007), p.216; A William Collier arrived 21 August 1841 on *Asia* (6) and a Job Harris on 4 February 1844 on *HMS Anson*.

<sup>169</sup> John Frost, *The Horrors of Convict Life Two lectures delivered in the Oddfellow’s Hall Padiham August 31<sup>st</sup> 1856 by Mr John Frost*. Originally published London, 1856 (Hobart, 1973), pp. 40–45.

<sup>170</sup> *BPP Crime and Transportation* 7 Robert Pitcairn to Stanley 4 February 1846, pp. 494–95 Inc 4 in No 7 Eardley-Wilmot to Stanley (No. 33) 6 February 1846, pp. 489–98.

<sup>171</sup> *BPP Crime and Transportation* 7 J B Motherwell MD to Forster 13 December 1845, p. 505 Inc 4 in No. 9 Eardley-Wilmot to Stanley (No. 54) No. 9, 17 March 1846, pp. 502–12.

<sup>172</sup> Richard Davis, *The Tasmanian Gallows. A Study of Capital Punishment* (Hobart, 1974), pp. 32–33.

<sup>173</sup> Davis, *The Tasmanian Gallows*, pp. 32–33.

1845 there were two executions for ‘unnatural crime’, and eleven for other crimes.<sup>174</sup> Kirsty Reid suggests it was reasonable to conclude the decision to execute Lyons was ‘powerfully influenced’ by events surrounding Eardley-Wilmot’s dismissal ten days earlier.<sup>175</sup>

Vicar-General William Hall appealed for the lives of those convicted of unnatural crime and ‘lying in the Hobart Town gaol under sentence of death’. On 30 July 1846 he implored Eardley-Wilmot’s ‘kind consideration in the hope that their lives may be spared’. Hall claimed that during the previous few years ‘several persons’ had been executed for unnatural crimes in cases where ‘violence had been used’.<sup>176</sup> While Comptroller-General Champ deplored the existence of crime of ‘this description’, he did admit the nature of employment provided opportunities. The crime prevailed to a greater extent at the Coal Mines than any other station. Eardley-Wilmot’s determination to confront the problem is significant, as shown by his direction to Champ to apply ‘separation and increased supervision’. Eighteen solitary cells were erected with 100 more ‘in progress’, with a proposal to increase the number of separate apartments at all stations. Champ reported that experience had shown ‘such crimes’ were ‘generated most probably by idleness’, and he admitted having ‘erroneously’ thought these convicts required ‘less efficient superintendence’ than others.<sup>177</sup>

In sending Stanley a copy of Champ’s report of 14 March, Eardley-Wilmot referred to his own despatch of 6 February (No. 33) on the ‘subject of unnatural crime committed in the convicts gangs and stations’. When this despatch was published by the House of Commons, it is significant that the words ‘unnatural crime’ were substituted with ‘\* \* \*’ and all marginal notes omitted.<sup>178</sup> Eardley-Wilmot included ‘copies of the returns of the Medical Officers’ of the convict gangs and stations. It seems there were ‘about seventy cases’ of ‘disease as the average’, and Stanley would be able to see an average of about seven cases in one thousand.<sup>179</sup> The Coal Mines and Impression Bay had the highest number of reported cases,

<sup>174</sup> TAHO SC41/ 1/5 ‘Registers of Prisoners tried in Criminal Cases’, 20 October 1846, Police No. 16206; TAHO CSO20/ 1/17 ‘Correspondence files “A” Series Judges Reports on capital cases’, 20 October 1846; Statistics of Van Diemen’s Land for 1844–1846, Table 39, p. 19. There were no executions on Norfolk Island for unnatural crime, whereas, in 1845 there were two for ‘murder’, and twelve in 1846; There is no record of executions for 1847 in Statistics of Van Diemen’s Land for 1847 (Hobart, 1848).

<sup>175</sup> Reid, *Gender, crime and empire*, pp. 204–05.

<sup>176</sup> TAHO CSO20/ 1/17 ‘Correspondence files “A” Series Judges Reports on capital cases’, W Hall to Eardley-Wilmot, 30 July 1846 pp. 466–68 on behalf of John Beer and George Pedley, underlining in original.

<sup>177</sup> CO280/193 (AJCP 542) Report of Comptroller-General Champ to Eardley-Wilmot, 11 March 1846, pp. 115–21 enc in Eardley-Wilmot to Stanley (Miscellaneous No. 54), with enc 17 March 1846, pp. 109–82.

<sup>178</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 54) 17 March 1846, pp. 502–12.

<sup>179</sup> CO280/193 (AJCP 542) Eardley-Wilmot to Stanley (Miscellaneous No. 54), 17 March 1846, pp. 109–111, underlining in original, with an unsigned marginal note added at the Colonial Office: ‘But this does sit fine by the average of Crime’.

with twenty each. Cascades had eight, Port Arthur five and Salt Water River ‘3 or 4 cases in 13 months’. In total there were 64–66 confirmed cases of disease and one ‘doubtful’. Fifteen stations had no reported cases.<sup>180</sup>

Unnatural crime existed ‘to a certain extent, there can be no doubt’ agreed Eardley-Wilmot. He was ‘certain’ the ‘disease’ was a ‘consequence’ of ‘such horrible practices’, and referred Stanley to his 2 November 1843 “Private and Confidential” despatch. This was not made public, nor was it printed by the House of Commons, as confirmed by a marginal note: ‘+ This Despatch was never out into the Public Dept but was placed by Lord Stanley, in the custody of Mr Smith. CM [?]’ and further [in a different hand] and not signed: ‘It relates (I think) exclusively to the State of the female Penitentiary.’<sup>181</sup> The details, which proved to be correct, and which had been obtained during an enquiry motivated by the Principal Medical Officer, Dr Clarke, will be evaluated in the next chapter.

In March 1846 Eardley-Wilmot claimed that from his first knowledge of unnatural crime he had given his ‘greatest attention, and care’ towards prevention. This statement too, resulted in a comment at the Colonial Office: ‘Yet the subject has never been noticed by the Lt Govr himself or by the Comptroller General of Convicts’.<sup>182</sup> As established in this chapter, there is no truth to this claim, and as shown, Eardley-Wilmot had taken preventive action. He also accepted that in all ‘large assemblies of the male sex, whether in the Army, Navy, or among Prisoners ... unnatural Crime does more or less prevail’ and ‘though its recurrence may be lessened’ it is ‘impossible wholly to prevent it’. In Champ’s letter Stanley could read ‘what preventive means’ had been and were being taken. The medical returns and abstract detailed the number of cases and the stations where ‘disease exists’, and Stanley would be able to ‘perceive how much exaggerated has been the extent of the evil’. To this statement too, a note was written in the Colonial Office: ‘Qn. The exaggeration is not up to the frequency of the disease but as to rpd frequency of the Crime.’<sup>183</sup>

After receiving Eardley-Wilmot’s despatch (and enclosures, mainly medical reports) of 14 March 1846 at the Colonial Office, Stephen wrote a note in the margin on 7 August. In this

<sup>180</sup> CO280/193 (AJCP 542 ‘Schedule of Cases’, p. 113 in Eardley-Wilmot to Stanley (Miscellaneous No. 54), 17 March 1846, pp. 109–126 with 23 enclosures.

<sup>181</sup> GO25/1/11 ‘Lieut-Governor: Letterbook of Despatches to Secretary of State 14 September 1843–28 November 1845’, Eardley-Wilmot to Stanley, 2 November 1843, pp. 15–19; the marginal note was written on a copy of the despatch in CO280/193 (AJCP 542) Eardley-Wilmot to Stanley (Miscellaneous No. 54), 17 March 1846, p. 110.

<sup>182</sup> CO280/193 (AJCP 542) Eardley-Wilmot to Stanley (Miscellaneous No. 54), 17 March 1846, pp. 109–11.

<sup>183</sup> CO280/193 (AJCP 542) Eardley-Wilmot to Stanley (Miscellaneous No. 54), 17 March 1846, pp. 109–11.

note, also not published by the House of Commons, Stephen commented how, from Eardley-Wilmot's reports, he inferred that the 'crime' to which the medical reports referred, was of 'much more frequent occurrence' than reported — 'the crime, though not the consequential disease'.<sup>184</sup> The medical reporters 'seem to agree that this may be the case' and in the absence of 'physical restraints the danger is peculiarly great; & that proper restraints are in use only in a comparatively few of the stations'. The only way the 'lamentable subject' could usefully be pursued was to provide Denison (Eardley-Wilmot's successor) with 'necessary resources'.<sup>185</sup> A similar situation was reported at Norfolk Island. When magistrate Robert Pringle Stuart opened the door at the Kingston Convict Barracks he found men 'scrambling into their own beds from others, in a hurried manner, concealment being evidently their object'. Stuart was not surprised by this behaviour, because with a shortage of wardsmen and insufficient support, 800 men were locked indoors from 6.00 p.m. until sunrise without lights, 'without visitation by the officers', or any inspections.<sup>186</sup>

It is reasonable to conclude Eardley-Wilmot had no motive for not informing the Colonial Office of his attempts to remedy the situation. This was not the end of his endeavours, and four months later he reported to Gladstone, Stanley's replacement. The incidence of 'nameless crime' was 'less than formerly', and to further improve the situation 1,442 separate apartments had either been built or were 'nearly finished' on Tasman's Peninsula. Additional constables had been appointed: 'lights were kept burning all night' and there were 'frequent and unexpected visits' at 'all hours'.<sup>187</sup> Stanley found 'this (in many respects) a remarkable dispatch'. It was 'very evident' that Eardley-Wilmot would 'strenuously deny the truth of the grounds on which he was recalled, & the justice of that measure'.<sup>188</sup> The next month Champ's version was that the 'evil' was not 'peculiarly the result of the probation system'. Eardley-

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<sup>184</sup> For the copy published by the House of Commons, see *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 54) 17 March 1846, p. 502 and 24 'Inclosures', mainly from assistant surgeons, pp. 502–12, for the unpublished copy and Stephen's note of 7 August see CO280/193 (AJCP 542) p. 115 of Eardley-Wilmot to Stanley (Miscellaneous No. 54), 17 March 1846, pp. 109–111 with enc pp. 115–22 and stamped as received at the Colonial Office on CO 6 August 1846.

<sup>185</sup> CO280/193 (AJCP 542) Stephen's note 7 August p. 115 of Eardley-Wilmot to Stanley 17 March 1846, pp. 109–11 and enc pp. 115–22, with underlining by Stephen.

<sup>186</sup> Eustace FitzSymonds (ed), *Norfolk Island 1846. The Accounts of Robert Pringle Stuart and Thomas Beagley Naylor* (Adelaide, 1979), Stuart to Comptroller-General, 20 June 1846, p. 45.

<sup>187</sup> Richard Shannon, *Gladstone Volume One 1809–1865* (London, 1982), p. 187, at Peel's request Gladstone replaced Stanley; *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Gladstone (No. 100), 10 July 1846, p. 557 and CO280/194 (AJCP 194), Eardley-Wilmot to Gladstone 10 July 1846, pp. 431–54.

<sup>188</sup> CO280/194 (AJCP 194), Eardley-Wilmot to Gladstone (No. 100) 10 July 1846, pp. 431–54, Stanley's note to Mr Hawes follows this despatch, see p. 554.

Wilmot's explanation was similar, and he reminded Gladstone how, during the previous six years forty-five men were transported from England for offences of a 'similar nature'.<sup>189</sup>

Eardley-Wilmot thought 'exaggerated accounts of the existence of the evil' had been sent to England to increase opposition to the probation system, and he assured Stanley that every precaution and prevention would 'never be wanting'.<sup>190</sup> Usually the convicts were in huts or dormitories which slept 'from fifteen to fifty, generally about twenty' in each. Every individual had a space of 'about two feet in width', the berths divided by a 'separation board of about fourteen inches in depth'. Every effort was being made to increase the number of sleeping-cells as 'rapidly as possible', but a shortage of mechanics and 'other unavoidable causes' meant time would 'necessarily elapse' before one could be constructed for each man.<sup>191</sup> Lights were kept burning in each hut at night with supervision through holes in each door and window 'at uncertain hours'. Each yard had a watchman whose duty it was to make sure the lights constantly burnt and to report any irregularities. Despite this, Eardley-Wilmot admitted the convict watchmen were 'not always to be depended upon'. As a solution, he suggested the appointment of free married constables of 'good character'.<sup>192</sup>

Despite a hopeful beginning, after only four years, the probation system was condemned. This central feature of Eardley-Wilmot's administration had been implemented as clean and reformatory, replacing assignment which had been seen by extremists as a system of slavery. The British government thought Eardley-Wilmot had failed in a 'principal portion' of his 'public duty, namely the active care of the moral interests involved in the system of convict discipline'.<sup>193</sup> The administration of the colony was entrusted to the Superintendent of Port Phillip, Charles Joseph LaTrobe until a new Lieutenant-Governor could be sent from England. The replacement of Eardley-Wilmot and the details surrounding it will be discussed in chapter ten, preceded by problems of religion in the convict gangs and further details on the economical situation of the colony.

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<sup>189</sup> *BPP Crime and Punishment Transportation 7* 'Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846', p. 584 inc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>190</sup> CO280/193 (AJCP 542) 'Schedule of Cases', p. 113 in Eardley-Wilmot to Stanley (Miscellaneous No. 54), 17 March 1846, pp. 109–126 with 23 enclosures.

<sup>191</sup> *BPP Crime and Punishment Transportation 7* 'Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846', p. 585 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>192</sup> *BPP Crime and Punishment Transportation 7* 'Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846', pp. 584–85 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>193</sup> CO280/196 (AJCP 545) Gladstone to Wilmot (No. 104) 30 April 1846, public despatch pp. 558–65.



This chapter has shown that the probation system was introduced as an experiment, and, although it turned out a failure, this was largely due to circumstances the British government had not foreseen, the congregating of men in gangs and stations particularly aggravating problems. In view of the possible alternatives available as punishment in the early 1840s, the policy of transportation and probation appeared a 'very reasonable' solution to what was, at the time, seen as an extremely difficult problem.<sup>194</sup> Eardley-Wilmot was placed in the impossible position of implementing the probation system which was ideally suited to homosexuality. As demonstrated, Eardley-Wilmot implemented structures in an attempt to end the 'horrible practices', but as will be shown in the next chapter, the practice was not isolated to male convicts.

As well as managing male convicts, Eardley-Wilmot was also responsible for transported youths, women and children, who started arriving in greater numbers from the early 1840s. The number of women at the Female House of Correction at South Hobart peaked in 1844. Many of the women gave birth while under sentence, and placed extra pressure on Eardley-Wilmot to provide facilities for babies and children. He engaged in his belief of religion, education, and training as a means of rehabilitation and crime prevention to the women, the youths and the children, and will be the main focus of the next chapter.

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<sup>194</sup> A G L Shaw, 'The Origins of the Probation System in Van Diemen's Land', *Historical Studies Australia and New Zealand*, 6.21 (November 1953), p. 16.

## Chapter Six

### **‘Misguided little creatures’ and female protagonists**

The previous chapter detailed some of the problems to confront Sir John Eardley Eardley-Wilmot when confronted with an influx of convicts following the enquiry by the Select Committee on Transportation (Molesworth Commission) and the ending of transportation to New South Wales. This chapter will establish that extensive criticism of his management of Point Puer; the female houses of correction; the hulk *Anson*; the Brickfields Hiring Depot, the Queen’s Orphan Schools and the babies’ nurseries, all part of the accommodation, education and training associated with female convicts and juveniles, was not justified. His extensive background in the criminal justice system in Britain was evident in his determination to improve the education and training for the juvenile sector of the colony’s population. This chapter will analyse these particular convicts and will determine that under Eardley-Wilmot’s administration females, children and juveniles were better educated and trained than has generally been acknowledged.

Eardley-Wilmot was in a unique position. He was the only Magistrate and Justice of the Peace to sentence youths to transportation and then be appointed to the same British penal colony. The concern he demonstrated for offenders in Warwickshire he continued in Van Diemen’s Land, and it will be shown that he was particularly anxious that juveniles be separated from the influence of adult male convicts. The female convicts, their assignment and punishment, and the effect of childbirth on their sentence will also be examined. This chapter will also analyse the nurseries and orphan schools, the institutions associated with the babies and children.

One of the most important observations in chapter one, was how the concept of criminal juveniles as a social problem in the early to mid-1800s was managed by juvenile-specific institutions in Britain, while in the Australian colonies young male criminals were, at times, subjected to ‘separate and sometimes specialised disciplinary and reformatory strategies’.<sup>1</sup> The arrival of these ‘young delinquents’ (a term generally reserved for male convicts) was perceived a problem, and the contaminating nature of Van Diemen’s Land was generally contrary to juvenile reform. The authorities viewed the youngest boys as some of the most

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<sup>1</sup> Kim Humphery, ‘Objects of Compassion: Young male convicts in Van Diemen’s Land 1834–1850’, *Australian Historical Studies* 25.98 (April 1992), pp. 13, 17.

troublesome and recalcitrant of prisoners, sharing a reputation with women as morally non-reclaimable in the eyes of ‘respectable’ middle-class observers. As Kim Humphery explained, this shared reputation may partly explain why penal strategies directed at moral reformation, rather than only being directed at the discipline of the young, were slow to emerge.<sup>2</sup> In addressing this issue, this chapter will establish that from the early 1840s a different situation prevailed at Point Puer.

In a 1999 study, Peter MacFie and Nigel Hargraves provided a similar assessment to that of Humphery, when they concluded many of the boys from the first Point Puer intake appeared to fit the ‘Dickensian street thief’. They also attempted to incorporate the post-convict experience into their study, but suggested further research was needed to access the full impact of these former inmates on Australian society.<sup>3</sup> Heather Shore, who advanced such research, challenged the view that the 19<sup>th</sup> century was a ‘pivotal period of change in the treatment of young offenders’. There was, she asserted, ‘frequent’ panic about crime and delinquency partly in ‘response to mass urbanisation’ and the presence of the poor and criminal, especially approaching the end of the Napoleonic Wars. At that time much juvenile crime was perceived as a process of ‘criminal progression’, as the young were drawn into crime through ‘poverty and debilitating backgrounds’. To Shore, this was a period of ‘reconceptualisation of youth crime and various developments in social policy’ in which the juvenile offender was a central figure.<sup>4</sup>

As this thesis clarifies, there is little doubt the escalation in the number of juvenile convicts transported to Van Diemen’s Land in the 1830s was in part determined by social and economic conditions in Britain. Those transported between 1837 and 1842 were mainly born during the two decades in which the British population showed the greatest increase.<sup>5</sup> The response to the perceived threat from boys was a rise in the use of the Vagrancy and Malicious Trespass Acts which, in turn, contributed to a rise in the number convicted.<sup>6</sup> This is supported by evidence in chapter one, which detailed Eardley-Wilmot’s awareness of the situation as demonstrated by his recommendation that the crime of larceny be changed to a

<sup>2</sup> Humphery, ‘Objects of Compassion’, pp. 13, 17.

<sup>3</sup> Peter MacFie and Nigel Hargraves, ‘The Empire’s First Stolen Generation: The First Intake at Point Puer 1834–39’, *Tasmanian Historical Studies. Exiles of Empire*, 6.2 (1999), pp. 129–54.

<sup>4</sup> Heather Shore, ‘The Idea of Juvenile Crime in 19<sup>th</sup>-century England’, *History Today* 50.6 (June 2000), pp. 21–27.

<sup>5</sup> Avril Kyle, ‘Little Depraved Felons’, *Australian Historical Studies* 25.99 (October 1992), p. 320; B R Mitchell, *British Historical Statistics* (Cambridge 1988), pp. 9–11.

<sup>6</sup> Susan Magarey, ‘The Invention of Juvenile Delinquency in Early Nineteenth Century England’, *Labour History*, no. 34 (1978), pp. 20, 26–27.

crime of a minor nature and be covered by the Malicious Trespass Act. Shore's study on the concept of juvenile delinquency in the period 1820–50, as already detailed, also applies here.<sup>7</sup>

### Point Puer and juvenile convicts

In November 1833, following the transportation of juveniles to Van Diemen's Land, there was concern for the sixty boys housed with adult prisoners in the Hobart Town Prisoners' Barracks, 'un-assignable boys' who were a 'dead weight' on the government. No instructions or arrangements had been received for their reform, so Lieutenant-Governor George Arthur decided to segregate them from adult prisoners. Executive Council members suggested future arrivals of boys be sent to Tasman's Peninsula, and they nominated a barn on Slopem Main which might, at little expense, be converted into barracks.<sup>8</sup> They also recommended a schoolmaster and a medical officer be attached to the establishment, with 'certain hours' set aside for 'work & useful instruction' and for 'Manual Labour with the Spade & the Hoe'.<sup>9</sup>

Despite this recommendation, Port Arthur commandant, Charles O'Hara Booth, chose Point Puer as the place he could manage the boys 'much better, more securely, and with less expense'.<sup>10</sup> One month later he had a building ready for seventy boys where they would be 'perfectly safe from any intercourse' with Port Arthur. They would sleep in hammocks, which in all 'probability' would be best for their 'moral habits, cleanliness and regularity', and Booth proposed a 'line of demarcation' across the narrow part of the promontory with a 'Sergeant and nine Rank & File' as guards.<sup>11</sup> Therefore, Point Puer became what Avril Kyle labelled 'an institutional and isolationist model' with the boys 'isolated from the general community and further isolated as a form of punishment based on solitary penitence'.<sup>12</sup>

As early as 1831 a number of juvenile criminals had 'already been sent' to Port Arthur where they were 'receiving instruction', and it was expected new arrivals would be sent there immediately after arrival in Hobart Town. According to a local almanac, the 'most important object' of the decision was the '*instruction of boys in trades*, chiefly that of sawyers', which

<sup>7</sup> Heather Shore, 'Inventing the juvenile delinquent in nineteenth-century Europe', in Godfrey et al (eds), *Comparative Histories of Crime* (Devon, 2003), p. 111.

<sup>8</sup> TAHO EC4/ 1/3 Minutes of Proceedings of the Executive Council, 25 November 1833, pp. 80–81; UTA RS 7/124 Arthur to R W Hay 8 February 1834 in 'Notes and correspondence 1940 Point Puer with typed copy of Report of Horne to John Franklin'; see also Skye Jackson, 'From Orphan School to Point Puer: A study of the care of vulnerable children in Van Diemen's Land (1828–1833)' BA (Hons) thesis, University of Tasmania 1998, pp. 70–71.

<sup>9</sup> CSO1/690/15198 Executive Council to Colonial Secretary, 23 November 1833, pp. 143–44.

<sup>10</sup> D Heard, *The Journal of Charles O'Hara Booth Commandant of the Port Arthur Penal Settlement* (Hobart, 1981), 29 November 1833, p. 165; Point Puer is from the Latin 'puer' for 'boy'.

<sup>11</sup> CSO1/ 1/690/15198 Booth to Colonial Secretary Burnett 24 December 1833, pp. 147–48.

<sup>12</sup> Kyle, 'Little Depraved Felons', p. 322.

was ‘likely to prove of the greatest ultimate benefit to the colony’. The boys would learn ‘habits of industry’ and not be ‘spread through the country’ where they would learn ‘vices’, and form ‘connexions which eventually lead in many instances to their ruin’.<sup>13</sup>

Point Puer opened in 1834, where the allocation of juveniles was under Arthur’s directions, as he had not received any fixed orders about the operation of the station.<sup>14</sup> Point Puer was the first such establishment in the British Empire, and it is reasonable to assume that, Eardley-Wilmot’s background in anti-slavery measures and also his juvenile reform and associated pioneer institutions were added incentives for him to be appointed. In early 1834 ‘a most unusual number of boys’ were sent to the colony. Arthur found it ‘utterly impossible to imagine a more corrupt fraternity of little depraved felons’, all ‘objects of compassion’ who had either been ‘thrown upon the world totally destitute’ or been under the ‘tutorage of dissolute Parents’.<sup>15</sup> He sent 100 to Point Puer, and delegated supervision to Booth, who described them as ‘misguided little creatures’.<sup>16</sup> On arrival the surgeon examined all boys. They then underwent weekly medical examinations. Each Sunday the boys were given clean shirts and soap for the week — the standard convict apparel being two jackets, two trousers, two boots, two striped cotton shirts, one cloth waistcoat and a cap. Bedding was a rug, a blanket and a bed tick or hammock, and as the barracks building was cold, the ‘well behaved’ could gain an extra blanket.<sup>17</sup>

In 1834 the Quaker missionaries James Backhouse and George Washington Walker visited Point Puer, and found the boys had the knowledge and habits to make them honest, hard-working and ‘useful’ members of society. The boys’ general health was ‘good’, and their diet — the same as the Port Arthur convicts with the addition of raisins as an indulgence on Sundays — protected them from scurvy. Every morning before meals and each evening, the Catechist read Holy Scriptures as the boys prayed, and they attended public worship once during the week and twice each Sunday.<sup>18</sup>

<sup>13</sup> *The Hobart Town Almanack for the year MDCCCXXXI* (Hobart Town, 1831), p. 273, italics in original.

<sup>14</sup> F C Hooper, ‘Some Observations on the Point Puer Experiment’, *Tasmanian Historical Research Association Papers and Proceedings* (hereafter THRA P&P) 2.2 (March 1953), p. 40.

<sup>15</sup> UTA RS 7/124 Arthur to R W Hay 8 February 1834 in ‘Notes and correspondence 1940 Point Puer with typed copy of Report of Horne to John Franklin’; No special instructions to Eardley-Wilmot regarding point Puer have been located.

<sup>16</sup> UTA RS 7/124 Charles O’Hara Booth to Private Secretary Adam Turnbull, 6 February 1834 in ‘Notes and correspondence 1940 Point Puer with typed copy of Report of Horne to John Franklin’.

<sup>17</sup> Ian Brand, *Port Arthur 1830–1877* (Moonah, 1979), p. 53.

<sup>18</sup> CSO1/ 1/807/17244 ‘The report of a visit to the penal settlement on Tasman’s Peninsula, in the 11<sup>th</sup> month 1834 by Jas. Backhouse & Geo. W Walker’ and Appendices of details including menus and daily rations, 6 November, pp. 55–65.

By the end of 1834 there were 161 boys at Point Puer. They cleared the grounds and learned various trades. To cope with increasing arrivals, by 1840 they had constructed buildings, the first, a large barrack room 90 feet long and 80 feet wide used as a mess, schoolroom, chapel and dormitory, where 120 boys slept in hammocks. Nearby, another large building housed various kinds of workshops, and next were the chaplain's and superintendent's houses. Saw pits and cultivated fields were then in line, and a ring road followed the coast to Port Arthur, towards which two jetties faced, while half-way, one half mile further along was the 'line of demarcation' patrolled by sentries.<sup>19</sup>

Punishment levels were graded and associated with particular offences, the 'most trivial' crime 'not permitted to pass without punishment'. At the lowest level was confinement to the muster ground when not working, where the boys were 'scavengers'. Next was confinement to cells where no talking was permitted, where meals were eaten and where the boys slept, but left their cells for schooling. The most common punishment was solitary confinement on bread and water for 'very short' periods, while the more severe 'punishment on the breech' (flogging) was 'never resorted to until every other means to reform' had been tried.<sup>20</sup>

After 1837 Colonial Secretary Lord John Russell recommended that ships be chartered for the transportation of 'young criminals' to prevent 'the evil' of juveniles mixing with 'older criminals during the voyage'. As a result, between 1837 and 1841, eight ships exclusively transported 1,200 boy convicts aged between eight and nineteen years to Van Diemen's Land. Most went to Point Puer.<sup>21</sup> A government visitor in 1842 was David Burn, who praised Point Puer. Burn emphasised the constant surveillance of the boys and was impressed with the instruction provided in trades, as the skills learnt would enable them to gain an 'honest livelihood'.<sup>22</sup> He questioned: 'How many of England's poor but virtuous children would be overjoyed with the full provisions, excellent lodging, and comfortable clothing — not to say a word of the beneficial instruction — of Point Puer!'<sup>23</sup>

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<sup>19</sup> Heard, *The Journal of Charles O'Hara Booth*, Statistical Returns, p. 32; F C Hooper, *Prison boys of Port Arthur: A study of the Point Puer Boys' Establishment Van Diemen's Land, 1834 to 1850* (Melbourne, 1967), pp. 3–4.

<sup>20</sup> Thomas James Lempriere, *The Penal Settlements of Early Van Diemen's Land*, originally published 1839 (Launceston, 1954), pp. 87–88.

<sup>21</sup> *British Parliamentary Papers* (hereafter *BPP*) *Reports from Select Committees on Transportation with minutes of evidence proceedings, appendices and indices. Crime and Punishment. Transportation 3* (Shannon, 1968), Glenelg to Franklin (No. 36) 28 October 1836, p. 214 and enc S M Phillips to Stephen, 20 October 1836, p. 214.

<sup>22</sup> David Burn, *An Excursion to Port Arthur in 1842* (Hobart, 1892), pp. 10–11; also in J W Beattie, *Port Arthur, the British penal settlement in Tasmania: glimpses of its stirring history* (Hobart, 1962?), pp. 29–44.

<sup>23</sup> Burn, *An Excursion to Port Arthur in 1842*, p. 11.

As more factories were built in Britain, families moved to the manufacturing districts. The associations they formed and the opportunities for criminal activities resulted in an increasing number of convicted boys. Numbers arriving in Van Diemen's Land steadily increased, and as shown in table 6.1, Point Puer reached a peak of 730 in 1842. In 1837 the *Frances Charlotte*, the first ship solely to transport juveniles to Hobart Town, arrived with 140 boys. In May 1834 thirty-nine boys who arrived on the *Moffatt*, and in 1838, 200 aboard the *Royal Sovereign* were immediately shipped to Point Puer. Booth was optimistic that 'with proper attention' to their morals, education and instruction in their different trades, the majority of boys, 'uncontaminated' by adult prisoners, would make 'useful and worthy' colonists.<sup>24</sup> His reformatory process centred on three aspects of training, 'skills' necessary for a balanced character — religious, mechanical and scholastic, while the school plan was that commonly used in England before the introduction of the National School system.<sup>25</sup>

**Table 6.1:** Boys at Point Puer 1834–46.<sup>26</sup>

	1834	1835	1836	1837	1838	1839
LANDED				148	228	217
TOTAL	161		270	315	455	488
BECAME FREE			21			
DEATHS				1	2	3

	1840	1841	1842	1843	1844	1845	1846
LANDED	174	285	248	194	85		
TOTAL	494	617	730	706	634	730	532
BECAME FREE							
DEATHS			3	5	8		

Of 1,434 convicts transported to the colony in 1834, 240 were boys aged between nine and eighteen from Pentonville and Millbank Prisons. Boys 'of the worst character' were sent from

<sup>24</sup> *BPP Crime and Punishment Transportation 3*, Booth's 'Report on Transportation of Juvenile Offenders', 2 June 1837 enc 1 in Franklin to Glenelg (No. 38) 4 August 1837, pp. 216–21 see especially p. 220; Heard, *The Journal of Charles O'Hara Booth*, p. 33–34, p. 211; See MacFie and Hargraves, 'The Empire's First Stolen Generation', pp. 144–46 for the future lives of the first boys at Point Puer.

<sup>25</sup> Hooper, 'Some Observations on the Point Puer Experiment', p. 41.

<sup>26</sup> *Statistical Returns of Van Diemen's Land From 1824 to 1839*, Table 38; *Statistics of Van Diemen's Land for 1838–1841* Table 53 p. 29 and Table 56 p. 30; Table 46 p. 24; *Statistics of Van Diemen's Land for 1842–1844*, Table 48 p. 25; Unfortunately, no more data for 'became free' and 'deaths' was recorded.

Millbank, where the ‘silent system’ was the method,<sup>27</sup> while from Parkhurst, between 1842 and the end of transportation, 1,499 were sent to Australia and New Zealand.<sup>28</sup> Sir James Graham claimed every boy at Parkhurst knew he was ‘doomed to be transported’ — these were the ‘hopes and pleasures’ his crime had ‘forfeited’. He should be ‘made to understand his future prospects in life entirely depend on his conduct’ at Parkhurst. If he has ‘done well’ at Parkhurst, he will, ‘on landing’ in Van Diemen’s Land, receive ‘a ticket-of-leave, and virtually be pardoned’. If his conduct be ‘indifferent’, he will receive a probationary pass, which is ‘far short of freedom’. If his conduct be ‘bad, he will be sent to Point Puer, where every hardship and degradation awaits him, and where his sufferings will be severe’.<sup>29</sup>

The *Launceston Examiner* described the Parkhurst boys as almost exclusively ‘thieves, nurtured in vice, and repeatedly convicted’ in the police and quarter sessions courts of London until they finally appeared at the Old Bailey. After the arrival in New Zealand, of ninety-six delinquents from Parkhurst about twelve months earlier on the *St George*, it was claimed the number of robberies in Auckland quadrupled. The Launceston press, in commenting, was ‘loud in its outcry against a repetition’ in Van Diemen’s Land, but ‘without effect’.<sup>30</sup>

The British government wished ‘to assimilate’ the system of management at Point Puer with that at Parkhurst,<sup>31</sup> and Benjamin Horne, British prison inspector and devout advocate of the separate system, was sent to the colony. Instructed to recommend the best way to implement the separate system at Point Puer, he arrived on 1 February 1843 and stayed five weeks.<sup>32</sup> Parkhurst, which opened in 1838, was a separate ‘model’ prison based on silence, separation and single cells, while at Point Puer there was little distinction between the different classes and ages of boys. Point Puer had no ‘single natural advantage to recommend it’, and Horne

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<sup>27</sup> *BPP Correspondence and papers relating to convicts ships convict discipline and transportation 1843–47. Crime and Punishment. Transportation 7* (Shannon, 1969), Sir George Grey to Earl Grey, 2 January 1847, p. 651.

<sup>28</sup> According to Paul Buddee, *Fate of the Artful Dodger. Parkhurst Boys Transported to Australia and New Zealand 1842–1852* (Perth 1984), pp. 169–70 Parkhurst Register 1838–1863 is an indexed register of all boys who passed through the Parkhurst Prison and gives ages, details of conviction, sentence and discharge of each prisoner. It is held in the Search Department of the Public Record Office, Kew, England.

<sup>29</sup> *BPP Crime and Punishment Transportation 7* Sir James R G Graham to the Committee of Visitors of Parkhurst Prison, 20 December 1842, pp. 101–02.

<sup>30</sup> *Launceston Examiner*, Vol. II No. 84, 21 October 1843 p. 658.

<sup>31</sup> *BPP Crime and Punishment Transportation 7*, Stanley to Franklin (No. 92) 16 May 1842, p. 89.

<sup>32</sup> UTA RS 7/124 Benjamin Horne, ‘Report on Point Puer by Mr Benjamin Horne to His Excellency Sir John Franklin KCB, KR etc etc etc Lieutenant-Governor of Van Diemen’s Land, 7 March 1843’ in ‘Notes and correspondence 1940 Point Puer with typed copy of Report of Horne to John Franklin’.



listed sixteen proposals, one of which was that a start be made to build a penitentiary on the separate system to accommodate 800 boys.<sup>33</sup>

The issue of educating the boys in horticulture also arose following Horne's report. He did not think cultivated land at Point Puer would pay for itself. He preferred a new site with more fertile soils where the boys could raise their own food and learn gardening and agricultural skills. Instead of the 'higher branches' of gardening, which Franklin had wanted taught, Horne considered the teaching of farming practices was of 'vital importance' as the 'great majority' depended on agricultural labour for subsistence and saw no prospect of employment in the colony for the 'half instructed tradesmen' who would leave Point Puer during the next few years.<sup>34</sup> Overall, Point Puer provided better food, clothing, more opportunities for gaining skills in a trade, and opportunities for learning to read and write than was available to the majority of adult convicts, and also provided a form of state education when such systems were unknown in the United Kingdom.<sup>35</sup>

Benjamin Horne had left the colony before Eardley-Wilmot's arrival, but the British government took his report seriously and soon enquired from the new Lieutenant-Governor what progress had been made in carrying out his recommendations. In October 1845 Eardley-Wilmot told Stanley he had recommended changes in the regulations at Point Puer and incorporated a number of the better features of Parkhurst. Convict overseers were progressively being replaced by free men, daily school had been increased to two and a half hours and work to seven hours, both at the expense of the boys' free time. He had recommended 'two good' schoolmasters be appointed and schoolbooks, 'numerous and of good selection', be supplied, and was hopeful of securing a resident clergyman to improve religious instruction.<sup>36</sup> Therefore, Eardley-Wilmot endeavoured to improve the education, and in turn, the future lives of many of England's 'corrupt fraternity of little depraved felons', with what he believed to be remedies for the causes of crime.

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<sup>33</sup> RS 7/124 Horne, *Report on Point Puer 1843* [pp. 30–35 of typed copy]; in the 'separate system' the buildings consisted of a central block from which blocks of cells radiated like the spokes of a wheel.

<sup>34</sup> *BPP Crime and Punishment Transportation 7* Horne to Franklin (7 March 1843) on Point Puer, enc 2 Forster to Champ 3 June 1844 pp. 372–74 in Eardley-Wilmot to Stanley (No. 164), 25 October 1845, pp. 368–74.

<sup>35</sup> Hooper, 'Some Observations on the Point Puer Experiment', p. 42; Benefits of working away from prison was similar for convicts working in British hulks, where, according to Mr Lang, master shipwright at Woolwich Dockyard in 1831–32, they were 'regarded with envy by the free labourers', many of whom would be 'glad to change places' knowing they 'would be much better off', see 'Report of Select Committee on Secondary Punishments' pp. 12–14 in *Parliamentary Papers 1831–32*, VII, p. 547 cited in C M H Clark, *Select Documents in Australian History 1788–1850 Volume 1* (Sydney, 1968), pp. 108–09.

<sup>36</sup> CO280/184 (AJCP 536) Eardley-Wilmot to Stanley (No. 164), 25 October 1845, p. 82 and *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Stanley (No. 164) 25 October 1845 p. 369.

Apparently disregarding Horne's recommendations, at the Colonial Office Sir James Stephen interpreted Eardley-Wilmot's desire for changes as an admission he had created problems, and he did not seem to consider that Eardley-Wilmot had only been in the colony for a brief time. As Frank Upward reasoned, Stephen 'could not comprehend that an institution could not have faults without being thoroughly faulty'.<sup>37</sup>

By late 1844, there had been a decrease in crime, the conduct of the 634 boys had 'much improved', and Point Puer was placed under the care of the Port Arthur commandant, William Champ.<sup>38</sup> The boys were instructed in fundamental education: tailoring; shoe-making; book-binding; boat-building; coopering and as sawyers; carpenters; bricklayers; stone-masons; stone-cutters; brick-makers; and gardeners, all skills which, from experience, Eardley-Wilmot knew would 'most likely' be useful to them in later life. The station had a resident Church of England schoolmaster, and a Church of Rome teacher was stationed at Port Arthur.<sup>39</sup>

It was fifteen months before Matthew Forster sent Horne's report of 7 March 1843 to Champ, who, in response, stressed Point Puer was ill sited, scattered, unplanned, and the buildings not worth improving. Champ proposed a new penitentiary at Safety Cove, about two miles further south with fresh water, agricultural land and nearby timber for construction — all lacking at Point Puer. Without these, he was convinced nothing could be done towards placing the establishment on 'a proper footing', particularly separate treatment and classification.<sup>40</sup> Later, Eardley-Wilmot also realised the need for a new penitentiary. The means of communication between Point Puer and Port Arthur, and the 'risk of contamination' of the boys from involvement with the Port Arthur men, which would 'inevitably' happen, meant a good system of discipline was also necessary.<sup>41</sup> His stress on the need to separate juveniles from the hardened criminals as a means of reform, was a key point of his administration.

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<sup>37</sup> Frank Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot Lieutenant-Governor of Van Diemen's Land 1843–46', MA thesis, University of Melbourne, 1974, pp. 174–75.

<sup>38</sup> William Thomas Napier Champ, Police Magistrate and coroner was appointed commandant 1844. After Champ's rule ended discipline deteriorated, and in 1848 Denison reduced the status of the commandant and put Port Arthur on the same footing and rules as other Peninsula stations. In 1856 Champ became the first Premier of Tasmania see Heard, *The Journal of Charles O'Hara Booth*, p. 66.

<sup>39</sup> *BPP Crime and Punishment Transportation 7* Forster's report 27 January 1845, pp. 238–40 enc in [Eardley-Wilmot] Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–51; see also Forster's report, enc pp. 209–13 in Eardley-Wilmot to Stanley (No. 149) 14 July 1844, pp. 208–24.

<sup>40</sup> *BPP Crime and Punishment Transportation 7* about Horne's report on Point Puer to Franklin dated 7 March 1843, p. 372 enc 2 in Forster to Champ 3 June 1844, pp. 372–74 all enclosures in Eardley-Wilmot to Stanley (No. 164) 25 October 1845, pp. 368–74; Champ had formerly been Police Magistrate of Hobart Town and coroner of the district.

<sup>41</sup> *Hobart Town Courier*, 12 December 1846, p. 2.

During Eardley-Wilmot's administration 125 boys were transported to the colony on two ships. The *Mandarin* arrived on 16 October 1843 with fifty-one, eleven of whom were free and forty had a ticket-of-leave. Thirty-one boys continued to New Zealand. The boys had spent three years at Parkhurst, and those who gained employment were 'arrogant and untrustworthy', claiming they were 'free emigrants', and, as such, authorities had no power over them. Following their arrival some colonists increased pressure for the abolition of transportation.<sup>42</sup> The second, the *Strathedin*, arrived on 25 December 1845 with seventy-four boys, thirty-two with a ticket-of-leave, twenty-one were third class convicts, and another twenty-one were fourth class.<sup>43</sup> In keeping with his belief in providing catechists, in December 1844 Eardley-Wilmot approved the transfer of Reverend Bond for the Roman Catholic convicts at Port Arthur.<sup>44</sup> Then responding to Bishop Robert Willson's recommendation, Eardley-Wilmot approved the appointment of catechist Roger Boyle to the Roman Catholic convicts at the Coal Mines on an annual salary of £75.<sup>45</sup>

By August 1845 the boys at Point Puer manufactured their own shoes and clothes of sheepskin. A 'great quantity' of cooperage was being made for the convict establishments, carts, barrows and 'similar articles', and all the boats for the convict department and a 'considerable number' for the Colonial Government.<sup>46</sup> Each boy attended school seventeen and one half hours weekly until able to read and write and work the compound rules of arithmetic, when he was exempt from attendance except on Sundays. Four hours weekly (exclusive of Sunday service) was devoted to religious instruction by the catechists, and Port Arthur clergymen frequently visited the station.<sup>47</sup>

By August 1846 there were 532 boys at Point Puer, 264 of these learning a trade. The others were employed in station duties, cultivating land and erecting a penitentiary at Safety Cove.<sup>48</sup>

<sup>42</sup> Buddee, *Fate of the Artful Dodger*, p. 165; Hooper, *Prison boys of Port Arthur*, p. 25.

<sup>43</sup> See 'Convicts to Australia' <http://members.iinet.net.au/~perthdps/convicts/park3.html> (20 July 2009) for boys' names, terms, ages, trial places and date; Buddee, *Fate of the Artful Dodger*, p. 165; Charles Bateson, *The Convict Ships 1787-1868* (Sydney, 1988) does not list any transport arriving on 16 October 1843. The only arrival of the *Mandarin* was 30 June 1840, pp. 364, 381; for the *Strathedin* see p. 395, pp. 368-99.

<sup>44</sup> CA6/WIL 1B 39/38 Convict Correspondence, Catholic Church Archives, W Nairn Comptroller General's Office to Revd Mr James Levermore, 19 December 1844; CA6/WIL 1B 57/92 Convict Correspondence, Catholic Church Archives Comptroller-General to Willson, 17 August 1845.

<sup>45</sup> TAHO CSO20/ 1/17 Willson to Comptroller-General 7 August 1845, p. 203; TAHO CSO20/ 1/17 Bicheno's memo 21 August 1845, p. 205.

<sup>46</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General Champ to Eardley-Wilmot, 1 August 1846', p. 577 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569-629.

<sup>47</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846', p. 577 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569-629.

<sup>48</sup> *BPP Crime and Punishment Transportation 7* 'Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846', p. 577 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569-629.

Once familiar with their trades, the boys were sent to the hiring depot at New Town Farm, where, until hired, they were employed cultivating land at the Queen's Orphan Schools. If a long period passed before the boys obtained private service, they generally became dissatisfied, frequently committed offences and fell 'into trouble'.<sup>49</sup> Eardley-Wilmot begged that Gladstone consider granting a conditional pardon to all boys who had completed 'one-half or even one-third' of their sentence. This would solve the 'evil' of them associating with the 'old and adult convicts', especially in 'barracks in town'.<sup>50</sup> His concerns over the probation system and his pleading for the boys to be removed from Point Puer and from bad influences was similar to his earlier concerns for Warwickshire's juveniles (as shown in chapter one), that one remedy was to involve parents and observe the Sabbath.

The following August following Champ's suggestion, Eardley-Wilmot repeated his request. He also suggested the 'well conducted' boys who were 'able to read, write, and cipher', and capable of earning their 'own livelihood' should be sent, at government expense, to another Australian colony or New Zealand. As well as making it possible for the boys to avoid the 'contagion of bad example', this was a display of Eardley-Wilmot's competence. He was initiating reformatory inducements for the boys towards eventually earning their own living and becoming well established colonial citizens.<sup>51</sup> Gladstone replied to Eardley-Wilmot's despatch of 25 October, but did not respond to his concerns about the ills of probation.<sup>52</sup> Despite this omission, it is relevant this despatch from the new Secretary of State bore the same date as his two letters recalling the Lieutenant-Governor.

Juvenile convicts had a reasonable claim to receive higher indulgences sooner than both male and female adults, as they spent longer periods in confinement. Men transported for seven years remained at a probation station for one year and were then granted a pass. Boys transported for a similar period remained at Point Puer until old enough to leave, or until they had sufficiently mastered a trade to obtain their own living, and were commonly at Point Puer for three or four years before eligible for a ticket-of-leave.<sup>53</sup> Despite being the only magistrate and Chairman of the Quarter Sessions to sentence youths to transportation and then be

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<sup>49</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846', p. 577 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>50</sup> CO280/184 (AJCP 536) Eardley-Wilmot to Stanley (No. 164) 25 October 1845, pp. 82–83; *Hobart Town Courier*, 17 February 1847, p. 2.

<sup>51</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846', p. 577 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>52</sup> *BPP Crime and Punishment Transportation 7* Gladstone to Eardley-Wilmot 30 April 1846, p. 375.

<sup>53</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846', p. 577 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

appointed to the same penal colony, no records have been located to indicate he contacted any he is known to have sentenced.<sup>54</sup> In reporting the Quarter Sessions, the press specified few names, and with rare exceptions, as shown in Appendix C, names were not related to dates of transportation or a particular transport. Unfortunately, the task of following up the criminals Eardley-Wilmot sentenced to Van Diemen's Land to know if their behaviour improved and their morals were corrected, is almost impossible.

One month after arriving, Eardley-Wilmot embarked in the government vessel *Eliza* for Tasman's Peninsula.<sup>55</sup> He and his party stayed at Port Arthur (as shown in figure 6.1), visited Slopen Island, the mines, the 'stations in the vicinity', and 'minutely' inspected Port Arthur and 'all its dependent stations' including the Coal Mines, Eaglehawk Neck and the nearby stations.<sup>56</sup> Three days later Forster, Surveyor-General Power and Naval Officer Moriarty left in the *Eliza* for d'Entrecasteaux Channel to select a 'proper site' for a Female House of Correction for newly arrived female prisoners.<sup>57</sup>

By November 1843 Eardley-Wilmot had 'visited almost every station and gang in this Colony', and 'travelled from one end of it to the other; both in the cultivated parts and in the Bush'.<sup>58</sup> According to the press, 'It is well known' Eardley-Wilmot visited Point Puer:

in the prosecution of his private enquiries — ... We beg, however, with all due respect to His Excellency, to suggest that little information could be obtained from a formal call and a cursory inspection, beyond the knowledge, useful to a certain extent, of the various localities.<sup>59</sup>

Point Puer represented a genuine attempt at reform. As F C Hooper has observed, had the 'best features of the scheme been instituted for the benefit' of England's 'under-privileged children', the founding of Point Puer would 'doubtless have been less urgent'.<sup>60</sup> By 1849 only 160 boys remained, and coinciding with the general reduction in the number of convict

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<sup>54</sup> Staff at the Warwickshire County Record Office advised they were unable to locate names or records of those he sentenced.

<sup>55</sup> UTA RS 25/2 (7) Boyes diary 28 September 1843, 'Getting in as many abstracts as possible for the Lt. Govr's signature. He starts tomorrow for Port Arthur.'; RS 25/2 (7) Boyes diary 29 September 1843, 'Sir Eardley and his party sailed, as I understand at 7 this morning.'

<sup>56</sup> They returned on 3 October *Austral-Asiatic Review*, 29 September 1843, p. 2 and 6 October 1843, p. 2; *Hobart Town Courier*, 6 October 1843, p. 2; The party was away from 29 September to 3 October 1843.

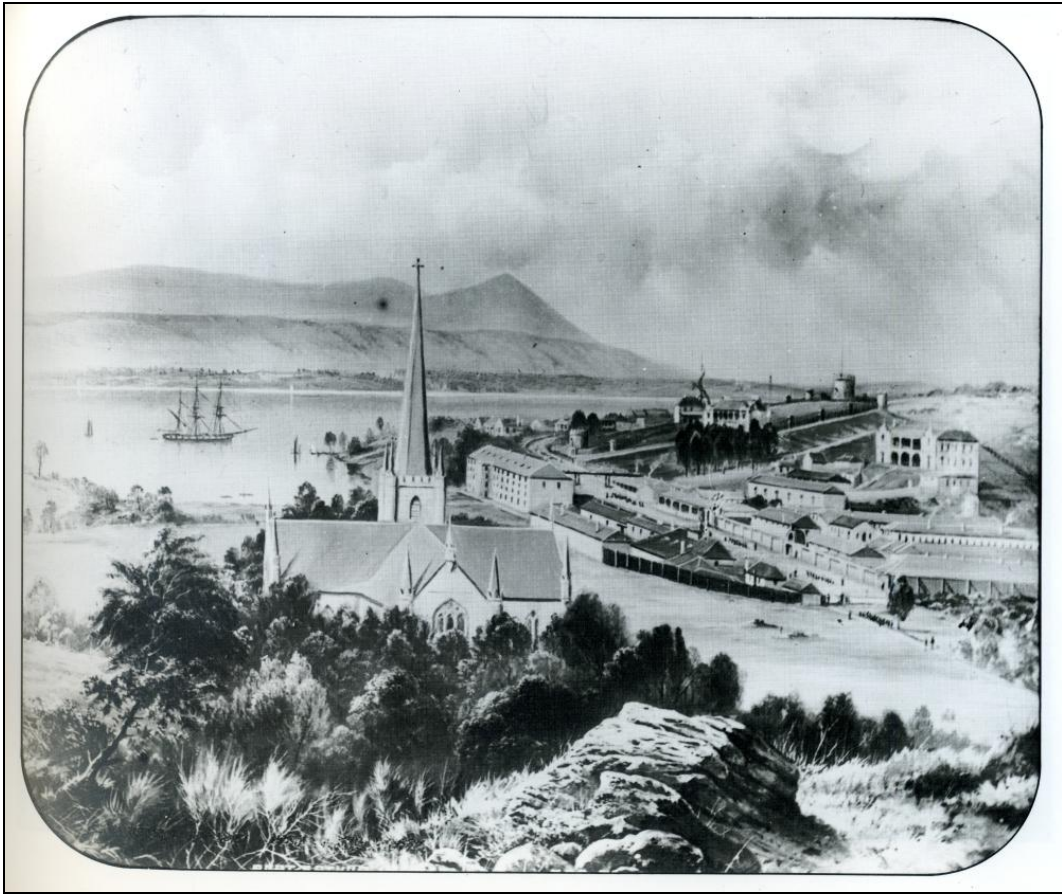
<sup>57</sup> *Austral-Asiatic Review*, 6 October 1843, p. 2. According to the *Hobart Town Courier*, 6 October 1843, p. 2, the site was Southport.

<sup>58</sup> GO25/ 1/11 'Lieut-Governor: Letterbook of Despatches to Secretary of State 14 September 1843–28 November 1845' Eardley-Wilmot to Stanley 'Private and Confidential' 2 November 1843, p. 18.

<sup>59</sup> *Hobart Town Courier*, 12 December 1846, p. 2.

<sup>60</sup> Hooper, 'Some Observations on the Point Puer Experiment', p. 42.

stations throughout the island, in 1849 Point Puer and Safety Cove were officially abandoned. On 1 March the boys were transferred from Point Puer to Cascades, on Tasman's Peninsula.<sup>61</sup>



**Figure 6.1:** Port Arthur 1848.<sup>62</sup>

### Female convicts

Lyndall Ryan focused on the phases of female transportation to Van Diemen's Land: open prison, assignment, and probation. This latter phase, the early years of which were in operation during Eardley-Wilmot's administration, was a response to political unrest in Britain and Ireland and to new ideas about female punishment. In drawing on Phillip Tardif's 1990 publication, *Notorious Trumpets and Dangerous Girls*, Ryan observed how there are

<sup>61</sup> BPP *Correspondence and papers relating to convict discipline and transportation 1849. Crime and Punishment. Transportation 9* (Shannon, 1969), Hampton, Comptroller-General of Convicts to Denison, 30 May 1848, p. 252 enc 1 in Denison to Earl Grey, 27 June 1848 'Salt Water River and Cascade, on the north side of Tasman's Peninsula, have been appropriated for the English convicts transferred from Norfolk Island ... There are 144 separate apartments at Cascade, and the buildings in general of a superior class ... as soon as circumstances will permit, Cascade will be appropriated for boys and other convicts under separate treatment, and the defective station at Point Puer abandoned', pp. 243–64, I thank Ken Lee, Resource Centre, Port Arthur Historic Site, for this reference; RS 7/124 Miss A Wayn's notes in 'Notes and correspondence 1940 Point Puer with typed copy of Report of Horne to John Franklin' they were sent to New Town Farm.

<sup>62</sup> M Tassell and D Wood, *Tasmanian Photographer from the John Watt Beattie Collection* (Melbourne, 1981), 'Port Arthur and Tasman Peninsula Lantern Lecture Series: Slide 4', pp. 24, 31.

few recorded stories of convict women during the period of probation.<sup>63</sup> Dianne Snowden has researched female convict experiences, specifically that of 248 Irish women who committed arson as a means of being transported. She discovered at least seventy-nine women, the majority of whom were single when they arrived in the colony, who confessed to the crime with the hope of being transported to improve their circumstances.<sup>64</sup> Apart from their crimes, the Irish were generally no different to the balance of the 11,000 female convicts who arrived in Van Diemen's Land between 1803 and 1853. Women were typically sentenced for periods of seven or fourteen years for petty theft from their employers in England. Secondary punishment, 'efficient assignment' and 'any pretence of providing protection' for transported women depended on multiple-purpose institutions.<sup>65</sup> After arrival, women were either assigned as domestic servants to free settlers or incarcerated within Houses of Correction (Female Factories) — the name abbreviated from the British institutional title 'Manufactory', referring to the role of prisons as work houses.<sup>66</sup>

By the end of the 1820s in Van Diemen's Land, female factories were the only places of punishment for women, while in New South Wales those who committed serious offences while under sentence could be sent to similar institutions or be transported to settlements of secondary punishment at Port Macquarie or Moreton Bay. In Van Diemen's Land, while the institutions were called 'factories', a variety of work was performed, employment being their least significant function. They were also labour exchanges for convicts waiting reassignment, refuges for convict women in times of illness and pregnancy, and nurseries for women with young children. As a result, most convict women transported to the colony after 1820 spent some of their sentence within these walls.<sup>67</sup> The factory at Cascades, South Hobart (1828), shown in figure 6.2 with Mount Wellington in the background, was the biggest and most significant, with others at Launceston (1832), George Town (1829), which was only occupied

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<sup>63</sup> Lyndall Ryan, 'From stridency to silence: The policing of convict women, 1803–1853' in Diane Kirkby, *Sex Power and Justice* (Melbourne, 1995), pp. 70–85 esp pp. 83–84; Phillip Tardif, *Notorious Strumpets and Dangerous Girls: Convict Women in Van Diemen's Land 1803–1829* (Ryde, 1990).

<sup>64</sup> Dianne Snowden, "A White Rag Burning": Irish women who committed arson in order to be transported to Van Diemen's Land', PhD thesis, University of Tasmania, 2005, pp. 2, 163, 484, 496, Appendix, pp. 554–64. According to Snowden John Williams calculated the arsonists comprised 7 per cent of the Irish female convicts transported to the colony, see John Williams, *Ordered to the Island. Irish Convicts and Van Diemen's Land* (Sydney, 1994), p. 72.

<sup>65</sup> A G L Shaw, *Convicts and the Colonies: A Study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (London 1966), pp. 300, 337; Bateson, *The Convict Ships 1787–1868*, pp. 382–90; Snowden, "A White Rag Burning", p. 241; Kay Daniels, *Convict Women* (Sydney, 1998), p. 10.

<sup>66</sup> <http://www.parks.tas.gov.au/publications/tech/rossarch/arch.html> Eleanor C Casella, 'Archaeology at the Ross Female Factory Historic Site', p. 1.

<sup>67</sup> Ryan, 'From stridency to silence', p. 76; Daniels, *Convict Women*, p. 107.

for a short period in a house rented from a local clergyman, and Ross (1847), adapted from an 1842 male convict road gang station.<sup>68</sup>



**Figure 6.2:** Cascades female factory from the north-west c.1890.<sup>69</sup>

During probation females were mainly assigned to settlers (as under assignment) after first being housed in hiring depots, in a rented house in St John’s Square Launceston, or in Hobart Town at the Brickfields Hiring Depot. There was a temporary hiring depot in Liverpool Street Hobart Town, and one later opened at Ross as part of the Ross Female Factory. Convicts were also hired from their ship upon arrival, from the hulk *Anson*, or from factories. The *Hobart Town Gazette* regularly listed the number of pass-holders waiting to be hired. In September 1845 at the Brickfields Hiring Depot alone, there were 226 ‘disposable’ women.<sup>70</sup>

<sup>68</sup> The Launceston Female Factory was demolished in the 1930s and Launceston College built on the site; Daniels, *Convict Women*, p. 107; Casella, ‘Archaeology at the Ross Female Factory Historic Site’, p. 1; for more details on George Town Female Factory, see Diane Phillips, *An Eligible Situation, the early history of George Town and Low Head* (Canberra, 2004).

<sup>69</sup> Tasmanian Museum and Art Gallery illustration in Julia Clark, *This Southern Outpost Hobart 1846–1914* (Hobart, 1988), p. 46.

<sup>70</sup> *Hobart Town Gazette*, Vol. XXX No. 1533, 30 September 1845, pp. 1214; In late October 1847 there were 174 waiting, being 117 at Brickfields Hiring Depot, 17 at St John’s Square and 40 on the *Anson*, see *HTG* Vol. XXII No. 1645, 26 October 1847, p. 1063; The following April there were 72, being 50 at Brickfields, 19 in Launceston and 3 on the *Anson*, see *HTG* Vol. XXXIII No. 1671, 18 April 1848, p. 404.



The recommendation to separate boys from older criminals did not extend to girls travelling on female transports. Though the *Times* in 1833 commented on how the failure to separate females according to age was, for the young girls ‘far more vindictive and awful than death upon the gallows’, Catie Gilchrist noted there seemed little official concern for the moral ‘corruption’ of these girls under the influence of convict women. This situation brought ‘the issue of separating the boys from the men on the transports into sharper view’, their separation ‘clearly integral to perceptions of moral order and discipline’.<sup>71</sup>

In England, where the appointment of women to supervise the incarceration of other women was central to the thinking of the prison reformer Elizabeth Fry and her followers, male and female combinations of staff, usually a husband and wife team became common practice in institutions. Following contact with Reverend Samuel Marsden in Sydney, Fry turned her attention to Van Diemen’s Land. In a letter to Robert Wilmot Horton, Under Secretary to Lord Bathurst, Fry pointed out the need to provide a building for the reception of female convicts as an alternative to the Hobart Town gaol where new arrivals might be contaminated by old hands. Fry included plans for a Female Penitentiary, for which she recommended a matron be employed, and a school provided.<sup>72</sup> Lieutenant-Governor Arthur acknowledged Fry’s letter (transmitted through Earl Bathurst). He thought the plan for a Female Factory was ‘very judicious’ as the existing establishment was exceedingly confined and dilapidated’.<sup>73</sup>

The Female House of Correction at South Hobart was formerly part of the Cascades Distillery, unsuccessful because of an over-supply of distillers. Thomas Yardley Lowes (to whom Lieutenant-Governor William Sorell allocated the land in 1823),<sup>74</sup> sold the building and land to the government, and the distillery was converted for its new use. By the end of 1828 about 100 of the estimated 725 female convicts in the colony had been transferred to the

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<sup>71</sup> Catie Gilchrist, ‘The “Crime” of Precocious Sexuality: young male convicts and the politics of separation’, *Journal of Australian Colonial History*, Vol. 8 (2006), p. 54.

<sup>72</sup> Two of her daughters (eds), *Memoir of Elizabeth Fry* (1<sup>st</sup> ed Chas. Gilpin, London 1847, 2<sup>nd</sup> ed John Hatchard & Son, London, 1848) p. 437, cited in Jennifer Parrott, ‘“Wise as a Serpent and Gentle as a Lamb”: Elizabeth Fry and the Extension of her Prison Work to the Australia Colonies’, BA (Hons) thesis, University of Tasmania 1990, p. 75.

<sup>73</sup> *Historical Records of Australia* (hereafter *HRA*) *Series III. Despatches and Papers relating to the settlement of the states. Volume iv* (Sydney, 1921), Arthur to Earl Bathurst 16 August 1824, p. 165; see *HRA III, Despatches and Papers relating to the History of Tasmania, Volume vii* (Canberra, 1997), pp. 735–51 for Arthur’s correspondence to Bathurst 25 November 1839, Colonial Office Minute, Government Notices, Rules and Regulations of the House of Correction for Females, duties of employees and also regulations for staff and female convicts.

<sup>74</sup> Tony Rayner, *Historical Survey of the Female Factory Historic Site Cascades Hobart* (Hobart, 1981), p. 1.

site from the gaol precinct at the corner of Macquarie and Murray Streets.<sup>75</sup> The factory on the Hobart Rivulet was criticised even before it opened. It was in a valley the sun scarcely reached, newspapers comparing it to the ‘black hole of Calcutta’ in the ‘very bosom of “the valley of the shadow of death”.’ Health problems were common, especially for the children, who made up a large proportion of the factory population. Women who became pregnant while in service often returned for their baby’s birth, the children staying with their mothers before being transferred to the orphan schools.<sup>76</sup> It was also claimed that a ‘great number of deaths ... constantly occur’ in the ‘dismal’ factory, and as ‘many as six or seven children have laid dead there at the same time’.<sup>77</sup>

Arthur regarded the Wesleyan Methodists as ideal people to run institutions. They gave ‘most valuable service to morals, if not to religion’, and demanded temperance.<sup>78</sup> Mary Hutchinson fitted Arthur’s ideal, and in 1832 was appointed matron of the new female factory. The former Mary Oakes’ grand-father was a convict, and when Mary was eleven years-old her father was appointed superintendent of the female factory at Parramatta. At the age of fifteen, Mary married Reverend John Hutchinson, and soon after they departed for the Pacific Islands where he had been appointed to convert the native inhabitants to Methodism. The newly weds did not stay long, as Hutchinson sought a land grant in Van Diemen’s Land, and instead of receiving a grant he accepted Arthur’s offer of appointment as superintendent of the Female House of Correction. Twenty-one year-old Mary, who is shown in figure 6.3, became matron, a position she held for nearly twenty years.<sup>79</sup>

Although in 1840 the probation system of management was introduced for males, no decision had been made about a comparable system for females, and in the early 1840s Franklin suggested a separate reformatory institution be built outside Hobart Town for newly arrived female convicts so they would be separated from earlier arrivals. In 1842 Stanley suggested a penitentiary should be capable of holding 400 newly arrived female prisoners, who would serve a minimum of six months. After leaving, the females would receive a pass and later a ticket-of-leave, their freedom dependent on good conduct and the labour market — the

<sup>75</sup> *Colonial Times*, 2 January 1829, p. 3; Rebecca Kippen, ‘“And the Mortality Frightful”: Infant and Child Mortality in the Convict Nurseries of Van Diemen’s Land’, paper delivered to the Female Factory Research Group Hobart, 8 August 2006, p. 3; Tony Rayner, *The Hobart Rivulet Historical Study* (Hobart, 1988), p. 31.

<sup>76</sup> *Austral-Asiatic Review*, 29 October 1841, p. 2 and 15 October 1839, p. 2.

<sup>77</sup> *Colonial Times*, 7 August 1829, p. 3; *True Colonist*, 23 March 1838, p. 4; P Tardif, *Notorious Strumpets and Dangerous Girls*, p. 31.

<sup>78</sup> A G L Shaw, *Sir George Arthur, Bart 1784–1854* (Melbourne, 1980), p. 145; L Robson, *A History of Tasmania: Volume I. Van Diemen’s Land from the Earliest Times to 1855* (Melbourne, 1983), p. 355.

<sup>79</sup> Daniels, *Convict Women*, p. 123; R C Hutchinson, ‘Mrs Hutchinson and the Female Factories of Early Australia’, *THRA P&P* 11.2 (December 1963) pp. 50–67.

capacity to find employment being an essential part of reformation. Secondary punishment sentences would be completed in female factories.<sup>80</sup>



**Figure 6.3:** Mary Hutchinson, matron at the House of Correction South Hobart.<sup>81</sup>

According to the 1844 report of the Society, during the previous two years important circumstances had arisen regarding female transportation. Committee members had been particularly concerned with this matter over a ‘course of years’, and rejoiced that the interests of the ‘sadly neglected and degraded portion of our fellow creatures’ had been under ‘active consideration’ of the British government. It was with satisfaction they learned that the system of assignment, ‘so grievously calculated to plunge these convicts yet deeper in disgrace and criminality’ was to be discontinued and a penitentiary erected. Towards these aims Dr and Mrs Bowden, and nineteen assistants had been sent, and the committee had ‘reason to hope for cordial co-operation ... which it had so long been the aim’ of the society to promote.<sup>82</sup> It is feasible that such pressure may have influenced the foundation of Stanley’s probation scheme

<sup>80</sup> *BPP Crime and Punishment. Transportation 7*, Stanley to Franklin (No. 176) 25 November 1842, pp. 115–16; For this despatch see also *HRA I*, xxii Stanley to Franklin, enc No. 1 pp. 514–23 in Stanley to Gipps 26 January 1843, pp. 514–29.

<sup>81</sup> Hutchinson, ‘Mrs Hutchinson and the Female Factories of Early Australia’, photo p. 50.

<sup>82</sup> Rev Thomas Timpson, *Memoirs of Mrs Elizabeth Fry* (Aylott & Jones London, 1847), p. 176 cited in Parrott, ‘Wise as a Serpent and Gentle as a Lamb’, pp. 104–05

under which, according to John West, women were to be ‘classified, separated and trained ... for the duties of domestic life’.<sup>83</sup>

### **Female convicts and Eardley-Wilmot**

The criminalisation of male homosexual acts in the nineteenth-century was a crucial aspect of the gendered construction of sexuality. Statutes criminalised male acts, but not of females, the reason, according to Ruth Ford was that lesbian sex was seen as ‘impossible’, and may explain why this aspect of female convictism did not receive the same attention as that of male convicts, despite acknowledgment of its existence by both Eardley-Wilmot and his acting successor Charles LaTrobe.<sup>84</sup> Catie Gilchrist is one historian who has written on various aspects of female convicts in Van Diemen’s Land, and comprehensively studied gender. She admitted it is difficult to entirely dismiss the idea that sexual relations represented abusive control over the will of others, in which sexuality was merely the mechanism of deeper violence. It might also be argued other relationships were founded on a ‘more loving and consensual dynamic’, but is difficult to verify. A pattern of dominance applied to male convicts, and Gilchrist suggested this could also apply to confined lesbian convicts.<sup>85</sup>

Just three months after arrival, in a ‘Private and Confidential’ despatch to Stanley, Eardley-Wilmot reported on female convict management at Hobart Town and Launceston. The factories contained 300–500 women at a time without employment or occupation for periods between three months and two years. These he found to be ‘generally of the most violent passions, and abandoned characters’ with their ‘Fancy-women, or lovers’ to whom they were ‘attached’.<sup>86</sup> Clearly dismayed by his discovery, Eardley-Wilmot suggested three measures to ‘repair this evil’. The first was to find employment for the women. The second was to lessen the period of their sentences, which would hold out the ‘certain hope of mitigation of sentence for good behaviour’, and he suggested they be permitted to marry whenever the ‘prospect of being supported’ was ‘sufficiently probable’.<sup>87</sup> The evidence shows that Eardley-Wilmot demonstrated foresight and competence in offering a solution, while still keeping Stanley informed. This was also demonstrated when, after finding women confined for many months

<sup>83</sup> Parrott, *Wise as a Serpent and Gentle as a Lamb*, p. 115; GO1/1/48 Stanley to Franklin, pp. 227–55; John West, *The History of Tasmania with copious information respecting the Colonies of New South Wales Victoria South Australia & c.*, A G L Shaw (ed) first published Launceston 1852 (Sydney, 1981), p. 510.

<sup>84</sup> Ruth Ford, “‘Lady-friends’ and “sexual deviationists”: Lesbians and law in Australia, 1920s–1950s’, in Kirkby, *Sex Power and Justice*, pp. 35–36 see also Jill Matthews, *Good and Mad Women: The Historical Construction of Femininity in Twentieth Century Australia* (Sydney, 1984), p. 118.

<sup>85</sup> Catie Gilchrist, ‘Male Convict Sexuality in the Penal Colonies of Australia, 1820–1850’, University of Sydney Postgraduate theses <http://hdl.handle.net/2123/666> p. 178.

<sup>86</sup> GO25/ 1/11 Eardley-Wilmot to Stanley ‘Private and Confidential’ 2 November 1843, p. 16.

<sup>87</sup> GO25/ 1/11 Eardley-Wilmot to Stanley ‘Private and Confidential’ 2 November 1843, pp. 16–17.

in female factories for ‘some breach of discipline, or small offences’ and waiting for dismissal to marry men ‘desirous of contracting marriage’, Eardley-Wilmot made ‘proper enquiries respecting the men’, and cancelled ‘many sentences for the purpose’.<sup>88</sup>

This thesis argues that as well as Eardley-Wilmot’s actions to improve the situation for male and juvenile convicts as already detailed, he also aimed to improve the conduct of the women. By ‘absorbing’ them into the population, expenses were reduced, and a ‘set of persons ... most difficult to deal with’ were removed. At the time ‘no respectable person’ would employ the women as servants, so Eardley-Wilmot eagerly awaited the arrival of Dr Edmund and Mrs Philippa Bowden and the ‘new System of Female Convict Discipline’, a system of moral treatment based on that in use at Hanwell Asylum in Middlesex.<sup>89</sup>

By November 1843 Cascades housed 612 women and seven children younger than two years old, while there were 184 women and 21 children at Launceston.<sup>90</sup> By early 1844 there were 620 women at Cascades, those under punishment and those eligible for private service ‘mixed’ together. By late January 1845 there had been a ‘marked’ improvement in the ‘whole arrangements’ at the factory, the women were in ‘full work’, the factory no longer ‘feared as a place of punishment’, and 112 separate working apartments had been added.<sup>91</sup> In his 18 November 1845 despatch to Stanley (received at the Colonial Office 14 April 1846), besides his own remarks, Eardley-Wilmot included ‘a copy of the Estimates for Convict Services’ for 1846 and 1847. He also sent ‘a copy of the Comparative Statement of the convict Estimates for 1845 and 1846’ and ‘a copy of the observations’ made by the Deputy Commissary General.<sup>92</sup> By so doing, he refuted Stanley’s later charges of neglecting to provide advice in his despatches. Eardley-Wilmot had ‘looked over these Estimates’ and believed they had been ‘considered by the Committee of Officers for reviewing Convict Expenditure, with every regard to economy, consistent with the wants of the service’.<sup>93</sup> Stanley’s later claims can be further challenged by two minutes written on the last page of this despatch. The first note signed ‘J S’ [James Stephen] dated ‘18 April’ to ‘Lord Lyttelton’, acting Under Secretary of State for the Colonies from January to July 1846, reads: ‘This, & no 642, must, I suppose, be

<sup>88</sup> GO25/ 1/11 Eardley-Wilmot to Stanley ‘Private and Confidential’ 2 November 1843, p. 17.

<sup>89</sup> GO25/ 1/11 Eardley-Wilmot to Stanley ‘Private and Confidential’ 2 November 1843, p. 17; see GO1/1/50 G W Hope to S M Phillipps 18 April 1843, pp. 605–15 enc Edmund Bowden and Philippa Bowden to Stanley 6 April 1843 ‘copy’ pp. 609–15 for their acceptance of the positions.

<sup>90</sup> *HTG* Vol. XXVIII No. 1437, 24 November 1843, p. 1305 and no. 1435, 10 November 1843, p. 1235.

<sup>91</sup> *BPP Crime and Punishment Transportation 7* Eardley-Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–51.

<sup>92</sup> CO280/185 (AJCP 537) Eardley-Wilmot to Stanley (No. 180) 18 November 1845, pp. 286–88.

<sup>93</sup> CO280/185 (AJCP 537) Eardley-Wilmot to Stanley (No. 310) 18 November 1845 [received CO 14 April 1846], pp. 286–88.

communicated to the Treasury, where, as I understand, the Estimates for this Convict Service are in course of preparation.’<sup>94</sup> The other, signed ‘J S Hampton 27 May 1846’, also contradicts Stanley’s claim: ‘The Estimates for 1846–7 has been handed to Mr Stephen.’<sup>95</sup>

Meanwhile, the factory population stabilized. In September 1845 there were 309 women, 181 of these under colonial sentence. Eight were free, with eighty-eight under the separate system. There were also babies and children under the age of two years, the sick, the invalids, and eleven servants and turnkeys.<sup>96</sup> In early 1846 in yard three at the Cascades factory, fifty-six more separate apartments were occupied. In total there were thirty-three old construction and 112 new, and steps were being taken to increase the benefits of the separate system to the Female Penitentiary at Launceston.<sup>97</sup> By late August 1846, 186 separate apartments and twelve solitary cells were complete, and 400 women were under punishment. Eardley-Wilmot hoped to subdivide the dormitories to provide separate a sleeping-place for each woman, and, although a religious instructor of the Church of England and a Roman Catholic clergyman visited, he begged that a resident chaplain be appointed to supplement regular schooling.<sup>98</sup>

When the Colonial Office received Forster’s last report enclosed in Eardley-Wilmot’s despatch, Stanley’s comments to Lord Lyttelton were similar to those made many times: ‘As in all’ his reports, Forster ‘passes over, with scarcely any notice, that wh is the all important matter — the real condition (morally and physically) of the Convicts — & [of] this omission the Lt Gov seems still unconscious, notwithstanding all that has reached this office.’<sup>99</sup> Despite Stanley’s claim to Lyttelton in a confidential memorandum fourteen months earlier, he admitted knowing the female prisoners were ‘even more disgustingly revolting than those of the males’. Stanley was ‘happy’ that ‘in this respect’ Eardley-Wilmot’s reports and also those of Forster showed ‘great improvement’ had taken place, even though Eardley-Wilmot did not detail as much as Stanley ‘should have desired’ on the ‘physical means adopted of guarding’ against the ‘immoralities’.<sup>100</sup> By this time Stanley would have received a report from Dr John

<sup>94</sup> CO280/185 (AJCP 537) Eardley-Wilmot to Stanley (No. 180) 18 November 1845, p. 288.

<sup>95</sup> CO280/185 (AJCP 537) Eardley-Wilmot to Stanley (No. 180) 18 November 1845, p. 288.

<sup>96</sup> *HTG* Vol. XXXI no 1560, 31 March 1846, p. 293.

<sup>97</sup> CO280/199 (AJCP 546), Despatches (Wilmot) reports of comptroller general (Matthew Forster) 5 January 1846, pp. 16–17; yards were numbered in the sequence in which built. Yard 3 was intended to ‘crush a Factory culture created by the women’, see Lucy Frost, *Foot steps and voices: A historical look into the Cascades Female Factory* (Hobart, 2004), p. 22.

<sup>98</sup> *BPP Crime and Punishment Transportation* 7 Comptroller-General to Eardley-Wilmot, 1 August 1846, p. 580 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>99</sup> Stanley to Lyttelton 11 June 1846, written on p. 9 of CO280/199 (AJCP 546) Eardley-Wilmot’s despatch of 23 January 1846 to Stanley pp. 3–9 enc Report from Forster with Schedules, Returns and Reports, pp. 12–74.

<sup>100</sup> PRO CO885/2/8 Colonial Office Confidential Memorandum on Transportation, 3 February 1845, p. 2. I thank Kevin Green for a copy of this document from the Public Record Office, Kew, England.

Hampton (a devotee of the ‘separate system’), which was highly critical of the probation system and the control and management of convicts.

In August 1846 the women were employed in washing, needlework, spinning, picking wool and making up clothes, but the prices charged were ‘far below the average’. Even so, the general state of the establishment was ‘satisfactory’, which reflected credit on the matron and superintendent. All ‘that was needed to render’ it ‘complete’ were additional working-cells and ‘separate sleeping-places’ to which Eardley-Wilmot would give his ‘earliest attention’.<sup>101</sup> In the meantime, Catholic Bishop, Robert Willson complained about the women’s gaol where, crowded in one room ‘occupied by the most depraved characters’, and those only detained for ‘want of bail’, was a fifteen year-old girl who had ‘lately left the Queens Orphan School for domestic service’, and ‘robbed her mistress of a trinket of small value’.<sup>102</sup> The descriptions of conditions for juvenile offenders in the 1800s are a reminder that sentencing of children to gaol was accepted as normal, and, apart from the example of Point Puer, it was not considered necessary that special arrangements be made for them.

### **Anson and Brickfields — ‘most interesting experiments’.**<sup>103</sup>

On 25 December 1843 the *Woodbridge* arrived at Hobart Town with 204 female prisoners. On board were Stanley appointees Dr Edward Bowden and his wife Philippa, the superintendent and matron for the *Anson*, ‘intended as a depot’ for female prisoners, which arrived in February 1844, with 500 male convicts, 150 soldiers of 58<sup>th</sup> Regiment, ‘about 150 women and children, and the same number of sailors’. As matron at the Hanwell Asylum, Mrs Bowden was familiar with the management of the insane under a system of non-restraint, a system in use in France.<sup>104</sup> Six of her assistants who arrived on the *Woodbridge* were from the same establishment. It was not until almost three months later, on 25 April, following the *Anson*’s refitting and decommissioning, that the floating prison could be towed to Prince of Wales Bay where it functioned as a hulk (as shown in figures 6.4 and 6.5) and the Bowdens were able to take formal office. After arrival, and prior to fitting out, the *Hobart Town Advertiser* reported

<sup>101</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846, pp. 580–81 enc in Eardley-Wilmot to Gladstone, 29 August 1846 (No. 128) pp. 569–629.

<sup>102</sup> CSO20/1/623 Catholic Bishop R W Willson to Colonial Secretary, 24 June 1846.

<sup>103</sup> *BPP Crime and Punishment Transportation 7* Gladstone to Eardley-Wilmot (No. 47), 20 February 1846, p. 339.

<sup>104</sup> Ian Brand, *The Convict Probation System: Van Diemen’s Land 1839–1854* (Hobart, 1990), p. 23; for Mrs Bowden see G R Lennox, ‘A Private and Confidential Despatch of Eardley-Wilmot: Implications, Comparisons and Associations concerning the Probation System of Convict Women’, *THRA P&P*, 29.2 (June 1982), pp. 80–92; *Colonial Times*, 6 February 1844, p. 2; *Hobart Town Courier*, 9 February 1844, p. 2; About the system being in use in France, Anne McMahon, addressing the Female Factory Research Group, Hobart 5 May 2009.

that a probation station for female convicts was planned for Oyster Cove, ‘the seat of the new factory for the control of female prisoners’, an area ‘which exhibits a small piece of rich cultivation in its recess’.<sup>105</sup>



**Figure 6.4:** *HMS Anson* c.1852.<sup>106</sup>

The Bowdens considered Oyster Cove unsuitable as a site for the new penitentiary and mooring for the *Anson*. Mrs Bowden wielded considerable power due to her association with Mrs Fry, the British Society for Promoting the Reformation of Female Prisoners and the British Ladies’ Committee. In March Mrs Bowden wrote to Eardley-Wilmot concerning the removal of the *Anson*. There were many objections to being far from the town, mainly those of supervising the assignment of convicts after their probation period and observing them when assigned. She anticipated problems with the supply of materials for the convicts’ work, which would rule out any possibility of the convicts taking in ‘needlework of various kinds’ to augment their income after their Government work was complete. Eardley-Wilmot acted promptly, and the *Anson* was stopped from proceeding to Oyster Cove. As the female convicts were viewed as contaminated and both a moral and security risk, the officer-in-charge of the vessel was instructed to moor the *Anson* high up the river far from shore.<sup>107</sup>

<sup>105</sup> *Hobart Town Advertiser*, 2 February 1844, p. 3.

<sup>106</sup> *Tasmanian Mail* 11 January 1896, Sketch by Chief Justice, Sir W Lambert Dobson, p. 17.

<sup>107</sup> *Memoir of Elizabeth Fry*, p. 470 cited in Parrott, *Wise as a Serpent and Gentle as a Lamb*, p. 115; Parrott, “Wise as a Serpent and Gentle as a Lamb”, pp. 110, 113, 118–19.





**Figure 6.5:** ‘Risdon Ferry on the Derwent VDL’ April 1846.  
The hulk *Anson* is beyond the ferry wharf on the left in Prince of Wales Bay.<sup>108</sup>

The prisoners from the *Woodbridge*, held at the New Town Farm since arrival, and 170 from the *Emma Eugenia*, which arrived on 2 April 1844, boarded the *Anson*.<sup>109</sup> The female convicts on the *Emma Eugenia* knew their ‘first home’ once out of service in the ‘unhappy land’ would be the Brickfields Factory.<sup>110</sup> The *Anson* became home for at least 3,500 women (twenty-five shiploads), and in an attempt to ‘rescue’ them from ‘degradation’, Eardley-Wilmot sanctioned the appointment of a female catechist, Mrs Montgomery, widow of the late Captain Montgomery, who was ‘properly qualified for the situation’.<sup>111</sup> If the number of women in each institution is any indication, the *Anson* was equally important to the Female House of Correction at Cascades. It was still in service in June 1849 when it was recommended that she ‘be immediately broken up’.<sup>112</sup> She was finally dismantled in January 1851.

<sup>108</sup> Max Angus, *Simpkinson de Wesselow, Landscape Painter in Van Diemen’s Land and in the Port Phillip District 1844–1848* (Hobart, 1984), Plate 13 p. 67.

<sup>109</sup> *Murray’s Review*, 29 December 1843, p. 2; *Launceston Examiner*, Vol. V No. 468, 16 December 1846, p. 795; The *Woodbridge* arrived 25 December 1843, see Bateson, *The Convict Ships 1787–1868*, pp. 366, 393.

<sup>110</sup> *Times*, 20 January 1846, p. 7 Cascades Female Factory was also described this way see *Austral-Asiatic Review*, 29 October 1841, p. 2.

<sup>111</sup> CA6/WIL 1B 57/89 Convict Correspondence Catholic Church Archives, Comptroller General to Willson, 7 August 1845 see also CA6/WIL 1B 59/99 Nairne to Willson, 11 September 1845.

<sup>112</sup> Lennox, ‘A Private and Confidential Despatch of Eardley-Wilmot’, pp. 85, 88–89; See FitzSymonds, *A Confidential Despatch from Sir John Franklin on Female Convicts, 4 June 1843* (Adelaide, 1996) pp.10–14 for classification of women and conditions at the Cascades factory; *Hobart Town Courier*, 23 June 1849, p. 3.

Almost coinciding with the establishment of the *Anson* was the Brickfields Hiring Depot at North Hobart, an 1843 plan of which is shown as figures 6.6.<sup>113</sup> A need for increased accommodation at the Cascades factory and a ‘means of separation’ resulted in the wooden building on the outskirts of town being enlarged, altered and surrounded by stockades to make it suitable as the female barracks for those under ‘probation surveillance’. In May 1843 the ‘primary probation’ gang employed in ‘metalling’ the top end of Campbell Street, was diverted to level the site.<sup>114</sup> It was not known how the women would be employed, but in ‘the neighbourhood’, were a ‘number of clay-hole excavations’ where ‘materials for making bricks’ had been dug, and it was ‘possible’ they might be ‘employed to fill them up and level and cultivate the ground for horticulture’, for which the ground was ‘well fitted’.<sup>115</sup> A superintendent and a matron were appointed, and 182 women eligible for assignment were transferred from Cascades to the new site, the Brickfields, as shown in figures 6.6 and 6.7, which was the hiring depot for the *Anson*, the site for inmates discharged from service and when changing service, until rehired.<sup>116</sup>

By September 1844 more accommodation was required, especially for 519 women ‘temporarily’ housed on the *Anson*, which Eardley-Wilmot suggested be used as a punishment penitentiary for women while retaining the Cascades factory for women not in private employment. Such arrangements would save the ‘enormous expense’ of erecting separate buildings in a new establishment. A penitentiary would be expensive, but, complained Under-Secretary George after receiving Eardley-Wilmot’s despatch, ‘I do not see any Report to justify the proposed Works at “The Cascades”’.<sup>117</sup>

In November 1845, with ‘apprehension’, Eardley-Wilmot viewed the prospective removal of female convicts from the *Anson*. He did not want any change to the existing arrangements until a building was completed which combined the advantages of the Cascades factory, which, two months before, he had described as an ‘isolated spot’ with a road which leads to ‘no where else, except the Mills and residence of Mr Degraives’. The site had ‘plenty of water

<sup>113</sup> Now the site of North Hobart Oval and Rydges Hotel (and Brickfields Restaurant) bounded by Argyle, Ryde, Letitia and Lewis Streets. In November 1852 the buildings became an immigration depot and later a pauper establishment. In 1889 the site was subdivided. All that survives above ground is the brick superintendent’s house about midway in Lewis Street, see Figure 6.6.

<sup>114</sup> FitzSymonds (ed), *A confidential Despatch from Sir John Franklin*, p. 21; John Thompson, ‘Beneath North Hobart’s footy field’, *Mercury*, 6 May 1995, p. 36.

<sup>115</sup> *Colonial Times*, 23 May 1843, p. 3.

<sup>116</sup> GO33/ 1/52 Eardley-Wilmot to Stanley (No. 106) 24 July 1845, pp. 169–71 and enc ‘The report of a visit to the penal settlement on Tasman’s Peninsula, in the 11<sup>th</sup> month 1834 by Jas. Backhouse & Geo. W Walker’, pp. 171–86.

<sup>117</sup> CO280/171 (AJCP 528) Wilmot to Stanley (No. 200) 13 September 1844 with Hope’s note added to the despatch, pp. 347–54.

— every convenience for air and exercise’, was close to town for the ‘convenience’ of persons wishing to have servants and yet not too near for ‘any improper intercourse’. Eardley-Wilmot reminded Stanley of his despatch dated 13 September 1844 in which Stanley suggested the Cascades factory be converted into a female penitentiary, as a result, saving the British Government an ‘immense’ outlay.<sup>118</sup> Preparation for a penitentiary and invalid station at Oyster Cove had commenced by January 1845. In November clearing of land was ‘in progress’, but if not built, sale of the site would cover expenses.<sup>119</sup>

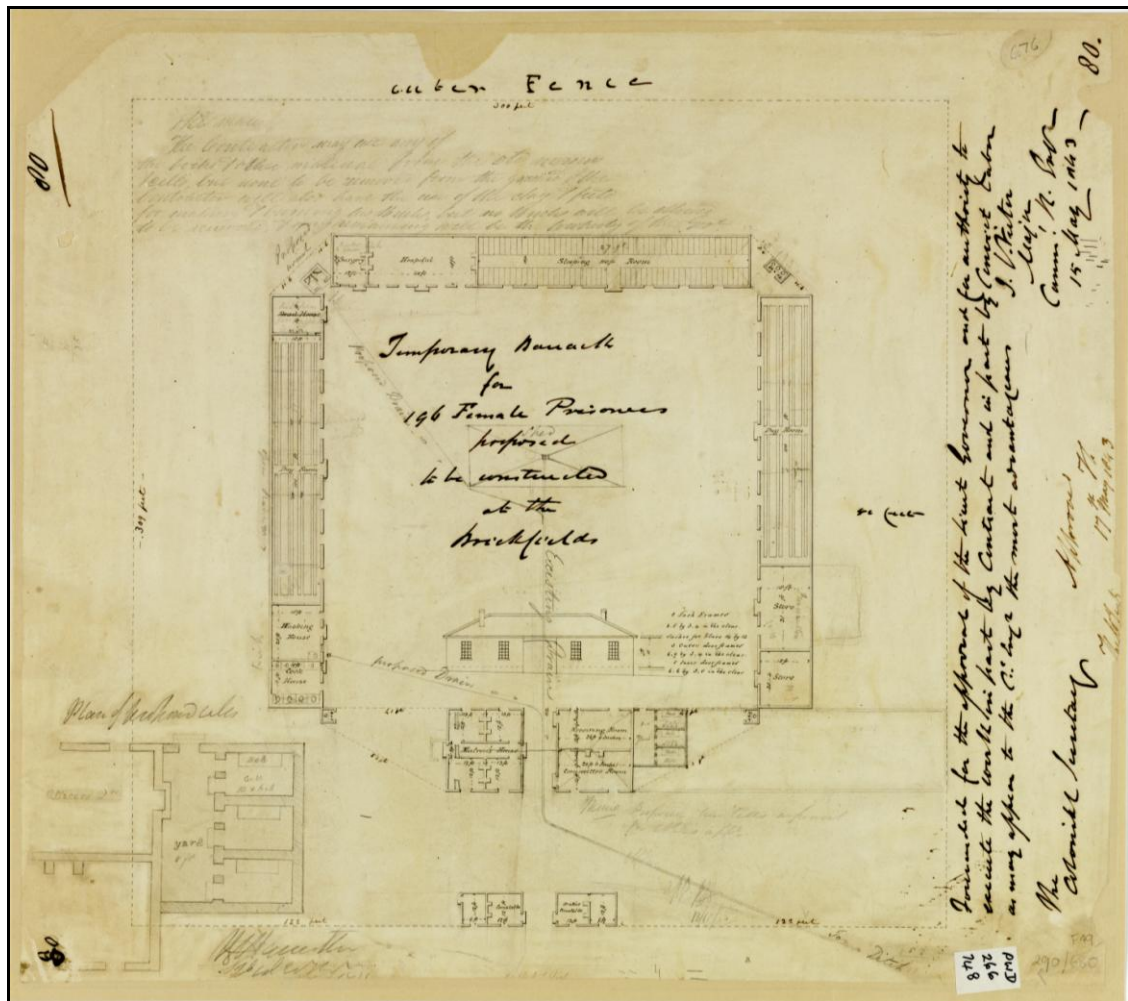
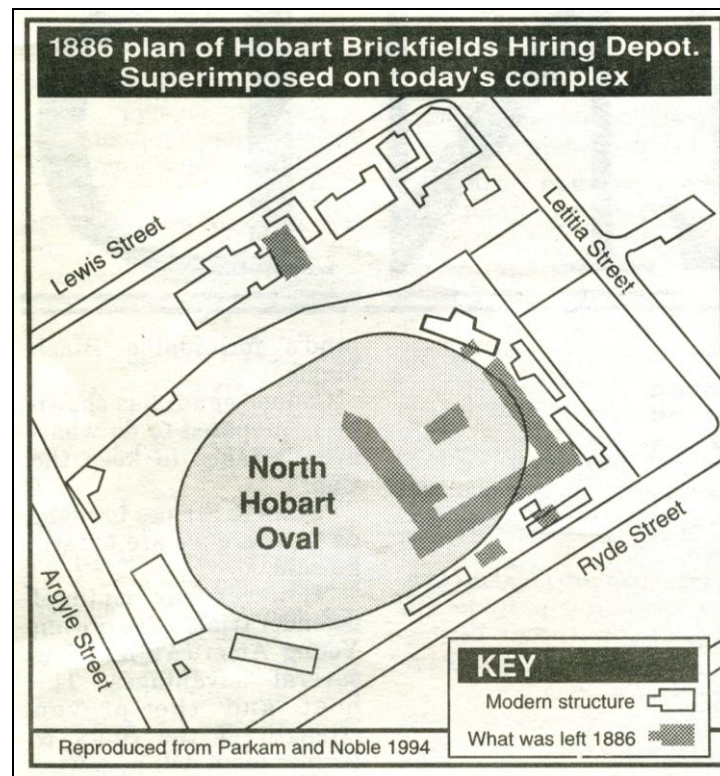


Figure 6.6: Plan of Brickfields Hiring Depot May 1843.<sup>120</sup>

<sup>118</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 188) 22 November 1845, pp. 377–80 enc Report from Dr Bowden, 20 November 1845, p. 377; CO280/171 (AJCP 528) Wilmot to Stanley (No. 200) 13 September 1844 with a note by Hope, pp. 347–54.

<sup>119</sup> *BPP Crime and Punishment Transportation 7* Forster's report 27 January 1845, p. 239 enc in Eardley-Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–51; Oyster Cove was never occupied by convicts, but later by Aborigines. Under his 1830 Black Line operation Arthur intended Aborigines be contained on Tasman's Peninsula, instead it was occupied by European convicts.

<sup>120</sup> TAHO PWD 266/1/748 Plan of Brickfields Hiring Depot, May 1843.



**Figure 6.7:** Brickfields Hiring Depot site showing the superintendent's house in Lewis Street.<sup>121</sup>

According to A G L Shaw, Eardley-Wilmot had been 'quite inactive' about building the already authorised women's penitentiary. In 1844 he had written about it 'with his usual indistinctness and vagueness', sent home no estimates or plans, said it would be expensive, and suggested keeping the *Anson*. When Dr Bowden sent a full report in 1845, Eardley-Wilmot made no comment.<sup>122</sup> Despite Shaw's claim, Eardley-Wilmot did in fact repeat Bowden's final sentence — that the Bowdens, 'would view with apprehension' their removal or any changes in existing arrangements, until the completion of a building on shore which combined all the advantages of their present residence and position. By reiterating the statement, Eardley-Wilmot had in fact commented.<sup>123</sup> This thesis therefore interprets Eardley-Wilmot's comments as being that he opposed a penitentiary at Oyster Cove. The 'difficulty' of access by those wishing to have a servant from a penitentiary located '20 miles from Hobart Town in a new location ... would be insuperable'. This seems to be the reason Eardley-Wilmot did not pursue the matter. His opposition to Oyster Cove was further

<sup>121</sup> Thompson, 'Beneath North Hobart's footy field', p. 36.

<sup>122</sup> Shaw, *Convicts and the Colonies*, p. 304.

<sup>123</sup> *BPP Crime and Punishment Transportation 7*, Report from Dr Bowden, 20 November 1845, p. 380 enc in Eardley-Wilmot to Stanley (No. 188) 22 November 1845, pp. 377–80.

emphasised when he stated how he was awaiting Stanley's decision about 'converting the Cascades factory into a penitentiary, or building an entire new one'.<sup>124</sup>

Progress at Oyster Cove stopped while Eardley-Wilmot awaited further instructions from Britain. It may be that he was also influenced by the expectation that fewer female convicts would be transported. The following year, in his report to Eardley-Wilmot (and forwarded to Secretary of State Gladstone), Champ suggested one option was to prepare Brown's River station for the reception of women under probation. This 'might be done in a few months', while the erection of a penitentiary on the 'plan approved' would take many years. Champ also had 'some reason' to expect a decrease in the number of female convicts arriving.<sup>125</sup>

In late October 1844 the *Hobart Town Courier* praised Mrs Bowden's management of the *Anson* and described how, as several visitors ascended the ladder they 'were agreeably saluted by the singing of the prisoners'. This, with the 'general service', was conducted by Reverend Giles. The women were employed in the 'necessary duties' as well as 'needlework, in the manufacture of shoes, straw-hats, door mats, &c., as far as the very limited means' available. The ship was remarkably clean, and the visitors were surprised to 'witness such general health' and ventilation 'so good' with so many people in such 'limited space'. In 'very striking contrast' to similar establishments, the convicts exhibited 'subdued, respectful' and 'proper deportment'.<sup>126</sup> Support for the *Anson* also came from Louisa Meredith,<sup>127</sup> wife of an early settler, some sections of the press, most notably the *Launceston Examiner*, and Bishop Francis Nixon, who described the ship as a 'pleasing exception' to the 'general rule of depravity' usual in hiring depots. Despite this, Nixon admitted that as part of a system where 'large masses of prisoners' congregated, the *Anson* had problems, and he praised the Bowdens and Reverend Giles for their 'unwearied and judicious exertions'.<sup>128</sup>

<sup>124</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Stanley (No. 188) 22 November 1845, p. 377; see also CO280/187 (AJCP 538) William Crawford and Whitworth Russell, Home Inspectors of Prisons, to Phillipps 21 May 1845, pp. 219–21 for their awareness of Eardley-Wilmot's concerns about the location of the proposed new prison.

<sup>125</sup> *BPP Crime and Punishment Transportation 7* 'Report from the Comptroller-General [W Champ] to Lieutenant-Governor Sir E Wilmot, Bart, 1 August 1846', p. 582 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>126</sup> *Hobart Town Courier*, 29 October 1844, p. 2.

<sup>127</sup> Louisa Anne Meredith, *My home in Tasmania during a residence of nine years* (Swansea, 2003) First published London 1852, Volume Two, pp. 208–09.

<sup>128</sup> *BPP Crime and Punishment Transportation 7*, Nixon (from 18 Sussex Gardens) 15 February 1847 to Earl Grey, p. 447; Brand, *The Convict Probation System*, p. 104.

In 1844 two visiting magistrates, William Watchorn and William Carter, were appointed to visit the Houses of Correction in Hobart Town. To the ‘Justices of Peace in Quarter Sessions’ on 7 October 1844 they reported their ‘great pleasure in bearing testimony to the good order, cleanliness & discipline’ of the Cascades factory. They also praised the ‘system & regularity’ in the establishment and the ‘quiet behaviour’ of the females, which reflected ‘great credit’ on the Hutchinsons. It was the only House of Correction where prayers were ‘regularly read’, to which the prisoners appeared to pay ‘great attention’.<sup>129</sup> This contrasted with the Female Prison at Parramatta which was in a ‘most deplorable’ state, for which, Stanley claimed, Governor George Gipps was responsible.<sup>130</sup>

At the Brickfields, the magistrates found a ‘total absence of all order & regularity, & the noise & confusion from Talk & Clatter were beyond description’. In the sleeping apartment the ‘floors were covered with expectoration and tobacco ash’. The magistrates questioned the Superintendent, who claimed the Comptroller-General knew about the smoking — the women were not there for punishment and ‘had a right to smoke if they pleased’. The practice of tobacco smoking was ‘filthy & disgusting’, and a habit which ‘stupefies the faculties but renders the female mind callous to reproof & shame’.<sup>131</sup> The women, in groups of three or four seated on the ground in dresses ‘loose & immodest’, acknowledged the presence of the superintendent and visitors with a ‘bold laugh or a bold stare’. They did not work and were in a ‘state of absolute Idleness’, while at Cascades every female was ‘modestly & becomingly drest their behaviour quiet and respectful’.<sup>132</sup> Such observations were praise for Eardley-Wilmot’s administration, as the Cascades was a problem area when he arrived the previous year.<sup>133</sup> At the Brickfields, the Bishop’s wife, Mrs Nixon, found a similar situation to the magistrates. The women were left in ‘total idleness; they dance, play, dress up for acting, and spend all’ their money ‘on tobacco and spirits’.<sup>134</sup>

The ‘manners and appearance’ of the 600 women on the *Anson*, was ‘far superior’ to those in other hiring depots. The inspecting magistrates only had two objections, ‘the want of air and exercise’, though contradictorily they emphasised how the *Anson* was nearly four miles from

<sup>129</sup> GO33/ 1/52 Report of visiting magistrates for the half year 1 April–30 September 1844, pp. 172–94; Nixon reported this visit and comments of magistrates see *BPP Crime and Punishment Transportation 7*, Nixon (18 Sussex Gardens) to Earl Grey, 15 February 1847, pp. 446–47.

<sup>130</sup> CO201/333 (AJCP 347) Stanley’s note to Hope 2 December 1844, p. 182 of Gipps to Stanley 20 May 1843, pp. 163–82, and on the same page Hope signifies his agreement.

<sup>131</sup> GO33/ 1/52 Watchorn and Carter’s report to ‘Justices of Peace in Quarter Sessions’, pp. 172–94.

<sup>132</sup> GO33/ 1/52 Watchorn and Carter’s report to ‘Justices of Peace in Quarter Sessions’, pp. 172–94.

<sup>133</sup> Upward, ‘The Dismissal of Sir John Eardley Eardley-Wilmot’, p. 22.

<sup>134</sup> Norah Nixon, *The Pioneer Bishop in Van Diemen’s Land 1843–1863; Letters and Memories of Francis Russell Nixon DD First Bishop of Tasmania* (Hobart, 1953), pp. 32–33.

the town centre and the nearest streams of fresh water were the New Town and O'Brien Rivulets. The landing-place from the *Anson* to the Risdon Ferry jetty was about a quarter of a mile, with only one ferry boat and two paddles and rather exposed to the sea breeze, the passage was 'not very speedy'.<sup>135</sup> In January 1845 the *Anson* was 'so crowded', with 647 female convicts it was necessary to moor a brig which belonged to the marine of the convict department alongside until an appropriate penitentiary was either built or supplied. Eardley-Wilmot told Stanley the situation would become 'more congested' as more convicts were expected from England. Alterations and additions were progressing at the Cascades factory, but he was still waiting on Stanley's instructions for adapting the factory to a penitentiary and for converting the *Anson* into a house of correction. Constant changes in officials on the 'floating building' were unfavourable to health, though happily the main complaints had been nothing more than 'colds, rheumatism, and lassitude'. Until he received a 'definitive decision' temporary arrangements would continue.<sup>136</sup>

In 1843 George Brooks was listed as being in charge at the Brickfields Hiring Depot which housed 179 females, all in government employment — twenty-four were 'single females aged 14 to under 21 years', while single females aged between 21 and 45 years-old made up the biggest group of 136. Reflecting the arrival of Irish convicts, eighty-eight were Roman Catholic, while seventy-two were Church of England.<sup>137</sup> In April 1845 settlers requiring assigned women had no difficulty, with 162 'disposable' women at the Brickfields, being ninety-five in 3<sup>rd</sup> class, fifty-two in 2<sup>nd</sup> class and fifteen in 1<sup>st</sup> class and also fifty-six in Launceston at St John's Square hiring depot.<sup>138</sup> This number reduced to thirty-three by the end of the month, and remained constant the following year.<sup>139</sup>

In January 1846, with his despatch to Lord Stanley, Eardley-Wilmot enclosed a return on the state of the schools at female establishments. In total, there were 1,118 women, 825 of whom were attending school. There were 502 on the *Anson*, Cascades Female Factory 215, Launceston Female Factory 65, and 43 at the hiring depot.<sup>140</sup> Seven months later he sent

<sup>135</sup> *Colonial Times*, 4 January 1845, p. 3; The location of the *Anson* can be seen in figures 6.5 and 6.6.

<sup>136</sup> *BPP Crime and Punishment. Transportation 7* Eardley-Wilmot to Stanley (No. 310) 31 January 1845, pp. 236–51 with enc Comptroller-General's Report dated 27 January 1845, pp. 238–40 and Return 3 enc Distribution return of the Convict Department, pp. 246–47.

<sup>137</sup> Female Factory Research Group, Hobart, <http://www.femalefactory.com.au/FFRG>.

<sup>138</sup> *HTG* Vol. XXX no 1508 1 April 1845, p 451 the report is dated 29 March 1845.

<sup>139</sup> There were 33 women for 'disposal', 23 (3<sup>rd</sup> class), 8 (2<sup>nd</sup> class) and 2 (1<sup>st</sup> class) on 25 September 1845, *HTG* Vol. XXX no 1533, 30 September 1845, pp. 1214, and 26 March 1846 there were 34, *HTG* Vol. XXXI no 1560, 31 March 1846, p. 294.

<sup>140</sup> *BPP Crime and Punishment Transportation 7* 'Return of the state of schools at establishments 7 for females at 31 December 1845' in Report of James Thomson, Registrar, enc 6 p. 480 in Eardley-Wilmot to Stanley, 23

Champ's report to William Gladstone, Stanley's successor, at which time there were 375 women on the *Anson*, 158 of these were first stage probation pass-holders. The rest had not obtained service. The women's conduct on board, where they were removed from temptation, was in general, 'good', but judging from the number punished for misconduct after they entered private service, the short probation on board did not result in permanent changes in their character or habits.<sup>141</sup> The expense of maintaining the *Anson*, where the ratio of female officers was 'about 1 to 23 women', was 'very great' at £2,391 5s 0d. At the female factory, where management was 'equally effective' and where many women were in separate confinement and therefore required more constant attendance, the proportion of female officers was 1 to 59, and the cost 'only' £1,008.<sup>142</sup>

Stanley continued his harsh criticism of Eardley-Wilmot, despite neither visiting the colony nor replying to many despatches. It also seems unlikely that Stanley considered the great distance between the colony and Britain and the time required for the transmission of despatches. As already established in this study, Eardley-Wilmot regularly forwarded reports to Stanley, and typically, when Dr Bowden reported to Stanley through Eardley-Wilmot in November 1845, the Lieutenant-Governor forwarded this to the Colonial Office after adding his own despatch.<sup>143</sup> Therefore, this thesis proposes that many of Stanley's complaints were unjustified, and after receiving this particular despatch of 22 November 1845 from Eardley-Wilmot, Stanley further forwarded it to Lord Lyttelton with a note commenting how it was a 'strange thing that on a matter of such importance' as the *Anson* Eardley-Wilmot 'should have nothing to say either in confirmation of the Report or on the contrary, especially considering the frightful stories' he had written about the 'conduct of the Female prisoners under a different discipline, or rather under a total want of discipline'.<sup>144</sup>

At the Colonial Office about 500 words of a report from Dr Bowden were marked 'Extract to Treasury'. Although not signed, the handwriting (possibly Stanley's) refers to the importance of regular training and employment for the *Anson* convicts, and how the shortage of labour was an 'obstacle to reformation and the enforcement of a salutary discipline'. Ready-made

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January 1846, pp. 470–84; on 20 August 1843 Peter Jarbo was appointed to commence duties on the *Anson*, GO1/ 1/64, Stanley to Eardley-Wilmot, 20 August 1843, p. 509.

<sup>141</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846', p. 581 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>142</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846', p. 581 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>143</sup> CO280/185 (AJCP 537) Eardley-Wilmot to Stanley (No. 188) 22 November 1845, pp. 383–85 enc Bowden to 'Stanley, Secretary of State for the Colonies etc etc', 20 November 1845, pp. 399–400.

<sup>144</sup> CO280/185 (AJCP 527) Stanley to Lyttelton, 18 April 1846, p 386.



prison clothing had been sent from England, instead, had material been sent, some of the women would have made garments and been kept from 'idleness'.<sup>145</sup> Here in response to correspondence from Eardley-Wilmot and Bowden, and, despite Stanley's claims, is further evidence that officials at the Colonial Office were aware of problems affecting the colony.

After succeeding Stanley as Secretary-of-State, Gladstone, maintained the criticism. No 'general report' had been received from either Eardley-Wilmot or the Comptroller-General on the 'state of the female convicts, or the effects of the new system' on the *Anson*. Gladstone continued: 'This ... is one of the most interesting experiments connected with transportation, and one from which, at the time of its institution, Her Majesty's Government appear to have had the fairest grounds for anticipating a successful result.'<sup>146</sup> Gladstone's interest in convict women was, no doubt, reinforced by his 'principal social and charitable work' in 'rescuing and rehabilitating prostitutes' and also by his preoccupation with religion.<sup>147</sup> It is unclear what extra information Stanley and Gladstone expected. Eardley-Wilmot provided detailed reports about situations affecting the colony, and ideas for solving them.<sup>148</sup>

More than twelve months passed before Eardley-Wilmot received a reply to his despatch of 22 November 1845. Writing on 27 April 1846, Gladstone gave the impression of not believing Eardley-Wilmot's (or even Franklin's) reports about the *Anson*.<sup>149</sup> Gladstone had 'no reason to doubt' Bowden's adverse report, the 'very reverse' of that described by the two Lieutenant-Governors. To Gladstone, the use of the *Anson* had been successful. There had been an 'absence of obscenity, immorality, and insubordination', and the convicts' conduct had been 'orderly, discreet and industrious'. He thought it 'impossible' not to feel the scheme held out the 'prospect of rescuing a portion at least (I trust a large portion) of the female convicts from the state of degradation' to which they had sunk.<sup>150</sup> As well as the need to 'rescue' female convicts, the education and care of the increasing number of their children and also children of free settlers was an essential part of the colony's development.

<sup>145</sup> CO280/185 (AJCP 537) Bowden's report to Stanley marked 'Extract to Treasury' 20 November 1845, pp. 399–400.

<sup>146</sup> *BPP Crime and Punishment Transportation* 7 Gladstone to Eardley-Wilmot (No. 47) 20 February 1846, p. 339.

<sup>147</sup> Magnus, Philip, *Gladstone: A Biography* (London, 1963), pp. 47, 105–10, 7–8.

<sup>148</sup> *BPP Crime and Punishment Transportation* 7 Eardley-Wilmot to Stanley (No. 188) 22 November 1845, p. 377.

<sup>149</sup> *BPP Crime and Punishment Transportation* 7 Eardley-Wilmot to Stanley (No. 188) 22 November 1845, p. 377; GO25/ 1/11 'Lieut-Governor: Letterbook of Despatches to Secretary of State 14 September 1843–28 November 1845' Eardley-Wilmot to Stanley 'Private and Confidential', 2 November 1843; Eardley-Wilmot to Stanley (No. 205), 13 September 1844, *Launceston Examiner*, Vol. V No. 468, 16 December 1846, p. 795.

<sup>150</sup> *Launceston Examiner*, Vol. V No. 468, 16 December 1846, pp. 795–76; Gladstone's reply dated 27 April 1846.

### **Babies' nurseries—overcrowded and unsuitable**

In 2006 Rebecca Kippen studied conditions for children, her main focus being the convict nursery at the Cascades Female House of Correction between 1828 and 1854. She compared the colony's nurseries with workhouses in Britain, and found mothers and children in both establishments were crowded in 'unsanitary conditions'. Inadequate food ('strongly influenced' by breastfeeding customs), clothing and shelter led to infant mortality rates of around 35–40 per cent. Malnourished babies were prone to infection, particularly diarrhoea, which spread rapidly in confined conditions where it was impossible to keep babies clean.<sup>151</sup> Adverse publicity forced the government to improve the situation for the children of convict mothers at Cascades, though not before several died.<sup>152</sup> In June 1838 a house in Liverpool Street was hired for a nursery, and fifty-seven women and ninety-six children were soon 'crowded together' in the 'small ill-ventilated old house'. Medical officers John McCl Clarke and Mr Muir were surprised more disease did not exist among them, as conditions in the 'miserable tenement' involved 'great Risk of Health and Life'.<sup>153</sup>

Accommodation in Liverpool Street was intended as a temporary arrangement until a more suitable building was found. Despite this, the nursery remained in the house for four years, and overcrowding and mortality continued. Those born in the nursery had a slightly better chance of survival than those who had been transported — the difference, ascribed by Dr Dermer, doctor in charge of the infants at the nursery in Liverpool Street, to the 'Sickly State' in which children arrived after the long sea voyage, 'so much so that one half generally die'. He attributed the situation to the women having salt provisions during the long voyage which rendered their milk 'not sufficiently nutritious' and to the 'reckless' state of their minds which made them 'careless about everything connected with their offspring'.<sup>154</sup>

In 1839 a board set up to report on the nursery in Liverpool Street found the building 'extremely crowded' and unsuitable. Franklin suggested a move to a new building, which would first need to be erected, as there were no private premises in the neighbourhood

<sup>151</sup> Kippen, "And the Mortality Frightful", p. 11; Lara Marks, 'Medical care for pauper mothers and their infants: poor law provision and local demand in east London, 1870–1929' *The Economic History Review*, New Series, Vol. 46, no. 3 (August 1993), pp. 518–542, esp. pp. 527–28.

<sup>152</sup> Kippen, "And the Mortality Frightful", pp. 6–7.

<sup>153</sup> CSO22/ 1/1043 Principal Medical Officer John McCl Clarke to Colonial Secretary 24 June 1842 and 15 September 1842.

<sup>154</sup> CSO16/ 1/11/file 388 Dr Dermer Inspector General of Hospital to J Clark Esq. MD 3 October 1843, pp. 204–05; Joan C Brown, 'Poverty is not a Crime': *Social Services in Tasmania 1803–1900* (Hobart, 1972), p. 64.

suitable for conversion except at ‘very considerable outlay’.<sup>155</sup> Despite the recommendation to erect a building, in 1842 the nursery was moved to Dynnyrne House and 20 acres of surrounding land, as shown in figure 6.8, leased from Robert Lathrop Murray for five years at £150 annually.<sup>156</sup> Here, children from the Female Factory at Launceston also took up residence. This move, according to the Superintendent of Convicts, brought ‘the most beneficial effects to the comfort and health of the children’. It was optimistically believed the building, with about twenty rooms, would hold around 200 women and children,<sup>157</sup> but by late November 1843 there were seventy-seven women and 101 children (fifty-nine of these younger than twelve months old).<sup>158</sup> Numbers decreased by September 1845, the nursery housing sixty women and ninety children, thirty-six of these less than twelve months.<sup>159</sup>

The arrangement did not last, and by August 1846 the rented building housed sixty-eight women and eighty-seven children, and was so crowded it was not ‘possible to maintain the order and cleanliness’ which should ‘characterise such an establishment’.<sup>160</sup> The building was ‘ill-adapted for the purpose’, the rooms ‘low and close’ and the ‘state of the establishment ... far from satisfactory’. In 1851 the lease on Dynnyrne House ended, and the nursery was relocated several times, including the Brickfields and New Town before returning to the Cascades Female Factory in April 1854.<sup>161</sup>

### **Queen’s Orphan Schools or ‘dirty and ragged urchins’**

Lieutenant-Governor George Arthur, who arrived in the colony in 1824, soon recognised the need for an orphan school for the great number of illegitimate children. Two houses were rented, one at New Town in October 1827 as the Male Orphan School, and in February 1828, ‘Belle Vue’ in Davey Street for females. Although over 400 children were in need, only fifty, aged between two and fourteen, were first admitted.<sup>162</sup> Some of the children were Aboriginal

<sup>155</sup> CSO5/216/5423 Governor’s Order, 22 October 1839, pp. 43–44 and Report of the Board 24 October 1839, pp. 45–48.

<sup>156</sup> CSO22/ 1/1043 G T W B Boyes to Principal Superintendent, two letters dated 4 October 1842. The lease was executed on 3 November 1842, see letter of this date.

<sup>157</sup> Brown, *Poverty is not a Crime*, p. 64; CSO22/ 1/1043 John Clarke to Colonial Secretary, 20 September 1842.

<sup>158</sup> HTG Vol. XXVIII no. 1437, 24 November 1843, p. 1305.

<sup>159</sup> HTG Vol. XXX no. 1533), 30 September 1845, pp. 1213–14.

<sup>160</sup> BPP *Crime and Punishment Transportation* 7 Comptroller-General to Wilmot, 1 August 1846’, p. 582 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

<sup>161</sup> ‘Report from the Lieutenant-Governor to Earl Grey 31 May 1847’ *Correspondence on the subject of convict discipline and transportation* (London, 1847–48), cited in Kippen, ‘And the Mortality Frightful’, p. 7.

<sup>162</sup> Heard, *The Journal of Charles O’Hara Booth*, p. 67; Andrew McKinlay, ‘Early Orphan Schools in Tasmania’ (Richmond, 2007), esp. pp. 78–80 for more details on these premises; see also P Chapman (ed), *The Diaries and Letters of G T W B Boyes: Volume 1, 1820–1832* (Melbourne, 1985), pp. 287, 336 for further detail during the Arthur period.

and part-Aboriginal,<sup>163</sup> who, in 1832 included a ‘half Caste and two native Boys’ from the Aboriginal establishment at Flinders Island, but the Orphan School committee was unable to recommend the admission of ‘a native Girl, aged 18 years’, who was ‘brought up at the same time’.<sup>164</sup> There was also a ‘very numerous class’ of children of convicts who were a ‘burden’ on the colonial government and the ‘illicit amours’ of convicts incapable of supporting their children. To Arthur, orphan institutions were one way of meeting this ‘evil’, because by accepting children, the mothers could be ‘kept at hard labour!’<sup>165</sup>



**Figure 6.8:** ‘Dydneyrnyne House’ (formerly Dydneyrnyne Nursery) 1900.<sup>166</sup>

In 1829 John Lee Archer prepared plans for buildings to accommodate 300 children. The schools and the freestone Gothic-designed church, consecrated St John’s in May 1835 and open for service in December, were designed as a group. In 1835 ground behind the buildings was first used as a general cemetery. As shown in figure 6.9, St John’s formed the centrepiece flanked by identical brick buildings for the male and female orphan schools, with gatehouses,

<sup>163</sup> Heard, *The Journal of Charles O’Hara Booth*, p. 69; see *HRA* III, vii Arthur’s Memorandum 20 November 1830, pp. 655–59 for his suggestion that ‘nothing but Capturing, and forcibly detaining’ the ‘unfortunate Savages’ or ‘at least their Children’ would raise them ‘from their original rude barbarism to a more domestic state’ and could also ‘arrest a long term of rapine and bloodshed, already commenced’.

<sup>164</sup> CSO1/ 1/521 Correspondence file 11340 (Vol. 1), Orphan Schools Committee Report 20 December 1832, pp. 224–28, present: G Yeoland Ass Secretary; Rev W Bedford; Mr Hone; Mr Moodie.

<sup>165</sup> *HRA* III, vii, Arthur to Huskisson 26 September 1828, pp. 495–99

<sup>166</sup> TAHO PH30/1/5134 ‘South Hobart “Dydneyrnyne House” 1900’; Built in 1830 by Robert Lathrop Murray, ‘Dydneyrnyne House’, which had a distillery at the rear, was at the end of present day McFarlane Street. After its use as the nursery it became a farm. It was demolished in the 1970s, and replaced by a block of flats, see *Mercury* 19 February 2007, p. 19.

designed by convict architect James Blackburn, at the beginning of the driveway, built in 1841.<sup>167</sup> Girls were first admitted to the Queen's Orphan School in December 1832. The building for boys was completed in October 1833. Children still in residence when they reached fourteen years of age were usually apprenticed. Overcrowding led to the spread of diseases and at least fifty-eight children were buried in nearby cemeteries in 1843.<sup>168</sup>



**Figure 6.9:** Queen's Orphan Asylum New Town 1863.<sup>169</sup>

Eardley-Wilmot's predecessor, Sir John Franklin, did not think the colony should be 'burdened' with the maintenance and education of the children of convict parents, and in 1837 he established a board to enquire into the situation. According to the board on 6 September, during the previous 9½ years, 171 boys and 241 girls, all children of parents who arrived as convicts, had been admitted at an annual average cost of £13 per child. To Franklin, these parents were convicts and the British treasury should retrospectively defray the cost of their maintenance. A 'fair & reasonable charge for each child' whose parents were both still 'Prisoners of the Crown and not holding a ticket-of-leave' was £10. The cost of maintaining these children between May 1828 and 31 October 1837 was in excess of £14,022.<sup>170</sup>

<sup>167</sup> Heard, *The Journal of Charles O'Hara Booth*, p. 67; St John's Church is still in use in 2010; The only remaining monument is for Matthew Forster who died in 1846, the other headstones were removed to Cornelian Bay cemetery, the area now open grass.

<sup>168</sup> Heard, *The Journal of Charles O'Hara Booth*, p. 67; Friends of the Orphan School and St John's Park Precinct [<http://www.orphanschool.org.au/>]

<sup>169</sup> Creator: Samuel Clifford, 1827–90. Queens Orphan Asylum New Town 1863. W L Crowther Library, Tasmanian Archive and Heritage Office.

<sup>170</sup> CSO5/86/1885 Report from the Board, 6 September 1837, pp. 90–93; GO33/ 1/32 Franklin to Lord Glenelg (No. 67) 24 April 1839, pp. 346–60.

Children in convict nurseries and female factories were maintained by the British government, and when three years old, they were transferred to the orphan schools where they became the responsibility of the colonial government, as technically, the children of single convict women were not convicts. In 1839 Franklin tried to reduce the amount the colony owed Britain, and argued that because the mothers were under punishment their children should be maintained by the public and Britain should pay costs. Britain insisted the children were themselves free, and should not be a charge upon the Home Government.<sup>171</sup> Not prepared to pay the difference, Franklin balanced this against costs payable to the British treasury for services and forage allowance, totalling about £27,000.<sup>172</sup> Therefore, by default, British treasury paid the arrears for these children.

In turn, Eardley-Wilmot made significant changes in the management of the Queen's Orphan Schools. His principal motivation was economy, because colonial expenditure had exceeded revenue during previous years. In November 1843 there were 499 children in the schools, 376 were children of convicts and only 98 'the legitimate objects of the institution'. Therefore, Eardley-Wilmot considered the orphan schools were largely British establishments and should be paid by the mother country. Expenses were steadily increasing, so he decided to hand the schools to the British government to administer. The colonial government would pay the British government for non-convict children housed there, a situation he justified on the grounds of the changed character of the schools. This arrangement would reduce the estimated costs for 1845 from £5,927 15s 0d to £1,700 0s 0d, the difference being running costs, salaries, maintenance and overheads.<sup>173</sup> The responsibility for the care of children was therefore established — the British government would pay for boy convicts at Point Puer, children of convicts at the female factories and the orphan schools, while the children of the free settlers were a colonial responsibility.<sup>174</sup>

This change also affected other areas. In December 1843, in a 'Private & confidential' letter Eardley-Wilmot appointed Charles O'Hara Booth the superintendent of the orphan schools, which were then 'put under' the Convict Department. Eardley-Wilmot knew Booth's health

<sup>171</sup> GO33/ 1/32 Franklin to Lord Glenelg 24 April 1839, p. 346.

<sup>172</sup> CSO5/86/1885 'Report from the Board, 6 September 1837', pp. 90–93; GO33/ 1/32 Franklin to Lord Glenelg 24 April 1839, pp. 346–60; Brown, *Poverty is not a Crime*, p. 37.

<sup>173</sup> *HTG* 24 November 1843, Vol. XXIV, no. 1445, p. 1300, Eardley-Wilmot reporting to the Legislative Council meeting of 20 November 1843; *Statistics of Van Diemen's Land 1844 to 1846* (Hobart Town, 1847), Table No. 45, p. 24, and in 1845 there were 450 children.

<sup>174</sup> CO280/168 (AJCP 526), 'Minutes of the Committee of officers from reviewing Convict Expenditure. Transfer of the Queen's Orphan Schools', 16 January 1844 (Received CO 7 August 1844), pp. 242–55.

had ‘suffered from his endless duties’ and by an accident in the bush at Port Arthur, and was being offered the ‘means of an easier life’.<sup>175</sup> The Reverend Thomas James Ewing, the former superintendent, remained Chaplain at St John’s and also Protestant chaplain to the orphan schools, and Eardley-Wilmot appointed Father James Ambrose Cotham as Chaplain to the Catholic children. Religious instruction and services for Protestant and Catholic children were henceforth to be separated and Catholic staff appointed.<sup>176</sup> Still, in June 1844 Bishop Willson was upset that five Catholic children at the schools had, of their own volition, joined the Protestant Church. He claimed this was not a ‘liberty of conscience’ on the children’s part, it was with ‘justice and mercy’ that the government provided ‘for their respective religious culture’, and the government should ‘prevent changes of religious creeds by children’ who were ‘not in a position to judge’. This was a ‘sacred and vital principle’.<sup>177</sup>

In May 1844, in response to Reverend Therry’s recommendation that a ‘Catholic Lady’ be appointed school-mistress at the Queen’s Orphan Schools, Eardley-Wilmot thought ‘the best arrangement’ was for some ‘properly qualified person’ to daily visit the schools to perform ‘ordinary Religious duties’. In August 1845 Forster recommended Miss Quinn as school-mistress.<sup>178</sup> Eardley-Wilmot had been satisfied with Ewing as headmaster (although Denison, in reviewing evidence in 1849, decided he had been ‘very mildly dealt with’), and permitted him to remain in the residence attached to the school. Booth and his family lived at ‘Stoke’ at New Town, the home of Josiah Spode, who retired from government service after his post of Principal Superintendent of Convicts was abolished in 1844.<sup>179</sup>

In 1844 Eardley-Wilmot was faced with staff numbers increasing from thirteen to twenty-six at the schools. In April there were 513 children, 296 of these the children of convicts. Since 1837 the schools had been overcrowded, and housed over 500 children instead of the 300 originally intended. ‘To avoid extending the buildings’, and because the schools were then under the Convict Department, in 1844 and 1845 entry was restricted to children of

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<sup>175</sup> UTA RS 31/12 E Wilmot to Captain Booth, 29 December 1843, ‘Private & confidential’, in ‘Letter from Government House to Booth 29 December 1843’ held in the Royal Society of Tasmania Library.

<sup>176</sup> Brown, *Poverty is not a Crime*, pp. 69–70.

<sup>177</sup> CA6/WIL 1B 24/11 Convict Correspondence, Catholic Church Archives, Willson to Comptroller-General 25 June 1844.

<sup>178</sup> CA6/WIL 1C 19/1 Colonial Correspondence, Catholic Church Archives, Forster to Rev J J Therry, 17 May 1844; CA6/WIL 1B 57/91 Convict Correspondence Catholic Church Archives, Comptroller General to Willson, 17 August 1845.

<sup>179</sup> The house, named after Stoke Lodge where the Spode family lived in Stoke-on-Trent was demolished in the 1880s and a large house of the same name built on the site by Sir John Dodds, see Heard, *The Journal of Charles O’Hara Booth*, pp. 66, 69.

convicts.<sup>180</sup> Booth's wish to improve conditions for the children was severely limited by the government's unwillingness to spend more money than necessary. Forster could not recommend any 'extraordinary expense' for the education of the children of convicts, of whom the orphan schools were principally composed.<sup>181</sup> Booth was, however, able to introduce some improvements, and by the end of his first year, he was complimented by a correspondent, 'Viator', in the *Colonial Times* for his 'able and diligent management'. No longer were there 'dirty and ragged urchins skulking about the roadsides crawling along *most* willingly *from* school'. When out, they were 'under proper control' and excited 'admiration rather than pity of the passers-by'.<sup>182</sup>

Central to this chapter has been the problems created for Eardley-Wilmot by juvenile convicts and also female convicts and their children. It has been shown how female and male convicts all posed similar problems, although many females had the added disadvantages for colonial administrators of infants and children. The establishment and management of associated institutions, including Point Puer, the female Houses of Correction, the hulk *Anson*, the Orphan Schools and babies' nurseries created greater problems for Eardley-Wilmot than those which faced previous administrators. It was possibly due to Eardley-Wilmot's earlier penal reforms, which incorporated education, training and religious instruction and also his determination to end the apprenticeship of slaves, that female convicts, juveniles and children, were more efficiently administered by the Comptroller-General, Matthew Forster, under Eardley-Wilmot's guidance, than has generally been acknowledged. This chapter has established that the extensive criticism of Eardley-Wilmot's management of these institutions and matters was not justified.

Expansion and development strained the colony's chaplains as well the colony's finances, and to meet these needs Eardley-Wilmot was forced to request additional chaplains and to also borrow money. As well as arguing that the costs associated with the children of convicts were Britain's responsibility, he contended the same for police and the judiciary. These points will be examined in chapter eight, while the next chapter will address the shortage of ordained religious instructors in the colony which was, in part, created by strong colonial development.

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<sup>180</sup> By 1848 the schools accommodated 466 children, of whom 411 were children of convicts. Many had been 'deserted by one or both ex-convict parents who had gone to Victoria or Western Australia', see Heard, *The Journal of Charles O'Hara Booth*, p. 69.

<sup>181</sup> Heard, *The Journal of Charles O'Hara Booth*, p. 70.

<sup>182</sup> *Colonial Times*, 9 November 1844, p. 3.



***PART 3: Colonial Life, Controversies and Dismissal***

## Chapter Seven:

### Colonial chaplaincies: Church and state

‘any ignoramus ... was good enough for the Colonies’<sup>1</sup>

The administrative burdens of the probation system were, for Sir John Eardley Eardley-Wilmot, compounded by the additional challenges of the status of the Church in the penal colony. His reformatory process, which centred on religious, mechanical and scholastic skills, and his appointment of Protestant and Catholic chaplains and teachers to the relevant institutions have been examined in earlier chapters, as have instructions relating to religious instructors for the convict gangs and probation stations. This chapter explores the tension created by the appointment of those catechists, the background to their appointment and the difficulties which the Lieutenant-Governor faced from both colonial opposition and a lack of Colonial Office support. The situation was immensely complicated by the presence of a very religious, meticulous and dogmatic Secretary of State, William Ewart Gladstone.

Soon after arrival, Eardley-Wilmot made it obvious he would not be a party to the creation of privileges for the Church of England. The colonial press applauded his stand. As Manning Clark explained, the Lieutenant-Governor was not to know he had upset Bishop Nixon, a man who would one day help bring about his destruction.<sup>2</sup> Eardley-Wilmot’s Anglicanism was, Frank Upward claimed, ‘nominal and perfunctory’, he was ‘nonplussed’ by narrow religious enthusiasms, and Nixon’s zeal did not impress him. He found no reason to complain of the Presbyterian or Catholic clergy, and was, like former Lieutenant-Governor George Arthur, impressed by the Wesleyans with their ‘clear social direction’. Yet, from the Church of England he met an attitude of non-co-operation, though his allies in reforming the convicts should have been the clergy.<sup>3</sup> Foreshadowing his non-denominational approach before leaving England, Eardley-Wilmot delivered a speech to a missionary society, telling them he was an

<sup>1</sup> Norah Nixon, *The Pioneer Bishop in Van Diemen’s Land 1843–1863; Letters and Memories of Francis Russell Nixon DD First Bishop of Tasmania* (Hobart, 1953), Bishop Nixon to Mr Woodcock, 24 February, 1844, p. 22 referring to the earlier appointment of William Bedford as senior chaplain, on the ‘presumption that any ignoramus, provided that he could but read and write and was possessed with fair average qualifications, was good enough for the colonies’.

<sup>2</sup> *Hobart Town Advertiser*, 3 November 1843, pp. 2–3; Manning Clark, *A History of Australia III. The Beginning of an Australian Civilization 1824–1851* (Carlton, 1991), pp. 282–83.

<sup>3</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley, ‘Private and Confidential’ 4 November 1843 pp. 300–07; CO280/169 (AJCP 527) Eardley-Wilmot to Stanley (No. 129) 3 June 1844, p. 345–52 (received CO 4 October 1844), marked ‘Copy to Archbpt of Canterbury’; Frank Upward, ‘The Dismissal of Sir John Eardley Eardley-Wilmot Lieutenant-Governor of Van Diemen’s Land 1843–46’, MA thesis, University of Melbourne, 1974, p. 131.

advocate of ‘the political freedom’ and ‘civil rights of all denominations’ of Christians.<sup>4</sup> Likewise, in the colony on 21 October 1843, when first meeting his council, he stated a preference for the Episcopal Church and an attachment to religious liberty and equality.<sup>5</sup>

### **Religious background 1826–43**

Following British settlement, the Church of England in Van Diemen’s Land came under formal control of the senior Chaplain in Sydney. In 1823 the Reverend Samuel Marsden visited Van Diemen’s Land, and in 1826, when Thomas Hobbes Scott (Archdeacon of New South Wales from October 1824) made an official visit, the colony only had four churches. Apart from such visits, ecclesiastical control was seen as inadequate.<sup>6</sup>

The shortage of chaplains had been a problem for many years before Eardley-Wilmot’s arrival. In 1826 Arthur requested additional chaplains, for whom he believed Britain should pay everyday expenditure. In April 1828, in a ‘Private and Confidential’ despatch to the Secretary of State, because of a ‘severe shortage’, Arthur again requested religious instructors for the convict gangs and probation stations. Reformation of convicts was an important feature of the colony, and without religious instruction punishment was ineffective.<sup>7</sup> As well as Church of England clergymen, Roman Catholic priests were also needed, especially after the passage of An Act for the Relief of His Majesty’s Roman Catholic Subjects (1829), which permitted Catholics to enter Parliament and take an oath to support existing institutions of church and state. Therefore, civil liberties which Catholics had been denied were reinstated.<sup>8</sup>

In February 1835 Lord Aberdeen decided to transfer William Ullathorne, the Catholic Vicar-General of New South Wales, to Van Diemen’s Land with an annual payment of £200.<sup>9</sup> In September Dr John Bede Polding, the newly appointed ‘Vic Apost’ of New South Wales, called to Hobart Town on his way to Sydney. After Polding’s representations, which reflected

<sup>4</sup> *Examiner*, 1 July 1843 Vol. II No. 52, p. 411.

<sup>5</sup> John West, *The History of Tasmania with copious information respecting the Colonies of New South Wales Victoria South Australia &c. &c.* first published Launceston 1852. A G L Shaw (ed) (Sydney, 1981), p. 179.

<sup>6</sup> Ross Border, *Church and State in Australia 1788–1872. A constitutional study of the Church of England in Australia* (London, 1962), p. 228; As noted in chapter four, Scott was secretary to Sir William Molesworth, chairman of The Select Committee on Transportation.

<sup>7</sup> *Historical Records of Australia* (hereafter *HRA*) *Series III, Despatches and Papers relating to the History of Tasmania*, Vol. vii (Canberra, 1997), Arthur to Huskisson ‘Private & Confidential’, 14 April 1828, pp. 116–24.

<sup>8</sup> *HRA* III, viii (Canberra, 2003) Murray to Arthur 4 May 1829, p. 340 and Appendix 10, pp. 1264–77.

<sup>9</sup> CO280/188 (AJCP 539) ‘Roman Catholic Establishment in Van Diemen’s Land’, Murdoch, 8 February 1845, pp. 396–97.

an ecumenical approach, Arthur ‘inserted in the Estimates for 1836 a note of £1500’ towards the erection of a Roman Catholic Church.<sup>10</sup>

The year 1836 was significant when New South Wales governor Richard Bourke and his Legislative Council passed the Church Act (7 William IV, No. 3) to promote the building of Churches and Chapels and provide for the maintenance of Ministers of Religion in New South Wales. Similar legislation was introduced in Van Diemen’s Land by Lieutenant-Governor Sir John Franklin. Financial assistance was available to all denominations for the recruitment and deployment of clergy, and subsidies were available to attract clergy from overseas and to assist in the payment of their stipends.<sup>11</sup> The general principle was that when a sum over £300 was subscribed by ‘any denominations’ of Christians for the erection of churches and the minister’s house, an equal contribution should be added from public funds to an upper limit of £700.<sup>12</sup> It was also a condition that 200 ‘free bona fide members of the denomination were required to live within ten miles of the proposed church’ if it was to be built in Hobart Town or Launceston. Similarly, eighty were required to form an eligible congregation in areas outside these two centres. In contrast, the upper limit under the New South Wales Act was £1,000, and only 100 adults were required to live ‘within a reasonable distance’ to ‘express their intention to attend’, the Act ‘explicitly’ directing that ‘convict servants could be included in the number’. Churches built this way were to be vested in trustees — a chaplain appointed by the Crown.<sup>13</sup> The Act ended Church of England hopes of being recognised and supported financially as the official Established Church in the colonies as it was in England.<sup>14</sup>

In both colonies the Church of England, Presbyterians and Catholics were included in the Church Act. Any benefits the Wesleyans and other minor denominations received were by special annual votes, as they were not considered part of the ‘Establishment’. Arthur proposed an annual grant for the Wesleyans (it became £500) and the Independent (Congregational) minister at Hobart Town, the Reverend Frederick Miller was offered a ‘gratuity’ of £200 a year. Though Dissenter principles forced Miller to refuse the gratuity, the congregation nevertheless later accepted assistance when colonial necessity and denominational rivalry

<sup>10</sup> CO280/188 (AJCP 539) ‘Roman Catholic Establishment’, p. 396.

<sup>11</sup> Naomi Turner, *Sinews of Sectarian Warfare? State Aid in New South Wales 1836–1862* (Canberra, 1972), p. 1; Patricia Curthoys, ‘State Support for Churches 1836’, in Bruce Kaye (ed), *Anglicanism in Australia. A History* (Melbourne, 2002), pp. 31–32.

<sup>12</sup> CO280/188 (AJCP 539) ‘Roman Catholic Establishment in Van Diemen’s Land’, pp. 397–98; Similar policy had been followed by Arthur, especially at Campbell Town, Lincoln and Norfolk Plains, see *HRA* III, vii Arthur to Murray (No. 36) 19 August 1830, pp. 520–26.

<sup>13</sup> John Barrett, *That Better Country. The Religious Aspect of Life in Eastern Australia, 1835–1850* (Carlton, 1966), p. 37.

<sup>14</sup> Curthoys, ‘State Support for Churches 1836’, pp. 31–32.

caused them to compromise their ideals. All churches were accepted in the colony, and no recognised denomination was excluded from government benefits if requested.<sup>15</sup>

In October 1836, with only two Roman Catholic chaplains in Van Diemen's Land, Arthur sent an application from William Ullathorne to the Colonial Office for three additional clergymen. He thought 'three were not wanted', two would be 'very desirable', but only one was absolutely required.<sup>16</sup> In February 1838 Ullathorne travelled to England, and following representations to Lord Glenelg, clergyman Thomas Butler was sent to the colony. James Joseph Therry then succeeded Ullathorne as Vicar-General in New South Wales.<sup>17</sup>

Both the Church of England Bishop of Australia, William Grant Broughton, and Archdeacon William Hutchins, head of the Church in Van Diemen's Land, objected to the claims of other denominations for recognition and financial support under the Church Act. The Act was intended to grant official recognition, and equality to all denominations, and was introduced at a time when toleration and acceptance of all denominations was rare in the British Empire.<sup>18</sup> Broughton thought the government should only provide aid to the 'true' Church — the Church of England. Similarly, throughout the 1840s, Bishop Nixon maintained opposition to the declaration of denominational equality in the colony. As an example, in 1844 he protested against the appointment of Robert Willson as Roman Catholic Bishop of Hobart Town, and publicly opposed various Roman Catholic theological teachings.<sup>19</sup> Nixon also 'wrangled' with Willson about the latter's use of the title 'Bishop of Hobart Town'. In return, Willson admonished Nixon for 'engaging in religious strife and allowing the religion of Christ to degenerate into a "tinkling cymbal" at a time when thousands of their respective flocks were festering in misery and crying for spiritual aid and consolation'. Nixon responded with a series of sermons in St David's Church on the 'errors of the Catholic Church'.<sup>20</sup>

### **Control of clergy — appointment to government positions**

On 18 August 1842, the Crown issued Letters Patent, creating a separate diocese of Van Diemen's Land and elevating New South Wales to a bishopric. The Letters Patent also raised St David's Church to cathedral status and revoked Broughton's jurisdiction over Van

<sup>15</sup> Barrett, *That Better Country*, p. 38.

<sup>16</sup> CO280/188 (AJCP 539) 'Roman Catholic Establishment in Van Diemen's Land', p. 398; Barrett, *That Better Country*, p. 13.

<sup>17</sup> CO280/188 (AJCP 539) 'Roman Catholic Establishment in Van Diemen's Land', pp. 398–99.

<sup>18</sup> Curthoys, 'State Support for Churches 1836', pp. 32–33; Turner, *Sinews of Sectarian Warfare?* p 3.

<sup>19</sup> Curthoys, 'State Support for Churches 1836', pp. 32–33.

<sup>20</sup> Clark, *A History of Australia III*, p. 323.

Diemen's Land, giving authority to the Archbishop of Canterbury.<sup>21</sup> On 21 August 1842 at Westminster Abbey five new bishops were consecrated. One was Reverend Francis Russell Nixon to the See of 'Tasmania'.<sup>22</sup> Nixon, his wife and children, their governess and Reverend Fitzherbert Adams Marriott, arrived at Hobart Town in July 1843 and stayed at Government House until a house with three acres of land in Davey Street was ready for occupation.<sup>23</sup> Nixon, appointed to succeed the late William Hutchins (1792–1841), was not Archbishop William Howley's first choice. Dr Thomas Arnold, headmaster of Rugby, had twice indicated a willingness to accept a bishopric in the colony, but before the Letters Patent were established, he accepted the position of Regius Professorship of Modern History at Oxford.<sup>24</sup>

The newly created 'diocese of Tasmania' was well financed from England. Archbishop Howley (1766–1848) guaranteed Nixon a stipend of £1,400 a year,<sup>25</sup> the Colonial Bishopric Fund £5,000, and the Society for the Propagation of the Gospel £2,500. Friends contributed £1,800 as an endowment for Marriott, the new Archdeacon of Hobart Town, and two years later an anonymous gift of £5,000 to be used for missions to the convict population was forwarded to the colony through the Bishop of Ripon.<sup>26</sup>

Under Lord Stanley's November 1842 scheme for introducing 'religious instructors' into Van Diemen's Land, he intended that, with respect to their discipline, English practice should be followed, with the instructors subject to the control of the Comptroller-General of Convicts and the Lieutenant-Governor.<sup>27</sup> As superintendent of convict chaplains, Stanley created an ecclesiastical officer who was to be an intermediary between the Lieutenant-Governor and the chaplains. Archdeacon Marriott was granted the position, and Stanley explained to Marriott that he was to act as the civil servant of the Crown, not as the Bishop's Archdeacon.<sup>28</sup> Later Marriott denied this was how he understood the position, and objected to any office free of the

<sup>21</sup> Other bishoprics were to be established immediately in New Zealand; The British Possession in the Mediterranean; New Brunswick; Cape of Good Hope, and Ceylon, see Border, *Church and State*, pp. 5–6, 229; *Times*, 25 August 1842, p. 5.

<sup>22</sup> Nixon, *The Pioneer Bishop*, Bishop Nixon to Mr Woodcock, 24 February 1844, p. 23; Border, *Church and State*, p. 229; *Times*, 25 August 1842, p. 5.

<sup>23</sup> Nixon, *The Pioneer Bishop*, Nixon to Mr Woodcock 21 July 1823, pp. 8–9; The house and land, next door to Colonial Secretary James Bicheno, is now 326 Davey Street, with units 'Davey Place' on much of the original three acres. The Nixon family later moved to 'Boa Vista', then 'Bishopstowe' at New Town. This is now the National Trust property 'Runnymede'.

<sup>24</sup> Border, *Church and State*, p. 229; P A Howell, 'Bishop Nixon and Public Education in Tasmania', *Melbourne Studies in Education*, 1967, p. 169; F J Woodward, *The Doctor's Disciples: A Study of Four Pupils of Arnold of Rugby, Stanley, Gell, Clough, William Arnold* (London, 1954), p. 102.

<sup>25</sup> Nixon to Denison, 27 July 1848 (Hobart 1845) (Mitchell Library) cited in Howell, 'Bishop Nixon and Public Education in Tasmania', p. 169.

<sup>26</sup> Barrett, *History of The Church of England in Tasmania*, p. 7.

<sup>27</sup> Border, *Church and State*, p. 114.

<sup>28</sup> Nixon, *The Pioneer Bishop*, Mrs Nixon to her father 3 April 1844, p. 24; Border, *Church and State*, pp. 115–16.

Bishop. He was an ecclesiastical officer chosen by Stanley because he was ‘possessed of the mind’ and enjoyed the confidence of the Bishop, and if he could ‘serve the Government in doing an Archdeacon’s work’ he was ‘willing to be a civil servant, but no further’.<sup>29</sup>

Nixon believed the Letters Patent made him the sole protector of Church of England clergymen.<sup>30</sup> Although Eardley-Wilmot was willing to consult Nixon over appointments and dismissals, he was unwilling to cede such authority. The issue at stake involved discipline and security within the convict system, and Eardley-Wilmot believed had Nixon been given the powers he sought, the heads of other denominations might request similar powers.<sup>31</sup>

Nixon, a ‘remarkable man’ in appearance and character, good-looking with ‘coal-black hair ... piercing black eyes, and full, rather thick lips’ was ‘tenacious of his rights’ and ‘extremely anxious’ to be correct regarding attire and ‘points of etiquette’. Devoted to the fine arts, he was ‘a beautiful draftsman’.<sup>32</sup> He spent twelve years at the Merchant Taylor School in London before finally being admitted to Oxford, from where he graduated with a Bachelor of Arts 3<sup>rd</sup> class in classics, Master of Arts in 1841 and Doctor of Divinity in 1842. After a number of minor posts in the Church Nixon married Anna Marie Woodcock. Charles Woodcock, his father-in-law, and Edward Coleridge, his brother-in-law, were both ‘solid clerics’, and it may have been a result of this, Nixon’s first marriage, that in 1838 Archbishop Howley appointed him as one of six preachers at Canterbury Cathedral. When Colonial Office staff wished to appoint Van Diemen’s Land’s first bishop, Howley recommended his disciple.<sup>33</sup> Eardley-Wilmot’s later problems with Nixon may, in part, be explained by Howley’s beliefs. Opposed to Catholic emancipation and non-conformists holding public office, the reactionary Howley also disagreed with secular education.<sup>34</sup>

Nixon later admitted he encountered difficulties relating to the religious instruction of convicts, the difficulties ‘greatly increased’ because they arose ‘not from the Dissenters ... be they Presbyterians, Wesleyans or Roman Catholics’ but from his own Church of England.<sup>35</sup>

<sup>29</sup> Marriott to Gladstone 6 July 1846 PP (No. 92) enc 4 cited in *Border Church and State*, pp. 115–16.

<sup>30</sup> CO280/160 (AJCP 521) Nixon to Colonial Secretary, 13 September 1843, pp. 310–18 (received CO 20 March 1844).

<sup>31</sup> CO280/169 (AJCP 527) Eardley-Wilmot to Stanley (No. 129) 3 June 1844, p. 345–52 (received CO 4 October 1844), marked ‘Copy to Archbpt of Canterbury’.

<sup>32</sup> W R Barrett, ‘Nixon, Francis Russell (1803–79)’, *Australian Dictionary of Biography* (hereafter *ADB*) 2006, [<http://www.adb.online.anu.edu.au/biogs/A020252b.htm>]

<sup>33</sup> Upward, ‘The Dismissal of Sir John Eardley Eardley-Wilmot’, pp. 128–29; P A Howell, ‘Bishop Nixon and Public Education in Tasmania’, p. 169.

<sup>34</sup> J R Garrard, ‘Howley, William (1766–1848)’, *Oxford Dictionary of National Biography* (hereafter *ODNB*), January 2008 [<http://www.oxforddnb.com/view/article/14005>].

<sup>35</sup> CO280/160 (AJCP 521) Nixon to Colonial Secretary 13 September 1843, pp. 310–18, underlining in original.

Eardley-Wilmot considered Nixon to be a ‘conscientious, sincere’ and ‘zealous Christian’ who had the ‘good of the colony and its inhabitants at heart’, but was not aware of the relative position of the Church of England with other creeds, nor did Eardley-Wilmot think Nixon realised the government accepted the ‘equality of other Church Communions’. An appreciation of various religions was necessary for effective discipline in the probation stations and gangs. Without ‘utmost caution’ the safety of the colony could be endangered.<sup>36</sup>

The appointment of chaplains to the different gangs and stations remained with the Crown through the Secretary of State or the Crown’s representative in the colony, and for many years Wesleyan Methodists had been the only religious instructors and chaplains on almost every station in the colony.<sup>37</sup> The only power conferred on Nixon by his Letters Patent was his ecclesiastical power over the clergy, that of suspending from ‘ecclesiastical DUTIES any of the Clergy who become legally subject by misconduct to his jurisdiction’. Despite this, he thought appointments, and especially removals, rested with him.<sup>38</sup> Eardley-Wilmot tried, unsuccessfully, to explain that chaplains to gaols were appointed and removed by a ‘power totally distinct from ecclesiastical nomination’. Instead of confining 10,000 convicts in one gaol the government chose to ‘have several overt Gaols in various parts of the Island, with a Chaplain to each’. To further explain the situation, Eardley-Wilmot showed Nixon two of Stanley’s orders and the nomination of Mr George Giles to the chaplaincy of the new penitentiary. However, this was all ‘without effect’.<sup>39</sup>

Gaol visits by clergy were important, but Church of England clergy had some doubt about their responsibility to these institutions. The Wesleyans, though, were keen to reach out to the convicts. According to William Simpson, the religious catechist at Port Arthur, the convicts were equally keen, so Simpson and other disciples appealed for more clergy to enable them to instill ‘moral and religious principles’ into the minds of the ‘degraded persons’ around them.<sup>40</sup>

<sup>36</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley ‘Private and confidential’ 4 November 1843 pp. 301–02.

<sup>37</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley ‘Private and confidential’, 4 November 1843, p. 302 the situation confirmed in Stanley to Franklin, 25 November 1842; Stanley to Franklin (No. 2), 29 April 1843.

<sup>38</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley ‘Private and confidential’ 4 November 1843, pp. 302–03.

<sup>39</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley ‘Private and confidential’ 4 November 1843, pp. 303–04 referring to *British Parliamentary Papers* (hereafter *BPP*) *Correspondence and papers relating to convict ships convict discipline and transportation 1843–47. Crime and Punishment. Transportation* 7 (Shannon, 1969), Stanley to Franklin (No 175) 25 November 1842, p. 110 and Stanley’s Despatch (No. 2) of 27 April.

<sup>40</sup> L Robson, *A History of Tasmania: Volume I. Van Diemen’s Land from the Earliest Times to 1855* (Melbourne, 1983), pp. 353–54; for the enthusiasm of the catechists and official approval for a grant of 300 acres for a school, see *HRA* III, vii, Huskisson to Arthur, 30 April 1828, p. 287.



Nixon claimed Eardley-Wilmot was an enemy of the Church: He had ‘calculated to advance the purposes of the home Govt without care and scruple. — Needy at home and in debt to the Bankers here, he must keep his post at any risk to his conscience or his feelings’. Eardley-Wilmot is a ‘man of no very high principle’ with ‘£4000 a year at stake’:

He is just such a man as ought not to be sent to a young and but partially settled Colony. We do not want a man who notoriously has run away from his creditors in Engd, and thus shewn to the penal portion of the Colony, that their Ruler has not any very delicate feeling himself on the score of honest and upright principle. Society thro him has received an irreparable injury. Ladies who never before had the entrée of Govt House are now freely admitted provided that they are young & pretty and have no objection to the philandering attentions of an elderly Gentleman. ... When first Sir E W came he professed himself to be a staunch member of the Church.— But his Banker is a Wesleyan.<sup>41</sup>

Disturbed by trends in Britain, Nixon thought it ‘a strange fashion’ among statesmen in England of ‘yielding point after point to avowed enemies’ of the Church, while the Church denied friends and members the ‘ordinary support which might be claimed not as a matter of favour, of right’.<sup>42</sup>

As Frank Upward pointed out, it was unlikely Nixon would be happy in Van Diemen’s Land if he believed the Church of England was denied its rights in Britain. In the colony it was considered a colonial duty to recognise and support the Christian religion in general.<sup>43</sup> Nevertheless, the Church of England did not receive exclusive privileges. This was the reverse of Nixon’s principle, and according to Reverend John Philip Gell, the nominated head of Christ College, it was necessary for Nixon to show independence in the colony.<sup>44</sup> The colony paid the salaries of the clergy of four other denominations, and Church of England colonial clergyman W L Gibbins disliked being on an equal footing with Presbyterians, Baptists, Wesleyans and Roman Catholic clergy. He lamented that ‘secularism and pernicious liberalism’ had a stronghold in the colony. Nixon was soon to join Gibbins in his sorrow.<sup>45</sup>

Between 1818 (after direct transportation to Van Diemen’s Land) and December 1840, no ships sailed directly from Ireland to Van Diemen’s Land. In 1829 Governor Darling had no ‘documentary evidence’ why this was the situation, but by 1829 the practice was well

<sup>41</sup> TAHO NS3/ 1/1 Nixon’s letter dated 20 December 1844 [no addressee] underlining in original.

<sup>42</sup> NS3/ 1/1 Nixon’s letter dated 20 December 1844 [no addressee].

<sup>43</sup> J S Gregory, *Church and State. Changing Government Policies towards Religion in Australia; with particular reference to Victoria since Separation* (Melbourne, 1973), p. 5; for a detailed account of the New South Wales situation, see Turner, *Sinews of Sectarian Warfare?*

<sup>44</sup> Gell-Franklin Papers (LaTrobe Library), J P Gell to his mother, September 1841, cited in Upward, *The Dismissal of Sir John Eardley Eardley-Wilmot*, pp. 130–31.

<sup>45</sup> ‘Papers of the Society for the Propagation of the Gospel’, Report of W L Gibbins, 26 January 1846 (Mitchell Library) cited in Upward, *The Dismissal of Sir John Eardley Eardley-Wilmot*, p. 131.

established.<sup>46</sup> Thirty per cent of male and nearly 40 per cent of female convicts sent to New South Wales were Irish, many of whom were Catholic, while before 1840 only 10 per cent (1,072) arrived in Hobart Town. These were probably mainly those sent from Sydney by Governor Lachlan Macquarie in the *Minerva* in 1818 and the *Castle Forbes* in 1820.<sup>47</sup> According to John Williams, claims have been made that for ‘reasons of religion’ Arthur requested the British government forward all Irish convicts to New South Wales, whereas, a rival interpretation is provided by Manning Clark. He thought Arthur believed Ireland to be a ‘breeding ground for a loathsome superstition and those human monsters, who, after a life of crime and disaffection, practised cannibalism in the sombre bush of Van Diemen’s Land’.<sup>48</sup> The ending of transportation to New South Wales meant Irish convicts, who would previously have been transported to Sydney, arrived in Hobart Town.

The Roman Catholic Church had problems. In reply to Bishop Polding’s enquiry about provisions made by the Legislative Council for Roman Catholic clergymen who arrived in Van Diemen’s Land after 1839, Stanley explained none had been made, but £200 for the probable increase ‘of one minister’ appeared in the estimates for 1840, and £800 in 1841 for the ‘probable increase of four ministers’.<sup>49</sup> Just five months later, Parliamentary Under-Secretary George Hope, advised Polding’s agent in London that Franklin had recommended a Roman Catholic clergyman be sent to the colony to ‘labour among the Prisoners’.<sup>50</sup> On 20 October 1842 at St Chad’s Cathedral Birmingham, Dr Robert William Willson was revealed to be the new Vicar-General for Van Diemen’s Land to replace Reverend James Therry. The following month Willson signed himself ‘Catholic Bishop of Hobarton’, though, according to the acting senior clerk at the Colonial Office in 1845, it ‘would appear’ Willson was ‘privately informed’ the government could not recognize his assumption of the title. Willson requested permission to select five Roman Catholic priests to accompany him to the colony.<sup>51</sup>

<sup>46</sup> HRA I, *Series I Governors’ Despatches to and from England, Volume xiv* (Sydney, 1922), Darling to Sir George Murray, 18 February 1829, p. 653; HRA III, viii, n 211, p. 833; HRA III, viii n 219, p. 834; John Williams, *Ordered to the Island* (Sydney, 1994), pp. 88–89, 114.

<sup>47</sup> A G L Shaw, *Convicts and the Colonies: A Study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (London, 1966), p. 183; Williams, *Ordered to the Island*, pp. 88–89.

<sup>48</sup> Williams, *Ordered to the Island*, pp. 88–89; A McLeay in *V&P* (LC NSW) 1838, p. 177 and T P MacQueen, *Australia as she is and as she may be* (London, 1840) p. 17 cited in Manning Clark, *A History of Australia II. New South Wales and Van Diemen’s Land 1822–1838* (Carlton, 1968), p. 123. Clark also states Arthur ‘requested the British government not to send Irish convicts to Van Diemen’s Land’, see Manning Clark, *A Short History of Australia. Illustrated Edition* (Ringwood, 1992), p. 65.

<sup>49</sup> CO280/188 (AJCP 539) ‘Roman Catholic Establishment’, pp. 400–01; CA6/WIL 1A 2/4 Home Correspondence, Lord Stanley to Bishop Polding, 11 November 1841, see also CA6/WIL 1A 1/3 Stanley to Polding, 6 October 1841.

<sup>50</sup> CA6/WIL 1A 2/5 Home Correspondence, G Hope to Heptonstall, 20 April 1842.

<sup>51</sup> CO280/188 (AJCP 539) ‘Roman Catholic Establishment in Van Diemen’s Land’, dated 8 February 1845, Murdoch, pp. 401–02.

Stanley was only prepared to sanction the appointment of one clergyman, although it would, in ‘all probability’ soon be necessary to appoint more Catholic clergymen for the convicts. He was happy to receive Willson’s recommendation for clergymen he considered qualified,<sup>52</sup> but it would be necessary to wait for a detailed report on the situation from the newly appointed Lieutenant-Governor Eardley-Wilmot before making recommendations.<sup>53</sup> Despite this, in February 1843 Stanley approved the appointment of two clergymen on £200 each with lodging and rations.<sup>54</sup>

Willson was permitted to take three priests with him — their passages and his own, a ‘Public Expense’. Willson notified Eardley-Wilmot of these details and that he was proceeding ‘to assume the superintendence of the R.C Church’ in the colony.<sup>55</sup> In replying on 14 June 1844, and indicative of no favouritism to any particular religion, Eardley-Wilmot agreed ‘three additional R.C Clergymen’ were needed — ‘two to be paid from Convict Funds and one from Colonial Funds’.<sup>56</sup>

Willson, the colony’s sixth Catholic priest arrived at Hobart Town on 11 May 1844. Philip Conolly, who arrived in 1821 and whose annual salary of £100 was paid from public funds, was the first.<sup>57</sup> Father Watkins, also Vicar-General was next, then Father Ambrose Cotham, an English Benedictine who served at Richmond and Launceston. Thomas Butler, an Irishman, who arrived in 1839 and replaced Cotham at Richmond, was followed by Therry, when churches at Richmond, Hobart Town and Launceston served 2,000 free Catholics.<sup>58</sup>

In the colony Willson found ‘upwards’ of 3,000 Catholic Convicts under the ‘immediate control of Government’ distributed in ‘thirty five prisons, or probation stations’. During the next decade close to one-third of the 36,000 felons sent to the colony were Irish Catholics.

<sup>52</sup> CA6/WIL 1A 4/13 Home Correspondence, Hope to Willson, 31 January 1843.

<sup>53</sup> CA6/WIL 1A 6/17 Home Correspondence, Hope to Willson, 23 March 1843; Lord Chamberlain’s Office 21 March (Official Appointments and Notices) *Times* 29 March 1843, p. 6.

<sup>54</sup> CA6/WIL 1A 5/15 Home Correspondence, G W Hope to Willson, 23 February 1843 in reply to Willson’s request for how many he was permitted to recommend, see CA6/WIL 1A 5/14 Home Correspondence, Willson to Hope, 10 February 1843.

<sup>55</sup> CO280/188 (AJCP 539) ‘Roman Catholic Establishment in Van Diemen’s Land’, pp. 401–02.

<sup>56</sup> CO280/188 (AJCP 539) ‘Roman Catholic Establishment in Van Diemen’s Land’, pp. 402–03; the Colonial Office received a copy of Eardley-Wilmot’s reply on 20 December 1844.

<sup>57</sup> CO280/188 (AJCP 539) ‘Roman Catholic Establishment’, 8 February 1845, initialled ‘TWCM’ and dated 8 February 1845, p. 395. This was Thomas William Murdoch, Acting Senior Clerk Colonial Office, August 1839–March 1846, J C Sainty, *Office-Holders in Modern Britain. VI. Colonial Office Officials* (London, 1976), p. 45.

<sup>58</sup> W T Southerwood, *The Convicts’ Friend: A Life of Bishop Robert William Willson* (George Town, 1989), pp. 43–44, 51; CA6/WIL 1A 6/18 Home Correspondence, Willson to Stanley, 7 August 1843; for details of a dispute over a debt of £3000 between Willson and Therry which continued until 1857, see P O’Farrell, *The Catholic Church in Australia. A Short History: 1788–1967* (Melbourne, 1968), esp pp. 61–65.

The only religious assistance they received was from three Clergymen, who also endured heavy duties involved with their 'respective flocks': the Military; hospitals; penitentiaries; 'the common gaols' and 'not unfrequently' executions. In Hobart Town an orphan school with 160 Catholic children being raised as Protestants presented a peculiar responsibility.<sup>59</sup> Willson was assured Eardley-Wilmot and the colonial government did not want the orphan school children to change from the religion in which they had been raised, and the Superintendent had been informed accordingly.<sup>60</sup>

Willson learned that twenty Catholic prisoners at the New Town station were locked in the dining room while Protestants attended church services at the Orphan School chapel, he requested they be accompanied by a Catholic overseer to Sunday 9 a.m. Mass at St Joseph's Church.<sup>61</sup> He also applied for a 'more appropriate place' in the male penitentiary for Divine Service than the 'large room in which the prisoners take their meals'.<sup>62</sup> Willson tried to gain separation of Catholic and Protestant convicts, even during work, and was prepared to allow non-Catholic convicts to read prayers to Catholic prisoners from an authorised Catholic book.<sup>63</sup> He requested the Secretary of State's permission to select five Catholic clergymen to attend the convicts, the reasons for which would 'at once be obvious', and he begged that Stanley 'confirm the grants' to allow him to make 'necessary' arrangements.<sup>64</sup> Willson also pressed for proportional equality with the Anglicans and Protestants, asking Stanley to grant 'the same amount of spiritual relief to the unfortunate convicts professing the Catholic religion as to those of other creeds'.<sup>65</sup>

To the newly-appointed Bishop, work among the prisoners, especially the Catholics, was urgent. Within three years of his arrival, 7,593 Catholic prisoners were transported to the colony,<sup>66</sup> while, according to the 1847 census, the total Catholic population was only 9,904.<sup>67</sup> Good priests, Willson believed, would guide the convicts to eventual freedom and ultimately 'domestic happiness', but his most urgent task was to convince the British treasury to spend more money on chaplains and catechists for the Roman Catholic convicts. His insistence on

<sup>59</sup> CA6/WIL 1B 44/63 Section 6.17 Willson to Hope, March 1843 in Hope to Willson, 25 February 1844, Convict Correspondence, CA6/WIL 1A 6/18 Home Correspondence, Willson to Stanley. 7 August 1843.

<sup>60</sup> CA6/WIL 1B Convict Correspondence, Forster to Willson, 10 July 1844.

<sup>61</sup> CA6/WIL 1B 23/9 Convict Correspondence, Willson [no addressee], 20 June 1844.

<sup>62</sup> CA6/WIL 1B 39/47 Convict Correspondence, Willson to Forster, 17 December 1844.

<sup>63</sup> Southerwood, *The Convicts' Friend*, p. 52.

<sup>64</sup> CA6/WIL 1A 2/8 Home Correspondence, Willson to Secretary of State, 6 November 1842.

<sup>65</sup> CA6/WIL 1A 3/9 Home Correspondence, Willson to Secretary of State, 4 December 1842.

<sup>66</sup> Southerwood, *The Convicts' Friend*, p. 51.

<sup>67</sup> *Statistics of Van Diemen's Land for 1848. Compiled from official records in the Colonial Secretary's Office* (Hobart Town, 1849), Return No. 79, p. 55.

adequate spiritual reading stemmed from convictions formed while parish priest at Nottingham and when head of the movement for issuing spiritual and religious literature at cheap prices.<sup>68</sup> He had ‘assiduously’ attended ‘the workhouse, the house of correction, town and county prisons, the lunatic asylum, and the county hospital’.<sup>69</sup> In this way Willson’s belief that reform would be achieved by education and religious instruction was, in many respects, similar to that of Eardley-Wilmot’s.

According to Father W T Southerwood, Willson’s biographer, Willson saw his role to be the ‘regeneration’ of those who had ‘fallen’. Irrespective of the ‘moral worth’ of the individual ‘offering his services’, even the most depraved Catholic convict would ‘not accept the assistance of any other minister of religion but his own’.<sup>70</sup> Before Willson’s departure for the colony, Stanley had promised that transportees would be split into separate gangs in what Southerwood termed a ‘kind of religious apartheid’. Willson found this was not the situation, and blamed Comptroller-General Forster for this ‘breach of promise’. Southerwood suggested this might be the reason Willson later insisted on the separation of Protestant and Catholic convicts for prayers and religious instruction.<sup>71</sup>

Eardley-Wilmot fulfilled Willson’s demands. As already revealed in chapter six, separation for religious instruction extended to Point Puer, where both Protestant and Roman Catholic catechists and Port Arthur clergymen frequently visited.<sup>72</sup> He made similar arrangements for the men at Port Arthur and at the Mines on Tasman’s Peninsula, and supplemented regular schooling for women and children at the houses of correction with instruction from both Church of England and Roman Catholic catechists.<sup>73</sup> Experience of the probation system convinced Willson that no punishment system was as ‘unwise’ as congregating ‘large masses of people within the walls of prisons’ without an efficient system of ‘moral culture’ which should be managed with ‘utmost discretion’. At probation stations, where he found convicts in

<sup>68</sup> Southerwood, *The Convicts’ Friend*, p. 51; *HTG* Vol. XXXIII No. 1701, 7 November 1848, Govt Notice 114, the appointment and removal of teachers was to rest with the Lt-Gov through the Inspector of Schools. All schools were to be open to all religious denominations, with religious instruction in accordance to the wishes of parents, pp. 1109–110.

<sup>69</sup> William Terrance Southerwood, ‘Bishop R W Willson, Teacher and Pastor’, BA (Hons) thesis, University of Tasmania, 1971, p. 7.

<sup>70</sup> CA6/WIL 1A 6/18 Home Correspondence, 7 August 1843 Willson to Stanley; Southerwood, ‘Bishop R W Willson, Teacher and Pastor’, p. 26.

<sup>71</sup> Southerwood, *The Convicts’ Friend*, p. 52; Southerwood, ‘Bishop R W Willson, Teacher and Pastor’, p. 27.

<sup>72</sup> *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846’, p. 577 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629; see also chapter six.

<sup>73</sup> CA6/WIL 1B 39/38 Convict Correspondence, W Nairn Comp-Gen Office to Rev Mr James Levermore 19 December 1844; CA6/WIL 1B 57/92 Convict Correspondence, Comp-Gen to Willson, 17 August 1845; *BPP Crime and Punishment Transportation 7* Comptroller-General to Wilmot, 1 August 1846’, p. 580 enc in Eardley-Wilmot to Gladstone (No. 128) 29 August 1846, pp. 569–629.

chains, road making, forest clearing and mining coal, he encouraged them, remonstrated with them, and heard their grievances. He also delivered religious instruction to the female convicts on board the *Anson* and visited arriving convict ships to warn Catholics about vice and crime, and to encourage them to live righteously.<sup>74</sup>

In referring to Stanley's letter of 31 January 1843 when he promised more priests for the convict establishments, Willson appealed for these men. The only ministry for the Catholic convicts in the probation gangs were the three paid by the colonial department and attached to the convict department, two of whom were employed in prison establishments in Hobart Town and one at Port Arthur, a 'totally inadequate' situation for the colony's needs. Although able to approve the appointment of three Catholic catechists for children at the orphanage, Eardley-Wilmot was obliged to send Willson's plea for convict chaplaincies to the Colonial Office.<sup>75</sup> He agreed respective clergymen and religious instructors should take an interest in the 'temporal and eternal interests' of the convicts, and he restricted controversial tracts and books within prisons. Willson extended his 'sincere thanks' for this action.<sup>76</sup>

The Wesleyan Methodists also sought colonial government assistance. In July 1841 they clashed in the Executive Council over their request for money to assist in the erection of their Melville Street church. One councillor claimed that the church was 'far too large for the Congregation' and too 'large a scale' for the colony. The buildings had already cost 'nearly £10,000', of which '£3000 the Church community was obliged to find'.<sup>77</sup> Sunday Schools were an 'important part' of the Wesleyan Methodist structure, and by 1840 the Church had 570 members and also 922 scholars in the Sunday Schools. As Lloyd Robson has observed, if the Church of England tried to introduce 'culture and a sense of history' to the colony, the 'burning energy of revivalism and certainty' was brought by the Wesleyans. This 'populism' and 'sense of urgency' distressed some people.<sup>78</sup>

In 1842 there were 2,263 Wesleyan Methodists in the colony.<sup>79</sup> This was 4 per cent of the population, with the greatest majority, over 7 per cent, living around Launceston. The

<sup>74</sup> Shaw, *Convicts and the Colonies*, pp. 295–311; Southerwood, *The Convicts' Friend*, pp. 51–52.

<sup>75</sup> CA6/WIL 1B 44/63 Sec 6.17 Willson to Hope, March 1843 in Hope to Willson, 25 February 1844, Convict Correspondence; CA6/WIL 1B 51/72 Convict Correspondence, Forster to Willson, 6 June 1845; GO33/ 1/51 Eardley-Wilmot to Stanley, 6 June 1845, pp. 470–74.

<sup>76</sup> CA6/WIL 1B 20/3 Convict Correspondence, Willson to Forster. 27 May 1844.

<sup>77</sup> CO408/19 (AJCP 883) Russell to Franklin (No. 266) 23 July 1841, pp. 250–51.

<sup>78</sup> Anne Bailey, 'Launceston Wesleyan Methodists 1832–1849. Contributions, Commerce, Conscience', unpublished PhD thesis, University of Tasmania 2008, p. 184; Wesleyan Methodist Missionary Society, Annual Report 1840 (London), cited in Robson *A History of Tasmania: Vol. I*, pp. 353–55.

<sup>79</sup> *Statistics of Van Diemen's Land for 1842–44*, Table No. 25, p. 11.

Wesleyans were soon faced with a new challenge, as Irish Catholic convicts began to arrive in the colony, and Wesleyan minister John Weatherstone was delighted to report that only fifty or sixty men from the 700 or 800 at Port Arthur attended mass conducted by a visiting Catholic priest. Catholic activism included a petition against the regulations of a proposed new college promoted by Franklin and Reverend Gell.<sup>80</sup> Religious differences did not end here for Eardley-Wilmot. In 1846 he was forced to conciliate between the Jewish community and Bishop Nixon. ‘Consternation’ had arisen in the Jewish community when fourteen-year old Mary Ann Lazarus was baptised by a government chaplain. The situation had developed as a result of convictism. In May 1833 Mary’s father, a watchmaker, had been ‘sentenced in Hobart Town to life imprisonment for attempting to defraud Judah Solomon of £145 by the use of a forged bill of exchange’.<sup>81</sup>

Faced with the problem of supporting the family, Judah’s wife Hannah, placed two daughters in the Queen’s Orphan School where the elder, Mary, began to ‘shine as the star of the chaplain’s lessons in religious instruction’. In July 1846 Mary, who had been assigned outside the institution to work as a servant, approached the chaplain, Reverend Forster, and begged to be baptised. The ceremony was performed the following Sunday. Mary’s mother was horrified. To be baptised was to ‘defy her family and her past’. Louis Nathan, president of the Hobart Town Synagogue, approached Eardley-Wilmot, who angrily protested to Nixon, asked him to investigate the complaint and take any necessary action. Nixon admitted the baptism had been performed. The Lieutenant-Governor communicated his ‘deep regret’ about a ‘most improper’ event to the Synagogue’s president and complained to London about ‘the unfortunate meddling’ of Nixon.<sup>82</sup> Eardley-Wilmot did not agree to children’s religion being changed from that in which they had been raised. It is reasonable to assume that in this particular case he was not aware of the situation until afterwards. He then calmed a difficult situation by responding positively to Nixon’s anger.

Nixon held ‘grand views’ on the power of religious knowledge to reform convicts. As he saw it, the central fault of transportation was that police, not clergy, had been sent to control convicts. In late 1843 Nixon notified the Colonial Secretary he would not ordain clergymen for the convict department while regulations placed them under civil jurisdiction.<sup>83</sup> Nixon

<sup>80</sup> Bailey, ‘Launceston Wesleyan Methodists 1832–1849’, p. 171; Robson, *A History of Tasmania I*, p. 355; GO33/1/46 Eardley-Wilmot to Stanley 3 November 1843, pp. 697–704.

<sup>81</sup> J S Levi and G E J Bergman, *Australian Genesis: Jewish Convicts and Settlers 1788–1850* (Adelaide, 1974), p. 165.

<sup>82</sup> Levi and Bergman, *Australian Genesis*, pp. 165–66.

<sup>83</sup> CO280/160 (AJCP 521) Nixon to Col Sec, 13 September 1843, pp. 310–18 (‘received C.O. Mar 20 1844’).

stood by his word, even after it became clear he had misread his Letters Patent which gave priority to local legislation. He realised he was demanding greater powers than those of English bishops, where visiting magistrates had the right to appoint and dismiss gaol chaplains, and if a Bishop considered a clergyman had been wrongfully dismissed he could appoint the clergyman to a curacy, thereby ensuring him an income.<sup>84</sup> The dispute which developed over this issue was an important factor in Eardley-Wilmot's later recall. The Lieutenant-Governor's claim that full-time convict chaplains were under his direction was denied by Nixon, who refused to ordain or licence convict chaplains.<sup>85</sup> Stanley's previous warning to Eardley-Wilmot of imminent difficulties over the 'critical subject' of religious instruction for convicts was clearly well founded, and Stanley's earlier suggestion to form separate gangs exclusively of Protestants and Roman Catholics must have been tempting.<sup>86</sup>

Early in 1844 Nixon withdrew the licence of two chaplains for 'unbecoming behaviour', but Eardley-Wilmot continued to pay their salaries. By this time Nixon was convinced the probation system was converting the colony into 'the lazar house of the British dominions', so only men of 'proven moral rectitude' should be entrusted to instruct convicts in their duties to God and man.<sup>87</sup> The Bishop's wife thought the government was planning 'to overthrow the Church', and 'quietly and deliberately resolved — to fight the battle out to the end'.<sup>88</sup>

In July 1846 Eardley-Wilmot reported to the new Secretary of State Gladstone how Nixon had not carried out Stanley's intentions regarding the ordination of religious instructors. Nixon had also refused to ordain 'many good and pious men' who were recommended by the Society for Propagation of the Gospel, and appointed by Stanley, to be religious instructors. Eardley-Wilmot suggested only already ordained gentlemen be sent, as external qualifications made 'strong impressions' on the prisoners of the Crown, and the appearance, manners, and even the dress of a clergyman would frequently, at first, have greater power over the prisoners than the most devout layman. Eardley-Wilmot claimed Roman Catholics did not experience the same problems. They selected the best educated and 'most polished of their priesthood', and it was not uncommon for prisoners at probation stations to receive the 'sacrament from the ministers of the Roman Catholic faith' where there was no Protestant clergyman.<sup>89</sup>

<sup>84</sup> Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', pp. 135–36.

<sup>85</sup> Michael Roe, *Quest for Authority in Eastern Australia 1835–1851* (Parkville, 1965), pp. 19–20.

<sup>86</sup> This matter has been related in chapter five.

<sup>87</sup> Clark, *A History of Australia III*, p. 323.

<sup>88</sup> Nixon, *The Pioneer Bishop*, Mrs Nixon to her father, 30 September 1844, pp. 34–35.

<sup>89</sup> *BPP Crime and Punishment Transportation 7*, Eardley-Wilmot to Gladstone (No. 100) 10 July 1846, p. 558.



Nixon claimed jurisdiction over all clergy working with the convict gangs, but the Government refused to recognise his claim. Inevitably, a conflict broke out between Nixon and Eardley-Wilmot. As a result, the Bishop sent Archdeacon Marriott to England where he discussed with Earl Grey the question of the endowment of the diocese, of education, and whether or not convict chaplains should be under the control of the Bishop.<sup>90</sup> Maria Nixon described the situation to her father:

Lord Stanley has given the Comptroller-General of Convicts the power of dismissing the Chaplains at any moment, subject to the ultimate decision of the Governor. My husband protests against this, as utterly destructive of his power of protecting his clergy against capricious aggression, and will not ... be instrumental in handing over to laymen — who may not even be members of the Church — an authority which has never been conceded to or claimed by any Bishop at any period of the Church's history ... An anomaly which the Bishops allowed to creep in in England seems to be at the bottom of this — that the visiting Magistrates of gaols have the power of appointing and dismissing their chaplains.<sup>91</sup>

On his return to Van Diemen's Land in November 1845, Marriott was accompanied by six ordained clergymen and two lay teachers of religion 'under a distinct pledge that the Bishop would ordain the lay teachers immediately on their arrival'.<sup>92</sup> However, in making the promise on behalf of Nixon, Marriott erred. As Nixon pointed out to Earl Grey on 19 January 1847, Marriott's mistake in the first place was that he believed Nixon would 'consent to delegate to another the work of superintendence over the spiritual duties of any portion of the clergy officiating' in his diocese. Marriott's reason for going to England was to attempt to establish 'some plan of co-ordinate authority' to satisfy the Bishop and the government, but Nixon did not regard 'co-ordinate authority' and halving the Episcopal authority as the same. He felt capable of doing any superintending and less expensively than Stanley had proposed. He refused to ordain those who arrived with Marriott and others who followed, and would not recognise the office of superintendent of convicts and Marriott's appointment to it. Still, due to his 'personal respect' for Stanley, Nixon permitted Marriott to be temporary supervisor over the convict chaplains — not by virtual of any appointment by Stanley or anyone else, but by his own delegation.<sup>93</sup>

Nixon was compelled to admit that Eardley-Wilmot was correct in point of law, and on 23 April 1846 voiced his concerns in a sermon in St David's Cathedral. Government policy concerning religious instructors 'sanctioned by the united civil and ecclesiastical authorities at

<sup>90</sup> Border, *Church and State*, pp. 114–15.

<sup>91</sup> Nixon, *The Pioneer Bishop*, Mrs Nixon to her father 3 April 1844, p. 23.

<sup>92</sup> Ecclesiastical Affairs of the Colonies VDL Part VI Grey to Denison p. 41, 30 September 1846, cited in Border, *Church and State*, p. 116.

<sup>93</sup> Border, *Church and State*, p. 116

home' struck at the 'root' of the colonial church. The Secretary of State had the power to establish a new body of clergy designated convict chaplains (previously religious instructors), and these clergymen were now out of the Bishop's effective protection, and, to a 'great extent', also beyond his jurisdiction. Under the new policy the Secretary of State was permitted to place a 'Superintendent ... essentially a civil officer', who was 'invested' with 'no small share of spiritual control' as head of these chaplains.<sup>94</sup> Nixon would not accept that the Secretary of State could give the power to the Lieutenant-Governor of dismissing instructors from their spiritual and temporal positions without first referring to him.<sup>95</sup>

Nixon also pointed out that arrangements made in England with 'chief civil and ecclesiastical authorities' were intended to provide protection to the convict chaplains to make their position secure, and also to afford Nixon a degree of authority to permit him to ordain, licence, and recognise the chaplains. The Lieutenant-Governor's immediate power of dismissing convict chaplains had in fact been revoked. In its place was the provision that if Eardley-Wilmot wished to remove a religious instructor from office, he was to communicate with Nixon, who was permitted to disagree and render the 'dismissal unnecessary'. In the extreme event of continuing disagreements, Eardley-Wilmot was then 'authorized at once' to remove the Bishop, appoint another person, and report the matter to the Secretary of State.<sup>96</sup>

This assumption of authority by the Secretary of State deprived the Bishop of ecclesiastical discipline over a considerable number of clergy in his diocese. Nixon argued that the only legitimate source from which such powers could emanate was the Bishop, and, as Bishop, he was not mentioned. The superintendent was to consult with the Comptroller-General, and was independent of any Episcopal control. Any contact he had with the Bishop concerning the control of more than one-third of the clergy in the diocese was nothing more than a matter of courtesy. Nixon found the position intolerable. Earl Grey emphasised the Government could in no way recede from the position, and told Eardley-Wilmot to 'maintain control over all persons, clergy or laity, employed in the instruction of convicts'.<sup>97</sup>

The delineation of the effective extent of ecclesiastical jurisdiction needed revision, especially the wording of the Letters Patent. There had been other problems affecting clergy who were

<sup>94</sup> Nixon, Lord Bishop of Tasmania, *A Charge delivered to the Clergy of the Diocese of Tasmania at the Primary Visitation, in the Cathedral Church of St. David, Hobart Town, on Thursday, the 23<sup>rd</sup> April, 1846* (Hobart Town, 1846), pp. 69–70, 73–74.

<sup>95</sup> Nixon, *A Charge delivered to the Clergy of the Diocese of Tasmania*, p. 71.

<sup>96</sup> Nixon, *A Charge delivered to the Clergy of the Diocese of Tasmania*, pp. 71–73.

<sup>97</sup> Nixon, *A Charge delivered to the Clergy of the Diocese of Tasmania*, pp. 75–84; Border, *Church and State*, pp. 118–20.

neither ‘convict’ nor ‘missionary chaplains’ and who held their respective offices under licence from the Bishop. As a result, in 1846 Nixon visited England to discuss with the Secretary of State the position of the Church and the question of the Bishop’s temporal authority.<sup>98</sup> In England Nixon attacked the probation system, and by implication Eardley-Wilmot and the British Government that employed him. This was not the first time Nixon had complained to London. In 1844 he criticised Eardley-Wilmot to several correspondents, including Broughton and Edward Coleridge. Coleridge carried the story to that ‘ardent young man’ Gladstone, who had entered politics to serve the Church, succeeded Stanley as Secretary of State for the colonies, and who finally dismissed Eardley-Wilmot.<sup>99</sup>

Comptroller-General Matthew Forster, whose duty it was to prepare all periodical returns, and to whom Franklin had given ‘power’, ‘even to the removal of religious instructors’, knew the British government expected the religious instructors sent out to be ordained in the colony. Due to Nixon’s attitude, this had not happened, and by August 1846 the convict department only had seven Church of England chaplains. Had the five religious instructors who arrived been ‘admitted into orders, the spiritual wants of the convict establishment would have been more effectually met’. Forster requested that in future Gladstone send those ‘already in priests’. The colony also needed more Roman Catholic clergymen or instructors. Those attached to the convict department were ‘untiring in their duties’, but it was ‘utterly impossible’ for them to do all that was required. Forster recommended at least one Roman Catholic clergyman be attached to the channel stations, a second be appointed to Launceston, a third to Maria Island, and a fourth to the Coal Mines.<sup>100</sup>

Meanwhile, Nixon’s Catholic rival, Bishop Willson, had been busy letter writing. Many of his fifty-one official letters to the convict department in 1845 concerned the provision of clergy and catechists at establishments under government control; complaints about defective buildings and prisoner accommodation; and requests for adequate and comprehensive distribution of Catholic literature, prayer books and catechisms. In February Willson applied for six additional priests and also religious instructors to attend the spiritual needs of convicts in probation stations. He also appealed for catechists at the Coal Mines and a male instructor

<sup>98</sup> Border, *Church and State*, p. 123.

<sup>99</sup> Roe, *Quest for Authority*, pp. 19–20; T Barron and K J Cable. ‘The Diary of James Stephen 1846’ *Australian Historical Studies* 13:52 (April 1969), p. 508. Sir James Stephen’s diary (1 January–5 September 1846) [microform] Bib ID 1067206 Cambridge University Miscellaneous Collections M2591 (AJCP M2591).

<sup>100</sup> *BPP Crime and Punishment Transportation 7 Inc* ‘Report from the Comptroller-General’ to Eardley-Wilmot, 1 August 1846, p. 583 in Eardley-Wilmot to Gladstone, 29 August 1846, pp. 569–629.

at Launceston.<sup>101</sup> Willson recommended Mrs Montgomery as ‘Female Catechist’ for the *Anson* and Miss Quinn as ‘schoolmistress to children of Roman Catholic religion at the Queen’s Orphan School’. Eardley-Wilmot approved both appointments, their salaries to be paid from colonial funds.<sup>102</sup>

### Attitudes to education

The appointment of colonial chaplains and aid for churches was closely linked with which educational system the government should promote by its allocation of funds. As John Barrett explained in 1966, the conflict in England between parliament, the Church of England and the dissenters over control and support of schools, carried to the Australian colonies.<sup>103</sup> In Hobart Town the Church of England had operated a grammar school since the mid-1830s, and during his administration, Franklin had arranged the immigration of Reverend John Philip Gell, intending to appoint him head of a college (Christ College) of near-university standing. Gell, who later married Franklin’s daughter, was a loyal churchman and pupil of Thomas Arnold. Gell lamented the system of primary education on offer, as it put ‘the weapon of learning into the hands of the people’ and left it to an ‘independent priesthood to form the popular faith’.<sup>104</sup> In reality Christ College, Jane Franklin’s ‘hobby of hobbies’, the foundation stone of which was laid on 7 November 1840 was doomed.<sup>105</sup>

The Church of England dominated education until 1839 when Franklin set up a lay board of education and introduced a system of national education based on principles of the British and Foreign Schools’ Society. Instruction was limited to reading, writing and arithmetic, religious instruction being confined to a reading of the Bible without note or comment, while the teaching of a particular creed, catechism or doctrine was forbidden. Except for a small contribution from parents, the government provided finance for the schools, which were administered by a board of education.<sup>106</sup> Church of England clergy, who had controlled government schools, opposed Franklin’s changes, condemned the system of instruction as a ‘godless form of education’, and refused to have any school involvement.<sup>107</sup>

<sup>101</sup> Southerwood, *The Convicts’ Friend*, p. 55.

<sup>102</sup> TAHO CSO20/ 1/17 Willson to Eardley-Wilmot 7 August 1845, p. 91 and Bicheno’s Memo 14 August 1845, p. 94 for Montgomery; TAHO CSO20/ 1/17 Willson to Eardley-Wilmot 17 August 1845, p. 186 and Bicheno’s Memo 21 August 1845, p. 186. Miss Quinn’s salary was £60 p.a.

<sup>103</sup> John Barrett, *That Better Country*, p. 3.

<sup>104</sup> Woodward, *The Doctor’s Disciples*, pp. 80, 92–93; Roe, *Quest for Authority*, p. 23.

<sup>105</sup> Woodward, *The Doctor’s Disciples*, pp. 84–85, 96–97. That night the foundation-stone was overturned, and the coins and the inscription buried underneath were stolen.

<sup>106</sup> M D McRae, ‘Educational Controversies in Van Diemen’s Land, 1847–55’, *Tasmanian Historical Research Association Papers and Proceedings*, 10.4 (July 1963), p. 74; Roe, *Quest for Authority*, p. 4.

<sup>107</sup> McRae, ‘Educational Controversies in Van Diemen’s Land, 1847–55’, p. 74.

Nixon wanted money for education to be allocated to the various denominations according to the most recent census with different parties maintaining their own schools and training their own children in religion. Eardley-Wilmot thought it desirable to maintain the British and Foreign Schools' Society Plan of non-denominational education.<sup>108</sup> The *Hobart Town Courier* thought Nixon's proposal inequitable. If the education vote was distributed according to the census, only the Church of England, Catholics and Presbyterians would establish schools.<sup>109</sup> The dissenting Launceston *Examiner* warned that Nixon's opinions would have the colony on 'its guard ... Dr Nixon claims supremacy because he is a bishop and because his religion is true', but the *Examiner* warned Eardley-Wilmot to be 'cautious' how he applied the 'spark to the train'. If a system of religious preference was established, and if the religious ministers 'at the stations resigned', it might be difficult to replace them, in which case the position of the Bishop would lose its significance.<sup>110</sup>

In 1843 the Roman Catholic clergy, who initially supported Franklin's policy, joined the Church of England in opposition. Ranged against them were Eardley-Wilmot, clergy of non-conformist churches and laymen of all denominations. The dissenting clergy were the most active supporters of the general schools and Dr John Lillie, the Presbyterian minister of St Andrew's Church, their unofficial spokesman. However, they fought a losing battle. Eardley-Wilmot's strong defence of the national system was 'coldly' received by Stanley and Gladstone, both of whom were in favour of aid for Church schools.<sup>111</sup> The report of a Commission of Equity, which established that Church of England criticism of the National Schools was ill-founded, was ignored in London.<sup>112</sup>

Disputes between Gell and Eardley-Wilmot over the site for Franklin's proposed college had arisen just days after Eardley-Wilmot's arrival in the colony when Gell described him as:

a tall broad-faced grey-haired country gentleman, with plenty of talk. He takes things easily ... and on Sunday he went to Church with the old Governor and Lady Franklin and on these as on all occasions showed the greatest deference for his worthy predecessor ... He is certainly a gentleman, but I have had no opportunity to make further discoveries. I imagine he bodes no good to my College from an expression or two he let fall.<sup>113</sup>

<sup>108</sup> *Cornwall Chronicle*, Vol. 9 No. 466, n.p. [p. 2] 4 November 1843 and Vol. 9 No. 467, 11 November 1843 n.p. [p. 2]; Woodward, *The Doctor's Disciples*, p. 105.

<sup>109</sup> *Hobart Town Courier*, 3 November 1843, p. 2; Howell, 'Bishop Nixon and Public Education', p. 177.

<sup>110</sup> Patricia F Ratcliff, *The Usefulness of John West. Dissent and Difference in the Australian Colonies* (Launceston, 2003), p. 355.

<sup>111</sup> McRae, 'Educational Controversies in Van Diemen's Land, 1847-55', p. 74.

<sup>112</sup> McRae, 'Educational Controversies in Van Diemen's Land, 1847-55', pp. 74-75.

<sup>113</sup> J P Gell to W E Nairn 22 August 1843, cited in Woodward *The Doctor's Disciples*, p. 103.

Lord Stanley agreed with Eardley-Wilmot that there was little likelihood a college would be founded for some time. Twelve months later, on 6 August 1844, Eardley-Wilmot suggested to Gell the Christ Collect project should be abandoned for ten years, as Stanley had permitted him to buy the site of the proposed College at New Norfolk for his own residence.<sup>114</sup> Gell was convinced Eardley-Wilmot's hostility to his college was the result of a ten-year-old grudge against Dr Arnold, who, at the 1834 election for Warwickshire's northern division voted for Eardley-Wilmot's Radical opponent.<sup>115</sup>

In response to Gell's threat to leave the colony if a chartered college was not set up under his leadership, efforts were to be made in England to meet his wishes. In the meantime, Gell taught at Queen's School, which came under scrutiny in early 1844.<sup>116</sup> The administration was looking for ways of reducing expenditure. The school only had twenty students and Colonial Secretary James Bicheno told Gell that Eardley-Wilmot had decided both his salary and that of Mr Buckland, the second master, would cease from 30 June 1844 and the school would close.<sup>117</sup> The same year Nixon ordained Gell and appointed him to a chaplaincy of a church in Goulburn Street which it planned to build. In early May Eardley-Wilmot approved Nixon's recommendation that Gell be appointed chaplain for the new district.<sup>118</sup>

Under the Church Act (1837) building of the Goulburn Street church should have commenced within six months of the appointment of a clergyman or his salary would cease. In May 1845 Eardley-Wilmot requested that Bicheno find out if work had commenced.<sup>119</sup> In response to Bicheno's query, Gell replied that a chapel had been built in the upper part of Goulburn Street, and a 'considerable amount of money' had been collected for the erection of the church, but this would 'take a much longer time to finish'.<sup>120</sup> According to the Church Act, as Gell's salary was 'for the Chaplain of the "Church"' which was required to be built within six

<sup>114</sup> Eardley-Wilmot to Gell 7 October 1843 in Gell-Franklin papers cited in Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 145.

<sup>115</sup> Woodward, *The Doctor's Disciples*, p. 105; this would have been Robert (Chester). Three of his sons were enrolled at Rugby. In January 1821 John Eardley Eardley Wilmot aged 10 and Frederick Marow Eardley Wilmot aged 8 were enrolled, and in August 1832 Robert Charles Chester Eardley-Wilmot, aged 10, information from Rugby School Temple Reading Room.

<sup>116</sup> Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 146.

<sup>117</sup> CSO8/115/2400 Bicheno to Gell, 8 March 1844, pp. 78–79 and Bicheno's undated note to Auditor, p. 80; See K Fitzpatrick, *Sir John Franklin in Tasmania 1837–43* (Melbourne, 1949), pp. 182–90 for details of school.

<sup>118</sup> See CSO8/171/2397 pp. 35–42 for petitions from local residents who 'desire & intend to frequent the church which is intended to be built' in the 'upper part' of Goulburn Street 'or its neighbourhood'; CSO8/171/2397 Bicheno to Boyes, 11 May 1844, p. 47.

<sup>119</sup> CSO8/171/2397 Bicheno to Gell 8 May 1845, p. 53.

<sup>120</sup> CSO8/171/2397 Rev J P Gell advised Bicheno, 9 May [1845] pp. 54–55.

months, and not a chapel, Gell was told his salary would cease.<sup>121</sup> It was possibly a result of this, that in 1846 Nixon revived the plan for a college. In October, after Eardley-Wilmot's dismissal, Nixon established Christ College at Bishopsbourne and made Gell the warden. Nixon was also instrumental in the establishment of the Launceston Church Grammar School on 1 July 1846 and Hutchins School on 3 August 1846.<sup>122</sup>

The denominationalists finally achieved victory in March 1846, when Gladstone instructed Eardley-Wilmot to adopt the practice of New South Wales where church schools received financial assistance from the colonial government on the basis of one penny a day for each child attending. This was only achieved one month before Eardley-Wilmot was dismissed, and the task of implementing the assistance rested with Sir William Denison, who quickly became acquainted with the bitter character of sectarian differences in the colony.<sup>123</sup> By 1850 government schools in Van Diemen's Land copied the British and Foreign model, while those in New South Wales taught under the National system.<sup>124</sup> Meanwhile, the Catholics were also struggling to establish their own schools.

### **Roman Catholic schools and extension of religion**

On 20 September 1836 when Arthur reported on the proposed establishment of schools on the plan of the British and Foreign Society Schools, the Catholics were 'so unconsiderable' in number that one or two schools would suffice for them for many years. Less than four years later, Franklin transmitted an application from 'the Roman Catholic faith' of Hobart Town praying for assistance towards the establishment of a school for children of Catholic parents. On 6 October 1840 Lord Russell refused the application on the grounds that it was impossible to establish exclusive schools for every 'distinct' Christian community.<sup>125</sup>

Bishop Willson only found two struggling Catholic schools. He was determined to build his own but was blocked by the extreme poverty of his people and the thriftiness of the government in its unilateral dealings with a 'non-influential minority group'.<sup>126</sup> He 'begged' that Eardley-Wilmot provide a place where the children of 'poor Catholics in Launceston'

<sup>121</sup> CSO8/171/2397 Memo from Eardley-Wilmot to Gell, 19 May [1845], pp. 56–58, underlining in original.

<sup>122</sup> Roe, *Quest for Authority*, p. 23; Denison's two sons were students at Christ College. At the 1853 Annual Commemoration Denison said the more central Tunbridge would be a better situation. Christ College closed 27 May 1857, see Karl von Stieglitz, *The Story of the Pioneer Church in Van Diemen's Land* (Hobart, 1954), pp. 61–62.

<sup>123</sup> GO1/ 1/61 Gladstone to Wilmot (No. 55) 3 March 1846, pp. 9–97 in reply to Eardley-Wilmot's despatches of 13 June and 2 August 1845; McRae, 'Educational Controversies in Van Diemen's Land, 1847–55', p. 75.

<sup>124</sup> Roe, *Quest for Authority*, p. 6.

<sup>125</sup> CO280/188 (AJCP 539) 'Roman Catholic Establishment', p. 399.

<sup>126</sup> Southerwood, 'Bishop R W Willson, Teacher and Pastor', p. 11.

could be educated, his intention being to erect a school room on church land. The Catholics were willing to contribute £120 towards the intended building, which would cost at least £170, and he requested the government provide the extra £50.<sup>127</sup> According to the Colonial Secretary, the ‘state of the Colonial Revenue’ prevented the government providing the money.<sup>128</sup> As the next chapter will reveal, Bicheno’s reply is not surprising. The colony was in dire economic circumstances.

Willson welcomed Gladstone’s March 1846 decision that church schools would receive one penny or one farthing a day per child. By November the Catholics, with 180 children in the colony, had three schools: Hobart with 90 children; Launceston 40 and Richmond 30. In what appears to have been an attempt to explain the low figure, Vicar-General Hale explained, ‘many of our children frequent the government schools’.<sup>129</sup> Efforts to spread civilizing and socializing institutions in the colony led to some unusual arrangements. A church building at Bothwell was jointly used by the Church of England and Presbyterians in an ‘uneasy ecumenical arrangement’. Following a dispute, an appeal was made to the Colonial Office over whether the building belonged to the Church of England or whether the Presbyterian congregation had a claim to prevent this without an equivalent grant to their body. The matter was not settled, and dual use continued.<sup>130</sup>

A similar arrangement existed at Port Arthur. All denominations used the church where much of the decorative stonework and interior joinery was the work of the Point Puer boys. The large windows were plain glass, and the ornate three-tiered pulpit, was carved by a convict craftsman. Church attendance was compulsory, and each Sunday up to 1,100 people worshipped, the convicts marched by armed guards.<sup>131</sup> This arrangement was satisfactory while no ensign of any particular creed was erected, but once Stanley nominated Mr Durham, a Church of England clergyman to office, and ordered the church be consecrated, the different creeds could not conscientiously attend services.<sup>132</sup> Eardley-Wilmot decided not to ‘trouble’ Stanley with all the steps the convicts had taken to avoid attending church, ‘suffice to say’, that on 4 October 1843, 185 Catholic convicts refused to attend. Commandant Booth’s

<sup>127</sup> CA6/WIL 1C 9/33 Colonial Correspondence, Willson to Stanley, 11 August 1845.

<sup>128</sup> CA6/WIL 1C 10/34 Colonial Correspondence, Bicheno to Willson, 14 August 1845.

<sup>129</sup> Southerwood, ‘Bishop R W Willson, Teacher and Pastor’, p. 11; CA6/WIL 1C 22/64 Colonial Correspondence, Hale to Secretary of State, 14 November 1846.

<sup>130</sup> CO408/16 (AJCP 882), Russell to Franklin 9 September 1839, pp. 303–05 acknowledging Franklin’s despatch (No. 50) 8 March 1839; D I Henslowe, *Our Heritage of Anglican Churches in Tasmania* (Moonah, 1978), p. 15.

<sup>131</sup> Julia Clark, *Your Guide to Port Arthur* (Port Arthur, n.d. 2005?), p. 24.

<sup>132</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley ‘Private and confidential’ 4 November 1843, p 305–06.



response was to keep the convicts ‘in a room with proper books’ during Divine Service.<sup>133</sup> The Roman Catholics applied for a place of worship. Eardley-Wilmot denied the request, anticipating ‘every other Gang and station’ would submit a similar appeal. The expense of complying with such requests would be ‘enormous’, as well as buildings, the colony would need to increase the number of superintendents and officers.<sup>134</sup>

Nixon remained determined to uphold his authority, but by early 1846 differences had settled, or so Eardley-Wilmot thought. Nixon maintained his refusal to ordain religious instructors until mid-1846 when he visited England.<sup>135</sup> His leave was also to have the opportunity for his status to be clarified by the Archbishop of Canterbury, to put the special needs of the diocese and the evils of the convict system before the Home authorities, and to recruit candidates for the ministry of the colonial Church.<sup>136</sup> Nixon also gave evidence on the evils of the probation system of transportation before the House of Lords Select Committee on 23 March 1847.<sup>137</sup>

Nixon’s letters of 1844, forwarded by his brother-in-law Edward Coleridge to Gladstone, had convinced him that Eardley-Wilmot’s conduct seriously compromised the position of the Church of England in the colony.<sup>138</sup> As John Barrett commented, it was known, or suspected, in the colony that the Church clergy ‘had a hand in reporting, and exaggerating, Eardley-Wilmot’s misdemeanours’.<sup>139</sup> Gladstone had no sympathy for Nixon’s difficulties, and could not understand why he refused to co-operate. Gladstone was also angry about Coleridge, Nixon’s ‘mouthpiece’, who was ‘in no small degree’ responsible for Nixon writing the secret letter. Gladstone expected Nixon to ‘simply’ state he was ‘in error’ and that he had ‘made use of expressions injurious in a high degree’ to Eardley-Wilmot.<sup>140</sup> Gladstone was a high-church theologian whose first published work argued that only one Church should be supported by the state. Christianity was meant to ‘govern and pervade the whole of human life’, and politics was valuable only as far as it was ‘instrumental for the good of the church’.<sup>141</sup>

<sup>133</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley ‘Private and confidential’ 4 November 1843, pp. 307–08.

<sup>134</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley ‘Private and confidential’ 4 November 1843 p. 308.

<sup>135</sup> Robson, *A History of Tasmania: Vol. I*, pp. 404–10.

<sup>136</sup> CO280/193 (AJCP 542) Eardley-Wilmot to Stanley (No. 73) 20 April 1846, pp. 459–61; Nixon, *The Pioneer Bishop*, p. 50.

<sup>137</sup> UTA RS ‘Notes and correspondence 1940 Point Puer with typed copy of Report of Horne to John Franklin’; *Hobart Town Courier*, 1 December 1847, p. 2; Nixon returned to the colony in 1848.

<sup>138</sup> S G Checkland, *The Gladstones, a Family Biography, 1764–1851* (Cambridge, 1971) p. 306.

<sup>139</sup> *Hobart Town Courier*, 20 October 1847, p. 2; Barrett, *That Better Country*, pp. 132–33.

<sup>140</sup> BL Mss. 44365 [microfilm of original] Gladstone to Nixon, 24 June 1847, pp. 309–11.

<sup>141</sup> Checkland, *The Gladstones, a Family Biography, 1764–1851*, p. 306.

Nixon, who returned to the colony in 1848 (by which time Eardley-Wilmot had been dismissed and had died), saw himself as protecting the Church from the encroachment of the secular power in the form of the Lieutenant-Governor. As Kathleen Fitzpatrick has suggested, it appears that Nixon was constitutionally incapable of understanding that the position of a Bishop in Van Diemen's Land was radically different to England. In England there was one established Church. In the colony there were three whose ministers were paid from colonial revenue. Nixon's almost 'pathological pride' of office made him 'extremely touchy and difficult in personal relations'; he was at 'loggerheads' not only with Eardley-Wilmot, with his Archdeacon and senior chaplain, and also with the Roman Catholic Bishop.<sup>142</sup> Disputes between Catholic and Church of England clergymen were a continuing problem, and, despite Eardley-Wilmot's later instructions from his deathbed that the heads of churches should march together at his funeral, the Catholic priests, by 'rapid evolution, shot ahead of the procession, nearly ousting the Anglicans'. This episode symbolized the church and state tensions of the era.<sup>143</sup>

The main point of this chapter has been to demonstrate how in Van Diemen's Land the civil authorities claimed considerable authority over colonial chaplaincies. The dispute which developed over this issue was important in Eardley-Wilmot's recall. It was, in effect, the power of the Lieutenant-Governor versus the power of the Church, and an attempt by the Church of England to weaken his authority, but despite antagonism from Nixon, Eardley-Wilmot did not allow this to succeed. He adapted his policies to the realities of the colony. Less than twelve months earlier, the 'patriotic six', unofficial members of the Legislative Council also used measures to block Eardley-Wilmot's powers. This episode will be addressed in the next chapter.

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<sup>142</sup> Kathleen Fitzpatrick, 'Mr Gladstone and the Governor: The Recall of Sir John Eardley-Wilmot from Van Diemen's Land, 1846', *Historical Studies Australia and New Zealand*, Vol. 1 (April 1940–October 1941), p. 35; Border, *Church and State*, pp. 229–30.

<sup>143</sup> West, *The History of Tasmania*, p. 198; details of Eardley-Wilmot's funeral will be found in chapter ten.

## Chapter Eight

### Taxes, finances and elected representatives

With a decreasing revenue and an increasing debt, it would have taxed the powers of a more gifted statesman than Sir Eardley Wilmot to have managed the complicated affairs of the colony: it would, indeed, have been impossible for any man to have done so satisfactorily while hampered by the arbitrary and absurd mandates of Downing-street. It is, therefore, no wonder he was eventually brought into collision with the colonists, and especially with the independent members of the Legislative Council, an event which created excitement at the time, and contributed to the Governor's unpopularity to an extent which was hardly reasonable under the circumstances.<sup>1</sup>

In 1884, James Fenton (1820–1901), the first settler at Forth, expressed sentiments similar to those of John West in 1852, and as near contemporaries, it is reasonable to deem their remarks more relevant than those of later observers.<sup>2</sup> The arrival of 4,000–5,000 convicts in 1843 ‘pre-supposed’ a ‘lively labour-market’, but the tiny community of Van Diemen’s Land was unable to absorb the influx, its total population only 61,638.<sup>3</sup> The cost of the convict establishment was borne by the British government, and Kathleen Fitzpatrick observed how over 2,000 convicts escaped from custody in 1842–43. In her discussion she included costs of apprehending these convicts, the ‘cost of the judicial establishment to deal with their cases, the gaols to lodge them, and the clergy to reform them’.<sup>4</sup> The *Colonial Times* blamed Sir John Franklin for the situation. He found the colony ‘flourishing’, and apart from a ‘most obnoxious faction’, the people were ‘as happy as far as happiness can be found in a small community’, but was leaving the ‘colonists insolvent, and the Government bankrupt!’ The only lasting memento — a debt the colony was unable to pay.<sup>5</sup> Downing Street economic policies brought an inadequate source of revenue and a depression also made his administration difficult.

Since 1954, R M Hartwell’s extensively researched economic history of the colony with its detailed statistical tables has been the standard account of the economy, in particular, for the

<sup>1</sup> James Fenton, *A History of Tasmania from its discovery in 1642 to the present time* (Hobart, 1884) Facsimile edition (Hobart, 1978), p. 167.

<sup>2</sup> John West, *The History of Tasmania with copious information respecting the Colonies of New South Wales Victoria South Australia &c.* first published Launceston 1852. A G L Shaw (ed) (Sydney, 1981), p. 186; Paul Fenton, *James Fenton of Forth* (Melbourne, 2001), for details of James Fenton.

<sup>3</sup> R M Hartwell, *The Economic Development of Van Diemen’s Land 1820–1850* (Melbourne, 1954), p. 68 for population; GO33/ 1/46 Eardley-Wilmot to Stanley (No. 36) 5 December 1843, for Extract from Report of the Committee to enquire into the Finances of the Colony, pp. 827–40.

<sup>4</sup> Kathleen Fitzpatrick, ‘Mr Gladstone and the Governor: The Recall of Sir John Eardley-Wilmot from Van Diemen’s Land, 1846’, *Historical Studies Australia and New Zealand*, Vol. 1 (1940–41), pp. 40–41.

<sup>5</sup> *Colonial Times*, 1 August 1843, p. 2.

causes of the depression of the early 1840s.<sup>6</sup> Modern researchers have added very little about the colony's financial situation to that provided by earlier historians. This is shown in a 1968 study by S J Butlin who weaves monetary development into the 'fabric of the growth of the Australian economy' and describes domestic factors which affected local finances. He also details the liquidity crisis and its chain reaction, especially its effect on trade and bank deposits in the 1840s.<sup>7</sup> Noel Butlin provided a rival interpretation. He thought the impact of events external to the colonial economy, especially the timing and severity of the business cycle in the United Kingdom, had not been factored into the earlier works of S J Butlin, T A Coghlan, B C Fitzpatrick and E O G Shann.<sup>8</sup>

Richard Tuffin modelled the colonial labour market by using statistical data and newspapers, letters, diaries and contemporary colonial observations.<sup>9</sup> In so doing, Tuffin concluded, as the *Launceston Examiner* had implied in 1843, that 'It was the prisoner labour that made the land valuable' and hence affected the economy.<sup>10</sup> Probation, Tuffin claimed, 'robbed colonists of labour' and 'spewed forth a labour glut' as the colony was entering 'a severe depression in 1842'. The extra labour from New South Wales and the ticket-of-leave men, expensive for the free settlers to employ, resulted in failure to deliver the same returns to the settlers as before 1840, so the 'economic boom-to-bust cycle' was due to the ending of assignment.<sup>11</sup>

Hartwell considered the effect of land was measured by statistics and the resulting economy. Sharon Morgan expressed similar sentiments: the 'alienation of land is the first stage of exploitation'.<sup>12</sup> She also discussed problems which challenged the colonists, including the lack of tradition of breeding sheep, variability of the colony's climate and its effect on shorn sheep and new-born lambs, and the dilemma of finding a good blacksmith.<sup>13</sup> Morgan's emphasis on patterns and the effect of land settlement in the colony to 1830 demonstrated how economic problems became entrenched early in the colony's history.

<sup>6</sup> Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*.

<sup>7</sup> S J Butlin, *Foundations of the Australian Monetary System 1788–1851* (Sydney, 1968), pp. v, 321–32.

<sup>8</sup> N G Butlin, *Forming a Colonial Economy. Australia 1810–1850* (Cambridge, 1994), pp. 224–25 referring to T A Coghlan, *Labour and Industry in Australia: From the First Settlement in 1788 to the Establishment of the Commonwealth in 1901*, Vols. 1–4. Oxford: Oxford University Press, 1918; B C Fitzpatrick, *The British Empire in Australia. An Economic History, 1834–1939*. Melbourne: Melbourne University Press in association with Oxford University Press, 1941 and E O G Shann, *An Economic History of Australia*. Cambridge: Cambridge University Press, 1938.

<sup>9</sup> Richard Tuffin, 'Ants at the Picnic: Ending the Antipodean Free Lunch', BA (Hons) thesis, University of Tasmania, 2001.

<sup>10</sup> *Examiner*, Vol. II, No. 41, 24 May 1843, pp. 322–23; Tuffin, 'Ants at the Picnic', p. 81.

<sup>11</sup> Tuffin, 'Ants at the Picnic', pp. 79–98.

<sup>12</sup> Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, p. 31; Sharon Morgan, *Land Settlement in Early Tasmania. Creating an Antipodean England* (Carlton, 1992), p. 1.

<sup>13</sup> Morgan, *Land Settlement in Early Tasmania*, pp. 61, 62, 72.

This chapter will prove that the colony's desperate financial situation relating to the problems of taxes and finances was due to police and gaol costs being imposed on the colony by Britain, an imposition which resulted in protests in the Legislative Council over 'taxation without representation'.<sup>14</sup> Eardley-Wilmot's response to the situation will be investigated. It will be revealed that his actions were appropriate, and that he was treated unfairly, hence further discrediting Lord Stanley and Sir Robert Peel's claim that he was 'muddle-brained'.<sup>15</sup>

### The Legislative Council

The role, status and political significance of the Legislative Council between 1825 and 1856 was determined by three factors: economic conditions, the extent to which the Lieutenant-Governor was prepared to use his constitutional powers, and any conflict between his obligations as representative of the Imperial Government and that of the colonists. He could, however, to a certain extent determine the part the Legislative Council played in the organisation of government.<sup>16</sup>

Under the New South Wales Act of 1823 the New South Wales Governor had full jurisdiction over Van Diemen's Land until the Order in Council of 14 June 1825, which established an independent government for the colony, constituted a Legislative Council, and declared John Lewes Pedder the Chief Justice.<sup>17</sup> The constitutional framework of a 'five man advisory executive council together with a seven man' nominated Legislative Council or 'Crown Council', were both created by the 1823 New South Wales Act.<sup>18</sup> This Act, which was a temporary measure, was to expire at the end of the Parliamentary session after 1 July 1827. However, this was extended, and then confirmed by the Australian Courts Act 1828.<sup>19</sup>

The 1828 Act was designed to provide solutions to the most urgent problems, in particular, the administration of justice, because most criticism had been directed against the judicial

<sup>14</sup> A G L Shaw, *Convicts and the Colonies* (London, 1966), pp. 307–08.

<sup>15</sup> *The Papers of the Prime Ministers of Great Britain, Series Two. The Papers of Sir Robert Peel, Correspondence with Lord Stanley (Secretary for the Colonies)* British Library (hereafter BL) Mss. 40467 Stanley to Peel n.d. (late 1842?), pp. 315–16.

<sup>16</sup> Victor Korobacz, 'The Legislative Council of Van Diemen's Land', *Tasmanian Historical Research Association Papers and Proceedings* (hereafter THRA P&P), 21.1 (March 1974), p. 10.

<sup>17</sup> J M Bennett, *Sir John Pedder: First Chief Justice of Tasmania 1824–1854* (Sydney, 2003), pp. 56–57, in pursuance of the enabling power in s. 44 of 4 *Geo. IV c. 96*.

<sup>18</sup> *The Statutes of the United Kingdom of Great Britain and Ireland 4 George IV. 1823* Volume 63 (London, 1823), 'An Act for the better Administration of justice in New South Wales and Van Diemen's Land', 4, *Geo. IV, c 96, 1823 (New South Wales)* Clause XLIV, pp. 924–44; Terry Newman, *Representation of the Tasmanian People. Expanded edition 1803–1994* (Hobart, 1994), members' names under the Crown Council (1825–30), pp. 143–50.

<sup>19</sup> Bennett, *Sir John Pedder*, p. 6 how it was set to expire by s.45 and was extended by 7 & 8 *Geo. IV c. 73*.

system. Powers to impose taxes from earlier Acts continued, but the resulting revenue was henceforth to be appropriated by the Lieutenant-Governor and the Legislative Council (s.36 and s.37). Therefore, to this extent, the executive authority of the Lieutenant-Governor was decreased and depended on his powers to persuade councillors.<sup>20</sup> The Act also deprived him of powers to legislate in matters of urgency with or without the support of any one member. The dissent of a majority of members was enough to prevent the enactment of any proposal. During Eardley-Wilmot's administration the council required two-thirds of members to be present to be 'competent to act', a situation which became significant in October 1845. The Legislative Council was given limited revenue-raising powers and members could impose taxes for local purposes only. The Act also provided for the appropriation of revenue to be given to the Legislative Council when the Crown so nominated, at which time it was 'to appropriate all monies except that derived from the sale of Crown land'. The Legislative Council took over this latter function in 1833.<sup>21</sup>

On 30 January 1829 the Legislative Council was expanded to a 'Nominee Council' with eight official nominees (*ex-officio* or government officers), and six unofficial nominees (non-official members or private settlers). In 1837 Franklin advanced matters by providing public access to the Council to enable debates to be heard.<sup>22</sup> This 1828 Act, in place during Eardley-Wilmot's administration, was, according to Victor Korobacz, initially designed to impinge as little as possible on the authority of the Lieutenant-Governor.<sup>23</sup> The Act was replaced in 1850 when the British House of Commons passed an Act for the better government of the Australian Colonies which created a 'Blended Council' (bicameral within one chamber) with eight nominated official members and sixteen elected members.<sup>24</sup>

Sir John Franklin's administration had marked a new period in the history of the Legislative Council. In 1836 the Council assumed a larger and more significant role in colonial

<sup>20</sup> A C V Melbourne, *Early Constitutional Development in Australia* (St. Lucia, 1972), p. 152.

<sup>21</sup> *The Statutes of the United Kingdom of Great Britain and Ireland 9 George IV. 1828* Volume 68 (London, 1828), 'An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relating thereto', 9, Geo. IV, c.83, 1828 *Commonwealth (Australian Crts.)*, sec. XXI–XXIV, pp. 567–69; Korobacz, 'The Legislative Council of Van Diemen's Land', pp. 8–9.

<sup>22</sup> West, *The History of Tasmania*, p. 149.

<sup>23</sup> *The Statutes of the United Kingdom of Great Britain and Ireland 9 George IV. 1828* Volume 68 (London, 1828) 'An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relating thereto', 9, Geo. IV, c.83, 1828 *Commonwealth (Australian Crts.)*, pp. 558–75; Newman, *Representation of the Tasmanian People*, pp. 140–41; Korobacz, 'The Legislative Council of Van Diemen's Land', pp. 7–8.

<sup>24</sup> *The Statutes of the United Kingdom of Great Britain and Ireland 13 & 14 Vict. 1850* Volume 90 (London, 1850), 'Act for the better government of the Australian Colonies' 13 & 14 Vict. c.59, 1850. *Commonwealth (Australian Constitutions)*, pp. 346–57; Newman, *Representation of the Tasmanian People*, pp. 140–41.

government and politics and Franklin was instrumental in the Council gaining a better public image and an identity of its own than previously.<sup>25</sup> In his attempt to have the Council represent ‘all respectable classes of society’, he nominated non-official members who had been critics of Arthur’s administration and who were prominent in, or sympathetic to the movement for legislation by representation: Thomas G Gregson; W P Ashburner; W E Lawrence; Michael Fenton and William Kermode, men who saw themselves as representatives of ‘the people’ and guardians of the people’s rights and privileges.<sup>26</sup>

The prestige and political significance of the Legislative Council was greatest during the administration of Eardley-Wilmot, assisted by an Executive Council consisting of the chief officials of the colony — and for advice and formal legislative action, by the Legislative Council. Policy was formulated by the Executive Council, in which Eardley-Wilmot had a casting vote, the policy given legal status by legislation in the Legislative Council.<sup>27</sup> This assembly became the venue of a major conflict between the Executive (which was implementing British government policy), and non-officials who became identified with colonial interests. This clash, precipitated by an economic depression, increased financial burden on the colony by the implementation of Stanley’s probation system.<sup>28</sup> Eardley-Wilmot’s desperate measures for solving this problem will be the main focus of this chapter.

### **Finances: Colonial Chest and Commissariat (Military Chest)**

The Colonial Government managed its own finances, formally designated the Colonial Chest, details of which were included in ‘blue books’, the annual returns of statistics sent to the Colonial Office. The colony’s income for the Colonial Chest was derived from five main items. The largest was total fixed revenue, between 50 and 80 per cent of which was collected by the chief magistrate from customs made up of duties on colonial distillation, post office fees, licences and auction duties, rents on government property, fees of public offices and fines. The other four items were: incidental, loans in aid of revenue, imperial grants in aid of police and gaols and the Land Fund.<sup>29</sup>

<sup>25</sup> Korobacz, ‘The Legislative Council of Van Diemen’s Land’, p. 12.

<sup>26</sup> Sir John Franklin, *Narrative of some passages in the History of Van Diemen’s Land, during the last three years of Sir John Franklin’s administration of its government*. Facsimile edition (Hobart, 1967), p. 10; Korobacz, ‘The Legislative Council of Van Diemen’s Land’, pp. 13–14; Fenton’s wife Elizabeth wrote *The Journal of Mrs. Fenton, a narrative of her life in India, the Isle of France — Mauritius — and Tasmania during the years 1826–30*, published in London in 1901, and *Mrs Fenton’s Tasmanian journal 1829–30*.

<sup>27</sup> Alex C Castles, *Lawless Harvests or God Save the Judges: Van Diemen’s Land 1803–55: a legal history* (Melbourne, 2007), epilogue by Stefan Petrow, pp. 203–09.

<sup>28</sup> Victor Korobacz, ‘The Legislative Council of Van Diemen’s Land 1825–1856’, p. 205.

<sup>29</sup> Hartwell, *The Economic Development of Van Diemen’s Land 1820–1850*, pp. 237–39.

Access to areas in the new settlements of Port Phillip and South Australia caused a severe reduction in customs revenue and income from the sale or leasing of Crown land. The British government set a minimum sale price for Crown land in Van Diemen's Land of 12s 0d per acre, then raised it to £1 0s 0d, where between 1828 and 1838 it had been 7s 11½d per acre.<sup>30</sup> The maintenance of colonial gaols and police was a charge against the Land Fund, but in 1845, became a colonial expense. As already assessed in chapter five, Sir James Stephen knew the British government was embarrassed and the colony's financial situation was desperate as it had to pay police and gaol costs. Modern historian Stefan Petrow acknowledged that 'many colonists felt unhappy about paying the escalating police costs to control the increasing number of British criminals'.<sup>31</sup> After continuous agitation and continually arguing his case, it was near the concluding phase of Eardley-Wilmot's administration that the British Treasury again agreed to contribute an 'imperial grant' towards the upkeep of gaols and police.<sup>32</sup>

The bulk of Colonial Chest expenditure was absorbed by civil, judicial and ecclesiastical establishments, police, schools, pensions and military. The British government thought it 'reasonable' these costs were paid from the Chest as the colony would benefit. Despite this, the situation became 'unbearable during the post-1842 depression years'.<sup>33</sup> Income for the Commissariat (Military Chest), money for the convict system, was supplied by the British Treasury, and to whom the officers in control in the colony were directly responsible. While not prepared to find money directly for long-term investment in the interests of the free population of Van Diemen's Land, the British Treasury's expenditure in maintaining its own establishment in public works and by grants to the local government was important for the colony's economic development.<sup>34</sup>

In 1843 Hobart Town was described by Norah Nixon, the wife of Bishop Nixon, as 'magnificent ... the buildings and works for the most part look unfinished, but there is a great

<sup>30</sup> Fitzpatrick, 'Mr Gladstone and the Governor', p. 41; until 1831 land was mostly granted and not sold.

<sup>31</sup> Shaw, *Convicts and the Colonies*, pp. 307–08; Stefan Petrow, 'After Arthur: Policing in Van Diemen's Land 1837–1846', in M Enders and B Dupont (eds), *Policing the Lucky Country* (Sydney, 2001), pp. 179–80.

<sup>32</sup> Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, p. 237.

<sup>33</sup> Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, pp. 237–51 for more details on government revenue and expenditure; Richard Tuffin, 'The Evolution of Convict Labour Management in Van Diemen's Land: Placing the "Penal Peninsula" in a Colonial Context', *THRA P&P*, 54.2 (August 2007), p. 73; L Robson, *A History of Tasmania: Vol. I. Van Diemen's Land from the Earliest Times to 1855* (Melbourne, 1983), p. 418.

<sup>34</sup> Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, pp. 238–39.



deal in progress'.<sup>35</sup> The editor of the *Hobart Town Courier* was pessimistic. He expected the new Lieutenant-Governor to find 'a legacy of difficulties and disasters bequeathed to him' and a Finance Committee sitting 'in order to provide for the ordinary ways and means, the Treasury being nearly beggared'.<sup>36</sup> Realising the situation, Eardley-Wilmot was sympathetic to the plight of the colonists — nonetheless he was Britain's administrator rather than the colony's representative, and Colonial Office policy was driven by monetary considerations.

### **Falling revenue and implications**

During 1839 and 1840 the colony experienced short-term growth based on exports. Large shipments of grain were sent from Van Diemen's Land to New South Wales after their crops failed the previous season. Sheep and cattle were shipped to Port Phillip and South Australia, and colonial produce, mainly wool and whale oil, to England. At the same time income was boosted by English and Anglo-Indian capital seeking investment opportunities and by a credit expansion of the local banks. Land sales, the 'most sensitive criterion of colonial prosperity', doubled in 1839, and again in early 1840.<sup>37</sup> Following this growth, towards the end of 1840 sales reduced, followed by five years of depression which heightened the desire for elective participation in financial management, as enjoyed in New South Wales. This wish produced a demand for self government, emphasised the need for reform and gave the 'necessary impetus' to the movement for ending transportation and the granting of self-government.<sup>38</sup> The depression was not restricted to Van Diemen's Land. In 1842 in New South Wales there were 600 insolvencies in the free population of 100,000. The following year in Sydney, with a population of 37,000, there were 1,243 unemployed mechanics or labourers. Including these men's dependents, approximately 3,750 people faced destitution. George Gipps, the New South Wales Governor, believed the situation was caused by the 'reckless rapidity with which capital of all sorts, but especially banking capital, was poured into the colony to seek greedy gains at usurious interest between the years 1834 and 1840'.<sup>39</sup>

<sup>35</sup> Nixon's wife in a letter to her family dated 21 July 1843, Norah Nixon (compiler), *The Pioneer Bishop in Van Diemen's Land 1843–1863; Letters and Memories of Francis Russell Nixon DD First Bishop of Tasmania* (Hobart, 1953), p. 8.

<sup>36</sup> *Hobart Town Courier*, 18 August 1843, p. 2.

<sup>37</sup> For details of the grain and stock trade, see contemporary press e.g. *Colonial Times*, 2 April 1830, pp. 2–3 reporting the sale of wheat at the inflated price of 6s 0d to 7s 0d per bushel for 'ready money' and flour at £1 0s 0d to £1 2s 0d per cwt, and for NSW see S J Butlin, *Foundations of the Australian Monetary System 1788–1851*, pp. 315–22; R M Hartwell, 'The Van Diemen's Land Government and the Depression of the Eighteen Forties', *Historical Studies Australia and New Zealand*, 4.15 (November 1950), pp. 190–91.

<sup>38</sup> Hartwell, 'The Van Diemen's Land Government and the Depression of the Eighteen Forties', p. 187.

<sup>39</sup> Manning Clark, *A History of Australia III. The Beginning of an Australian Civilization 1824–1851* (Carlton, 1991), pp. 293–94.

A call was made for immigration into Van Diemen's Land, but it was thought wages were too high, and immigration, by increasing the working population, would further decrease wages and increase profits. In November 1841, £60,000 was granted for immigration (£36,000 for immigrants on the bounty system, £14,000 for 500 chosen farm labourers and £10,000 for female domestic servants). This resulted in several years during which labour was introduced into a falling market and the first probation pass-holders released for private employment.<sup>40</sup>

The non-official members of the Legislative Council believed the British government was responsible for the increase in the colony's debt, and they insisted Britain accept responsibility and relieve Van Diemen's Land of the financial burden. There was no agreement. The colonial situation became desperate, but Lord Stanley was unsympathetic to local problems. He did not accept the colonists' concerns, and was doubtful about the 'real need' to employ so many people to supervise and manage convicts — 'good and skilful management' of their labour would raise provisions and reduce costs.<sup>41</sup>

Eardley-Wilmot knew to balance his budget he must reduce public works and expenditure and would also need financial assistance from the British Treasury.<sup>42</sup> In February 1842 Stanley had admitted the task of drawing up Treasury estimates for the colony was 'impracticable', and did not think anyone would be able to 'surmount the difficulty'.<sup>43</sup> Excess expenditure before Eardley-Wilmot's arrival had been met by drawing on the Land Fund. As shown in table 8.1, this was fast disappearing and not being replenished. In November the 'necessities' of the times left him 'no alternative' but to abandon construction of a new Government House.<sup>44</sup>

Franklin's level of borrowing had been inadequate. Therefore, it was left to Eardley-Wilmot to present the problem to the Legislative Council. In his first address he detailed the major problem to face the government — the need to find a scheme to balance the colony's finances.

<sup>40</sup> *Hobart Town Gazette* (hereafter *HTG*) Vol. XXVI no. 1328, 12 November 1841, p. 1562; Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, p. 78.

<sup>41</sup> *British Parliamentary Papers* (hereafter *BPP*) *Correspondence and papers relating to convicts ships convict discipline and transportation 1843–47. Crime and Punishment. Transportation 7* (Shannon, 1969), Trevelyan to Stephen (No. 27), 18 March 1843, pp. 132–33.

<sup>42</sup> *HTG* Vol. XXVIII no. 1433, 27 October 1843, p. 1170.

<sup>43</sup> CO280/163 (AJCP 523) Stanley to Hope, 11 February [1842], pp. 42–45.

<sup>44</sup> *HTG* Vol. XXVIII no. 1437, 24 November 1843, pp. 1297, 1301; 'Wherever practicable,' wrote Eardley-Wilmot, 'I have stopped such works of public utility as might be left to a future day to complete.' He cited the new Government House, the college at New Norfolk, and Franklin's wharf, see Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, pp. 241–42; *HTG* Vol. XXVIII no. 1435, 10 November 1843, pp. 1237–38; *Historical Records of Australia* (hereafter *HRA*) *Series III, Despatches and Papers relating to the History of Tasmania, Volume vii* (Canberra, 1997) Arthur to Bathurst 23 September 1827, p. 237; The building of the new Government House will be detailed in chapter nine.

Through subsequent sessions he continued to emphasise the necessity to ‘maintain the strictest economy’, and his 1843 finance minutes revealed the urgency of the situation.<sup>45</sup> The anticipated revenue for 1842 had been £148,192 which was £10,494 below the estimate. Expenditure exceeded this by £10,937, while the anticipated expenditure for 1843 surpassed this by £134,900 and Eardley-Wilmot asked Stanley for a retrospective annual grant of £24,000 for the four years to wipe out the debt.<sup>46</sup> In February 1843 when Franklin ‘anticipated’ annual expenditure would exceed income by £17,907 he predicted if the ‘state of things’ continued, by the end of 1844 the colony would be ‘some thousands into debt’.<sup>47</sup> This forecast transpired.

**Table 8.1:** Land Fund balances 1836—45

The costs of police and gaols exceeded the Land Fund surplus by £171,032 between 1836 and 1845. Eardley-Wilmot's estimate was £104,177.<sup>48</sup>

YEAR	COST OF POLICE AND GAOLS £	LAND FUND SURPLUS £
1836	22,154	18,851
1837	36,809	30,315
1838	43,789	9,737
1839	35,838	29,721
1840	36,665	52,906
1841	35,826	47,276
1842	37,565	1,508
1843	40,278	10,049
1844	42,652	3,515
1845	46,778	6,460
<b>Totals</b>	<b>£378,354</b>	<b>£207,322</b>

Eardley-Wilmot continued his efforts to reduce expenditure — and in turn, colonial debt. He was supported by government members who unanimously voted for a resolution calling on

<sup>45</sup> GO33/1/55 Eardley-Wilmot to Gladstone 25 August 1846, pp. 1354–365; *Hobart Town Advertiser*, 24 November 1843, p. 2 with ‘Report of meeting of Legislative Council’ on 20 November 1843; *Cornwall Chronicle*, 27 January 1844 p. 2; CO280/153 (AJCP 518) Franklin to Stanley 24 February 1843, pp. 411–39.

<sup>46</sup> GO33/1/55 Eardley-Wilmot to Gladstone 25 August 1846, pp. 1354–365.

<sup>47</sup> CO280/153 (AJCP 518) Franklin to Stanley 24 February 1843, pp. 423–24.

<sup>48</sup> Hartwell *The Economic Development of Van Diemen's Land 1820–1850*, p. 249; GO33/1/55 Eardley-Wilmot to Gladstone 25 August 1846, pp. 1354–365; see also Hartwell, ‘The Van Diemen's Land Government and the Depression of the Eighteen Forties’, p. 194.

the Home Government to pay two-thirds of police and gaol costs.<sup>49</sup> He kept Stanley informed. On 30 November 1843 the weekly balance in treasury was only £3,221 2s 1d, free paupers' hospital expenses totalled £4,000, and at least £10,000 was for the expected demands on the government during the next fourteen days. In February 1844 the colonial treasurer's balance had been reduced to £800, so Eardley-Wilmot borrowed £5,000 at 8 per cent for three months from the Bank of Van Diemen's Land to meet the 'recent demands of the colony' when he hoped the Commissariat would be in a 'more favourable condition' to supply requirements.<sup>50</sup>

This chapter argues that when he presented the budget for 1844 and announced there would need to be drastic cuts in areas such as the distribution of rations to the unemployed and also pensions, Eardley-Wilmot was demonstrating an awareness of the need for the 'rigid application of public money' for 'public purposes'. His savings policy also resulted in public works being reduced to a minimum. A sub-committee inquiring into the growing number of insolvencies and the financial state of the colony recommended even more stringent retrenchments.<sup>51</sup> Despite this, when attempts to balance the budget failed, he resorted to Franklin's practice of borrowing from the Commissariat, which was, in effect, borrowing from the British Treasury. In 1843 Eardley-Wilmot borrowed £17,000 and the next year borrowings exceeded £50,000. On the contrary, by the abolition and reduction of public offices and works, by June 1844 savings totalled £13,000, and in August, £32,505.<sup>52</sup>

### **Financial discontent with Stanley's probation system**

As established in earlier chapters, Stanley stated the primary object of his system was to reduce British Treasury costs and to make convicts contribute 'to their own subsistence'.<sup>53</sup> The change in the system was accompanied by a change in the attitude of convicts who, according to one newspaper, developed an 'all too independent and insubordinate air'.<sup>54</sup> Employers, who were obliged to pay pass-holders a fixed wage, whereas previously they were only responsible for the upkeep of their assigned servants, were not impressed by the quality

<sup>49</sup> GO33/1/55 Eardley-Wilmot to Gladstone 25 August 1846, pp. 1354–365; CO280/153 (AJCP 518) Franklin to Stanley 24 February 1843, pp. 411–39.

<sup>50</sup> GO25/ 1/11 Eardley-Wilmot to Stanley (No. 44), 13 February 1844, pp. 101–03.

<sup>51</sup> GO33/ 1/46 Eardley-Wilmot to Stanley (No. 36) 5 December 1843, with Extract from Report of the Committee to enquire into the Finances of the Colony, pp. 827–40.

<sup>52</sup> *HTG* Vol. XXIX no. 1472, 26 July 1844, reporting Legislative Council meeting of 23 July 1844, pp. 884–85 and finance minute for 1845, pp. 863–67; Eardley-Wilmot to Stanley, 13 February 1844, 26 March 1844, 30 August 1844, 14 May 1846 all cited in Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, pp. 241–43.

<sup>53</sup> *HRA* I, xxii Stanley to Eardley-Wilmot 24 April 1843, pp. 709–11 in Stanley to Gipps 7 May 1843, pp. 709–12.

<sup>54</sup> *Hobart Town Advertiser*, 5 January 1844, p. 2; Korobacz 'The Legislative Council of Van Diemen's Land 1825–1856', p. 217.

of the more expensive probation labour. John Leake, in reply to Eardley-Wilmot's circular requesting his opinion on the convict population,<sup>55</sup> responded that probationers were 'not industrious generally speaking'.<sup>56</sup> Similarly, the press cautioned its readers how no man with 'common prudence' would hire a ticket-of-leave man who had been a probationer, as 'in five cases out of six' he was 'not skilled in the labour he undertakes'.<sup>57</sup>

In July 1844 following discussions between Eardley-Wilmot and the colonial auditor about the colony's financial concerns and the granting of warrants for loans, G T W B Boyes seemed satisfied the Lieutenant-Governor had made 'some important alterations' in the estimates.<sup>58</sup> He had either 'reduced or abolished' the 'useless and superfluous' offices and departments not connected with probation — thereby saving 'about £13,000 a year'. The extra costs involved in the employment of 686 ticket-of-leave men and pass-holders was 'very considerable' — £17,646. The separation of convicts from the colonial department also increased government expenditure, and the colony's takeover of several administrative areas, previously paid by the Commissariat, involved an even greater outlay for salaries. The revenue for 1843 was estimated at £130,720, but only £119,199 8s 7d was received.<sup>59</sup>

The revenue from the sale and leasing of Crown land was negligible, and police and gaol charges, normally offset by the Land Fund, had to be met almost entirely from ordinary colonial revenue. Eardley-Wilmot warned the Council of a grim future unless the British Treasury offered financial relief. He stressed that 'something like £60,000 should' be borne by Great Britain for the 'security, control, education, and administration of justice to her convicts'. Further retrenchments failed to close the gap between income and expenditure, and he had no alternative but to borrow from the Commissariat and the banks.<sup>60</sup>

The depression worsened. In 1844 agricultural produce brought ruinously low prices, cattle imported from Port Phillip rendered the local cattle of little value, sheep for mutton were supplied from New South Wales and wheat was imported from Valparaiso to Sydney, where a duty was based on Van Diemen's Land grain. As a result, Eardley-Wilmot begged that the

<sup>55</sup> TAHO TL PQ 365.9946 EAR Leaflet from Government House dated 3 September 1846 asking for the recipient's opinion on various aspects of convict life (this leaflet hand addressed to J Leake Esq.).

<sup>56</sup> UTA RS *Report on the Historical Manuscripts of Tasmania Number 3. The Leake Papers (1822–1917)* (Hobart, 1959) John Leake (from Campbell Town) to Eardley-Wilmot 31 September 1846, pp. 28–29.

<sup>57</sup> *Hobart Town Advertiser*, 5 January 1844, p. 2.

<sup>58</sup> UTA RS 25/2 (8) Boyes Diary, 4 July 1844 and 28 July 1844.

<sup>59</sup> *Austral-Asiatic Review*, (Finance minute 23 July 1844) 27 July 1844, p. 5.

<sup>60</sup> *Hobart Town Advertiser*, 26 November 1844, p. 2; GO33/ 1/47 Eardley-Wilmot to Stanley (No. 86) 26 March 1844, pp. 756–58; GO1/ 1/57 Stanley to Eardley-Wilmot (No. 391) 8 February 1845 acknowledging despatches No. 164 (22 July 1844) and No. 186 (30 August 1844), pp. 172–84.

colony's corn be permitted into England duty-free, the same as Canadian wheat.<sup>61</sup> At the Midland Agricultural Show in October 1844 Richard Dry echoed Eardley-Wilmot's thoughts. Dry hoped grain exports would open up a 'brighter and more cheering prospect' for the 'deserving and talented men' who had suffered from the 'sad reverses of the colony'.<sup>62</sup> Since 31 May 1831 public meetings had been a forum for protests. Increasingly, such meetings were held to object to the 'influx of moral pollution', to deplore how the colony was 'doomed forever to be the gaol of Great Britain', and to demand the end of transportation.<sup>63</sup> Protests had abated under Franklin, but a crisis erupted under Eardley-Wilmot. Public meetings detested 'unconstitutional taxation', and the town was placarded with posters declaring 'No Taxation without Representation'.<sup>64</sup>

There had been a large decrease in Customs receipts. These formed the greatest portion of ordinary revenue, and mid-year the estimated required revenue was £121,095, but the colony had only received £32,373. Eardley-Wilmot realised this shortfall could not be avoided because of the 'gradual falling off in the receipts' of several departments from which fees were paid or revenue derived, and also from a 'failure in the land fund, from which only £2000' was expected the following year (1845). In 1840, £58,443 had been collected.<sup>65</sup> In February 1844 when it was not possible to sell Treasury bills, he negotiated a loan with the Bank of Van Diemen's Land, and during March and also May he borrowed £15,000 from the Commissariat.<sup>66</sup> The financial situation of the colony continued in a similar way, and in November the finance committee met on five days in six to discuss the situation.<sup>67</sup> The revenue and expenditure covering this period is presented in table 8.2, which clearly displays the financial dilemma in which Eardley-Wilmot found himself, and about which he had little control, as many financial decisions affecting this balance were made before his arrival.

As this chapter specifies, Eardley-Wilmot regularly informed Stanley on the colony's deteriorating finances. Despite Stanley acknowledging two despatches in which Eardley-Wilmot provided estimates for 1844 and explaining the circumstances which forced him to

<sup>61</sup> Robson, *A History of Tasmania Vol. I*, p. 415.

<sup>62</sup> *Colonial Times*, 19 October 1844, p. 3; Eardley-Wilmot attended the show at Campbell Town.

<sup>63</sup> West, *The History of Tasmania*, p. 127; Shaw, *Convicts and the Colonies*, pp. 264–65.

<sup>64</sup> Brian Fletcher, *Colonial Australia before 1850* (Melbourne, 1986), p. 154; Korobacz, 'The Legislative Council of Van Diemen's Land 1825–1856', p. 264; Meetings commenced in February, see *Colonial Times*, 15 February 1845, p. 2; *Hobart Town Courier*, 2 August 1845, pp. 2–3.

<sup>65</sup> *Austral-Asiatic Review*, (Finance minute 23 July 1844) 27 July 1844, p. 5.

<sup>66</sup> GO33/ 1/47 Eardley-Wilmot to Stanley (No. 86) 26 March 1844, pp. 756–58; GO1/ 1/57 Stanley to Eardley-Wilmot (No. 391) 8 February 1845 acknowledging despatches No. 164 (22 July 1844) and No. 186 (30 August 1844), pp. 172–84.

<sup>67</sup> RS 25/2 (8) Boyes Diary, 21, 22, 23, 25, 26 November 1844.

borrow from the Bank of Van Diemen's Land, Stanley remained critical. The Lieutenant-Governor should not have borrowed from the Commissariat Chest. This was only for cases of 'urgent and special necessity'.<sup>68</sup> Despite his initial reaction, Stanley revised his instructions when he heard of Eardley-Wilmot's December borrowing, justified as a 'pressing emergency'. According to Stanley, from 16 February to the end of August Eardley-Wilmot had 'drawn ... £45,000 in addition to £6,500' from the Military Fund which Her Majesty's Government had 'felt it their duty to advance'. Stanley then made it plain that despite circumstances, borrowing was to cease. Her Majesty's Government felt 'bound to express their decided disapprobation' of Eardley-Wilmot's application for advances to the Military Fund (Commissariat Chest). He was to make more stringent efforts to 'equalize Colonial Revenue and expenditure ... and to repay the sums advanced from the Military Chest'.<sup>69</sup>

**Table 8.2:** Government revenue and expenditure 1836–48.<sup>70</sup>

YEAR	TOTAL REVENUE £	TOTAL EXPENDITURE £	BALANCE IN HAND £
1836	128,137	129,879	34,482
1837	137,355	137,465	20,941
1838	127,709	133,681	16,853
1839	142,525	142,525	11,393
1840	179,116	151,050	27,958
1841	185,804	160,974	56,628
1842	143,711	185,072	76,408
1843	135,260	166,556	35,048
1844	164,332	160,630	2690
1845	136,983	138,753	6392
1846	123,200	122,777	4622
1847	150,474	142,498	—
1848	129,545	136,193	—

Eardley-Wilmot repeatedly complained to Lord Stanley how 'the loss' of the Land Fund was responsible for the 'present inefficiency of our means to meet our expenditure'. As well as the increase in daily police expenditure 'India, Hong Kong, the Cape of Good Hope, America, the

<sup>68</sup> GO1/ 1/55 Stanley to Eardley-Wilmot (No. 242) 8 July 1844, in response to Eardley-Wilmot's despatches No. 41 (9 February 1844) and No. 44 (13 February 1844), pp. 31–34.

<sup>69</sup> GO1/ 1/56, Stanley to Eardley-Wilmot (No. 391) 8 February 1845 acknowledging despatches No. 113 (25 May 1844), No. 164 (22 July 1844) and No. 186 (30 August 1844), pp. 172–88; Korobacz, 'The Legislative Council of Van Diemen's Land 1825–1856', pp. 207–08.

<sup>70</sup> Hartwell, *The Economic Development of Van Diemen's Land 1820–1850*, p. 238.

Mauritius, and particularly Sydney’ all send ‘doubly-convicted criminals’ to the colony. He complained how they ‘pour in their felons’ of the ‘worst description’ who then become a liability to the colony through its ‘jurisdiction and expenditure’.<sup>71</sup> His only solution was taxation. He told Stanley he had decided to increase *ad valorem* duties from 5 to 10 per cent, and make the inhabitants of Hobart Town pay for water and street lights.<sup>72</sup> Legislative Council member Thomas Gregson opposed the impost on principle. It was unjust to tax people for burdens caused by the ‘extraordinary pressure of convictism’. Yet, distasteful to their feelings, a majority of the Council voted for the bill as a necessary expedient. The public was indignant, and Anthony Fenn Kemp, the veteran colonist also called for ‘No Taxation without Representation’.<sup>73</sup>

In February Boyes discussed the situation with Colonial Secretary Bicheno ‘particularly with respect to the Cash credit with the Commercial Bank’.<sup>74</sup> The Colonial Auditor understood that Eardley-Wilmot believed ‘he was right’ in going to the Legislative Council to sanction his proposal to borrow money from the Commercial Bank. It was ‘the safest plan, he might be otherwise surcharged for the whole amount’.<sup>75</sup> Also around this time Eardley-Wilmot proposed obtaining a loan (not exceeding £25,000) from the Bank. He planned to raise duties on imported foreign goods, to pay for the Hobart and Launceston water works by rates and for the Derwent Bridge at Bridgewater by tolls. In February 1845 he summoned the Council.<sup>76</sup>

The financial depression created anger, and colonists tended to blame Eardley-Wilmot and his executive for the state of affairs over which they had no elective control. New land and convict regulations, which in other circumstances might not have aroused such opposition, were inoperable in the depressed economy. It was unfortunate for both Franklin and Eardley-Wilmot that they were accountable in a time of depression when emerging feelings for self-government were increasing. Despite the situation, and in the face of opposition, Eardley-Wilmot moved new revenue bills. He told the Council that to assist in the ‘most desirable’ object of ‘equalising’ revenue to expenditure and ‘discharging’ the colony’s debt, ‘some assistance from the Public besides what is freely given by ourselves, is necessary’.<sup>77</sup>

<sup>71</sup> *BPP Crime and Punishment. Transportation 7*, Eardley-Wilmot to Stanley 24 January 1845, pp. 235–36.

<sup>72</sup> *BPP Crime and Punishment. Transportation 7*, Eardley-Wilmot to Stanley 24 January 1845, p. 235; *ad valorem* duties were import duties levied in proportion to the certified value of merchandise or goods.

<sup>73</sup> Fenton, *A History of Tasmania from its discovery in 1642 to the present time*, pp. 167–68.

<sup>74</sup> RS 25/2 (8) Boyes Diary 18 February 1845.

<sup>75</sup> RS 25/2 (8) Boyes Diary 5 February 1845; *Austral-Asiatic Review*, 20 February 1845, p. 3, the Legislative Council opened the previous day.

<sup>76</sup> *HTG* Vol. XXX no. 1503 25 February, 1845, pp. 223–26.

<sup>77</sup> *HTG* Vol. XXX no. 1525 (Legislative Council meeting of 30 July 1845), 5 August 1845, pp. 953–56.



Petitions and protests followed. Settlers insisted such taxation would be unnecessary if the Imperial Government either paid for the police and gaol establishment or abandoned its probation system — if not its policy of convict transportation. The financial crisis would not have arisen had the colonists been given representative government and control over their own destiny. The crisis had to be settled immediately, so Eardley-Wilmot sought approval for unauthorised borrowings, a situation which James Stephen at the Colonial Office realised was ‘unavoidable’. The concessions Treasury had so reluctantly and belatedly made over the cost of police and gaols in 1845 were, according to Stephen, acknowledgment that the financial crisis was partly British Treasury’s fault.<sup>78</sup> It was, however, before this dispensation was known in the colony that the Legislative Council became the focus of attention.

### **Legislative Council: the politics of the ‘patriotic six’**

The Lieutenant-Governor also had to deal with increasing inflexibility in the Legislative Council. The road and ferry tax which he intended introducing was opposed, and in August 1845 the body rejected two bills, one for repairs to the main road from Hobart Town to Launceston, the Highway Bill (involving a turnpike), and the Bill for ‘Lighting the Town of Hobart’. The introduction of these bills was in direct response to a Colonial Office instruction that he raise further revenue by local taxation.<sup>79</sup> Both were defeated by the ‘determination of certain members’ who formed a majority, stating that ‘no bill in aid of the Colonial Revenue should pass’ while the Home Government did not pay the expense of police, judicial and gaols. Consequently, Eardley-Wilmot adjourned the Legislative Council to allow time ‘to review the Estimates’, which he hoped to reduce in order to meet the additional expenditure ‘thrown upon the Colony’ by the rejection of the bills.<sup>80</sup>

Opposition was led by Gregson, who thought the colonists were ‘unjustly charged’ an ‘enormous’ amount ‘purely for convict purposes’. Expenses had ‘paralysed the energies of the people, exhausted the Colonial Treasury and brought the government to a state of bankruptcy’. Opposition members were determined to resist taxation until the British Government

<sup>78</sup> A G L Shaw, ‘Three knights: Sir James Stephen, Sir John Franklin and Sir John Eardley-Wilmot’, *THRA P&P*, 36.4 (December 1989), p. 150; GO33/ 1/52 Eardley-Wilmot to Stanley (No. 125) 26 August 1845, pp. 653–67; *Colonial Times*, 15 August 1845, pp. 2–3 for more on expenditure; CO280/186 (AJCP 537) James Stephen’s note to Lord Lyttelton, 27 April [1846] pp. 173–74 after Eardley-Wilmot to Stanley (No. 229) 17 December 1845, pp. 169–72; Korobacz ‘The Legislative Council of Van Diemen’s Land 1825–56’, p. 16.

<sup>79</sup> Robson, *A History of Tasmania Vol. I* p. 422; see also S Petrow, ‘A Painful Birth: Municipal Government in Hobart Town 1845–57’ *THRA P&P*, 49.3 (September 2002), pp. 203–24, esp. p. 209.

<sup>80</sup> In CO280/185 (AJCP 537) Eardley-Wilmot to Stanley (No. 170) 5 November 1845, pp 167–68 Eardley-Wilmot referred Stanley to his despatch (No. 125), which is GO33/ 1/52 Eardley-Wilmot to Stanley (No. 125) 26 August 1845, pp. 653–67.

paid £40,000 or £50,000 annually for police and gaols.<sup>81</sup> Gregson, described by Eardley-Wilmot as ‘radical’ and ‘Jacobinical’, was joined in opposition by Michael Fenton, William Kermode, Richard Dry and John Kerr, who all had substantial colonial investments.<sup>82</sup>

Opposition to Eardley-Wilmot’s attempts to fulfil Colonial Office instructions further inflamed the situation. Colonial Secretary Bicheno claimed the policy of parallel representation and taxation was a wild revolutionary idea, a product of American independence. He then compared the parent country to the hen and the colonies to chickens. Constitutional history showed it was the ‘prerogative of the crown to tax the people’. Customs were not taxes, as the public was not compelled to use the articles on which they were levied.<sup>83</sup> Around this time Edward Kemp, son of wealthy merchant Anthony Fenn Kemp, attacked Eardley-Wilmot in a satirical verse published in *A Voice from Tasmania* (1846). According to Kemp:

This is the age of Road Acts — a Street Act  
Our sapient Councillors should first enact.

Sir Eardley vilifies us with impunity,  
And tells Lord Stanley, we’re a bad community ...<sup>84</sup>

The Council met again on 31 October 1845, and the cry of ‘no taxation without representation’ was elevated when Eardley-Wilmot presented the 1846 estimates ‘further reduced’ to equalize expenditure and revenue, leaving the balance of the proceeds of the Land Fund (after subtraction of costs) as payment towards colonial debt. He was forced to use both his deliberative and casting vote, but the members who opposed the previous meeting ‘opposed the passing of the Estimates’ until police and gaol expenses were paid by Britain. Following the third reading, the ‘patriotic six’, as the opposition members became known: Thomas George Gregson; Michael Fenton; Richard Dry; William Kermode; John Kerr and Charles Swanston resigned their seats and walked out of the Chamber leaving the Lieutenant-Governor without a quorum of the required ten men, and without any Appropriation Act.<sup>85</sup>

The depression had rendered the colony bankrupt, and because of large land holdings, all six men were disadvantaged. It is reasonable to conclude each man’s action was, in part, due to

<sup>81</sup> *Hobart Town Advertiser*, ‘Report of Legislative Council Meeting of 12 August’, 15 August 1845, p. 3.

<sup>82</sup> Robson, *A History of Tasmania Vol. I*, pp. 422–23.

<sup>83</sup> West, *The History of Tasmania*, pp. 184–85.

<sup>84</sup> TAHO TC Edward Kemp, *A Voice from Tasmania* (Hobart Town, 1846), pp. 33–34.

<sup>85</sup> CO280/185 (AJCP 537) Eardley-Wilmot to Stanley (No. 170) 5 November 1845, pp. 167–79; Korobacz, ‘The Legislative Council of Van Diemen’s Land 1825–56’, See also R J Brain, ‘Thomas Gregson: A Tasmanian Radical’ (Hobart, 1955) pp. 86–88; For the ‘patriotic six’ walk-out, see *Hobart Town Advertiser*, 4 November 1845, pp. 2, 4 and *Examiner*, Vol. IV No. 350, 1 November 1845, pp. 698–99.

his personal situation: Sir Richard Dry (1815–69) was the only native-born ‘member’ of the six. He was the son of an Irish political convict who arrived at Port Jackson in 1800 and came to Van Diemen’s Land in 1804 with Colonel Paterson to the first settlement in the north of the colony. When Richard Dry was born the family was well established with considerable land, wealth and social standing. Following his father’s death in 1843, he inherited the Quamby estate, a social gathering place for the landed gentry. Affectionately known as ‘Dicky’, he was a key figure in the fight to end transportation, a member of the committee which drafted the Tasmanian constitution, and the state’s first native-born Premier.<sup>86</sup>

Like Dry, Thomas George Gregson (1798–1874) was one of the largest employers of convict labour on his 2,500 acre grant ‘Northumbria’ at Jericho. On his second land grant, of 1,000 acres, he built ‘Restdown’, which became the town of Risdon. Unlike Dry, Gregson conducted his public life with violence and extravagance, which caused him to be feared.<sup>87</sup> In 1832 he launched his newspaper, the *Colonist*, financed jointly with George Meredith, and in 1857 was Tasmania’s second premier for two months.<sup>88</sup> Michael Fenton (1789–1874) who nominated to the Legislative Council in 1840 had served as Captain in the 13<sup>th</sup> Light Infantry in Burma and India. He sold his commission in 1828 and arrived in the colony in 1829. He received a land grant of 1,970 acres at Fenton Forest Glenora, where he was a large employer of convict labour. Fenton also gained wealth from shipping timber to Melbourne.<sup>89</sup>

Charles Swanston (1789–1850) had a similar background to Fenton. By 1819 he was a Captain in the British Army and because of reductions, in 1821, lost his command and became military paymaster in the provinces of Travancore and Tinnevely. In 1828, in ill-health, Swanston was granted one year’s leave in Van Diemen’s Land, where, with his family he arrived in January 1829, and soon purchased property, including Newtown Park at New Town. At the expiration of his leave, the controversial Swanston briefly returned to India to resign his appointment, finally settling back in the colony in May 1831. In November he was appointed managing director of the Derwent Bank, in 1834 he introduced the overdraft system

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<sup>86</sup> Louise James, ‘Richard Dry (1815–69)’, in A Alexander (ed), *The Companion to Tasmanian History* (Hobart, 2005), p. 110; John Reynolds, ‘Dry, Sir Richard (1815–69)’, *Australian Dictionary of Biography* (hereafter *ADB*) 2006 [<http://www.adb.online.anu.edu.au/biogs/A010313b.htm>]; W V Teniswood, ‘Dry, Richard (1771–1843)’, *ADB* 2006 [<http://www.adb.online.anu.edu.au/biogs/A010312b.htm>]; Clark, *A History of Australia III*, p. 325.

<sup>87</sup> Clark, *A History of Australia III*, p. 325.

<sup>88</sup> F C Green, ‘Gregson, Thomas George (1798–1874)’, *ADB* 2006 [<http://www.adb.online.anu.edu.au/biogs/A010438b.htm>]

<sup>89</sup> L L Robson, ‘Fenton, Michael (1789–1874)’, *ADB* 2006 [<http://www.adb.online.anu.edu.au/biogs/A010352b.htm>]; Paul Fenton, ‘The Fenton Family’, Alexander (ed), *The Companion to Tasmanian History*, p. 133.

into Australian banks, and then established the Derwent Savings Bank.<sup>90</sup> Swanston was influential in the Montagu dispute which resulted in Franklin's recall. Another of the patriotic six, John Kerr had, in 1827, also been a director of the Derwent Bank.<sup>91</sup>

The sixth member of the group was William Kermode (1780–1852) who arrived in Hobart Town in 1819. He made at least three voyages to England, and in 1821, following Lieutenant-Governor Sorell's request, took Aboriginal boy, George Vandiemer. Kermode returned for the boy in 1827. After being granted 1,000 acres and purchasing a further 2,000, Kermode developed a property he named 'Mona Vale' after 'Castle Mona', the original home of the Dukes of Atholl on the Isle of Man. The Duchess of Atholl had been one of his patrons.<sup>92</sup>

While the official members of the Legislative Council were obliged to vote with the Lieutenant-Governor on all government questions, the non-official members were only bound to assist in measures necessary for the colony's benefit. The nature of their powers and the proper mode of their exercise were subjects of dispute, and the Colonial Office remained silent about an explanatory letter from the six, followed by a printed apology. Their letter, *A Statement of the facts and circumstances which led to the Resignation of the Non-Official Members of the Legislative Council of Van Diemen's Land in the October Session of 1845* argued they had been expected to vote for expenditure which the colony could not afford, and which would have added 'alarmingly' to the colony's debt.<sup>93</sup>

It has been suggested the resignation of the 'patriotic six' was timed to coincide with a 'highly dramatic' movement. Almost immediately after bringing 'accusations of unconstitutional practices' against the Lieutenant-Governor with the 'backing of an eminent, respected and popular attorney, and which were not successfully refuted by the executive, they were successful in establishing legitimacy for their action'. By 'capturing' public opinion, the six aimed to 'make it impossible' for Eardley-Wilmot to fill the vacancies. Consequently, they prevented the passage of the estimates and pressured both the colonial and British governments.<sup>94</sup> It appears that Eardley-Wilmot accepted the resignations because the six

<sup>90</sup> Charles Swanston, 'Swanston, Charles (1789–1850)' *ADB* 2006 [<http://www.adb.online.anu.edu.au/biogs/A020460b.htm>]

<sup>91</sup> Robson, *A History of Tasmania Vol. I*, pp. 257–58.

<sup>92</sup> E J Cameron, 'Kermode, William (1780–1852)' *ADB* 2006 [<http://www.adb.online.anu.edu.au/biogs/A010046b.htm>]; Leonie Mickleborough, *William Sorell in Van Diemen's Land Lieutenant-Governor, 1817–24. A Golden Age?* (Sandy Bay, 2004), pp. 86–87.

<sup>93</sup> Robson, *A History of Tasmania: Vol. I*, p. 424.

<sup>94</sup> Korobacz, 'The Legislative Council of Van Diemen's Land 1825–1856', p. 252.

refused to co-operate in passing the Bills, which ‘amounted to a virtual renunciation of office, and rendered their own formal retirement sooner or later inevitable’.<sup>95</sup>

After less than three months, in late December 1845, Eardley-Wilmot announced the appointment of six new legislators: a pastoralist from Fingal, Frederick von Stieglitz; Edward Bisdee a farmer from Melton-Mowbray; Henry Reed, pastoralist and Launceston merchant prominent in Methodist circles; Cornelius Driscoll, manager of the Hobart branch of the Bank of Australasia; John Leake, landowner in the Campbell Town district and Henry Hopkins, Hobart merchant and leading Congregationalist layman.<sup>96</sup> These nominees, who at times opposed official policy, did permit Eardley-Wilmot to govern. The *Hobart Town Courier* claimed they were ‘assembled expressly and solely for carrying out imperial views, however arbitrary — however unjust’, and, however ‘respectable’ their general character, they would probably not find ‘much favour in the eyes of the people’.<sup>97</sup>

The new Legislative Council did not meet until March 1846 when the estimates for the year were not passed, and the government was severely embarrassed. The new members, whose appointments later proved to be unconstitutional, were less compliant to the executive than expected, and their arguments were similar to those of the ‘patriotic six’. Leake opposed the discussion of any financial legislation until receipt of the Secretary of State’s intention about the payment of the judiciary and police and gaols expenditure. Reed’s move to delay the Bill was only supported by Leake, Hopkins and von Stieglitz. After the Bill was lost, Reed and Hopkins submitted their resignations.<sup>98</sup>

It is significant, that in April 1846 Sir James Stephen admitted the British Government’s ‘ill-advised’ and ‘non-considered pledge’ to abandon transportation to New South Wales and to throw the ‘whole current’ of convicts into Van Diemen’s Land, caused the colony’s constitutional crises. Equally vital (especially as it affected Eardley-Wilmot’s administration), is Stephen’s admission to Lord Lyttelton that Colonial Office staff were responsible for agreeing to replace convict assignment with probation and that House of Commons’ members

<sup>95</sup> GO33/ 1/53 Wilmot to Stanley (No. 224) 15 December 1845, pp. 834–63.

<sup>96</sup> *Hobart Town Advertiser*, 26 December 1845, p. 2.

<sup>97</sup> *Hobart Town Courier*, 17 January 1846, p. 2.

<sup>98</sup> *Observer*, ‘Report of the meeting of the Legislative Council of 24 March 1846’, 27 March 1846, *The Spectator*, 31 March 1846 seems to have been the only newspaper to make any comment, see Korobacz, ‘The Legislative Council of Van Diemen’s Land 1825–1856’, pp. 264–65.

were responsible for imposing impractical rules on probation which simply destroyed ‘one evil’ (assignment) and replaced it with the ‘other & much greater evil’.<sup>99</sup>

Stephen finally admitted to Lyttelton that Eardley Wilmot had ‘been right enough in substance’. Only three paths had been open to him: he could have disbanded the police, which might have produced ‘anarchy among the vilest society on this earth’; he could have drawn bills on the Treasury with a moral certainty of ‘their being dishonoured’, or his third path — which Stephen thought Eardley-Wilmot had wisely judged to have taken — that of having cast his own vote to force the Appropriation Act through the Legislature. He had ‘acted wisely’, but ‘obviously spoke and wrote indiscreetly’. To blame him for what had been ‘done or omitted’ would be ‘very hard’; to ‘absolve him’ for his actions, would be ‘impossible’, and in the six counsellors resigning, he was ‘substantially right’.<sup>100</sup>

Lyttelton mostly agreed with Stephen, but they differed over the best system of convict management. Lyttelton preferred probation, but agreed the ‘real blame, beyond all doubt’ was with the ‘Home Government’. Aware the ‘question of replacing’ Eardley-Wilmot was ‘pressing for immediate decision’, he thought the composition of the Council should ‘be adjourned’ until a decision had been made.<sup>101</sup> Home Office decisions were, therefore, much of the reason for the colony’s financial problems. As such, Eardley-Wilmot was exonerated for his course of action, thereby substantiating that he was neither treated impartially nor ‘muddle-headed’.

### **Colonial recovery**

Although by early March 1846 the colony’s economy showed signs of recovery and balancing the budget had been made easier by increasing prosperity, the government’s financial situation was still desperate. Granted approval from the Council, Eardley-Wilmot was forced to borrow another £7,000 from the Commercial Bank, making a total debt to the bank of £32,000. The debt to the Commissariat Chest was ‘not less than £75,000!’<sup>102</sup> The colonists objected to public debt, but it was taxation which precipitated revolt. The Customs Bill, which the Council passed, increased duties from 5 to 15 per cent — the main commodities affected being tea and sugar. This last measure amounted to a tax on the colonists, but later in the year

<sup>99</sup> CO280/186 (AJCP 537) Stephen’s note to Lord Lyttelton, 27 April [1846] pp. 173–74 after Eardley-Wilmot to Stanley (No. 229) 17 December 1845, pp. 169–72.

<sup>100</sup> CO280/186 (AJCP 537) Stephen’s note to Lord Lyttelton, 27 April [1846] pp. 173–74 after Eardley-Wilmot to Stanley (No. 229) 17 December 1845, pp. 169–72.

<sup>101</sup> CO280/186 (AJCP 537) Lyttelton’s note, 28 April [1846] p. 174 after Stephen’s note to Lyttelton, 27 April [1846] p. 174.

<sup>102</sup> *Hobart Town Courier*, 18 February, p. 2 and 4 March 1846, p. 2.

when attempts were made to raise revenue by such means as turnpike duties on roads, the Council, sensitive to public opposition, rejected it. With economic recovery imminent, trade increased. Revival was accompanied by an increase in revenue, and finally in August Eardley-Wilmot received a despatch from Gladstone. In exchange for the resumed control of the Land Fund, the British government would contribute £24,000 annually.<sup>103</sup> In spite of this, the Fund, for the first time since 1841, showed signs of recovery, mainly from leasing waste land.

In the Legislative Council William Orr, Hobart Town merchant, assumed the seat previously occupied by Hopkins. The remainder of the March session continued uneventfully, and a large quantity of legislation, previously delayed, was enacted. The new unofficial members made no attempt to form an opposition, and in September 1846 Reed was replaced by William Race Allison, the ‘Pot-boy’ from Macquarie River.<sup>104</sup> The session was brought to an abrupt end on 24 September by the sudden arrival of the ‘duplicate’ of Gladstone’s official despatch dated 30 April 1846, advising Eardley-Wilmot he was dismissed. It was his misfortune, as Franklin before him, to have been Lieutenant-Governor at a time of depression and increasing demands for self-government.<sup>105</sup> The varied reactions of leading citizens including members of the Legislative Council to Eardley-Wilmot’s dismissal will be addressed in chapter ten.

In July 1846, when Earl Grey succeeded Gladstone as Secretary of State, he suggested a temporary suspension of convict transportation. The ‘patriotic six’ incident, years of anti-transportation campaigning in the British press, and the colony’s weak economy resulted in a two-year suspension between 1846 and 1848.<sup>106</sup> The suspension only applied to male convicts, and fully laden convict transports of females kept arriving.<sup>107</sup> The ‘suspension’ period was later described by anti-transportationists as a ‘temporary hope doomed to disappointment’. On 5 March 1847 Grey realised ‘nothing less than the total abolition’ of transportation would help, as the colony had been ‘almost ruined’ by convicts. Meanwhile, Eardley-Wilmot was instructed to ask locals to document their views on the ‘momentous

<sup>103</sup> Gladstone to Wilmot 14 March 1846 cited in Korobacz, ‘The Legislative Council of Van Diemen’s Land’, p. 16.

<sup>104</sup> RS 25/2 (8) Boyes Diary 16 September 1846.

<sup>105</sup> The original of the official (public) despatch (No. 104) and Gladstone’s original of his ‘Secret’ letter arrived on the *Java*, see *BPP Correspondence and papers relating to Crown Lands settlement and other affairs in Australia 1847–48. Colonies Australia 10* Eardley-Wilmot to Gladstone, 5 October 1846, pp. 34–35 and Council Meeting 6 October 1846 p. 48 in Eardley-Wilmot to Gladstone, 26 September 1846, pp. 43–53.

<sup>106</sup> For some of this campaign see F G Clarke, *The Land of Contrarities: British attitudes to the Australian colonies 1828–1855* (Melbourne, 1977), pp. 10–12; Terry Newman, *Becoming Tasmania: Renaming Van Diemen’s Land* (Hobart, 2005), p. 95.

<sup>107</sup> Kirsty Reid, *Gender, crime and empire* (Manchester, 2007), p. 208, Charles Bateson, *The Convict Ships 1787–1868* (Sydney, 1988), pp. 392–94.

subject' of convict administration.<sup>108</sup> Their views were to become a subject for his successor as convicts continued arriving.

Despite major problems, most of which he inherited, Eardley-Wilmot had achieved some success. The British Treasury was persuaded to accept responsibility for two-thirds of the police and judicial costs, and ultimately Eardley-Wilmot was able to claim that his term saw the lifting of the depression, although some of this may have been due to normal market improvements. Nevertheless, he became desperately unpopular, and relations with most colonists grew bitter.<sup>109</sup> He had, though, saved his government from bankruptcy, decreased public expenditure, handled probation labour at its most critical stage and prevented rebellious outbreaks. He also protected British interests and the year 1846 saw the climax of opposition which had gained so much momentum from the depression. His illness and subsequent death intruded before the first great anti-transportation meeting on 6 May 1847, following which, the Queen was petitioned asking that transportation to the colony be abolished.<sup>110</sup> Later that year there was resistance to Grey's suggestion (but later hastily withdrawn), that criminal offenders in New South Wales be sent to Van Diemen's Land.<sup>111</sup>

When Sir William Denison assumed office in late 1846, the financial problems of the colonial government were at an end. Although the colony's prosperity had improved, discussions about the character of the Council and its powers of taxation remained sensitive. To allay resentment the 'patriotic six' were reinstated, but as Denison could not act until the Royal warrants were received, he governed without a legislature during 1847 while awaiting an authoritative ruling from England.<sup>112</sup> An Act to licence dogs (at a small fee) was responsible for political upheavals in 1847 and 1848. Attacked as unconstitutional, the Act was declared illegal by the judges of the Supreme Court.<sup>113</sup>

The public finances of the colony were once more satisfactory. The end of transportation and the attainment of self-government were in sight, and by 1848 the British Government

<sup>108</sup> Newman, *Becoming Tasmania*, p. 95.

<sup>109</sup> Shaw, 'Three knights', pp. 150–51.

<sup>110</sup> *Hobart Town Courier*, 8 May 1847, p. 2; Hartwell, 'The Van Diemen's Land Government and the Depression of the Eighteen Forties', pp. 196–97.

<sup>111</sup> *HTG* Vol. XXXIV no. 1733, 19 June 1849, pp. 393–94 for details of Grey to Denison 23 December 1848.

<sup>112</sup> *HTG* Vol. XXXII no. 1633, 3 August 1847, pp. 795–96 for Legislative Council meetings 26, 30 July 1847.

<sup>113</sup> See Peter Howell, 'The Van Diemen's Land Judge Storm', *University of Tasmania Law Review*, Vol. 2, 1966, pp. 253–69, especially p. 256–59 for the Dog Act case and where Eardley-Wilmot's son, Police Magistrate Augustus Hillier Eardley-Wilmot convicted John Morgan, editor of the *Britannia and Trades' Advocate*, of keeping an unlicensed dog; *Colonial Times*, 2 November 1847, p. 3.



abandoned all claims to the Land Fund.<sup>114</sup> Imperial authorities began to yield, and in September 1848, Denison, in the most optimistic financial minute in six years, spoke expansively of public works: roads, wharves, bridges and buildings.<sup>115</sup> The first election in the colony was held in 1851 with twenty-four seats, two-thirds (sixteen) members elected, all of whom were anti-transportationists.<sup>116</sup>

As shown in this chapter, colonial expansion and a lack of appropriate and adequate finance from British authorities for their own penal colony, and the requirements of administering a system of British design and implementation severely hampered and damaged Eardley-Wilmot's administration and brought the colony near bankruptcy. A lack of understanding and direction from the Colonial Office — Sir James Stephen and Lord Lyttelton admitted that the 'real blame' was with the British government — meant Eardley-Wilmot was a victim of British policy and inadequacy, thereby discounting Stanley's claim that he was incompetent. As well as matters discussed in this chapter, other aspects of the colony also required the Lieutenant-Governor's close attention. Public recreation space, especially on the public domain, the growth of social activities and their associated developments will be addressed in the next chapter.

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<sup>114</sup> *HTG* Vol. XXXIII no. 1693 (Legislative Council 12 September 1848), 19 September 1848, pp. 823–30.

<sup>115</sup> *HTG* Vol. XXXIII no. 1694, 26 September 1848 (Finance Minute for 1849) 21 September 1848, pp. 868–75.

<sup>116</sup> Castles, *Lawless Harvests or God Save the Judges*, epilogue by Stefan Petrow, pp. 204–05; Robson, Robson, *A History of Tasmania: Vol. I*, p. 515.

## Chapter Nine

### Growth of colonial society

As well the administration of the convict system, which was the prime concern of the British government, Sir John Eardley Eardley-Wilmot's management extended to other aspects of development. His agricultural interests in Warwickshire were influential in his establishment of the Royal Society of Tasmania, in the development and construction of facilities on the public domain, and, at the colonial gardens. These matters will be discussed in this chapter, with brief references to other scientific societies and the Anniversary Regattas.

Appointment to any official position was unique and shaped by experience and family background. As already established, patronage was a factor in Eardley-Wilmot's life through direct family relationships, while the extent of patronage granted to him from members and fellows of societies can only be speculation. He became a fellow of the Linnaean Society, Society of Antiquaries and the Royal Society, all appointments for life. His recommendation for the latter, where he was elected on 7 May 1812, described him as a 'Barrister at Law a Gentleman well versed in various branches of natural knowledge'. His proposers, who portrayed him as 'deserving' of the 'honor' and likely to become a 'useful & valuable member', were from the educated upper-class of British society.<sup>1</sup>

Until changes were introduced to the rules governing elections to Fellowship in 1847, the Royal Society was, 'in effect, an English gentlemen's club, albeit with a particular focus on promoting "natural knowledge"'.<sup>2</sup> This emphasis therefore, explains the similarity in the wording on many certificates of election, for instance, that of Eardley-Wilmot's father, William George Maton, Samuel Foart Simmons and Aylmer Bourke Lambert.<sup>3</sup> As a result, it is not possible to draw direct assumptions from the wording on Eardley-Wilmot's certificate of election that he was 'well versed in various branches of natural knowledge' as shown in figure 9.1.<sup>4</sup> As no relevant correspondence from these proposers seems to have survived, it

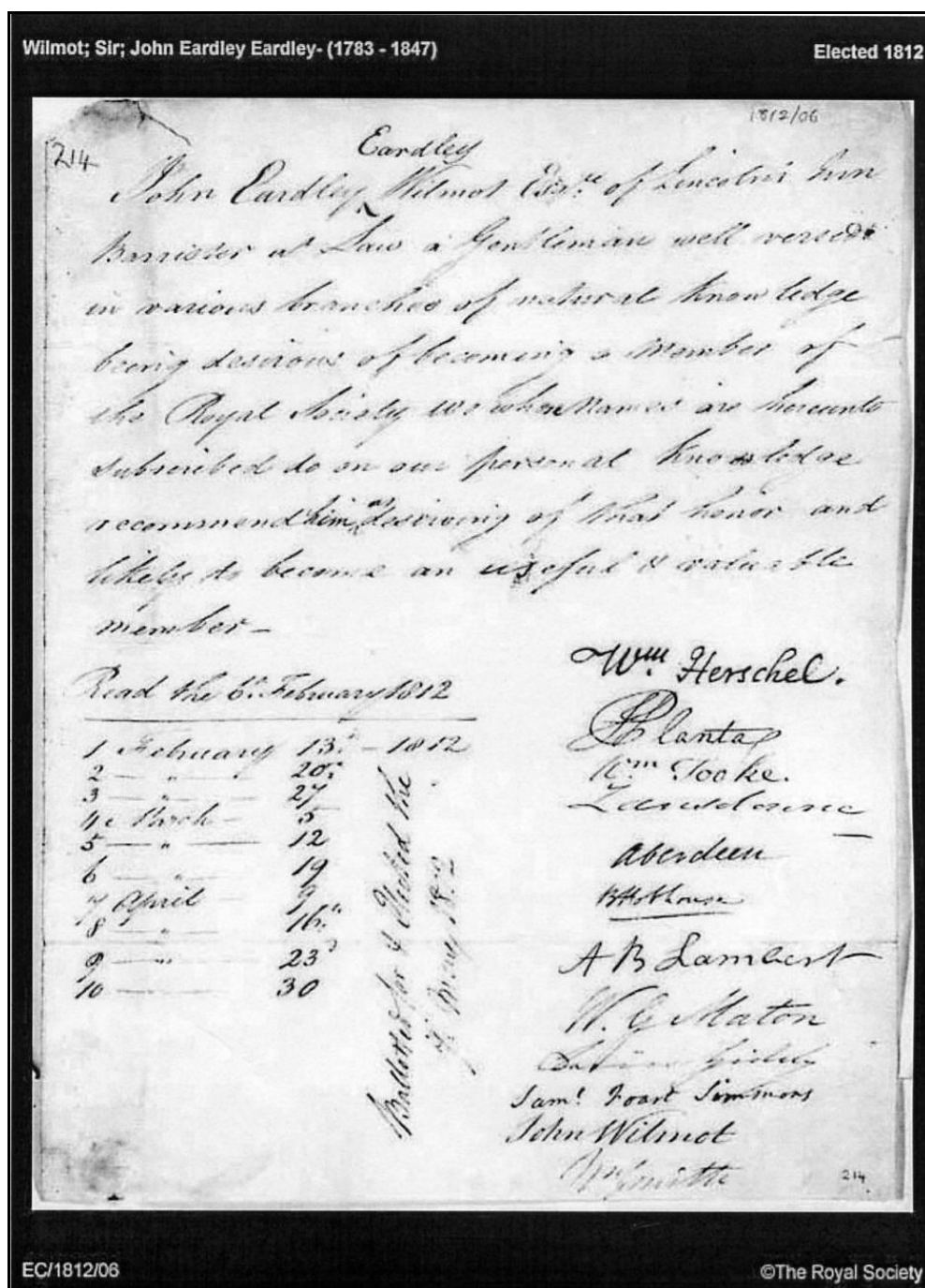
<sup>1</sup> Wm Herschel; J Planta; Wm Tooke; Lansdowne; Aberdeen; B Hobhouse; A B Lambert; W G Maton; Davies Giddy; Saml Foart Simmons; John Wilmot; Wm Smith, his father, father-in-law, see Sir John Eardley Eardley-Wilmot certificate of candidature for election, Royal Society EC/1812/06; In 1863 his son Frederick Marow Eardley-Wilmot became a Fellow, see EC/1863/16.

<sup>2</sup> R W Home, 'The Royal Society and the Empire: the colonial and Commonwealth Fellowship Part 1. 1731–1847', *Notes and Records of The Royal Society London*, September 2002, Vol. 56, pp. pp. 309, 312, 319, how after 1847 the Royal Society was transformed 'into an institution for a professional scientific élite'.

<sup>3</sup> Eardley-Wilmot EC/1779/21, Maton EC/1800/06, Simmons EC/1779/17, Lambert EC/1791/02.

<sup>4</sup> Sir John Eardley Eardley-Wilmot, certificate of candidature for election, RS Archives, London EC/1812/06

cannot be confirmed whether or not they influenced Eardley-Wilmot's later appointment to Van Diemen's Land. Yet, it is logical to assume that he was well known to his proposers. As revealed on his certificate of election, Eardley-Wilmot's most renowned Royal Society proposer was the astronomer William Herschel (1738–1822), founder of the present-day system of astronomy and court astronomer to the Royal family.<sup>5</sup>



**Figure 9.1:** Sir John Eardley Eardley-Wilmot's Royal Society Certificate of Election.<sup>6</sup>

<sup>5</sup> Michael Hoskin, 'Herschel, William (1738–1822)' *Oxford Dictionary of National Biography* (hereafter ODNB), Jan 2008 [<http://www.oxforddnb.com/view/article/13102>,].

<sup>6</sup> RS Archives, London EC/1812/06.

Several proposers were solicitors: William Tooke (1777–1863), elected to the House of Commons in 1832 for Truro, who, similar to Eardley-Wilmot, supported the abolition of slavery;<sup>7</sup> Robert Monsey Rolfe (1790–1868) (Baron Cransworth) Lord Chancellor;<sup>8</sup> and 3<sup>rd</sup> Marquis of Lansdowne (Henry Petty-Fitzmaurice) (1780–1863), member for Calne.<sup>9</sup>

Another, barrister Sir Benjamin Hobhouse (1757–1831), was distantly related through marriage. Hobhouse married twice, the second time to Amelia, daughter of Reverend Joshua Parry.<sup>10</sup> Eardley-Wilmot's first wife, Elizabeth Emma Parry, was Amelia's niece. Physicians are prominent. George Hamilton Gordon (1784–1860), 4<sup>th</sup> Earl of Aberdeen, who attended Harrow School at the same time as Eardley-Wilmot, was appointed Secretary for War and the Colonies in December 1834 in Sir Robert Peel's ministry and was Prime Minister from 1852 to 1855;<sup>11</sup> Samuel Foart Simmons (1750–1813), 'expert on insanity' and Henry Revell Reynolds (1745–1811)<sup>12</sup> were both, at different times, physician to King George III. On 4 February 1813 Eardley-Wilmot was elected a Fellow of the Society of Antiquaries. The signatories on his certificate of election (one of whom was also a proposer for the Royal Society) were: Burton Morice Earl of Aberdeen (President) and Henry Revell Reynolds. Eardley-Wilmot's father and grandfather were also Fellows of the Society.<sup>13</sup>

Later that year, on 2 November 1813, Eardley-Wilmot was admitted a Fellow of the Linnaean Society of London. His most notable nominator was William George Maton MD (1774–1835), 'physician extraordinary' in 1816 to Queen Charlotte, the Duke of Kent in 1820 and the infant Queen Victoria.<sup>14</sup> As with the Royal Society and the Society of Antiquaries, his fellowship of the Linnaean Society appears to have been an ethical and opportune means of gaining connections to influential associates, as the societies hold no record of contributions,

<sup>7</sup> G C Boase 'Tooke, William (1777–1863)', rev. Eric Metcalfe, *ODNB* 2004 [<http://www.oxforddnb.com/view/article/27548>].

<sup>8</sup> W R Cornish and David J A Cairns 'Rolfe, Robert Monsey, Baron Cranworth (1790–1868)', *ODNB*, Jan 2008 [<http://www.oxforddnb.com/view/article/24019>].

<sup>9</sup> C J Wright 'Fitzmaurice, Henry Petty-, third marquess of Lansdowne (1780–1863)' *ODNB*, May 2009 [<http://www.oxforddnb.com/view/article/22071>]; Lansdowne was Secretary of State 16 July 1827–22 January 1828, J C Sainty, *Office-Holders in Modern Britain V. Home Office Officials 1782–1870* (London, 1975), pp. 11, 55.

<sup>10</sup> Roland Thorne, 'Hobhouse, Sir Benjamin, first baronet (1757–1831)', *ODNB*, Jan 2008 [<http://www.oxforddnb.com/view/article/13402>].

<sup>11</sup> Muriel E Chamberlain, 'Gordon, George Hamilton-, fourth earl of Aberdeen (1784–1860)', *ODNB*, May 2009 [<http://www.oxforddnb.com/view/article/11044>].

<sup>12</sup> Helen Brock, 'Simmons, Samuel Foart (1750–1813)', *ODNB*, Jan 2008 [<http://www.oxforddnb.com/view/article/25565>]; Simmons attended King George III in both 1810 and 1812; Norman Moore, 'Reynolds, Henry Revell (1745–1811)', rev. by Claire L Nutt, *ODNB*, 2004 [<http://www.oxforddnb.com/view/article/23416>].

<sup>13</sup> Society of Antiquaries London, pers comm [<http://www.sal.org.uk>] 2 January 2008.

<sup>14</sup> *Database of Past Fellows, Linnean Society of London*, pers comm with archivist Lynn Crothall (30 December 2007); Norman Moore *rev* Peter Osborne, 'William George Maton MD (1774–1835)', *ODNB* 2004 [<http://www.oxforddnb.com/view/article/18341>]; Other nominators were B Rolfe and S Brookes.

correspondence or manuscripts for him. It is possible that during his membership of the Linnaean Society Eardley-Wilmot was known to Lord Stanley (14<sup>th</sup> Earl of Derby) many years before Stanley appointed him to Van Diemen's Land. Stanley's father, Lord Edward Stanley (13<sup>th</sup> Earl of Derby), was admitted a fellow of the Linnaean Society on 3 May 1810.<sup>15</sup> Eardley-Wilmot and the 13<sup>th</sup> Earl of Derby were both known to Aylmer Bourke Lambert, the noted botanist, who was a proposer for each man to the Royal Society.<sup>16</sup>

The growth of scientific societies in Australia reflected the desires of the colonists to 'come to terms with the peculiar and unknown phenomena of their environment'.<sup>17</sup> Following in the steps of explorer Sir John Franklin, Eardley-Wilmot, versed in new learning, founded the Royal Society of Van Diemen's Land, the first Royal Society outside the United Kingdom.<sup>18</sup> The Society has an unbroken record since 1843, its aims and objects founded on the work of earlier societies, for instance, the Van Diemen's Land Agricultural Society 1821; the Van Diemen's Land Mechanics' Institute 1827;<sup>19</sup> the Van Diemen's Land Scientific Society 1829 which imitated the 'Royal and other literary and scientific societies of Europe and India';<sup>20</sup> the Colonial Gardens 1818; the Hobart Town Horticultural Society 1839 and more particularly, the Tasmanian Society 1838 and the Franklin Museum 1842.<sup>21</sup> These latter two formed the cultural background to Eardley-Wilmot's initiative.

Perhaps the first society established in Van Diemen's Land to have objects similar to those of the Royal Society of London, was the Van Diemen's Land Agricultural Society. Founded in

<sup>15</sup> Neither his father nor grandfather were members of the society; Stanley's nominators: W Roscoe, A B Lambert, R Salisbury and J G Children, see *Database of Past Fellows, Linnean Society of London* <http://www.linnean.org> pers comm with archivist (30 December 2007).

<sup>16</sup> Lambert was founder of an herbarium of British and Irish plants, see RS Archives, London EC/1791/02. Lambert, author and publisher of books on conifers, discovered a rare species of thistle in Britain, the *Cnicus tuberosus*; Peter Chapman, 'Wilmot, Sir John Eardley Eardley-, first baronet (1783–1847)', *ODNB* Jan 2008 [<http://www.oxforddnb.com/view/article/52438>]; William T Stearne, 'Lambert, Aylmer Bourke (1761–1842)', *ODNB* 2004 [<http://www.oxforddnb.com/view/article/15931>]; Unfortunately Eardley-Wilmot's membership of the Linnaean Society is not noted in the *ODNB*.

<sup>17</sup> Michael E Hoare, "All Things Are Queer and Opposite": Scientific Societies in Tasmania in the 1840's', *Isis: Journal of the History of Science in Society*, 60.2 (Summer 1969), p. 198.

<sup>18</sup> Pers comm with Library Manager, The Royal Society 6–9 Carlton House Terrace, London (4 March 2008): 'I don't think the Royal Society of Tasmania could be described as a "branch" of our Royal Society — all the "other" Royal Societies around the world were set up as completely independent organisations, I think, though they may have had help from London or from individual FRs to get them started.' According to Peter Chapman, 'Wilmot, Sir John Eardley Eardley-, first baronet (1783–1847)', *Oxford Dictionary of National Biography* (hereafter *ODNB*) Jan 2008 [<http://www.oxforddnb.com/view/article/52438>] it 'was the first overseas branch of the Royal Society in the British empire'.

<sup>19</sup> *Wood's Van Diemen's Land Almanack, and Law and Commercial and Daily Remembrancer for 1846* (Launceston, 1846), p. 3.

<sup>20</sup> *Hobart Town Courier*, 12 December 1829, p. 2; M E Hoare, 'Doctor John Henderson and the Van Diemen's Land Scientific Society', *Records of the Australian Academy of Science*, Vol. 1, No. 3 1968, pp. 14–15; In 1832 Henderson published his *Observations on the Colonies of New South Wales and Van Diemen's Land*, Baptist Mission Press, Circular Road, Calcutta (Facsimile edition: Libraries Board of South Australia, 1965).

<sup>21</sup> *The Tasmanian Cyclopaedia: An Historical, Industrial and Commercial Review* (Hobart, 1931), p. 128.

Hobart Town on 1 January 1821 with Lieutenant-Governor William Sorell as Patron, the principal objects were the raising of the level of animal husbandry and the prevention of stock theft.<sup>22</sup> Agricultural shows were a means for agricultural and pastoral societies to promote rural industry with displays of produce, demonstrations, handcrafts and livestock. The Campbell Town Show (1838) is the oldest continually running event of its kind in the southern hemisphere. Other towns around the island held annual shows, but not all have survived.<sup>23</sup> Just two months after arriving, Eardley-Wilmot (with his private secretary and Matthew Forster) showed ‘zeal and interest in the objects connected’ with the Midland Agricultural Association when they travelled ‘80 miles’ to the annual meeting and ‘5<sup>th</sup> Annual Stock Exhibition’ at Campbell Town.<sup>24</sup> The Lieutenant-Governor dwelt with ‘great fluency on the advantages of agriculture’ and told those present to ‘consider’ themselves:

the column of a lofty pillar; but, depend upon it, a tenantry form the pedestal, — a virtuous, moral, and industrious peasantry the foundation on which that pillar rests. I see around me some of your largest proprietors, who this day are lords of wastes and princes of deserts; but who, if the system of tenantry be carried out as fully as it deserves, will become patriarchs; and the future Russells, Cavendishes, and Percys of the colony may be proud to date their ancestry from one of you.<sup>25</sup>

A similar return compliment was paid by early settler Anthony Fenn Kemp, who congratulated the meeting on the appointment of His Excellency as Patron of the Midland Agricultural Society, a body which included much of the wealth and influence of the colony. Kemp then compared Eardley-Wilmot’s presence to ‘the vivifying rays of the sun after a long cheerless winter, encouraging the ploughman to resume his labors with fresh spirit’.<sup>26</sup>

Overwhelming support gradually diminished. A Midland Agricultural Association meeting was held at Englebert’s Hotel Campbell Town in early September 1846. This meeting was to consider Eardley-Wilmot’s 1 August 1845 despatch to Stanley and a petition signed by 1,750 free colonists praying the number of convicts be reduced to the total which existed in 1840, and that transportation to the colony cease.<sup>27</sup> The meeting reviewed the despatch, and the

<sup>22</sup> E L Piesse, *The foundation and early work of the Society. Royal Society of Tasmania Seventieth Anniversary* (Hobart, 1913), p. 118.

<sup>23</sup> Margaret Harman, ‘Agricultural Shows’, in A Alexander (ed), *Companion to Tasmanian History* (Hobart, 2005), p. 12.

<sup>24</sup> *Murray’s Review*, 13 October 1843, p. 2; *Colonial Times*, 17 October 1843 p. 3; *Cornwall Chronicle*, Vol. 9 No 463, 21 October 1843 [p. 2].

<sup>25</sup> Agricultural Dinner 18 October 1843 in John West, *The History of Tasmania with copious information respecting the Colonies of New South Wales Victoria South Australia &c.* First published Launceston 1852. A G L Shaw (ed) (Sydney, 1981), pp. 178–79.

<sup>26</sup> West, *The History of Tasmania*, p. 179.

<sup>27</sup> *The Maitland Mercury and Hunter River General Advertiser*, 24 September 1846, p. 3; *BPP Crime and Punishment Transportation* 7 Eardley-Wilmot to Stanley (No. 110) 1 August 1845, pp. 300–04; *Cornwall Chronicle*, 12 September 1846, p. 1; *Hobart Town Courier*, 9 September 1846, pp. 2–3.

association publicly announced that much of that stated in the petition was ‘erroneous and exaggerated’, and one of the conditions on ‘which settlers obtained free grants of land was upon investing a considerable capital in the colony’. The petition omitted the condition upon which each grantee was to receive a proportionate number of convicts as assigned servants; thus proving the fact that the colony would always be considered a penal settlement. The meeting resolved that these statements were unfounded and seriously affected the best interests of the colony.<sup>28</sup> The despatch was in ‘direct violation of the principles’ on which the association was established, and it was with ‘utmost pain’ and ‘necessary sacrifice to truth and justice’ that members were ‘compelled to declare publicly’ they no longer considered Eardley-Wilmot patron of the Midland Agricultural Association. Hence, his name was to be ‘erased from the books of the society’.<sup>29</sup>

Despite this later rejection, between 1843 and 1846, as well as visiting rural areas Eardley-Wilmot introduced an incentive which was similar to one he had previously introduced in Warwickshire. In the early 1830s an agricultural depression in England had created financial and dismal consequences for workers’ families, a situation, which Eardley-Wilmot claimed, was made worse by the family man who spent his income in ‘beer-shops’. In 1832 he established a system of ‘cottage allotments’ which proved a ‘complete success’. He had forty acres which he let to agricultural labourers to cultivate and charged £1 per acre, from which he deducted ‘added rewards’ to the value of £4 15 0.<sup>30</sup> These ‘rewards’ were an incentive to ‘industry and good conduct’. The labourers with the ‘best cultivated garden’, the ‘greatest produce of potatoes’, and the ‘greatest produce of grain’ were rewarded with rent free land for one year. The second and third winners in each division were provided with their allotment rent free for six months, and three months.<sup>31</sup>

In 1834 Eardley-Wilmot had urged members of the Warwickshire Agricultural Society to practice the system which would give each worker ‘moral elevation’, ‘self-respect and self-esteem’, attributes of the ‘great distinction between pauperism and independence’. Edward Bolton King (Liberal) MP for Warwick, and member of the Warwickshire Agricultural Society, knew farmers who first ‘looked suspiciously on the system’, but after a trial the system was contributing to the interests of the labourers and the land owners. King also provided forty gardens for cultivation, and the families involved had ‘never had a single

<sup>28</sup> *Hobart Town Courier*, 9 September 1846, pp. 2–3.

<sup>29</sup> *Hobart Town Courier*, 9 September 1846, pp. 2–3; *The Maitland Mercury and Hunter River General Advertiser*, 24 September 1846, p. 3.

<sup>30</sup> *Leamington Spa Courier*, 31 May 1834, p. 3.

<sup>31</sup> *Leamington Spa Courier*, 21 April 1832, p. 3.

shilling from the parish except in cases of illness and accident', one half of whom were previously 'regular paupers'. Convinced of the benefits, he hoped the Society would implement Eardley-Wilmot's plan.<sup>32</sup> King's appeal was successful, and by 1837 other 'gentlemen' had also let land to agricultural labourers. In 1837, despite doubling the rent, Eardley-Wilmot estimated that on average, each man derived at least £10 per annum from his garden, changed habits and became 'sober and industrious'.<sup>33</sup>

Eardley-Wilmot introduced his incentive to Van Diemen's Land in 1844. To the person with the highest number of acres (over fifty) sown during the year with English barley, he offered a silver cup or fifteen sovereigns; for the largest hop garden planted in 1844 a silver cup or ten sovereigns; and for the largest area planted in New Zealand flax a silver cup or ten sovereigns. He also offered six sovereigns to the owner of any dairy in the colony who 'shall make and cure the best quality of butter for the market, not less than *one* cwt during the season, 1844'; and for the 'dairyman or woman, *one* sovereign' for the 'best specimen of ... sweet and full milk cheese, the quantity no less than *two* cwt, six sovereigns', the sample to consist of two cheeses of each variety.<sup>34</sup>

### Early scientific societies

The Tasmanian Society was established in late 1838 under Franklin's patronage.<sup>35</sup> Franklin, a member of several scientific societies in England, and his wife Lady Jane, corresponded with European men of science. In November 1840 among those Franklin welcomed to the colony were: explorer Count Strzelecki, ornithologist John Gould, Antarctic explorers James Ross and Francis Crozier and French counterpart Dumont d'Urville. Dr Joseph Dalton Hooker, who accompanied the expedition as botanist, returned to England with 5,340 species of plants, the discoveries published in six illustrated quarto volumes as *Botany of the Antarctic Voyage*, which included the flora of Van Diemen's Land. Franklin also invited 'gentlemen of the country' he knew to have the required information to combine and form a society for the purpose of 'illustrating the Natural History, Agriculture, Statistics, etc. of this country'.<sup>36</sup> By

<sup>32</sup> *Leamington Spa Courier*, 31 May 1834, p. 3.

<sup>33</sup> *Leamington Spa Courier*, 3 June 1837, p. 3.

<sup>34</sup> *Hobart Town Courier*, 28 September 1844, p. 1, with emphasis in original.

<sup>35</sup> Mitchell Library (hereafter ML) A246 CY Reel 2237 'Gunn Correspondence Vol. 1', Gunn to LaTrobe, 17 November 1847, marked 'Copy. — Original forwarded through the Colonial Secretary', p. 311 that the society began in 1839. I am grateful to Eleanor Cave for access to this microfilm; Piesse, *The foundation and early work of the Society*, pp. 124, 130.

<sup>36</sup> UTA RS *The Tasmanian Journal of Natural Science, Agriculture, Statistics &c Volume I* (Hobart, 1842) and (London, 1842), The Tasmanian Society Meeting 3 October 1843; The Royal Society Library does not hold any records of The Tasmanian Society before this volume; James Fenton, *A History of Tasmania from its discovery in 1642 to the present time* (Hobart, 1978), p. 157, also Kathleen Fitzpatrick, *Sir John Franklin 1837–1843* (Melbourne, 1949), pp. 245–49.



1842 his new society was named ‘The Tasmanian Society’,<sup>37</sup> its minute book for 1841 titled ‘Minutes of “The Society” V. D. Land 1841’.<sup>38</sup> In the first issue of *The Tasmanian Journal of Natural Science, Agriculture, Statistics, etc.*, published in August 1841 which he financed, the society is the ‘Philosophical Society of Tasmania’, thus showing Franklin’s preference for the name ‘Tasmania’. In the preface to the first complete volume published in 1842, the Society is identified as ‘The Tasmanian Society’.<sup>39</sup>

Franklin regularly presided at society meetings, first at ‘Mr Solomon’s rooms’, and later at Government House.<sup>40</sup> In March 1841 James Barnard offered to supervise printing of the *Tasmanian Journal*, the Society ‘defraying all expenses of Labour and Materials’.<sup>41</sup> The Franklins were committed to stimulating local scientific endeavours, and Lady Franklin built the temple-like ‘Ancanthe’ at Lenah Valley, the foundation stone of which was engraved ‘Tasmanian Museum 16 March 1842’.<sup>42</sup> She originally intended Tasmanian Society members to be trustees of the museum, which opened in late October 1842, but as the body had no ‘legal or chartered existence’ and its continued activity was in doubt, she could only choose trustees from its members.<sup>43</sup>

### **Eardley-Wilmot and founding of the Royal Society of Van Diemen’s Land**

Eardley-Wilmot convened a meeting of the Tasmanian Society at Government House on 14 October 1843. He invited members of the Tasmanian and the Mechanics and Horticultural associations who he hoped would form a ‘section of one extended Society’.<sup>44</sup> He had accepted presidency of the Tasmanian Society, but it appears he then decided the Tasmanian Society should be the nucleus of his new society, the Botanical and Horticultural Society of Van Diemen’s Land, set up to maintain the colonial gardens. Annually the gardens cost the

<sup>37</sup> Piesse, *The foundation and early work of the Society*, p. 124.

<sup>38</sup> UTA RS 147/1 Minutes of “The Society” V D Land 1841.

<sup>39</sup> Piesse, *The foundation and early work of the Society*, pp. 124, 130; *The Tasmanian Journal of Natural Science, Agriculture, Statistics &c Volume I* (Hobart, London, 1842).

<sup>40</sup> Lady Franklin, Journal, 1839, Book 2 (Lefroy Bequest, Scott Polar Research Institute, Cambridge, England), cited in Fitzpatrick, *Sir John Franklin 1837–1843*, p. 198.

<sup>41</sup> RS 147/1 Minutes of a meeting 3 March 1841 in Minutes of “The Society” V.D.Land 1841.

<sup>42</sup> Terry Newman, *Becoming Tasmania: Renaming Van Diemen’s Land* (Hobart, 2005), p. 45. It is still in use today as the Franklin Museum.

<sup>43</sup> Gillian Winter, ‘The Foundation Years of the Royal Society of Tasmania, 1843–46’, *Papers and Proceedings of the Royal Society of Tasmania*, Volume 127, 1993, p. 62; Sir John Franklin, *Narrative of some passages in the History of Van Diemen’s Land, during the last three years of Sir John Franklin’s administration of its government* (Hobart, 1967), pp. 78–79.

<sup>44</sup> *Launceston Examiner*, 11 October 1843, p. 632; See *Launceston Examiner*, 21 October 1843, p. 658 for the inaugural meeting of The Horticultural and Botanical Society of Van Diemen’s Land.

government £802, and he intended that the government would give £400 to the new society<sup>45</sup> for ‘paying its Officers and promoting’ its objects, and also fourteen acres from the colonial gardens, while still preserving an ‘essential’ section for Government House.<sup>46</sup>

The new society would have a president, twelve members of council, treasurer, secretary and ‘an indefinite number of Fellows’. As president, Eardley-Wilmot would nominate the first fifty Fellows, the thirty-seven resident Tasmanian Society members to be included in this number. After initial memberships, an indefinite number of fellows could be added by ballot at business meetings, each candidate to be proposed and recommended by three fellows.<sup>47</sup> Eardley-Wilmot applied the knowledge he had gained from membership of English societies to the colony — the rules of the Botanical and Horticultural Society of Van Diemen’s Land would be modelled on those of the Linnaean and Horticultural Societies in England.<sup>48</sup> The entrance fee for the new Society was £2 0s 0d with an annual ‘contribution’ of £1 0s 0d or £10 0s 0d for life membership.<sup>49</sup> A split resulted, possibly from disputes over the entrance fee, the Tasmanian Society members feeling their society had ‘fairly earned its position as a scientific body’ and they brought a museum set up by Lady Franklin and the rents of the Ancanthe estate, £75 a year.<sup>50</sup> All but five Tasmanian Society members walked out of the initial meeting, and Eardley-Wilmot was left with only eighteen people for his new society.<sup>51</sup>

Undeterred, in the Legislative Council on 20 November 1843, he announced the formation of the Botanical and Horticultural Society of Van Diemen’s Land and his plans for management and maintenance of the gardens. The Society gained possession of the gardens on 1 January 1844, and Eardley-Wilmot submitted a request for Her Majesty Queen Victoria to become patroness and to permit the society to be named the ‘Royal Society of Van Diemen’s Land for Horticulture, Botany and the Advancement of Science’. On 6 September 1844 he announced that Queen Victoria obliged and extended her patronage. This was the first Royal Society outside the United Kingdom. Eardley-Wilmot also revealed Her Majesty’s Government

<sup>45</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley (No. 2) 15 September 1843, pp. 51–52 and Grey to Stanley 3 April 1844, p. 15; ML A246 CY Reel 2237 ‘Gunn Correspondence Vol 1’, Gunn to LaTrobe, 17 November 1847, pp. 313–15; Winter, ‘The Foundation Years of the Royal Society of Tasmania’, p. 62.

<sup>46</sup> Piesse, *The foundation and early work of the Society*, p. 139; Gillian Winter, ‘For ... the Advancement of Science’: The Royal Society of Tasmania, 1843–1886’ BA (Hons) thesis, University of Tasmania 1973, p. 9; *Hobart Town Gazette* (hereafter *HTG*) Vol. XXVIII no. 1437, 24 November 1843, p. 1298.

<sup>47</sup> UTA RS RSA/C/1 ‘Rules and Regulations of the Botanical and Horticultural Society of Van Diemens Land instituted 14 October 1843’, Rules 3, 4, 5, 6, 8. The hand-written book has no page numbering.

<sup>48</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley (No. 2) 15 September 1843, pp. 51–52.

<sup>49</sup> UTA RSA/C/1 ‘Rules and Regulations of the Botanical and Horticultural Society of Van Diemens Land instituted 14 October 1843’ Rule 10.

<sup>50</sup> *Launceston Examiner*, 21 October 1843, p. 658; Piesse, *The foundation and early work of the Society*, p. 139.

<sup>51</sup> Winter, ‘The Foundation Years of the Royal Society of Tasmania, 1843–46’, p. 62; The Royal Society library collection is currently housed at the Hobart Campus of the University of Tasmania.

sanctioned a grant of £400.<sup>52</sup> During his first visit to Launceston, where he arrived on 31 August, he gave the Government Garden to the Launceston Horticultural Society. The area was added to the Society's grounds fronting Brisbane and Cameron Streets.<sup>53</sup>

The 'leading object' of the Botanical and Horticultural Society of Van Diemen's Land was to develop the 'physical character' of the island and to illustrate its 'natural history and productions'.<sup>54</sup> Ladies were to be admitted as Fellows 'upon the same terms, with the same privileges and under the same regulations' as gentlemen.<sup>55</sup> The first was Mrs Louisa Bell of Davey Street (Ticket 52) admitted on 4 January 1844.<sup>56</sup> She did not remain a Fellow very long, but did sign visitors into the gardens on both 15 and 19 April 1844.<sup>57</sup> Female Fellows were permitted to 'vote by proxy' at general meetings if they had previously notified the secretary in writing of their appointed gentleman who was a Fellow.<sup>58</sup> The inclusion of women was very progressive, as women were not elected to a Fellowship at London's Royal Society until 1945.<sup>59</sup> There was, though, a colonial precedent. Ladies were admitted to The Tasmanian Society as early as 1843, and perhaps before then, but no earlier records of admission appear to have survived.<sup>60</sup>

<sup>52</sup> UTA RS RSA/A/1 Government House 6 September 1844, Proceedings of the [Van Diemen's Land Horticultural and Botanical] Society 1843–45, Council 1843–45; UTA RS RSA/K/1 *Report of the Royal Society of Van Diemen's Land for Horticulture and Botany, May 1845*, p. 8; UTA RS49/18 GO1/54 Stanley to Eardley-Wilmot (No. 193), 6 September 1844, in which Stanley approved the transfer of the Colonial Gardens to the Horticultural and Botanical Society and sanctioned the annual allowance, pp. 56–61.

<sup>53</sup> *The Tasmanian and Austral-Asiatic Review*, Friday 1 September 1843, p. 2; *Cornwall Chronicle*, Vol. 8 No. 457, 2 September 1843 [p. 2]; Eardley-Wilmot stayed at the Government Cottage while in Launceston; *Launceston Examiner*, Vol. II no 83, 18 October 1843 p. 651.

<sup>54</sup> UTA RSA/C/1 Meeting of Gentlemen at Government House 14 October 1843 Eardley-Wilmot President, and also rule 1 of 'Rules and Regulations of the Botanical and Horticultural Society of Van Diemens [sic] Land instituted 14 October 1843'.

<sup>55</sup> RSA/C/1 Rule 13 of Rules and Regulations: 'Ladies may be admitted as fellows upon the same terms, with the same privileges, and under the same Regulations in all respects as Gentlemen.' See Rules and Regulations of the Botanical and Horticultural Society of Van Diemens Land instituted 14 October 1843'.

<sup>56</sup> UTA RSA/A/1 Louisa Bell and four men had been proposed on 7 December 1843, see Minutes of the Annual General Meeting held at Government House on 4 January 1844, in 'Proceedings of the [Van Diemen's Land Horticultural and Botanical] Society 1843–45. Council 1843–45', the book has no page numbering.

<sup>57</sup> RSA/C/1 'Declined subscrib Resigned' has been written across her name on the nominal list of members, Nominal List of Fellows, 'The Botanical & Horticultural Society of Van Diemens [sic] Land instituted 14 October 1843'; UTA RSA/E/20 Visitors Book [Botanical Gardens of the Royal Society of Van Diemen's Land] 1 March 1844 to 1 February 1849.

<sup>58</sup> RSA/C/1 Rule 17 'Rules and Regulations of the Botanical and Horticultural Society of Van Diemens [sic] Land instituted 14 October 1843'.

<sup>59</sup> The first two were Kathleen Lonsdale and Marjory Stephenson. There are currently 1317 Fellows, of whom 66 (5%) are women. Over the last seven years, 10 per cent of new Fellows elected to the Royal Society have been women (33 of 344), see <http://royalsociety.org/page.asp?tip=1&d=2214> (29 February 2008).

<sup>60</sup> In 1843 Mrs Whitefoord Smith of Launceston was one of 37 resident VDL members and 42 corresponding members (interstate and overseas); Smith and Mrs Allport of Hobart were members in 1844, see *The Tasmanian Journal of Natural Science, Agriculture, Statistics &c Volume II*, pp. 80, 160.

Under the 1843 rules of the Botanical and Horticultural Society of Van Diemen's Land, Fellows had access to the gardens, the museum and the library, and were permitted to be accompanied by visitors.<sup>61</sup> A library of general literature which the public could access was envisaged, but when a separate public library was established in 1849 it was decided the Royal Society would concentrate on building a major scientific collection.<sup>62</sup> Fellows met regularly to read and discuss original material and published scientific papers particularly relating to Australia's flora, fauna and geology, and in March 1845 had fifty-six financial members and £138 9s 4s in reserve. According to Gillian Winter, the society was 'exclusive' in the sense that it 'started under, and continued to enjoy, vice-regal patronage, many of its members being high-ranking civil servants, wealthy graziers, or clergymen'. Despite this, without a university to provide a 'trained nucleus' of scientists, the Society was dependent on 'amateurs' and a few scientifically trained men.<sup>63</sup>

In late 1845 a cottage of free-stone (sandstone) was built in the gardens. Eardley-Wilmot had permitted the removal of stone from the quarry on condition the Society repaired the road, damaged when carting the stone.<sup>64</sup> The next year, as a further demonstration of his interest in education and colonial progress, he agreed to 'fit up' rooms of the cottage (formerly occupied by the secretary Dr Storey) as a museum and reading room. He also agreed to ask the Royal Society of London, the Linnaean Society and the Society of Antiquarians for duplicate natural history books.<sup>65</sup> It is uncertain if these requests were made, as the societies have no surviving correspondence on the topic. If his requests were submitted, they do not appear to have been noted by Council.<sup>66</sup> Yet, according to Ronald Campbell Gunn (1808–81), former assistant superintendent of convicts at Launceston and founding member and first secretary of the Tasmanian Society, Lord Stanley acknowledged receiving a copy of the first journal with a 'flattering expression of his interest in the objects and welfare of the Society'.<sup>67</sup>

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<sup>61</sup> RSA/C/1 Rule 15 of 'Rules and Regulations of the Botanical and Horticultural Society of Van Diemens Land instituted 14 October 1843'.

<sup>62</sup> Winter, 'The Foundation Years of the Royal Society of Tasmania, 1843–46', p. 64.

<sup>63</sup> RSA/A/1 'Proceedings of the [Van Diemen's Land Horticultural and Botanical] Society 1843–45. Council 1843–45', Meeting of Council 14 March 1845; Winter, 'The Foundation Years of the Royal Society of Tasmania, 1843–46', p. 61.

<sup>64</sup> UTA RS RSA/A/2 'Royal Society [of Van Diemen's Land] Council Minute Book 1845–53' Meeting of Council 18 August 1845.

<sup>65</sup> RSA/K/1 *Report of the Royal Society of Van Diemen's Land for Horticulture and the Advancement of Science 1846* (Hobart Town, 1846), pp. 9–10.

<sup>66</sup> Correspondence with Royal Society, London <http://www.royalsoc.org.uk>, Linnaean Society of London <http://www.linnean.org> and Society of Antiquaries London <http://www.sal.org.uk>; As the interests of the Society of Antiquaries 'do not in general extend to science and natural history, it is unlikely' the Society would have been able to offer Eardley-Wilmot 'any significant assistance'.

<sup>67</sup> ML A246 CY Reel 2237 'Gunn Correspondence Vol 1', Gunn to LaTrobe, 17 November 1847, p. 313; In 1842 the Linnaean Society, Geological Society of London and Athenaeum Society all received a copy of the

Staffing and administration changed when the Royal Society took control of the gardens. In December 1843 Mr Herbertson was engaged as head gardener on a salary of £80 per year. Also appointed were Launceston's Mr Moran as overseer, and Mr C Grant as gardener. While Moran collected plants at Bruny Island and in the Huon, Grant (replaced by convict James Dickinson on 5 May 1845 with a salary of £60) ordered plants from Sydney.<sup>68</sup> The following January Eardley-Wilmot authorised the purchase of 500 loads of manure at 2d or 3d per load.<sup>69</sup> He also authorised a carpenter from the probation party, the purchase of timber for huts for the men and stables for the horses, and two tons of hay for the horse at the gardens.<sup>70</sup>

Despite a large area of Pavilion Point being public space, Eardley-Wilmot realised the colonists had no '*place de promenade*' so he ordered the Director of Roads, Captain Forth, to 'construct *without* delay, a carriage road of the utmost extent ... *for the public use*' on the Government Domain. The road of 'five miles and a quarter' was soon available to the public, the convict workers discovering an adult skeleton during construction.<sup>71</sup>

### **Eardley-Wilmot and the Royal Society gardens**

The first government gardens in Hobart Town were established about 1807 near the junction of Macquarie and Barrack Streets. On the eastern side of the present intersection, they extended down the hill towards Liverpool Street and the town rivulet. Lieutenant-Governor William Sorell arrived in April 1817, and it was possibly before 1818 (two years after the Botanic Gardens in Sydney), that he relocated them to the public domain, the present site of the Royal Tasmanian Botanical Gardens,<sup>72</sup> part of 50 acres (20.2 hectares) formerly known as Pavilion Point or 'Hangan's Farm', named after its original owner, John Hangan.<sup>73</sup>

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second issue of *Journal of The Tasmanian Society*, see *The Tasmanian Journal of Natural Science, Agriculture, Statistics &c Volume II*, 2 January 1843, p. 78, 7 June 1843, p. 79.

<sup>68</sup> Marcus Hurburgh, *The Royal Tasmanian Botanical Gardens 1818–1986* (Sandy Bay, 1986), pp. 19–20; Cripps, 'Nurserymen and Gardeners: An Important Part of Tasmania's History', p. 230.

<sup>69</sup> RSA/A/1 Proceedings of the [Van Diemen's Land Horticultural and Botanical] Society 1843–45. Council 1843–45 Council meeting, Royal Society of Van Diemen's Land, 11 January 1844.

<sup>70</sup> RSA/A/1 Proceedings of the [Van Diemen's Land Horticultural and Botanical] Society 1843–45. Council 1843–45 Council meeting, Royal Society of Van Diemen's Land, 8 February, 1844, and from which time, instead of being held at Government House, future meetings would be held at 3.00 pm at the Room of the Secretary in the Stone Buildings Macquarie Street; Meeting of Council 15 February 1844.

<sup>71</sup> *Murray's Review*, 22 September 1843, p. 2 italic emphasis in article; Carriage drives shown on Lands and Titles 'Government House Grounds General Plan', Hobart Plan P 94A; *Examiner*, 21 October 1843, p. 658.

<sup>72</sup> In the Statement of Salaries 1 April–30 June 1818 in the quarterly account of the Police Fund there is an item 'J. Faber, Superintendance of Govt. Garden and Grounds, £5 0s 0d', *HTG* 9 January 1819, pp. 1–2.

<sup>73</sup> Piesse, *The foundation and early work of the Society*, p. 120.

George Arthur, who arrived in 1824 to replace Sorell, put more convicts to work in the grounds, adjacent to the site he had chosen for a new Government House.<sup>74</sup> In 1827 he recommended to the Colonial Secretary that a botanical garden be further developed as no colonial plants and shrubs had been collected.<sup>75</sup> In 1828 the first superintendent, William Davidson (who arrived with over 2,000 vines and fruit trees), was appointed on a salary of £100 per annum. The following year his house was built from stone quarried on site, his convict maintenance staff housed in the same building, on one side of the passage in two rooms, six convicts in one, and four in the other.<sup>76</sup>

Davidson developed the gardens with trees from the Government Gardens at Launceston and George Town. He ordered seeds from England and gathered ‘no less than 40 species of moss’ and native plants from Mt Wellington.<sup>77</sup> By 1830 about fifteen acres of ground was enclosed, and twelve gardeners and also twelve convicts from the chain gang were employed cultivating the garden and cleaning the domain.<sup>78</sup> Bee hives were established, bees having been brought into the colony by Dr Thomas Braidwood Wilson RN, surgeon and superintendent on the convict transport *John*.<sup>79</sup> The most impressive project undertaken during Davidson’s residence, under instruction from Arthur, was the 330 feet long, 12 feet high, Arthur Wall, the plans for which were submitted to the Colonial Secretary in February 1829, and which defined the western boundary. Davidson also built a hot house against the inside wall. Heated by individual fireplaces, he used the hot house for growing pineapples.<sup>80</sup>

The Royal Society was founded primarily for the administration of the gardens — these and the Museum being the public face of the Society. At first the gardens comprised mainly fruit trees and better known European plants and shrubs with only a small collection of indigenous plants and rarer European varieties. To many, the value of belonging was access to the Gardens and free plants and cuttings.<sup>81</sup> Despite this, the Society soon administered the

<sup>74</sup> Winter, “For ... the Advancement of Science”, p. 11; Governor Lachlan Macquarie’s selection for a new Government House had been Macquarie Point, where the Queen’s Battery was built in 1841–42, for the present site of the cenotaph, see Amy Rowntree, *The Story of Government House* (Hobart, 1960), p. 4.

<sup>75</sup> *Mercury* 28 June 1922, p. 4.

<sup>76</sup> CSO1/749 Colonial Secretary to Davidson, 18 November 1828, p. 116; CSO1/292 undated note possibly written by George Arthur, p. 224. This file contains papers relating to the gardens from 1828 until 1834; Extensively modified over the years, Davidson’s residence is now used for offices.

<sup>77</sup> *Hobart Town Courier*, 28 March 1829, p. 2.

<sup>78</sup> Piesse, *The foundation and early work of the Society*, p. 122.

<sup>79</sup> *Hobart Town Courier*, 5 February 1831, p. 3.

<sup>80</sup> See TAHO CSO1/292 (file 7139/17) John Archer, Civil Engineering Office to John Burnett, Colonial Secretary, 18 February 1829, for plan of wall which was to be 12 ft high, 3 ft thick and stone foundation with 3 ft drop, the ‘flues will require to be completely lined with bricks in consequence of the stone not being of a nature to withstand the heat of fire’, pp. 245–47.

<sup>81</sup> Winter, ‘The Foundation Years of the Royal Society of Tasmania, 1843–46’, p. 64.

gardens in the interests of the public, its own members enjoying no special privileges. While the sale of plants provided welcome income, the Society was anxious not to compete unfairly with professional nurserymen by selling popular plants at cheaper prices.<sup>82</sup>

As already detailed, activity was widespread in the Botanical Gardens during Eardley-Wilmot's administration. As well as initiating such proceedings, he found the chemical analysis of indigenous gums, resins and vegetables which might be medicinally useful to be a curiosity, and he attempted to identify suitable grasses, both indigenous and exotic. Inspired by his earlier agricultural interests he probably influenced the Royal Society's establishment of summer and autumn horticultural shows. The first was held on Regatta Day, December 1844, and the second during February 1845 in the Music Hall in Collins Street.<sup>83</sup>

### Scientific specimens exchanged

Mainly resulting from the activities of Ronald Gunn, inter-colonial and international exchange of plants and seeds was established during Eardley-Wilmot's administration.<sup>84</sup> A Fellow of the Linnaean Society (1850) and the only Tasmanian in the nineteenth century to be made a Fellow of the Royal Society of London (1854), in 1832 Gunn began correspondence with botanist William Jackson Hooker (appointed Director of the Botanical Gardens Kew in 1841).<sup>85</sup> By 1843 Gunn was sending scientific books, European plants and seeds, 'animals in brine which cost him £20', 'some of the rarer birds' and to 'fill up the case ... sundry bottles of Snakes, frogs, Birds, Mulluscae, and Crustaceae'. Indicating a genuine interest in scientific research, Gunn requested samples of these be forwarded to Dr R E Grant at University College or 'any other person who will really use them & publish the results'.<sup>86</sup> In August 1844, unable to supply Hooker's requests for 'labelled fruits' and Huon Pine in flower or fruit, he sent Huon Pine 'branches' and offered to gather 'Rock lichens'. He also had

<sup>82</sup> Winter, 'The Foundation Years of the Royal Society of Tasmania, 1843–46', pp. 64–65.

<sup>83</sup> *Hobart Town Courier*, 17 May 1845, p. 2.

<sup>84</sup> RSA/A/1 Proceedings of the [VDL Horticultural and Botanical] Society 1843–45. Council 1843–45 Council meeting 31 December 1844; ML A246 CY Reel 2237 'Gunn Correspondence Vol 1', Gunn to LaTrobe, 17 November 1847, p. 312, Rev Gell, mentioned in chapter seven, was at one time the society's secretary; T E Burns and J R Skemp, 'Gunn, Ronald Campbell (1808–1881)', *Australian Dictionary of Biography* (hereafter *ADB*) 2006 [<http://www.adb.online.anu.edu.au/biogs/A010448b.htm>].

<sup>85</sup> T E Burns, and J R Skemp, *Van Diemen's Land Correspondents 1827–49* (Launceston, 1961), pp. x, 101; EC1854/06 two RS proposers were: Lt-Gov W T Denison and J E Bicheno; <http://royalsociety.org/Dserve.exe?dsqIni=Dsvelini&dsqApp=Archive&dsq>; In 1865 Hooker was succeeded by his son Joseph; Ann Cripps, 'Nurserymen and Gardeners: An Important Part of Tasmania's History', *Tasmanian Historical Research Association Papers and Proceedings*, 56.3 (December 2009), p. 228.

<sup>86</sup> Burns and Skemp, *Van Diemen's Land Correspondents*, Gunn to Dr Wm J Hooker 6 December 1843, 9 May 1844, pp. 95–98; 'DC 218 Supplement to Foreign Letters 1865–1900', Royal Botanic Gardens, Kew Archives, Ronald Campbell Gunn, Launceston VDL to Jos D Hooker, 20 August 1844 underlining by Gunn. I am grateful to Eleanor Cave for this information and for her transcription of the letter at the Royal Botanic Gardens Kew.

specimens of a ‘very distinct New Boronia’ which was ‘very handsome’ with a ‘nearly round leaf’ if Hooker was interested. Hooker only needed to ask if he wanted ‘more of any species’. When Archdeacon Marriott went to England, Gunn sent ‘a box of devilish ugly rough-dried Algae’ for Hooker, and for ‘Robt. Brown’ a Case of our Sponges & Corallines’ and a ‘very large Bottle of Orchideae preserved’.<sup>87</sup>

Following such activity there was an increasing emphasis on developing the plant collection, and, at the suggestion of Dr John Lillie, the Presbyterian minister, in May 1844 Dr Waldick in Calcutta was sent a copy of the Rules and Proceedings of the Society and asked to forward ‘any seeds or plants of the more hardy kinds’, while John Abbott, secretary of the Society, offered a ‘collection of dried plants’ and ‘seeds and plants’ if they would be acceptable going from a temperate climate to that of Calcutta. In early 1844 Mr R Brooke of Salt Water River and Mr Pringle of Salt Water Creek<sup>88</sup> were invited to collect seeds of ‘native rare shrubs or dried plants’ which could be placed in a ‘box with a ball of earth round them’ before transportation to the gardens or into storage for the forthcoming museum. A similar letter was sent to Mr Anderson in Sydney.<sup>89</sup> Illustrating his concern for colonial industries, as well as agricultural aspects, in September 1844 Eardley-Wilmot arranged for three boxes of ‘specimens of native wood of Tasman’s Peninsula’ to be sent to England. He thought the ‘Wood of the White Curly Gum’ a ‘species of eucalyptus’ was ‘equal if not superior to the English Oak’ and might be suitable for ship building in the Royal Dockyards.<sup>90</sup>

Administratively, during the period 1844–47, Royal Society activities concentrated on overseeing the management and development of the 14 acres (5.67 ha) of gardens; refining the rules for the regulation of the Society; and reaching agreement with the rival Tasmanian Society. In these endeavours, from 1845 the Royal Society was well served by the qualified superintendent R W Newman.<sup>91</sup> Newman erected several hot houses, introduced over 200 species of plants belonging to more than 100 genera and prepared a portion of the gardens for cultivating the ‘more valuable kinds of fruit trees’. He also designed and formed the garden’s

<sup>87</sup> ‘DC 218 Supplement to Foreign Letters 1865–1900’, Ronald Campbell Gunn, Penquite near Launceston to Jos. D. Hooker Esqr West Park Kew, 23 September 1844, underlining by Gunn; As noted in chapter 7, Marriott travelled to England to have discussions with Earl Grey.

<sup>88</sup> Probably James Pringle superintendent at Saltwater River Probation Station which was established in 1841.

<sup>89</sup> UTA RSA/A/2 [Royal Society of Van Diemen’s Land] ‘Botanical and Horticultural Society Letter Book’, John Abbott Secretary to Dr Waldick 8 May 1844, Abbott to Mr R Brooke 14 May 1844, Abbott to Mr Pringle 19 June 1844, Abbott to Mr Anderson Sydney 12 July 1844.

<sup>90</sup> CO280/171 (AJCP 528) unsigned to Eardley-Wilmot 6 August 1845, pp. 362–63 referring to Eardley-Wilmot’s despatch (No. 206) 17 September, see also Champ to Forster, 27 June 1844, pp. 367–73.

<sup>91</sup> Winter, ‘The Foundation Years of the Royal Society of Tasmania, 1843–46’, p. 65; Minutes of Council meeting 6 January 1845; Hurburgh, *The Royal Tasmanian Botanical Gardens 1818–1986*, p. 23.



reservoir, thereby overcoming the ‘laborious and expensive arrangement’ of carting water for the gardens from the town.<sup>92</sup>

In early January 1844 the gardens were open to members of the Society and to those who produced a written order and a copy of one of the advertisements placed in three newspapers.<sup>93</sup> The conditions for taking cuttings, plants and fruits were altered the following month. Fellows were permitted to take produce that was ‘required to be preserved’, visitors could accompany fellows at no cost, and the contentious entrance fee was waived for members living more than ten miles from Hobart Town.<sup>94</sup> In September 1844 entry conditions were further eased. The superintendent was permitted to admit ‘all respectable persons’ who applied to him, but members were only permitted plants to the value of their annual subscription of £1. Sales, from which the head gardener received 10 per cent, benefitted the Society, totalling £13 0s 6d on 31 December 1844.<sup>95</sup> Between September 1844 and May 1845 the gardens were open to the public twice weekly, the entry fee was abolished, and visitors were required to enter their names in the book at the entrance gate.<sup>96</sup>

Disappointingly for Eardley-Wilmot, not all residents recognised the Royal Society’s scientific status. In March 1845 Gunn wrote to Joseph Hooker in London, stating the Royal Society could ‘go to the devil’.<sup>97</sup> He claimed Fellows were ‘disgusted with His Excellency’s frequent interference & old Bicheno’ told him that the Society ‘would die immediately despite the £400 a year from the Government’.<sup>98</sup> A few months earlier, when commenting on the Tasmanian Society, then based in Launceston, Gunn alleged: ‘we have got rid of all vice-presidents, etc and flourish alike as humble members’.<sup>99</sup> After a few months the Tasmanian

<sup>92</sup> *Mercury* 28 June 1844 p.4; RSA/K/1 *Report of the Royal Society of Van Diemen’s Land for Horticulture and the Advancement of Science 1846* (Hobart Town 1846), p. 7; The reservoir is now the lily pond.

<sup>93</sup> The advertisement was in *Omnibus*, *Trumpeter* and *Hobart Town Advertiser*, see RSA/A/1 Proceedings of the [Van Diemen’s Land Horticultural and Botanical] Society 1843–45. Council 1843–45 Council meeting, Royal Society of Van Diemen’s Land, 11 January 1844.

<sup>94</sup> UTA RSA/A/1 Proceedings of the [Van Diemen’s Land Horticultural and Botanical] Society 1843–45 Minutes of Council meeting 1 February 1844 and General Meeting 7 November 1844.

<sup>95</sup> RSA/A/1 Proceedings of the [Van Diemen’s Land Horticultural and Botanical] Society 1843–45 General Meeting 1 February 1844, Minutes of Council 5 September 1844 and 6 January 1845, underlining in original; Winter ‘For ... the Advancement of Science’, p. 12.

<sup>96</sup> RSA/A/1 Proceedings of the [Van Diemen’s Land Horticultural and Botanical] Society 1843–45 General Meeting 5 September 1844; *Hobart Town Courier*, 17 May 1845, p. 2; See RSA/E/20 Visitors Book [Botanical Gardens of the Royal Society of Van Diemen’s Land] 1 March 1844–1 February 1849 with names of Fellows and names and brief addresses of visitors.

<sup>97</sup> R C Gunn to J D Hooker, 29 March 1845 Letter 191 in Burns and Skemp, *Van Diemen’s Land Correspondents*, p. 111.

<sup>98</sup> ‘DC 218 Supplement to Foreign Letters 1865–1900’, Ronald Campbell Gunn to Jos. D. Hooker [May 1845?]; James Bicheno was elected a fellow of the Linnaean Society in 1812.

<sup>99</sup> Gunn’s unaddressed note, probably to J E Bicheno 26 November 1844 in Burns and Skemp, *Van Diemen’s Land Correspondents*, p. 112.

Society was ‘rickety’. According to Gunn he ‘dry nursed’ it, ‘requiring’ all his ‘skill to keep it alive’, and aimed to keep it ‘on as long as possible ... out of spite’, to show Eardley-Wilmot ‘what can be done’.<sup>100</sup>

### Access by horse and cart

In May 1845 a public carriageway was formed through the domain, and after relocation of the lower fence, over one acre of ground was added to the gardens near the River Derwent. The area, divided into three sections to show ‘its natural history and productions’, was for the ‘botanical arrangement of plants, classified and labelled’; the cultivation of plants used in ‘agriculture, medicine and the arts’; and fruit and plants which may be ‘useful or desirable to introduce’ to the colony, all developments which further demonstrate Eardley-Wilmot’s initiation of improvements for the colonists’ benefit.<sup>101</sup>

As already noted, the western boundary was defined by the convict-built Arthur Wall.<sup>102</sup> This has sandstone foundations, is double sided — the side facing the entrance is sandstone, believed to have been quarried on site, while the eastern side (inside) is faced with convict-made bricks. At ground level on the outside wall were fireplace openings and a number of air ducts one foot (30 cm) apart, since covered with built-up soil. The air ducts promoted a draught and distributed warmth from coal fires lit in the fireplaces so the wall could be heated to assist the ripening of fruit, the heat passing through flues to outlets on the crest.<sup>103</sup> The traditional English idea of a kitchen garden with a ‘hot wall’ to protect fruit trees from frost and to ripen fruit in autumn was popular after about 1750 in northern England.<sup>104</sup> It was not necessary in the colony, the ‘delightfully salubrious’ climate producing almost ‘every species of British fruit, vegetable, or corn’ in the ‘greatest possible perfection’, and where ‘bird or beast, domesticated or otherwise’, have satisfactorily ‘increased and multiplied’.<sup>105</sup>

<sup>100</sup> ‘DC 218 Supplement to Foreign Letters 1865–1900’, Royal Botanic Gardens, Kew Archives, Ronald Campbell Gunn to Jos. D. Hooker [May 1845?].

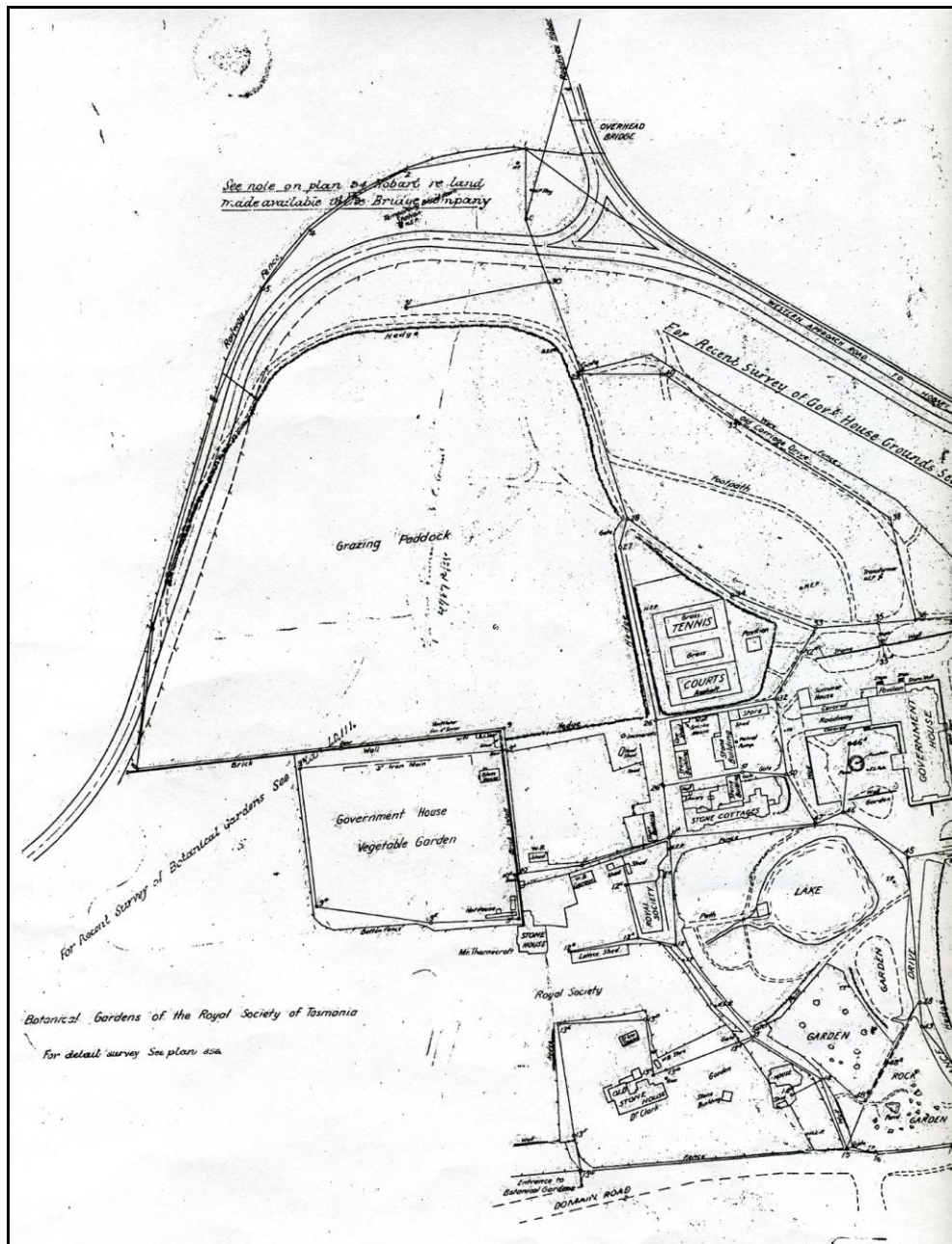
<sup>101</sup> *Hobart Town Courier*, 17 May 1845, p. 2; Minutes of Council meeting 27 February 1845.

<sup>102</sup> Hurburgh, *The Royal Tasmanian Botanical Gardens 1818–1986*, p. 11; In recent years buttresses were added to the eastern side to prevent the wall leaning due to the planting of a row of potentially enormous trees on the western side.

<sup>103</sup> P Frazer Simons, *Historic Tasmanian Gardens* (Canberra, 1987), p. 30.

<sup>104</sup> ‘The walls were built of brick, which held the heat better than stone, warmed by ovens or furnaces where wood or coal was burnt. Good examples still exist at Wentworth Woodhouse, Constable Burton and Nostell Priory’, see Charles Quest-Ritson, *The English Garden: A Social History* (London, 2001), p. 163.

<sup>105</sup> David Burn, *A Picture of Van Diemen’s Land*. A facsimile of a work published in *The Colonial Magazine 1840–41* (Hobart, 1973), p. 180.



**Figure 9.2:** Position of carriageways and government garden c.1939.<sup>106</sup>

### The Eardley-Wilmot wall

Along what was formerly the eastern boundary separating the Gardens from the future Government House site and paddock, is the Eardley-Wilmot brick wall about twelve feet (four metres) high supported by buttresses, as shown in figure 9.3. The convict-made bricks (smaller than modern bricks) were laid to follow the slope of the ground. The wall, about 280 metres long, of which 130 metres was built in a north-south direction, with a right angled corner on the southern end turning to an east-west direction stretching to the former

<sup>106</sup> Lands and Titles P94A. Reproduced with the permission of the Department of Primary Industries and Water, © State of Tasmania.

superintendent's cottage, is possibly the longest span of any brick wall built by convict labour still standing in Tasmania.<sup>107</sup> Built from 1844 no records have been located of Eardley-Wilmot seeking permission or finance from the Colonial Office for its construction. Neither have any records been located to indicate the existence of foundations, nor does the wall appear to have any foundations other than those supporting the buttresses which were added about 1964.



**Figure 9.3:** Section of western side of Eardley-Wilmot wall 2010.

Eardley-Wilmot's wall provided work for convicts and enclosed the government garden as a separate unit.<sup>108</sup> It is unknown if the area was enclosed after Sorell established the gardens in 1818. The earliest available maps do not indicate any boundary structures. Even though some maps have original dates, they also have additions, some undated and there is no indication if the marked changes were implemented. The south-eastern boundary of the Royal Society Gardens was at the water edge, and here too, maps do not provide details of fencing.<sup>109</sup>

<sup>107</sup> 'The Tasmanian Botanical Gardens', *Australian Parks. Journal of the Australian Institute of Park Administration* Vol. 2, No. 1 (August, 1965), p. 12.

<sup>108</sup> *Let's talk about The Royal Tasmanian Botanical Gardens Hobart* (Launceston, April 1983), p. 9.

<sup>109</sup> *Lands and Titles Hobart, Hobart Plan P91A* (undated); in more recent years land has been reclaimed in this area, the lowest grassed area of the gardens.

During the depression of the 1840s it was inevitable government extravagance would be criticised. In September 1844 ‘A Tradesman’ in a letter to the editor of the *Hobart Town Courier* complained that Eardley-Wilmot ‘expended a very large sum of money’ on the ‘magnificent brick wall around *his share* of the Government Garden’, money which could have been used in relieving the plight of unemployed free tradesmen.<sup>110</sup> Despite such criticism, the Colonial Auditor thought the outlay of £549 2s 6d for the wall ‘might perhaps be considered as a legitimate expense, as no Officer could be expected to incur an outlay of the kind, for the benefit of their successors’.<sup>111</sup> The cost of the wall was about one seventh of Eardley-Wilmot’s annual salary and 9.6 times the average wage (4s 6d to 5s 0d per day) of a mechanic without board and lodgings in Hobart Town.<sup>112</sup>

Legend has it that Eardley-Wilmot built the wall to keep out grasshoppers, but research has failed to support this proposition.<sup>113</sup> Marcus Hurburgh suggested the wall was built from ‘bricks intended for Government House’, but no correspondence or plans to indicate this have been found.<sup>114</sup> It is more likely the new Government House was to be built of sandstone, as supported by the preparation of plans and the quarrying of sandstone on site following Arthur’s decision that Hobart Town should remain the capital of Van Diemen’s Land.<sup>115</sup>

It is therefore interpreted that the Eardley-Wilmot’s convict-brick wall was built as a boundary fence for the Royal Society gardens and the Government House gardens within it. The wall would also have been a means of employing pass-holders, as their numbers had increased, 900 waiting for service in December 1843.<sup>116</sup> It seems unlikely it was built to keep out grasshoppers, and no suggestion has been found of a grasshopper plague in 1844. Yet, according to Boyes, who lived at *Belle Vue*, about 500 yards north of the Government garden, at the time of a drought in February 1847 the ‘ground under the plums, apples and pears’ were

<sup>110</sup> *Hobart Town Courier*, 28 September 1844, p. 3, emphasis in original.

<sup>111</sup> CSO 280/213 (AJCP 556) Denison to Earl Grey 21 November 1847, p. 438.

<sup>112</sup> R M Hartwell, *The Economic Development of Van Diemen’s Land 1820–1850* (Melbourne, 1954), p. 85; In 2010 values the cost of the wall would be approximately \$70,310 Australian.

<sup>113</sup> *Mercury* 28 June 1922, p. 4; Hurburgh, *The Royal Tasmanian Botanical Gardens 1818–1986*, p. 18; W A Tobias, ‘The Tasmanian Botanical Gardens’, *Australian Parks. Journal of the Australian Institute of Park Administration* Vol. 2, No. 1 (August 1965), pp. 8–12; *The Botanic Garden, An online Newsletter for the Botanic Gardens of Australia and New Zealand* 12 July 2005 [<http://www.chabg.gov.au/chabg/newsletter/05-july/index.html>], Authors: Mark Fountain, Manager Botanical and Public Programs RTBG and Dr Alan MacFadyen Botanical Resources Officer RTBG, p. 9.

<sup>114</sup> Hurburgh, *The Royal Tasmanian Botanical Gardens 1818–1986*, p. 18; Hurburgh did not include references.

<sup>115</sup> HRA III vi, Arthur to Bathurst, 23 September 1827, pp. 235–38 and 23 November 1827, pp. 348–51; Piesse, *The foundation and early work of the Society*, p. 121.

<sup>116</sup> Hartwell, *The Economic Development of Van Diemen’s Land 1820–1850*, p. 81.

‘full of the winged grasshopper’ which in ‘heedless flight strikes violently against your person as you walk and occasionally dashes at your face’.<sup>117</sup>

Plans show the Government House vegetable garden to have been about 100 yards by 90 yards — about 9,000 square yards (7,290 square metres).<sup>118</sup> Having the wall as two of its boundaries, and the inside angle facing north catching the sun, it provides protection from southerly winds and sea breezes, and was probably used to grow the imported vines on and fruit trees against. Eardley-Wilmot realised the colony needed to be self sufficient, and assistance towards successful food production was embraced. The positioning of the wall might also have been to divide the garden from the domain, from the Regatta Ground which was public space, to block off those using the carriage driveways, to stop theft of fruit and vegetables or merely to separate Eardley-Wilmot’s garden from the area he gave to the Royal Society for the Botanical Gardens. Hurburgh suggested it was probably for building the wall ‘and kindred misdemeanours’ that Eardley-Wilmot was eventually dismissed from office.<sup>119</sup> Despite Hurburgh’s implication, as will be pointed out in chapter ten, there is no indication in Gladstone’s despatches to suggest the wall was a factor in Eardley-Wilmot’s dismissal.

Eardley-Wilmot’s development of the gardens was praised by his successor, Sir William Denison and his wife two days after arriving in the colony. To the new arrivals, who had ‘just come off a long sea voyage’, the gardens ‘seemed little short of Paradise’. The profusion of fruit ‘exceeded anything’ Lady Caroline had seen before, plums were ‘dropping and lying about almost in heaps’. Also in fruit were pears, apples, figs, vegetables of ‘all sorts’, a walnut, English flowers and native shrubs.<sup>120</sup> This compliment illustrates the success of the early plantings of fruits and vines, and was a tribute to Eardley-Wilmot’s development of the area and his enlightened attitude to the provision of public amenities.

In 1848 the Tasmanian Society and the Royal Society of Van Diemen’s Land for Horticulture, Botany and the Advancement of Science combined and became the Royal Society of Tasmania.<sup>121</sup> Six acres from the Government House grounds, part of which was behind the Eardley-Wilmot wall, were added to the gardens in 1964. To access the extra area, archways

<sup>117</sup> UTA RS 25/2 (9) Boyes Diary, 8 February 1847; Searches for boundary fencing have been undertaken at Lands and Titles, Royal Society Archives and TAHO.

<sup>118</sup> Lands and Titles Hobart, ‘Government House Plans’, Hobart Plan P94A.

<sup>119</sup> Hurburgh, *The Royal Tasmanian Botanical Gardens 1818–1986*, p. 18.

<sup>120</sup> Richard Davis and Stefan Petrow (eds), Sir William and Lady Denison, *Varieties of Vice-Regal Life (Van Diemen’s Land Section)* (Hobart 2004), extract from Lady Caroline Denison’s Journal, pp. 31–32.

<sup>121</sup> Burns, and Skemp, *Van Diemen’s Land Correspondents*, p. 112.

were constructed through the wall and support buttresses added. The gardens, now The Royal Tasmanian Botanical Gardens, are managed by a separate board of trustees.<sup>122</sup>

### **Government House and its role in colonial society**

On arrival Eardley-Wilmot found there were three gubernatorial residences — Government House in Macquarie Street, as shown in figure 9.4 and 9.5 (on land which today is the section of Elizabeth Street between the Town Hall and Franklin Square), a government cottage at Launceston (erected by William Paterson about 1807 on what is now the south-eastern section of City Park) and Turriff Lodge at New Norfolk. Lord Stanley decided the Launceston and New Norfolk properties would no longer be maintained from public funds, but by the Lieutenant-Governor. Therefore the costs became Eardley-Wilmot's responsibility, and to assist with expenses, his salary was increased from £3,500 to £4,000.<sup>123</sup> While waiting for Franklin to vacate Government House, Eardley-Wilmot visited the other two buildings, and found them 'in the most extraordinary and most unjustifiable state of dilapidation'.<sup>124</sup>

In 1817 Government House, described as 'uninhabitable not only with regard to comfort, but even as to security and common decency', and by an early settler as 'unfinished', was renovated for Sorell,<sup>125</sup> but by 1825 the office-residence was in a 'ruinous state'.<sup>126</sup> When Arthur arrived in 1824 he suggested a new Government House be built of stone at Pavilion Point. In April 1826 Lord Bathurst authorised him to commence a new building 'upon a reasonable scale of expense' if the present residence was 'found to be incapable of being placed in a proper and permanent state of Repair'.<sup>127</sup> Plans were prepared for Arthur's proposed location, Pavilion Point, within 200 yards of the government garden, with all work except the joinery to be completed by convicts. By September 1827 sandstone had been quarried on site and foundations positioned, but the dilapidation of the existing building was 'so alarming' the engineer was directed to 'strengthen' the building, and because of the estimated cost the new Government House was abandoned. Arthur directed additional labour be supplied from the penitentiary so a botanical garden could be 'proceeded with' on the

<sup>122</sup> Tobias, 'The Tasmanian Botanical Gardens', *Australian Parks. Journal of the Australian Institute of Park Administration* Vol. 2, No. 1 (August, 1965), p. 12; Frazer Simons, *Historic Tasmanian Gardens*, p. 32.

<sup>123</sup> Burns, and Skemp, *Van Diemen's Land Correspondents*, pp. 111–12; Lynette Ross, 'Launceston's Government Cottage' in Alexander (ed), *Companion to Tasmanian History*, p. 210.

<sup>124</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley (No. 2) 15 September 1843, pp. 51–52.

<sup>125</sup> Charles Rowcroft, *Tales of the Colonies, or, the Adventures of an Emigrant*, by Charles Rowcroft Esq. A Late Colonial Magistrate (London, 1850), pp. 16–17; Leonie Mickleborough, *William Sorell in Van Diemen's Land. Lieutenant-Governor 1817–24. A Golden Age?* (Hobart, 2004) pp. 16–17.

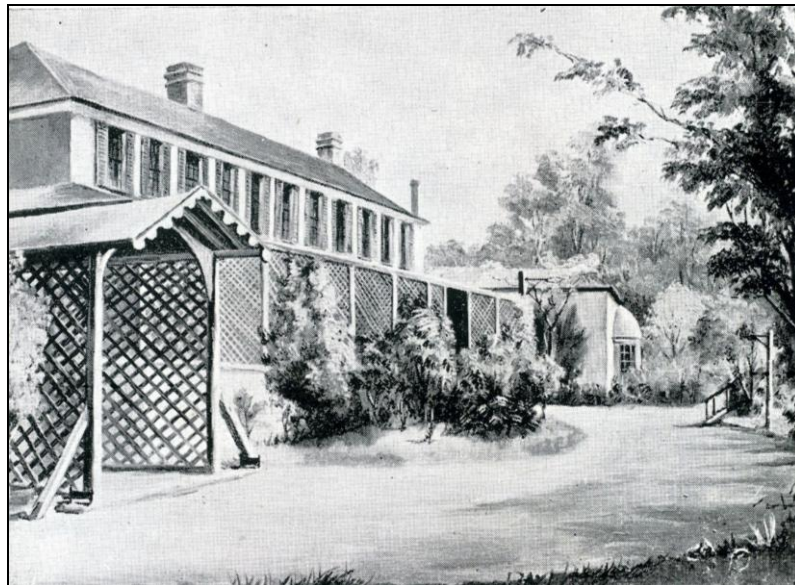
<sup>126</sup> Terry Newman, 'Government House', Alexander (ed), *Companion to Tasmanian History*, p. 165.

<sup>127</sup> HRA III, v Bathurst to Arthur 23 April 1826, p. 201.

domain.<sup>128</sup> In October 1828 the British Government approved a new Government House as ‘soon’ as the colony could meet the expense ‘without embarrassing the Public Service’.<sup>129</sup>



**Figure 9.4:** Government House Sullivan's Cove façade 1837.<sup>130</sup>



**Figure 9.5:** Government House, Macquarie Street façade 1837.<sup>131</sup>

Following Arthur's recall in 1836, newly arrived Franklin revived the proposal. In 1840 the Legislative Council decided he should make the final decision about plans.<sup>132</sup> The foundation

<sup>128</sup> *HRA III*, vi Arthur to Bathurst, 23 Sept 1827 p. 235–37 and 23 November 1827, pp. 348–51; *Let's talk about The Royal Tasmanian Botanical Gardens Hobart* (Launceston April 1983), p. 2; Piesse, *The foundation and early work of the Society*, p. 121.

<sup>129</sup> *HRA III*, vii Sir George Murray to Arthur, 1 October 1828, p. 519; Murray was replying to Arthur's despatches of 28 September and 25 November 1827.

<sup>130</sup> Piesse, *The foundation and early work of the Society*, from sketches made by T E Chapman for Lady Franklin plate XIII facing p. 166.

<sup>131</sup> Piesse, *The foundation and early work of the Society*, from sketches made by T E Chapman for Lady Franklin plate XIII facing p. 166; Joan Kerr, *The Dictionary of Australian Artists* (Melbourne, 1992), p. 143.



stone was laid in 1840 ‘on a spot commanding views of the Derwent and the surrounding beautiful scenery’ adjoining the gardens, and in ‘pleasant drives among the groves of native trees’.<sup>133</sup> James Blackburn’s plans were approved in early 1842 for the building of ‘three blocks and ornate in design’, estimated to cost £14,592 18s 1d.<sup>134</sup>

Soon after arrival Eardley-Wilmot employed probation convicts and also boys from Point Puer as labourers, brick-makers, stonemasons and carpenters on the new Government House.<sup>135</sup> However, by November ‘after so much work’ had been done, and because of the dire financial situation he had no alternative but to discontinue the building.<sup>136</sup> It was only in 1853 during Denison’s tenure, that William Kay adapted Blackburn’s plans, and construction recommenced.<sup>137</sup> The convict labour force used on-site sandstone, and also Huon pine and teak from the convict hulk *Anson*. In 1855 ten of the seventy rooms were ready for occupation, having cost £120,000. The site was 67 acres, thirty-four of which were in grass, and Governor Sir Henry E Fox-Young took up residence.<sup>138</sup>

After the building of the new Government House was suspended, old Government House was refurbished, Franklin, Eardley-Wilmot, Denison and Fox-Young having all requested improvements and additions. Eventually the building was extended to fourteen rooms. The relationship of the building to the town centre is shown in figure 9.6. The adjacent land (the present site of buildings bordering Franklin Square), was the ‘Government Paddock’. During his tenure Eardley-Wilmot used the area as a small zoo for native animals.<sup>139</sup> Here, in May 1844 he had an emu, a kangaroo and a ‘Native Tiger’.<sup>140</sup>

<sup>132</sup> Newman, ‘Government House’, Alexander (ed), *Companion to Tasmanian History*, p. 165; Hurburgh, *The Royal Tasmanian Botanical Gardens 1818–1986*, p. 16.

<sup>133</sup> Louisa Anne Meredith, *My home in Tasmania during a residence of nine years, Volume One* (Swansea 2003), p. 28

<sup>134</sup> J Moore-Robinson, Chief Secretary’s Department, ‘Tasmanian Government Houses’, in *The Mercury* 29 November 1923, p. 5

<sup>135</sup> *British Parliamentary Papers* (hereafter *BPP*) Correspondence and papers relating to convicts ships convict discipline and transportation 1843–47. *Crime and Punishment. Transportation 7* (Shannon, 1969), enc B, C, F pp. 175–76 in Eardley–Wilmot to Stanley, 5 October 1843, pp. 171–79.

<sup>136</sup> *HTG XXVIII* no. 1437, 24 November 1843, p. 1301.

<sup>137</sup> Terry Newman, ‘Government House’, in Alexander (ed), *Companion to Tasmanian History*, p. 165; Hurburgh, *The Royal Tasmanian Botanical Gardens 1818–1986*, p. 16.

<sup>138</sup> Rowntree, *The Story of Government House*, pp. 12–13; Moore-Robinson, ‘Tasmanian Government Houses’, p. 5; Between Bathurst’s authorisation to commence work and a habitable building, 28 years had elapsed.

<sup>139</sup> Rowntree, *The Story of Government House*, p. 8, also when Government House was demolished the old blocks sold for £20,000.

<sup>140</sup> RS 25/2 (8) Boyes Diary 24 May 1844 Boyes attended a levée at Government House, took his son Henry and ‘placed him in the Anteroom, so that every person proceeding to the Levee passed before him ... Sir Eardley walked out ... and then took us to show Henry the Emu and Kangaroo — and also a Native Tiger.’



**Figure 9.6:** From the Old Wharf Hobart Town 30 June 1846.<sup>141</sup>

Centre is the spire of old St David's Cathedral beneath Mount Wellington, with Government House immediately to its right. The cottage of the Lieutenant-Governor's private secretary, where Eardley-Wilmot died, is immediately left of the Bond Store (on right of painting).

The 'Government Farm' (currently Cornelian Bay Cemetery), was advertised for lease in September 1843. The land, of 120 acres, was 'securely fenced and in the best possible condition', with 60 acres under crop. Buildings included a dwelling; barn; cow-house; piggery; fowl and pigeon-houses; a two-stalled stable and men's huts. The future tenant was offered the run of 400 acres adjoining — presumably this was the domain.<sup>142</sup> The following month the farm was let for an annual rent of £150 to Boyes, acting Colonial Secretary, who was living at *Belle Vue*.<sup>143</sup> Boyes quickly stocked his farm with a 'black cow and calf' and a 'well bred light Grey'. Having paid £14 10s 0d 'for the three', he was pleased the ewes were 'lambing fast'.<sup>144</sup> The following March, when Boyes paid his rent, he told Eardley-Wilmot he did not wish to renew his lease. In September he started selling his stock and farm machinery, including 170 ewes, 130 hoggets, four rams, a plough, a winnowing machine and a stack of

<sup>141</sup> Max Angus, *Simpkinson de Wesselow, Landscape Painter in Van Diemen's Land and in the Port Phillip District 1844–1848* (Hobart, 1984), p. 19.

<sup>142</sup> *Hobart Town Courier*, 1 September 1843, p. 1; Lindy Scripps, *A Tranquil haven A history of Cornelian Bay* (Hobart, 2006), p. 13.

<sup>143</sup> Scripps, *A Tranquil haven A history of Cornelian Bay*, p. 13; RS 25/2 (7) Boyes Diary 15 and 19 September 1843; In 1872 the former Government Farm became part of the new public cemetery, replacing St David's Burial Ground.

<sup>144</sup> RS 25/2 (7) Boyes Diary 10 and 11 October 1843.

hay.<sup>145</sup> According to the 1847 report of Colonial Auditor Boyes, it ‘appears’ Eardley-Wilmot ‘appropriated the proceeds of the government farm to his own use’ — £150 in the first year, and then a less amount. A proportion of the garden at the government cottage at Launceston was also let, and apparently Eardley-Wilmot did not pay the annual rent of £22 to treasury.<sup>146</sup> This minor misappropriation of government funds did not attract official censure.

The usual place of residence for the colony’s Lieutenant-Governor was Government House in Hobart Town. Since 1815 his place of retirement was the government cottage on the outskirts of the rural township of New Norfolk, twenty miles from Hobart Town accessible by both land and water. This was Turriff Lodge, a farm of 80 acres, on an ‘irregular and unfertile piece of table-land’ with a valley on the opposite side of the river of ‘rich alluvial soil’.<sup>147</sup> Two months after Eardley-Wilmot found the lodge ‘in the most extraordinary and most unjustifiable state of dilapidation’, the local press reported that he intended to make the ‘beautiful place of retirement his usual residence’ until ‘his family arrangements’ were complete.<sup>148</sup> This did not happen, as three of his sons were his only family members to arrive. During the next two years he spent £271 12s 0d on additions, repairs and furniture, and £329 13s 6d on travelling — all legitimate claims, but according to Boyes, his claim of £12 9s 0d for furniture was ‘inadvisable’.<sup>149</sup> Eardley-Wilmot continued his agricultural pursuits, and in 1846 ordered that hops be transplanted from Maria Island to Turriff Lodge.<sup>150</sup>

### **Society, culture and sport**

As head of the government, Eardley-Wilmot was inevitably involved in community activities, one being Anniversary Regattas. The carriageways he had constructed through the domain made the area easily accessible for the public to attend — the River Derwent an ideal location for water carnivals, the gentlemen who owned the boats, gambling on the results of boat races.<sup>151</sup> The idea of making a regatta the occasion for a public holiday first occurred to James Wilson, merchant of Hobart Town (later member of the Legislative Council, Mayor of Hobart

<sup>145</sup> RS 25/2 (7) Boyes Diary 25 March 1844 and RS 25/2 (8) 9 September 1844.

<sup>146</sup> CSO280/213 (AJCP 556) Denison to Earl Grey Secretary of State 21 November 1847, p. 440–41.

<sup>147</sup> David Burn, *A Picture of Van Diemen’s Land*, p. 91.

<sup>148</sup> CO280/160 (AJCP 521) Eardley-Wilmot to Stanley (No. 2), 15 September 1843, pp. 51–52; *Murray’s Review*, 20 October 1843, p. 2.

<sup>149</sup> CO280/213 (AJCP 556) Denison to Earl Grey 21 November 1847, p. 438.

<sup>150</sup> Frazer Simons, *Historic Tasmanian Gardens*, p. 107, p. 111. Hops had been brought to the colony in 1829 by William Shoobridge who planted them at Providence Valley, but after ‘vain endeavours’ to provide sufficient moisture his trials were unsuccessful, and he transplanted them to Maria Island. In 1838 hops were introduced to *Redlands* on the Plenty River. The original owner was George R Read whose property was described in 1845 as the most productive in the colony; *The Tasmanian Mail* 9 May 1885, p. 28; see *The Tasmanian Cyclopaedia*, p. 424 for a photo of the north façade of Turiff Lodge in 1889.

<sup>151</sup> M Nicholls (ed), *The Diary of the Reverend Robert Knopwood 1803–1838* (Hobart, 1977), 30 October 1815, p. 216; David Young, *Sporting Island. A history of sport and recreation in Tasmania* (Hobart, 2005), p. 9.

and also knighted for his services to the colony).<sup>152</sup> In November 1838 Franklin proposed an annual regatta be established to embrace all people, be held on 1 December and be a public holiday to commemorate Tasman's discovery of the island almost 200 years before.<sup>153</sup>

Pavilion Point was the site for the first Anniversary Regatta, where a large rustic building was erected, partly for the 'good old Governor and his friends' but mainly for a flower show.<sup>154</sup> Tents and booths were supplied, and the committee provided free 'Colonial ale, biscuits and cheese'. The weather was 'glorious', the ships in Sullivan's Cove were decorated with flags and streamers and 12,000 people enjoyed the side-shows, amusement booths, regimental band and free food and alcohol.<sup>155</sup> There were five races, four-oared gigs, whale-boats, two for sailing-boats and one for dinghies. Franklin donated thirty sovereigns to the winner of the Tasman Prize, a race for whale-boats from Pavilion Point to New Town and return.<sup>156</sup>



**Figure 9.7:** Whale boat race c.1880.<sup>157</sup>

After well attended regattas, the supply of free alcohol and food resulted in many drunk and disorderly people. The regatta became the scene for 'colonial debauchery', and in 1842

<sup>152</sup> *Royal Hobart Regatta, 1948. 110<sup>th</sup> Anniversary Regatta Official Programme*, pp. 7–8; *Royal Hobart Regatta, 1949 Official Programme*, pp. 5–9.

<sup>153</sup> *True Colonist* 23 November 1838, p. 4.

<sup>154</sup> *Royal Hobart Regatta, 1948. 110<sup>th</sup> Anniversary Regatta Official Programme*, pp. 7–8; *Royal Hobart Regatta, 1949 Official Programme*, pp. 5–9.

<sup>155</sup> *Colonial Times*, 27 November 1838, p. 4; *Royal Hobart Regatta, 1948. 110<sup>th</sup> Anniversary Regatta Official Programme*, p. 8; Lloyd Robson, *A History of Tasmania: Volume I. Van Diemen's Land from the Earliest Times to 1855* (Melbourne, 1983), p. 359; Fitzpatrick, *Sir John Franklin 1837–1843*, pp. 169–70.

<sup>156</sup> *Colonial Times*, 4 December 1838, Vol. 24 no. 1175, p. 391; see figure 9.7 for a whale-boat race c.1880.

<sup>157</sup> TAHO illustration cited in Julia Clark, *This Southern Outpost Hobart 1846–1914* (Hobart 1988), p. 80.

Franklin proposed to ban liquor tents.<sup>158</sup> Following opposition to his suggestion, the committee moved the regatta from Pavilion Point to Chaffey's Point (now the site of Wrest Point Casino). William Chaffey, landlord of the nearby Traveller's Rest public house, provided five acres of land, and, despite declaring his determination to keep strict order, widely advertised his stock of fine wines, beer and spirits, as did private liquor marquee holders, all of whom were happy to profit from sales. The situation, no doubt, offered short term relief from the economic depression. Not surprisingly, Franklin did not attend.<sup>159</sup>

Eardley-Wilmot, anxious to avoid conflict during his first few months in office, agreed to return the regatta to Pavilion Point, where it was again held on 1 December 1843, by which time it was possible to 'enjoy a quiet ride to New Town, along the new road'.<sup>160</sup> In keeping with tradition, he donated — twenty and ten sovereigns to the boats placed first and second in the race for Gigs which pulled 'four oars to proceed round a boat moored off Cornelian Bay, then around the boat moored off Judge Montagu's point and back to the start'. The ongoing festive mood continued that evening when, in return for the Ball held in his honour the previous month, Eardley-Wilmot held a 'fancy dress' ball at Government House. The 'sonorous tones' of St David's Church at 9.00 p.m. were followed by the 'rattling of wheels' from all directions and with great 'delight' the guests arrived.<sup>161</sup>

### **Politics of rumour and scandal**

The position of Lieutenant-Governor involved entertaining colonial officials and selected settlers. On 30 August 1843 Eardley-Wilmot held the first of many levées, at which he 'looked very well and like a Governor'.<sup>162</sup> Despite the 'severity of the weather', attendance was 'most numerous'. Those present included: their Honours the Judges; Colonel Elliott commanding the troops; the Bishop; Colonial Secretary Bicheno; the Comptroller-General of Convicts Captain Forster; chief public officers, civil, military, ecclesiastical, and respectable inhabitants, while the guard of honour with the Queen's colour, and the 'fine band of that splendid regiment' the 51<sup>st</sup> King's Own Light Infantry attracted many spectators.<sup>163</sup> Robert

<sup>158</sup> Robson, *A History of Tasmania: Vol I*, p. 360.

<sup>159</sup> Robson, *A History of Tasmania: Vol I*, p. 360; Fitzpatrick, *Sir John Franklin 1837–1843*, p. 171; David Young, 'Early Hobart Town Regattas', *THRA P&P* 52.2 (June 2005), p. 71.

<sup>160</sup> *Colonial Times*, 9 November 1843, p. 3; in 1856 the Regatta relocated to Macquarie Pt where it is still held.

<sup>161</sup> The Ball was held on 9 November, *Hobart Town Courier*, 8 December 1843, p. 2; *Murray's Review*, 24 November 1843, p. 2 and 8 December 1843, p. 3;

<sup>162</sup> RS 25/2 (7) Boyes Diary 30 August 1843.

<sup>163</sup> *Austral-Asiatic Review*, Friday 1 September 1843, p. 2.

Lathrop Murray, editor of *Austral-Asiatic Review* praised His Excellency's manner: it was 'exactly what might have been expected from an English gentleman' of his position in life.<sup>164</sup>

Social affairs, dinner and visiting were popular pastimes in the early days of the colony, and it seems any event was the cause for celebration, as demonstrated by a levée and Ball to celebrate Her Majesty's birthday.<sup>165</sup> In January 1844 prior to a Bachelor's Ball, Bishop Nixon and his wife dined at Government House. Mrs Nixon was happy with Eardley-Wilmot's 'good taste' in inviting a 'select party' to meet them, and seemed content to have escaped the 'usual carpet hop' given Thursday evenings.<sup>166</sup> Other times Eardley-Wilmot invited officials and officers to dinner, on one such occasion he asked a 'tolerably large party', where there was an occasional game of whist.<sup>167</sup> Boyes was regularly invited, but it seems by February 1845 he no longer enjoyed the functions, maybe, because at one, there were 'No ladies — a tolerably stupid party'.<sup>168</sup> Soon, the wives of landowners were beginning to gossip about the Lieutenant-Governor, and a resident suggested one of Eardley-Wilmot's sons should 'pull the noses of all those' in the colony who repeat such rumours.<sup>169</sup>

Daily living also provided opportunities for socialising with the opposite sex. Eardley-Wilmot was at Turriff Lodge between 10 and 13 May 1844, and Bicheno was there between 11 and 17 May. According to Boyes, after Bicheno returned, he

spoke of Sir E's great courtesy and fondness for the younger part of the fair sex. Barrow & his wife and one or two of her sisters were staying at the Govt. Cottage. Sir E. had succeeded in establishing a friendly undertaking with the girls — sat on the sofa with them and occasionally condescended to pass his arm around their necks. They seemed to enjoy these little innocent familiarities amazingly.<sup>170</sup>

Five months later Boyes noted another incident in his diary. He 'saw Joseph Archer and his wife. Heard for the first time a report unfavourable to the morality of the Head of the Administration and to the virtue of a very young Lady whose Mother's conduct has been only too notorious.'<sup>171</sup> Reports of Eardley-Wilmot's 'propensities (which are strong) lying in the way of young women — an amiable weakness in a Governor' also reached Hooker at Kew

<sup>164</sup> *Austral-Asiatic Review*, Friday 1 September 1843, p. 2.

<sup>165</sup> *Hobart Town Advertiser*, 16 May 1845, p. 1.

<sup>166</sup> Norah Nixon, *The Pioneer Bishop in Van Diemen's Land 1843–1863; Letters and Memories of Francis Russell Nixon DD First Bishop of Tasmania*. (Hobart, 1953), p. 16.

<sup>167</sup> RS 25/2 (8) Boyes' Diary 2 August 1844.

<sup>168</sup> RS 25/2 (7) Boyes' Diary 22 September 1843, 24 October 1843; RS 25/2 (8) 17 July 1844, 2 August 1844, 17 August 1844; *Hobart Town Courier*, 15 December 1843, p. 2; RS 25/2 (8) Boyes Diary 19 February 1845.

<sup>169</sup> P L Brown (ed), *Clyde Company Papers III, 1841–45* (London, 1958), Mrs Victor to Mrs Williams 12 March 1845, pp. 648–51; *Austral-Asiatic Review*, 22 May 1845, p. 7 in response to a letter in *Hobart Town Courier*.

<sup>170</sup> RS 25/2 (8) Boyes Diary 17 May 1844.

<sup>171</sup> RS 25/2 (8) Boyes Diary 30 October 1844.

Gardens. According to Gunn, Eardley-Wilmot had ‘no taste for Science of any kind’ — his ‘only society’ was ‘young ladies without their mamas, or young married ladies without their husbands’.<sup>172</sup> Yet, Eardley-Wilmot was at the ‘apex of the colonial social hierarchy’ and Government House represented a ‘microcosm of colonial culture’. His position fixed the ‘standards of behaviour in the colony’. As a result, he was a target for criticism.<sup>173</sup>

According to Manning Clark, in October 1845 one exchange ‘sent the rounds’ of the colony. At a Government House dinner party a daughter of Anthony Kemp told those present that ‘if she were a man, she would never marry but would take as many lovers as she liked’. Eardley-Wilmot told her she was a ‘devil’, to which she responded, ‘you are another’.<sup>174</sup> Alison Alexander noted that Boyes wrote ‘the only extant diaries of the period’, and even though Boyes did not actually accuse Eardley-Wilmot of adultery, he ‘clearly had a low opinion’ of his morals.<sup>175</sup> Alexander suggested there were ‘several reasons to tempt’ the ‘conventional’ Lady Eardley-Wilmot to remain in England, for example, ‘educational and social opportunities for children’ and the disadvantages associated with a convict colony ‘on the other side of the world’.<sup>176</sup> Despite such conjecture, as detailed in chapter one, Eardley-Wilmot claimed his wife remained in England because of her ‘ill health & religious turn’.<sup>177</sup>

There was a more specific rumour. It concerned Julia Sorell, the eighteen year-old daughter of William Sorell, the registrar of the Supreme Court. On 13 April 1845 Boyes recorded:

Bicheno ... told me of the G. having sent for him and asked his advice. Sorell had called upon Sir E. and told him that a report was abroad injurious to his daughter Julia’s character. It was said, indeed that he had been told, that Sir E. had taken her up to New Norfolk where they remained a night and then returned.<sup>178</sup>

<sup>172</sup> ‘DC 218 Supplement to Foreign Letters 1865–1900’, Royal Botanic Gardens, Kew Archives, Ronald Campbell Gunn to Jos. D. Hooker [undated c May 1845?] with Gunn’s underlining.

<sup>173</sup> David Cannadine, *Ornamentalism: How the British saw their Empire* (London, 2001), p. 32; Penny Russell, ‘Ornaments of Empire? Government House and the Idea of English Aristocracy in Colonial Australia’, *History Australia*, Journal of the Australian Historical Association, Vol. 1, No. 2 (July, 2004), p. 199.

<sup>174</sup> Manning Clark, *A History of Australia III. The Beginning of an Australian Civilization 1824–1851* (Carlton, 1991), p. 323, which is a repeat of Boyes’ diary entry for 17 May 1844.

<sup>175</sup> Alison Alexander, *Governors’ Ladies: The Wives and Mistresses of Van Diemen’s Land Governors* (Hobart, 1987), pp. 121–25.

<sup>176</sup> Alexander, *Governors’ Ladies*, pp. 121–22.

<sup>177</sup> British Library, *The Papers of the Prime Ministers of Great Britain, Series Two. The Papers of Sir Robert Peel* Add. Mss. 40486, Eardley-Wilmot to Peel 12 September 1841, pp. 273–74.

<sup>178</sup> UTA RS 25/2 (8) Boyes Diary 13 April 1845; Boyes also claimed Eardley-Wilmot ‘carried on this silly gossip with old men or young wives or daughters — people he had known for years or the visitor of the moment’, see RS 25/2 (8) Boyes Diary 5 February 1845.

However, Julia Sorell, a ‘strikingly handsome girl of nineteen [sic], with delicate features’,<sup>179</sup> was a woman with a mind of her own, no doubt having heard rumours of earlier family betrayal. Her grandfather Colonel William Sorell was Lieutenant-Governor of the colony 1817–24. In 1807 when he was appointed to the Cape of Good Hope he deserted his wife, Harriet (née Coleman) and seven children. At the Cape he became very friendly with Louisa Kent, the wife of another officer, and when Sorell returned to England, he lived with Louisa. In 1817 she accompanied him to Van Diemen’s Land where she lived as his wife, with some of her children, and some of their own.<sup>180</sup>

In December 1823, Sorell’s first-born child, William (son of Harriet), arrived in the colony to seek support from his father. They had not seen each other for sixteen years, but their time together was brief, as Sorell had already received notice of his recall (he left in May 1824). The following year William Sorell junior married Elizabeth, daughter of Anthony Fenn Kemp, and in 1838, on the pretext that she was taking their children to England to ‘further their education’, abandoned them in Brussels and eloped to India with an officer she had known in Hobart Town. The children’s return to Van Diemen’s Land was arranged by the ex-Lieutenant-Governor, while Elizabeth remained in Europe, deserting her husband.<sup>181</sup>

Such a family background made Julia Sorell an ideal subject for rumours, as did the fact that Eliza Eardley-Wilmot remained in England. In April 1845 William Sorell junior heard allegations about his daughter from Judge Algernon Montagu, and immediately spoke with Eardley-Wilmot, who tried to discover the name of Montagu’s informant. He failed, despite threatening Montagu by proposing to refer the matter to England. As it happened, it was unfortunate that Eardley-Wilmot decided against taking such action.<sup>182</sup> After his dismissal Eardley-Wilmot called on the Legislative Council for a full investigation of Montagu’s behaviour, and even Bishop Nixon ultimately testified the claims were ‘utterly groundless’.<sup>183</sup> Richard Spooner, member of the House of Commons, received similar testimony from Bishop Willson, Roman Catholic Bishop of Hobart Town who could ‘truly say’ he did not see the

<sup>179</sup> Clark, *A History of Australia III*, p. 324; Julia was 18 years old. She was born on 17 August 1826 see Registrar General’s Department RGD33 Hobart Births 26/1839 and Hobart Baptisms RGD32 2064/1826.

<sup>180</sup> Mickleborough, *William Sorell in Van Diemen’s Land*, pp. 7–11, 100, 123–24.

<sup>181</sup> Mickleborough, *William Sorell in Van Diemen’s Land*, pp. 108–109, 111; Lucy Frost (ed) *A Face in the Glass: The journal and life of Annie Baxter Dawbin* (Melbourne, 1991), p. 138.

<sup>182</sup> RS 25/2 (8) Boyes Diary 13 April 1845; F Upward, ‘The Dismissal of Sir John Eardley-Wilmot Lieutenant-Governor of Van Diemen’s Land 1843–46’, MA thesis, University of Melbourne, 1974, pp. 152–53.

<sup>183</sup> *Hansard’s Parliamentary Debates Third Series Volume XCIII* (London, 1847), 7 June 1847, cols 200–01.



‘slightest reason to suspect any immorality’. Willson had ‘never heard a word’ from Eardley-Wilmot or anyone to offend the ‘most delicate ear’.<sup>184</sup>

Meanwhile, it is clear that speculative rumours obscured the conscientious way Eardley-Wilmot sought to pursue an enlightened role in leading and educating colonial society. According to Eardley-Wilmot’s contemporary, Reverend John West, who had been in the colony since 1838, rumours had ‘been long current’ and ‘spread with activity’. The Sydney journal *Atlas* even referred to Eardley-Wilmot’s private habits with expressions of disgust.<sup>185</sup> The implications of such claims of improper behaviour and other personal situations have been suggested as factors in Eardley-Wilmot’s recall. The next chapter will determine the outcome of these claims, Eardley-Wilmot’s subsequent demands for redress following notice of his dismissal, and the ultimate clearing of his name by the British parliament.

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<sup>184</sup> *Hansard Third Series xciii* (93) House of Commons, 7 June 1847, letter dated 5 June, 6 Manchester Street, Manchester Square from Willson to Sir J Eardley Wilmot, Bart, cols 201–02.

<sup>185</sup> West, *The History of Tasmania*, p. 196.

## Chapter Ten

### Rumours and recall

Sir John Eardley Eardley-Wilmot's administration ended abruptly in 1846 when he was dismissed by William Ewart Gladstone, who replaced Lord Stanley as Secretary of State four months earlier.<sup>1</sup> This chapter will detail some of the complaints made against the Lieutenant-Governor, and will show that Sir James Stephen was the 'architect' of the recall.<sup>2</sup> A key point in examining this will be Stephen's constant representations about what he claimed to be Eardley-Wilmot's incompetence and neglect of the probation system, and how, on 27 April 1846 Stephen's efforts were rewarded.

Also examined, will be the claims of John West and A G L Shaw who differ about the validity of complaints. According to West, writing in 1852, those who carefully examine Eardley-Wilmot's despatches will be 'compelled' to question the 'accuracy' of the complaints against him.<sup>3</sup> Shaw, who in 1981 edited John West's study, 'emphatically' disagrees. He claims that 'apart from one reference to homosexuality in 1843', Eardley-Wilmot made 'little or no criticism' of the probation system. Yet, Shaw did admit that unemployment caused by the depression 'interfered with its operation'.<sup>4</sup> Despite Shaw's later claims, Eardley-Wilmot repeatedly advised Colonial Office officials of problems in the probation system and the alarming emergence of homosexuality. He also sent many despatches and also reports from the Comptroller-General of Convicts Matthew Forster, in which Forster warned of problems.

Kathleen Fitzpatrick clearly defined her reasons for Gladstone's dismissal of the Lieutenant-Governor.<sup>5</sup> The official despatch and the secret letter 'provided the perimeter' — and rumours of immorality 'at the very least' led to the recall. In claiming that Eardley-Wilmot had not advised the British government about the 'mental, moral and spiritual state' of the convicts,<sup>6</sup> Fitzpatrick explained that Gladstone was mainly referring to the 'reputed prevalence of

<sup>1</sup> Gladstone was Secretary of State for the Colonies 22 December 1845–6 July 1846 and four times Prime Minister of Britain 3 December 1868–20 February 1874; 23 April 1880–23 June 1885; 1 February 1886–25 July 1886; 15 August 1892–5 March 1894.

<sup>2</sup> Frank Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot Lieutenant-Governor of Van Diemen's Land 1843–46', MA thesis, University of Melbourne, 1974, pp. 195–200 also came to this conclusion.

<sup>3</sup> John West, *The History of Tasmania, with copious information respecting the Colonies of New South Wales Victoria South Australia &*, first published 1852. A G L Shaw (ed) (Sydney, 1981), p. 195.

<sup>4</sup> West, *The History of Tasmania*, p. 60, n 39 for Shaw's comments.

<sup>5</sup> K Fitzpatrick, 'Mr Gladstone and the Governor: The Recall of Sir John Eardley-Wilmot from Van Diemen's Land, 1846', *Historical Studies Australia and New Zealand*, Vol. 1 (April 1940–Oct 1941), pp. 31–41.

<sup>6</sup> ML Stafford H Northcote, *The Case of Sir Eardley Eardley-Wilmot, considered in a Letter to a Friend* (London, 1847).

homosexual relations among the convicts'.<sup>7</sup> Colin Matthew presented a rival proposition. The 1840s and 1850s characterised a 'crisis' in Gladstone's 'public and private life'. The 'great questions' for him of whether politics was a 'legitimate career, of the nature of the Christian State, and of the relationship between ambition and duty' were central themes in his life. It was not until the 1860s that the 'path of his life seemed finally charted' and his thoughts 'consolidated'.<sup>8</sup> Richard Shannon believes Gladstone's dismissal of Eardley-Wilmot revealed his 'unsureness of touch', and Gladstone was 'lucky' Eardley-Wilmot's death prevented him returning to England to clear his reputation.<sup>9</sup> The propositions of all three authors are still relevant and will be discussed in this chapter.

In her 2006 thesis, Catie Gilchrist detailed the 'moral and sexual anxieties' shaped by the transportation of male convicts to the Australian colonies and the 'silences' and omissions' which led to Eardley-Wilmot's recall.<sup>10</sup> As Gilchrist comprehensively detailed this area, and this thesis supports her analysis, this final chapter will concentrate on other aspects, but first, this topic requires some discussion. Gilchrist made some 'low-key' comments about the moral and sexual material in historical assessments, in particular those of Alison Alexander, who stated the 'the suspicion of a little light adultery ... [was] ... enough to be used to obtain Eardley-Wilmot's immediate recall'.<sup>11</sup> Alexander later attributed 'public reasons' for his recall. Eardley-Wilmot had 'done nothing to reform the convicts or improve convict discipline, and had made no effort to combat the horrors of homosexuality amongst convicts'.<sup>12</sup> As already established in this thesis, Alexander's claim is incorrect. She also quoted from Gladstone's secret letter, very briefly mentioning its content, but the emphasis of her book is on the wives and mistresses of colonial governors.<sup>13</sup> Kay Daniels ventured a briefer explanation: 'Gladstone's recall of Eardley-Wilmot was, in part caused by his failure to deal adequately with the lesbian issue.' Daniels referenced her statement to Geoff Lennox, who provided a more comprehensive coverage.<sup>14</sup> He concentrated on the Lieutenant-

<sup>7</sup> Fitzpatrick, 'Mr Gladstone and the Governor', pp. 36–37.

<sup>8</sup> H C G (Colin) Matthew, *Gladstone 1809–1874* (Oxford, 1986), p. 104.

<sup>9</sup> Richard Shannon, *Gladstone Volume One 1809–1865* (London, 1982), p. 191.

<sup>10</sup> Catie Gilchrist, 'Male Convict Sexuality in the Penal Colonies of Australia, 1820–1850', The Sydney eScholarship Repository Postgraduate Theses 26 March 2006 [http://hdl.handle.net/2123/666], pp. 224–34.

<sup>11</sup> A Alexander, 'Governor's Wives and mistresses in Van Diemen's Land' in *Bulletin of the Centre for Tasmanian Historical Studies* Vol. 1, No. 2, 1986, pp. 30–31.

<sup>12</sup> A Alexander, *Governors' Ladies: The Wives and Mistresses of Van Diemen's Land Governors* (Hobart, 1987), p. 124; A Alexander, *Obliged to Submit: Wives & mistresses of colonial governors* (Hobart, 1999), p. 173.

<sup>13</sup> Alexander, *Governors' Ladies*, p. 125; Alexander, *Obliged to Submit*, pp. 173–74.

<sup>14</sup> Kay Daniels, *Convict Women* (Sydney, 1998), p. 182.

Governor's reports, the Bowdens and the *Anson*. To the 'stabs in the dark' linked with Bishop Nixon, Archdeacon Marriott and Dr John Hampton, Lennox added Philippa Bowden.<sup>15</sup>

A 'general concern at the Colonial Office about the record of the Probation System' and also 'irritation' with Eardley-Wilmot for 'neglecting to explain how the System worked' was 'behind' his dismissal, so claimed Joan Ritchie in 1976.<sup>16</sup> While Frank Upward's 1974 thesis comprehensively details the reasons around Eardley-Wilmot's dismissal, it has been overlooked in historical assessments, most likely because it is not readily accessible.<sup>17</sup>

Upward decided Eardley-Wilmot's dismissal was 'bound together' by the defective administration of the colony during the 1840s, both locally and in Britain, and with an administration defective in structure and in its relationship with those outside who placed pressure on it.<sup>18</sup> This final chapter will confirm that the interpretations of both Fitzpatrick and Upward are persuasive reasons for Eardley-Wilmot's dismissal. It will also give credence to W A Townsley's claim that Gladstone 'showed little understanding' of Eardley-Wilmot's local problems and was 'prepared to listen to tittle-tattle' about his private life.<sup>19</sup>

### **Speculation of promotion**

Eardley-Wilmot's recall was unexpected, as only six months into his appointment there was speculation about a promotion. His appointment had only been 'for a short time'. He would succeed Sir George Gipps as Governor of New South Wales, as Gipps was retiring — the changeover expected 'immediately'. According to the *Cornwall Chronicle*, Lord Marcus Hill, a Colonel in the Army and previously ADC to the Duke of Wellington at Waterloo, would become Lieutenant-Governor of Van Diemen's Land and 'Commander-in-Chief of the British forces' in the Australian colonies with head-quarters in Van Diemen's Land.<sup>20</sup> Conjecture continued. In Dublin in early 1845 it was suggested Eardley-Wilmot might succeed Gipps. In 'the event of such an arrangement' General William Napier, Lieutenant-Governor of Jersey,

<sup>15</sup> G R Lennox, 'A Private and Confidential Despatch of Eardley-Wilmot: Implications, Comparisons and Associations concerning the Probation System of Convict Women', *Tasmanian Historical Research Association Papers and Proceedings* (hereafter THRA P&P), 29.2 (June 1982), pp. 80–92.

<sup>16</sup> Joan Ritchie, 'Charles Joseph La Trobe in Van Diemen's Land, 1846', THRA P&P, 23.1 (March 1976), pp. 21–24.

<sup>17</sup> Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot'.

<sup>18</sup> Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', pp. iii –v.

<sup>19</sup> W A Townsley, *Tasmania. From Colony to Statehood 1803–1945* (Hobart, 1991), p. 38.

<sup>20</sup> *Cornwall Chronicle*, Vol. 10 No. 521, 16 March 1844 [p. 2]; Hill was not a General in the British Service as described in *Austral-Asiatic Review*, 29 March 1844, p. 2 and *Melbourne Weekly Courier*, Vol. 1 No. 13, 30 March 1844, p. 2.

would replace him and also have ‘command of the forces in all Australian colonies’.<sup>21</sup> Aware of reports that Eardley-Wilmot would ‘remain only one year’ in the colony before going to Sydney, Gipps did ‘not expect any immediate change’ in his own position.<sup>22</sup>

An unconfirmed report the following May claimed Eardley-Wilmot’s replacement would be a General Officer who would command the Australian District with head-quarters in Van Diemen’s Land.<sup>23</sup> One month later, Matthew Forster, the Comptroller-General, would be offered the position following the Lieutenant-Governor’s promotion to New South Wales. The *Colonial Times* editor asked: ‘Who so fit to take the entire charge of the large gaol as the principal gaoler?’ He answered his own question. Such an appointment did not seem ‘peculiarly strange’ because ‘Stanley’s pet scheme’ needed to be ‘carried out’, his views of the colony only ‘regulated’ by a ‘prison discipline thermometer’. Forster looked at the colony ‘through a bull’s eye of his own invention’, to appoint him ‘would be consistent — very!’<sup>24</sup>

No promotion transpired.<sup>25</sup> Instead, Eardley-Wilmot was notified of his dismissal in two of Gladstone’s communications, both dated 30 April 1846, one official (public) despatch, the other a ‘Secret’ letter.<sup>26</sup> The ‘duplicate’ of the official despatch arrived in the colony on 24 September 1846, and only gave Eardley-Wilmot twenty days’ notice of the arrival of ‘an administrator’. On 5 October the original arrived and also the ‘Secret’ letter informing him of imputations against his personal character.<sup>27</sup> On 26 September the *Launceston Examiner* made room for ‘recent intelligence from England’. The arrival of the *William Hyde* in Sydney on 16 September 1846 brought British news of 16 May. The *Sydney Herald* of 18 September was ‘enabled to state positively’ that Eardley-Wilmot had been recalled, although the name of his successor was not known before the *William Hyde* sailed. The source of information was a passenger who had spoken with Gladstone during the second week of May when Gladstone

<sup>21</sup> *Freeman’s Journal and Daily Commercial Advertiser*, 1 March 1845, p. 1; A similar claim by an authority of the ‘utmost reliance’, stated Napier was Lt-Gov of Guernsey, *Austral-Asiatic Review* 24 August 1844, p. 3.

<sup>22</sup> A G L Shaw (ed), *Gipps-La Trobe Correspondence* (Melbourne, 1989), Gipps to LaTrobe (Letter 211), 12 August 1843, pp. 224–25.

<sup>23</sup> *Tasmanian and Austral-Asiatic Review* 22 May 1845, p. 4.

<sup>24</sup> *Colonial Times*, 21 June 1845, p. 3.

<sup>25</sup> June 1846 Boyes noted it was likely Eardley-Wilmot would be relieved before Christmas, and was possible ‘His Ex’s successor was on his way to this colony’, UTA RS 25/2 (8) Boyes diary 26 June 1846.

<sup>26</sup> CO280/196 (AJCP 545) official (public) despatch Gladstone to Eardley-Wilmot (No 104), 30 April 1846, pp. 558–65 and ‘Secret’ letter pp. 554–57; *British Parliamentary Papers* (hereafter *BPP*) *Correspondence and papers relating to Crown Lands settlement and other affairs in Australia 1847–48. Colonies Australia Volume 10* (Shannon, 1969), Gladstone to Eardley-Wilmot (No 104), 30 April 1846, pp. 29–33 and ‘Secret’, p. 33; see also *British Library* (hereafter *BL*) *Manuscripts Collection, Papers of the Prime Ministers of Great Britain. Series Two. The Papers of W E Gladstone*, Mss. 44364, official pp. 47–54, ‘Secret’, pp. 61–62.

<sup>27</sup> The original official despatch (No. 104) and Gladstone’s original ‘Secret’ letter arrived on the *Java*, see *BPP Colonies Australia 10*, Eardley-Wilmot to Gladstone, 5 October 1846, pp. 34–35; *Hansard Third Series* Vol. xci, House of Lords 25 March 1847, col 370 how on 25 October the ‘duplicate official despatch reached Sir Eardley Wilmot on 25 October and with it the secret despatch’. The dates given in *Hansard* are incorrect.

‘mentioned Sir Eardley’s recall, so there is no doubt on the subject’. The ‘known veracity of the source’ of the information was ‘sufficient to guarantee the truth’, with Colonel Barney gazetted Governor of the new penal colony of Northern Australia ‘most probably the informant’.<sup>28</sup> Hence, colonists in Sydney knew of Eardley-Wilmot’s impending dismissal before his official notification arrived in the colony. It is possible the news also reached him.

Both Sir James Stephen and Gladstone’s brother-in-law,<sup>29</sup> Lord Lyttelton, acting Under-Secretary of State for the Colonies at the time, had read the draft of Gladstone’s official despatch. In response to Gladstone’s request for ‘any errors of fact’, neither made a written comment.<sup>30</sup> Both men simply initialled the draft, and one dated it ‘Apr 30’.<sup>31</sup> Gladstone’s official despatch specified the British government had decided to dismiss Eardley-Wilmot, not for ‘incompetency’ in ordinary duties, but for ‘the very defective manner’ with which he met the ‘special exigencies’ of the colony’s convict system. He was also notified that Her Majesty’s Government decided it would ‘be vain and futile’ to expect that during the remaining three years of his appointment the ‘defect’ could be repaired, and Gladstone (shown in figure 10.1), did not think any ‘written instructions’ from the Colonial Office ‘could possibly produce a ‘great and fundamental’ change.’<sup>32</sup>

Gladstone admitted Eardley-Wilmot had been placed in ‘circumstances of difficulty’. He had also discussed the economical questions of maintenance and ‘coercion’ of the probation convicts though he had entered into argument ‘in a manner too little penetrating’ about their criminal offences and the ‘inner world’ of their ‘mental, moral and spiritual state’. He had not supplied sufficient details, and only in ‘extremely rare cases’ had mentioned the ‘moral condition’ of the ‘many’ thousands of convicts in the gangs and at the probation stations.<sup>33</sup>

Gladstone was unable to judge whether the extent of the ‘horrible impressions’ of the probation parties were fact or ‘apprehension, magnified through obscurity’, but from the ‘evidence ... fragmentary and indirect’ as it was, he regretted much existed. He did ‘not

<sup>28</sup> *Examiner*, 26 September 1846, p. 611; *Hobart Town Advertiser*, 29 September 1846, p. 2.

<sup>29</sup> Sir James Stephen’s diary (1 January–6 September 1846) [microform] Cambridge University Miscellaneous Collections Add 7511 (AJCP M2591), 9 January 1846, p. 9.

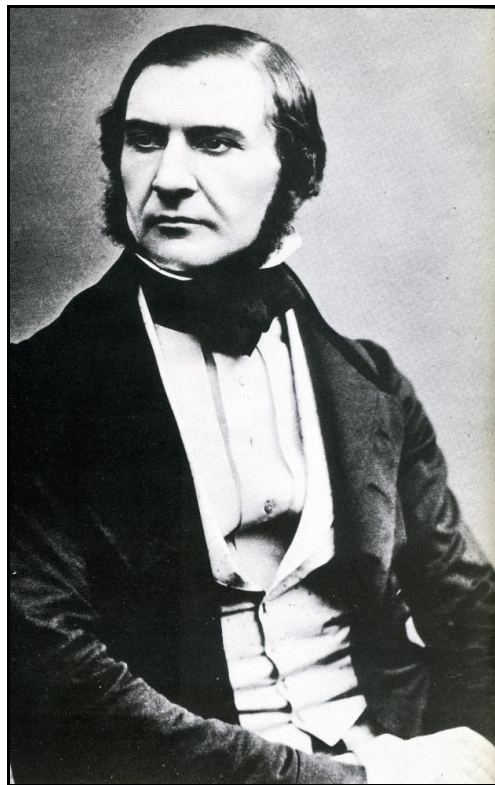
<sup>30</sup> BL *The Papers of the Prime Ministers of Great Britain, Series Two. The Papers of Sir W E Gladstone* Mss. 44364, pp. 47–54 for draft copy; M R D Foot, and H C G Matthew (eds), *The Gladstone Diaries Volume III, 1840–1847* (Oxford, 1974), Wednesday 29 April 1846 Wrote ... ‘at night a dispatch of recall to Sir E Eardley-Wilmot’, p. 534 and on 30 April 1846 he ‘Wrote to Sir E Eardley-Wilmot’, p. 534; Lyttelton was Acting Under Secretary of State for the Colonies January–July 1846.

<sup>31</sup> BL Mss. 44364, p. 47; CO280/196 (AJCP 545) Gladstone to Eardley-Wilmot ‘Secret’, 30 April 1846, pp. 554–57.

<sup>32</sup> CO280/196 (AJCP 545) Gladstone to Eardley-Wilmot (No. 104), 30 April 1846, pp. 558–65.

<sup>33</sup> CO280/196 (AJCP 545) Gladstone to Eardley-Wilmot (No. 104), 30 April 1846, pp. 558–65.

doubt' Eardley-Wilmot disbelieved much of what was alleged, 'perhaps the whole of it'. Despite these comments, Gladstone admitted Eardley-Wilmot had sent Stanley the 'most horrible and revolting' accounts of morals among female convicts — but the reports had not been followed up in the Colonial Office.<sup>34</sup> Gladstone found Dr and Mrs Bowden's report on the *Anson* to be 'interesting' and 'most important'. Gladstone continued his criticism. He censured Eardley-Wilmot for not 'affirming, contradicting or qualifying' the statements., and claimed Eardley-Wilmot simply passed them by as if they were a 'matter of trivial account' and did not show he had 'given any attention or care to the establishment'.<sup>35</sup>



**Figure 10.1:** William Ewart Gladstone c 1847.<sup>36</sup>

Gladstone disagreed with Eardley-Wilmot's full censure of the 'patriotic six' because he was obliged to admit much of what he was told about the conduct of the Legislative Councillors was allegation. Though he might agree with Eardley-Wilmot's action, he could not, on behalf of the Government, support him in his formal use of the term 'disloyalty' to the men's conduct. Yet, if this placed Eardley-Wilmot in an embarrassing situation, it was not decisively influential in his dismissal.<sup>37</sup>

<sup>34</sup> CO280/196 (AJCP 545) Gladstone to Eardley-Wilmot (No. 104), 30 April 1846, pp. 558–65.

<sup>35</sup> CO280/196 (AJCP 545) Gladstone to Eardley-Wilmot (No. 104), 30 April 1846, pp. 558–65.

<sup>36</sup> Shannon, *Gladstone Volume One 1809–1865*, between pp. 222–23.

<sup>37</sup> CO280/196 (AJCP 545) Gladstone to Eardley-Wilmot (No. 104), 30 April 1846, pp. 558–65.

The haste of the recall shows Gladstone's political motivation. The mail for Van Diemen's Land needed to be despatched by 30 April, and a special effort was made to ensure the dismissal was sent by this date.<sup>38</sup> A little over a fortnight later, when the next mail would leave, the House of Commons would have debated transportation, and it was important to Gladstone that the official notification of Eardley-Wilmot's dismissal preceded this debate. It was sent even before the Colonial Office had considered what arrangements would be made for the colony after Eardley-Wilmot received his despatch.<sup>39</sup>

It is quite possible, as Frank Upward suggested, that the speed of Eardley-Wilmot's recall was symptomatic of the failure of the Colonial Office to address the grave problem presented by the Legislative Council, the general confusion in the office indicated by the 'peculiar anomaly' of the dismissal. On 30 April 1846, the day Gladstone signed the despatch stating he could not trust Eardley-Wilmot to report on the moral state of the convicts, he contradicted himself by signing another despatch asking Eardley-Wilmot to report fully on the religious state of the boys at Point Puer.<sup>40</sup> As Shaw suggested, even before the 'storm broke' Gladstone may have realised he had made a mistake, as a fortnight later he refused to take notice of similar accusations brought against the Governor of the Bahamas by the Archdeacon there. 'My general view is', Gladstone noted,

that while private character ought to be regarded as a leading one among the conditions of fitness for appointment to office, I cannot make any investigation into private life unless a public scandal should ... bring the government into discredit.<sup>41</sup>

This was not the case in Hobart Town.<sup>42</sup> The despatch dismissing Eardley-Wilmot created considerable discussion and press comment in Britain — but Gladstone's 'Secret' letter created a public sensation with claims of allegations about Eardley-Wilmot's private life. Gladstone's 'duty' of having to send the secret letter was 'more painful and delicate' than the official despatch, but 'certain rumours' had reached him from a 'variety of quarters' — the nature of which, he claimed, it was 'perhaps unnecessary' to mention.<sup>43</sup>

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<sup>38</sup> CO280/186 (AJCP 537) Lyttelton noted the recall was 'pressing for an immediate decision', 28 April 1846, written after Eardley-Wilmot to Stanley (No. 229) 17 December 1845, pp. 169–72; Upward 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 185; BL Mss. 44364 Gladstone to Mr Eardley Wilmot, 4 May 1846 that the 'painful subject was dated on the 30<sup>th</sup> Ult. and it went by the opportunity of that day', p. 65.

<sup>39</sup> Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 185.

<sup>40</sup> Gladstone to Wilmot 30 April 1846 about moral situation of Pt Puer, cited in Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', pp. 184–85.

<sup>41</sup> CO23/163, f 67 Gladstone, min on Mathew (Bahamas) to Stanley 10 January 1846; BL Mss. 44528 f. 46 Gladstone to Mathew, 16 May 1846, both cited in Alan Shaw, 'Gladstone at the Colonial Office 1846' Australian Studies Centre, Institute of Commonwealth Studies, University of London, Working Paper No. 5 January 1986, pp. 5–6.

<sup>42</sup> Shaw, 'Gladstone at the Colonial Office 1846', pp. 5–6.

<sup>43</sup> CO280/196 (AJCP 545) Gladstone to Eardley-Wilmot 'Secret', 30 April 1846, pp. 554–57.



Gladstone expected Eardley-Wilmot to feel ‘some surprise’ that the official despatch did not mention any possibility of other employment during the remaining three years of an ‘ordinary term of six years’. Had the rumours been ‘slight’ and without credibility, Gladstone might have ‘gladly’ ignored them. Had they taken the form of charges or information supported by the names of the parties tendering them, it would have been his ‘absolute duty’ to refer the matter to Eardley-Wilmot for an explanation or apology. Yet, the claims occupied an ‘intermediate position’, and Gladstone felt justified not having referred them sooner.<sup>44</sup> In October 1845 the English *Naval and Military Gazette* printed an article purporting to be a letter written from Melbourne in which these imputations were presented. The letter also stated the colony was ‘entirely scandalized’ and ‘scandalous misconduct’ at Government House made it ‘quite impossible’ for ‘decent society’ to visit. Gladstone thought it necessary to explain to Eardley-Wilmot that, unless rumours were satisfactorily refuted, it would be impossible to advise Her Majesty to employ him in any other colony.<sup>45</sup>

Following the arrival of a copy of the *Naval and Military Gazette* in the colony in early 1846, the letter was printed in the *Cornwall Chronicle*. Leading officials headed by Chief Justice Sir John Pedder (who earlier had differences of opinion over Eardley-Wilmot’s ‘progressive attitudes to law reform’, mainly criminal law),<sup>46</sup> wrote to the editor stating the article was:

Totally (and here most notoriously) false. Ever since Sir Eardley Eardley-Wilmot assumed the Government ... the families of such of us as are married men, and the families of the other Government officers, and of the principal inhabitants of the colony, have had the honour (for so we account it) of being frequent visitors at Government House.<sup>47</sup>

Eardley-Wilmot’s immediate response was to seek the origins of the rumours from Gladstone and to tell him of the colonists’ practice of spreading rumours. It was ‘impossible’ to ‘grapple’ with charges, the nature and extent’ of which he was ‘ignorant’, so all he could do was deny the imputations. Had the accusations been specific, he would have shown ‘their utter falsehood’. Instead, he had been charged with ‘unknown acts of impropriety ... injurious to his character’ without any information about his accusers or their claims. Eardley-Wilmot

<sup>44</sup> CO280/196 (AJCP 545) Gladstone to Eardley-Wilmot ‘Secret’, 30 April 1846, pp. 554–57; *Hansard Third Series* Vol. xciii House of Commons, col 220.

<sup>45</sup> *Hansard Third Series* Vol. xci (91) (London, 1847), House of Lords, 25 March 1847, cols 368–73; *Times* 26 March 1847, p. 2.

<sup>46</sup> *Cornwall Chronicle*, Vol. XII No 745, 9 May 1846 [p. 2]; J M Bennett, *Sir John Pedder: First Chief Justice of Tasmania, 1824–1854* (Sydney, 2003), pp. 86–87.

<sup>47</sup> *Hansard Third Series* Vol. xciii, House of Commons 7 June 1847, cols 193–98; *BPP Colonies Australia* 10, Eardley-Wilmot to Gladstone, 5 October 1846, p. 47; J L Pedder to editor of *Naval and Military Gazette*, 21 March 1846 and letter signed by: Pedder; Bicheno; Fraser; Burgess; Horne; Boyes; Hone; Power; Stonor; Fleming and Proctor, enc 1 in No. 2, p. 48 in *BPP Colonies Australia* 10, Eardley-Wilmot to Gladstone, 26 September 1846, pp. 43–53.

‘earnestly’ requested that Gladstone specify the ‘dates, places, persons and circumstances’ to which the rumours applied.<sup>48</sup> He was determined to remain on the spot to subject his conduct to the ‘strictest investigation’ in the colony where all rumours appeared to have originated, and where they might, if well founded, be capable of proof.<sup>49</sup> The secret letter, though apparently separate from the official despatch in Gladstone’s mind, did not remain that way, Eardley-Wilmot’s release of it to the colonists resulted in the two documents becoming one.

He sought to redress the situation for the colony itself and to ensure his ‘whole conduct’ could undergo a ‘thorough and rigid inquiry’. For his own sake and for the honour of Her Majesty’s Government, he called on the Executive Council to investigate matters, and he provided them with both the secret letter and the official despatch.<sup>50</sup> He quickly achieved public vindication when 298 leading citizens, including members of the Legislative Council — Alexander Orr; John Dunn (junior); Cornelius Driscoll; Edward Bisdee; William R Allison and John Leake — signed a denial. They understood his dismissal was due to accusations against his ‘personal character’, and deemed it their ‘duty’ to truth and justice to contradict the reports.<sup>51</sup>

Faced with such responses, Gladstone told Eardley-Wilmot how those who revealed the rumours ‘did not profess to support their credit by any statement of particulars’. Despite repeated requests to be told the nature of the charges against him, Gladstone declined to do more than inform the Lieutenant-Governor that his bad reputation was a matter of ‘common notoriety’.<sup>52</sup> As to ‘nameless crime’, Eardley-Wilmot accused Gladstone of either being ignorant himself or of having kept Stanley in ignorance. Yet, Gladstone acknowledged receiving despatches informing him of the practice, and Bishop Nixon, in England at the time, produced damaging data relating to crime at the Coal-Mines Probation Station. On 3 May 1847, writing from 18 Sussex Gardens Hyde Park, Nixon forwarded the new Secretary of State Earl Grey, an address from a ‘very large proportion’ of the Hobart Town clergy. Nixon

<sup>48</sup> CO280/196 (AJCP 545) Eardley-Wilmot to Gladstone 5 October 1846 p. 542; *BPP Colonies Australia 10* Eardley-Wilmot to Gladstone 5 October 1846 pp. 46–47.

<sup>49</sup> *Hansard Third Series* Vol. xci, House of Lords, 25 March 1847, col 370.

<sup>50</sup> *BPP Colonies Australia 10*, Eardley-Wilmot to Gladstone, 5 October 1846, p. 47; The precedent of referring matters to the Executive Council reflecting on conduct was established by Sir George Arthur, see *BPP Colonies Australia 10*, enc 2 in No. 2, Council Meeting, 6 October 1846 p. 48 in Eardley-Wilmot to Gladstone, 26 September 1846, pp. 43–53; In the Commons Richard Spooner noted a precedent had been set by Arthur. When similar charges were preferred against him he ‘adopted that very proceeding’; Eardley-Wilmot’s course of action was one which ‘an honest man convinced of his own innocence was bound to take’, *Hansard Third Series*, Vol. xciii, House of Commons, 7 June 1847, col 193.

<sup>51</sup> *BPP Colonies Australia 10* ‘To Sir John Eardley Eardley-Wilmot, Baronet’, enc in Eardley-Wilmot to Gladstone 9 November 1846, No 4, pp. 50–51; *Hansard Third Series* Vol. xci, House of Lords, 25 March 1847, cols 369–70; TAHO TC NS448/1/2 Petition signed by 298 citizens.

<sup>52</sup> *BPP Colonies Australia 10*, Eardley-Wilmot to Gladstone (No. 164) 26 September 1846, pp. 43–46; *Times*, 26 March 1847, p. 2.

passed ‘no comment’ on the document itself, which ‘tells its own tale’. Signed by Archdeacon Marriott and twenty-four other chaplains, it requested that Nixon lay before the Secretary of State how ‘from many sources’ they were convinced that ‘unnatural crimes’ were ‘committed to a dreadful extent’ in the convict gangs. Believing that associations in gangs would ‘almost necessarily lead to dreadful demoralization’ they ‘earnestly’ implored that probation be discontinued.<sup>53</sup> Attacks on the probation system, and by implication on Eardley-Wilmot and the British Government, were also coordinated with a campaign in the *Times*.<sup>54</sup>

Earl Grey later admitted that reports from Charles LaTrobe and William Denison proved the failure of probation was due to inherent defects in the system.<sup>55</sup> In March 1847 Grey claimed to be ‘entirely ignorant of the grounds’ for his predecessor’s action, and was unable to hold out any hope of re-employing Eardley-Wilmot.<sup>56</sup> The same day Gladstone conceded the testimonial which Eardley-Wilmot forwarded was ‘an appropriate and sufficient answer’, and had he still been Secretary of State, he might have been eligible for re-employment.<sup>57</sup>

Responding to claims of not informing the Colonial Office about homosexuality, Eardley-Wilmot reminded Gladstone how, on 2 November 1843 he advised Stanley that women in the factories had their female lovers. Since then he had ‘unremittingly’ attended to ‘the suppression and diminution of these horrors’. In the absence of neither ‘directions from the Secretary of State’ nor ‘even the slightest notice’ of his despatch, he laboured ‘incessantly to provide precautions and remedies’, and was confident he had been as successful as possible. As rewards, he provided early tickets-of-leave to some of the ‘more deserving’ convict women to enable them to leave the over-crowded female factories and the *Anson*.<sup>58</sup>

Gladstone’s claims that the Lieutenant-Governor had not provided information can be further dismissed by his June 1846 acknowledgment of Eardley-Wilmot’s despatch and letter from the ‘respectable solicitor’, Mr Pitcairn. In ‘powerful language’ Pitcairn described effects of the probation system and the ‘horrid practices’ in which some of the convicts ‘indulged’ while

<sup>53</sup> *BPP Crime and Punishment Transportation* 7 Nixon to Earl Grey 3 May 1847, p. 716 and enc signed by 25 chaplains 9 July 1846, p. 716.

<sup>54</sup> CO280/194 (AJCP 543) in response: Eardley-Wilmot to Gladstone (No. 100) 10 July 1846, pp. 431–54.

<sup>55</sup> A G L Shaw, *Convicts and the Colonies: A Study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (London, 1966), p. 310.

<sup>56</sup> CO408/26 (AJCP 884) Grey to Eardley-Wilmot 20 March 1847, p. 312.

<sup>57</sup> CO408/26 (AJCP 884) Gladstone to Eardley-Wilmot 20 March 1847, p. 314.

<sup>58</sup> Gilchrist, ‘Male Convict Sexuality in the Penal Colonies of Australia, 1820–1850’, p. 159; *BPP Colonies Australia 10*, Eardley-Wilmot to Gladstone, 26 September 1846, pp. 44–45; for his description to Stanley, see GO25/1/11 Eardley-Wilmot to Stanley ‘Private and Confidential’ 2 November 1843.

‘respectable people were fleeing from moral corruption’.<sup>59</sup> Yet, this letter probably provided Gladstone and Stephen with support for their decision. As detailed in chapter four, knowledge about the practice of homosexuality was common, and particulars had been given in evidence to the Select Committee on Transportation of 1837–38.<sup>60</sup> It seems impossible that Colonial Office officials were not aware of the existence of homosexuality, suggesting that the later punitive action by officials appears to be another case of prejudice aimed at Eardley-Wilmot.

Eardley-Wilmot was confident Gladstone would ‘rescue’ him from the ‘double loss of character’ due to the ‘grossest falsehoods’ that ever oppressed an English gentleman.<sup>61</sup> He had ‘separated’ from his wife and family to undertake a ‘difficult and irksome office in another hemisphere’, and had ‘endured three years of toil’, and with only twenty days’ notice was ‘relieved’ of his administration. He was ‘deprived of income’ and denied ‘restoration to office’ until the rumours had been satisfactorily explained.<sup>62</sup> The ‘victim of accusations against his public and private character’, he was prepared to prove they were ‘totally unfounded and calumnious’.<sup>63</sup> In March 1845 when he tried to ‘ascertain the truth’ of the rumours that ‘conduct’ and ‘society’ at Government House was anything but ‘decorous’, he was simply told the ‘fact was notorious’ in the colony.<sup>64</sup>

Instead of embarking for England to confront the rumours, Eardley-Wilmot decided to ‘wait with patience and in privacy’. He expected that after Gladstone had considered the public demonstrations and the Executive Council’s report, he would be restored to Her Majesty’s favour with an ‘immediate appointment’ in another colony where his services ‘would be useful’.<sup>65</sup> He had one final request. To ‘wipe off the injury that as an English gentleman’ he had ‘sustained’, he requested a ‘personal mark of distinction, such as the Civil Order of the Bath, or of St. Michael’ so the world could see ‘Her Gracious Majesty will not suffer the

<sup>59</sup> CO885/2/11 ‘War and Colonial Department and Colonial Office: Subjects Affecting Colonies Generally, Confidential Print. Miscellaneous No. XXIX ‘The transportation system’. Report by Thomas William Clinton Murdoch on the history of the system in New South Wales and Van Diemen’s Land since 1837, with a covering minute by Earl Grey emphasizing the seriousness of the problem identified, 15–19 August 1846, p. 28. I am grateful to Kevin Green for a copy of this document from the National Archives, Kew.

<sup>60</sup> *BPP Crime and Punishment Transportation 3*, evidence of Ullathorne 8 and 12 February 1838, pp. 24–25 and John Russell, p. 60.

<sup>61</sup> *BPP Colonies Australia 10*, Eardley-Wilmot to Gladstone, 5 October 1846, p. 46.

<sup>62</sup> *Hansard Third Series* Vol. xciii House of Commons 7 June 1847, cols 195–96; CO280/196 (AJCP 545) Eardley-Wilmot to Gladstone 5 October 1846 p. 542; *BPP Crown Lands Australia 10*, Eardley-Wilmot to Gladstone 5 October 1846, pp. 46–47.

<sup>63</sup> *Hansard Third Series* Vol. xci, House of Lords, 25 March 1847, col 368.

<sup>64</sup> *Hansard Third Series* Vol. xci, House of Lords, 25 March 1847, cols 369–70, he tried to ascertain the truth of the comments in March 1845.

<sup>65</sup> *BPP Colonies Australia 10*, Eardley-Wilmot to Gladstone, 5 October 1846, p. 47.

lowest of Her subjects to be treated with injustice'.<sup>66</sup> His plea was futile. Such orders could only be conferred 'as rewards for distinguished service', and Lord Grey did not think his services had been 'such as to justify' proposing him. Such honours were only bestowed on those who held 'still more important' posts with the 'entire approbation' of the Sovereign, and for 'longer periods' than Eardley-Wilmot's administration.<sup>67</sup>

He also appealed to Colonel Secretary James Bicheno, to have the interim administrator, LaTrobe, 'sign a warrant' for his 'passage money' of £800. At 'nineteen days notice' his salary was suddenly stopped, and he requested the usual salary due to him be paid from colonial funds. Payment was necessary because the time of his departure from the colony was 'uncertain' and depended on proceedings of the Executive Council and a 'communication from England'. He explained that his application was similar to one he had made to Bicheno for Franklin, and following Bicheno's advice he had 'immediately granted' it.<sup>68</sup> During the next two months Eardley-Wilmot made several more requests for payment. These included appeals to Earl Grey 1 December 1846, LaTrobe 30 November 1846, and the Colonial Secretary in New South Wales, in which he asked for clarification about payments to Sir George Gipps when he was recalled.<sup>69</sup> Bicheno was told the money due to Gipps was to be paid to him on arrival in England from British Funds.<sup>70</sup> The matter of any payment to Eardley-Wilmot does not seem to have been settled before his death.

To establish that the decision to recall Eardley-Wilmot was taken on official and not private grounds, it would be necessary to show that the immediate demands, of which Gladstone later wrote to LaTrobe, referred to public affairs in the colony, but there is no evidence the convict system was worse in April 1846 than it had been for several years.<sup>71</sup> In view of both Gladstone's moral approach, and an inability to demonstrate a new crisis in the colony, it is difficult to challenge the conclusion arrived at by the conservative member for Winchester, B Escott, who agreed with fellow Conservative and member for Southampton, G W Hope in the

<sup>66</sup> *BPP Colonies Australia 10* (Shannon, 1969) Eardley-Wilmot to Gladstone 'I ask for a personal mark of distinction ... so that the world may see that [I] was not ... treated with injustice', 5 October 1846, p. 47; *Hansard Third Series* Vol. xciii (London, 1847), 7 June 1847, cols 195–96.

<sup>67</sup> CO280/196 (AJCP 545), Earl Grey to Eardley-Wilmot, 13 April 1847 on the original Earl Grey had crossed out: 'who have held ~~even more important Colonial Gov~~', p. 564 and *BPP Colonies Australia 10*, Earl Grey to Eardley-Wilmot, 13 April 1847, pp. 49–50.

<sup>68</sup> GO33/1/56 Eardley-Wilmot 'Government House New Norfolk' to Colonial Secretary (No. 37) 'copy' 14 October 1846, pp. 938–39.

<sup>69</sup> GO33/1/56 Eardley Wilmot to Earl Grey 1 December 1846, pp. 929–37, Bicheno to Eardley-Wilmot 28 October 1846, pp. 954–57, Eardley-Wilmot to LaTrobe 30 November 1846, pp. 958–60; LaTrobe to Eardley-Wilmot 2 December 1846, pp. 961–64.

<sup>70</sup> GO33/1/56 Colonial-Secretary NSW to Colonial-Secretary VDL 19 November 1846, pp. 965–68.

<sup>71</sup> Fitzpatrick, 'Mr Gladstone and the Governor', p. 33.

House of Commons debate in 1847. They ‘distinctly charge[d]’ Gladstone with having dismissed Eardley-Wilmot on the ‘ground referred to in that secret despatch. The papers themselves showed it.’<sup>72</sup>

After Eardley-Wilmot’s later death, his supporters in the House of Commons moved to exonerate his reputation. James Graham stated he knew the names of those who provided Gladstone with the information. They did not give their names anonymously, ‘but presented themselves at the Colonial Office’. Gladstone received the information from these ‘three gentlemen’, and from this he wrote his private letter. One man had, in the past been in the service of the Crown but refused to allow the use of his name. The second occupied a ‘high station’ in the colony, while the third, a public servant, who when asked to allow his name to be used, ‘shrunk from the avowal’. Gladstone was not prepared to disclose the names of these two men, but the names had been given to John Eardley-Wilmot, the Lieutenant-Governor’s son,<sup>73</sup> who would, by this time, have known of his father’s death.

### **Scandal in the colony**

It is impossible to know if Eardley-Wilmot committed adultery while in the colony. In 1974 Frank Upward suggested his ‘past’ was ‘suspect’, his marriage ‘probably broke down towards the end of 1825’ and it was ‘possible, even probable, that the rumours in the colony developed out of some indiscretion’ in Eardley-Wilmot’s past, as they initially began out of letters from England.<sup>74</sup> Upward’s assessment seems likely, but no convincing evidence in support of any indiscretion has been located.

Scandal was not new to the colony, and not exclusive to administrators who travelled without their wives. Personal circumstances led to the recall of William Sorell, Lieutenant-Governor 1817–24. Although he travelled with a lady he introduced as ‘Mrs Sorell’, she was not his own wife, but the wife of a fellow officer, and children who travelled with them included some of hers and some of their own. When selected to replace Major Thomas Davey, who was dismissed for lack of competence and also for alleged immorality, Sorell left his wife and six surviving children in England in financially dire circumstances.<sup>75</sup> The apparent personal behaviour of both Davey and Sorell was claimed to have affected public life. The appointment

<sup>72</sup> *Hansard Third Series* Vol. xciii, House of Commons, 7 June 1847, cols 225–26; see F W S Craig, *British Parliamentary Election Results 1832–1885* (Dartmouth, 1989), pp. 279, 334 for election of Escott and Hope.

<sup>73</sup> *Hansard Third Series* Vol. xciii, House of Commons 7 June 1847, col 214.

<sup>74</sup> Upward ‘The Dismissal of Sir John Eardley Eardley-Wilmot’, p. 154.

<sup>75</sup> L Mickleborough, *William Sorell in Van Diemen’s Land: Lieutenant-Governor 1817–24. A Golden Age?* (Hobart, 2004), pp. 3, 119–20.

of Eardley-Wilmot (after Franklin and his active and public wife) and the absence of Lady Eliza Eardley-Wilmot, made the masculine nature of government house ‘vulnerable to any suspect charges of inappropriate sociability’.<sup>76</sup> It has been suggested had Lady Wilmot accompanied her husband to the colony the damaging aspersions later cast against him for his purported personal misconduct would probably not have been made.<sup>77</sup> There is, nevertheless, another aspect to this proposition. Had Eardley-Wilmot’s opponents been aware of his parents’ divorce (after his mother was found guilty of adultery with the household footman), such information would certainly have been linked to his own alleged immorality.<sup>78</sup>

The charge of sexual immorality contributing to Eardley-Wilmot’s dismissal was not unique to the colony. In New South Wales accusations were made against Governor Sir Charles FitzRoy (1796–1858) who replaced the ailing Sir George Gipps in August 1846. FitzRoy was the second son of the Duke of Grafton, a noble line which sprang from the union of Charles II and one of his mistresses. To pure-minded radicals of the mid-nineteenth century these were dishonorable origins. When FitzRoy, recently widowed, stayed at Berrima during a tour of New South Wales, he became affectionate towards the innkeeper’s daughter, and, when she became pregnant, he bribed the girl’s father to remain silent. Accusations did not end here. His two adult sons were allegedly ‘loose-living’, and prostitutes did ‘regular business at Government House’.<sup>79</sup> In December 1847 while FitzRoy was driving, his wife Mary, and also his aide-de-camp Lieutenant Chester Masters, were killed in a carriage accident in the grounds of Government House, Parramatta.<sup>80</sup> Left without his wife, FitzRoy was in a similar situation to Eardley-Wilmot, and both faced attacks on their moral character.

A central figure in the Colonial Office during Eardley-Wilmot’s administration of Van Diemen’s Land was Under-Secretary Sir James Stephen, who had a long association with the colony. Even before he received any despatches from Eardley-Wilmot, Stephen was

<sup>76</sup> Gilchrist, ‘The Victim of his own Temerity?’ pp. 151–61, 250–54.

<sup>77</sup> Peter Mercer, ‘Colonial Treasures at the Tasmanian Museum & Art Gallery: Sir John Eardley Eardley-Wilmot’s Briefcase’, *National Trust Tasmania Newsletter* No. 182 (November 2001), p. 1.

<sup>78</sup> See also chapter one; ‘The trial of Fanny Wilmot, wife of John Wilmot, Esq. M.P. for adultery with a footman’ evidence of William Garthwaite <http://nla.gov.au/nla.cat-vn3267802> pp. 8–9.

<sup>79</sup> John Hirst, *The Strange Birth of Colonial Democracy* (Sydney, 1988), pp. 21–22; Michael Roe, *Quest for Authority in Eastern Australia in Eastern Australia 1835–1851* (Parkville, 1965), p. 195.

<sup>80</sup> John Kennedy McLaughlin, ‘Sir Charles Augustus FitzRoy’, in David Clune and Ken Turner (eds), *The Governors of New South Wales 1788–2010*. (Annandale, 2009), pp. 214–15; John M Ward, ‘FitzRoy, Sir Charles Augustus (1796–1858)’, *Australian Dictionary of Biography* [<http://www.adb.online.anu.edu.au/biogs/A010363b.htm>].

disillusioned, finding the colony's affairs 'tiresome and of little comparative significance'.<sup>81</sup> Stanley trusted Stephen with overseeing the administration of Van Diemen's Land, which resulted in his 'all-encompassing' influence over the colony.<sup>82</sup> Despite this trust, Stephen was not impressed with Stanley, who, in 1844 he described as 'a very weak man'.<sup>83</sup>

### **James Stephen's role in Eardley-Wilmot's recall**

Stephen's relationship with Gladstone was totally different from his relationship with Stanley. As a result, from early 1846 his influence on the daily organisation of Van Diemen's Land declined. According to T Barron and K J Cable, Stephen once described Gladstone, who later became Britain's greatest nineteenth-century politician, as 'the poorest and feeblest ... of all my Downing Street rulers'.<sup>84</sup> Ironically, though, as Upward explained, Stephen's influence on major policy matters was greater under Gladstone than when Stanley had been his superior. Stephen's minutes sometimes read as if he was 'a patriarch imparting his extensive knowledge to a novice', and Eardley-Wilmot's recall was very much due to Stephen's assessment of Gladstone.<sup>85</sup> The need to take orders from Gladstone, a career politician twenty years his junior, with no title to bolster his prestige and only brief experience as Under Secretary for the Colonies in 1835, was obviously a prospect Stephen feared.<sup>86</sup> It is also possible the Gladstone family connection to slaves in the West Indies and leading advocates for the planters, did not endear him to the Stephen family and their friendship with William Wilberforce and his aims of abolishing slavery.<sup>87</sup>

Stephen admitted that to blame Eardley-Wilmot for all that was done or omitted would be unfair, but to pardon him for the manner in which he administered the colony seemed 'impossible'. As for the Legislative Council, Stephen considered the 'patriotic six' were 'substantially' correct, so it would not be acceptable to punish them. If the number of

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<sup>81</sup> *Papers of Sir George Arthur Volume 4 Correspondence with Sir James Stephen 1823–54* (A2164) [microform] Stephen to George Arthur 6 February 1844; Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 83.

<sup>82</sup> Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 28.

<sup>83</sup> *Papers of Sir George Arthur Volume 4 Correspondence with Sir James Stephen 1823–54* (A2164) [microform] Stephen to George Arthur 6 February 1844.

<sup>84</sup> T Barron and K J Cable. 'The Diary of James Stephen 1846' *Australian Historical Studies* Vol. 13 No. 52 (April 1969), pp. 505, 509; Upward, 'The Dismissal of Sir John Eardley-Wilmot Lieutenant-Governor of Van Diemen's Land 1843–46', p. 29.

<sup>85</sup> Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', pp. 29–30.

<sup>86</sup> Barron and Cable. 'The Diary of James Stephen 1846', p. 506.

<sup>87</sup> Sir James Stephen's diary (1 January–6 September 1846) Add 7511 (AJCP M2591), diary entry 6 May 1846, p. 62 for contact with Wilberforce family.



unofficial members could be ‘considerably increased’ there might be some ‘escape’ out of the ‘difficulties’; otherwise, the only solution was to recall Eardley-Wilmot on other grounds.<sup>88</sup>

An ‘intellectual process-worker’ who worked diligently ten or eleven hours a day, Stephen handled vast quantities of material. He would rarely take a holiday, and when he did, he took a literary assistant to the country and would continue to ‘write, read, read, write or rather dictate all day’ from which he would have ‘weary eyes in the evening.’ This, as Shaw explained, meant Stephen was ‘keeping an eye on the colonies’, watching expenditure and administration, and ‘recalling precedents where his extraordinary memory stood him in good stead’. Always on the ‘lookout for maladministration’, he carefully examined situations reported to him.<sup>89</sup> Consequently, it is no surprise that he criticised Eardley-Wilmot.

As this thesis proposed, and as Upward concluded, Eardley-Wilmot’s weaknesses did not justify the strength of Stephen’s adverse reactions. The ‘greater part’ of Stephen’s rebukes were written in the Colonial Office as notes on the margins, or at the end of Eardley-Wilmot’s despatches, and not sent to the colony. Stephen’s demands were excessive, which probably made him think Eardley-Wilmot’s weaknesses worse than they were.<sup>90</sup>

On 19 August 1846 Gladstone’s successor, Earl Grey, wrote a covering memo recommending ‘to the immediate and most serious consideration of the Cabinet’ a paper written four days earlier by senior clerk in the Colonial Office, Thomas W C Murdoch.<sup>91</sup> Murdoch noted that the author of the ‘intelligence’, recently returned from Van Diemen’s Land, was a gentleman whose family Stephen had known all his life, and who, in his ‘boyhood’ lived for ‘some months’ in the Stephen family home. This man, later revealed as George Dougan, was employed in ‘public offices of low degree’ in Van Diemen’s Land. Stephen thought he was a ‘clerk in the office of the registrar of convicts’. A ‘gentleman by birth, manners and education’, Dougan could be ‘fully relied on’.<sup>92</sup>

<sup>88</sup> CO280/186 (AJCP 537) Sir James Stephen’s note to Lord Lyttelton, 27 April [1846] p. 174, after Eardley-Wilmot to Stanley (No. 229) 17 December 1845, pp. 169–72.

<sup>89</sup> A G L Shaw, ‘Stephen, Sir James (1789–1859)’ *Oxford Dictionary of National Biography* (hereafter *ODNB*) Jan 2008 [<http://www.oxforddnb.com/view/article/26374>].

<sup>90</sup> Upward, ‘The Dismissal of Sir John Eardley Eardley-Wilmot’, p. 123; marginal note for example CO280/193 (AJCP 542) Stephen’s note 7 August p. 115 of Eardley-Wilmot to Stanley 17 March 1846, pp. 109–11.

<sup>91</sup> CO885/2/11 War and Colonial Department and Colonial Office No. XXIX Murdoch to Earl Grey 15–19 August 1846 emphasizing the seriousness of the problem identified; TAHO NS488/22.

<sup>92</sup> CO885/2/11 War and Colonial Department and Colonial Office No. XXIX Murdoch to Earl Grey 15 August 1846, p. 28; TAHO NS488/22.

In Van Diemen's Land in August 1845 Dougan visited the physician at one of the probation gangs, some days passing the 'same stations four or five times'. He described 'vice and moral debasement' at the gangs as 'something so shocking' it made his 'blood curdle to think of it'. He had no doubt that more than two-thirds of those in the gangs were living in the 'systematic and habitual practice of unnatural crimes' and people actually paired together. The physician was aware of 'these things' because of the resulting 'loathsome diseases'. Dougan claimed the 'crime was punished, sometimes by whipping, and sometimes not at all', the 'violence and fury' of some of those punished and the whole scene could not be 'fitly described in words'.<sup>93</sup>

Following such reports, Stephen thought Van Diemen's Land represented 'the most revolting exhibition of human nature and human society', and Eardley-Wilmot's neglect in reporting such issues was 'strange'. Commencing with Forster's first report, Stephen was firm in his criticism. The reports had not been drawn up with any force of clarity, and in two or three respects, economy was practiced at the expense of good management. Stephen forgave Eardley-Wilmot's failure to add anything to Forster's reports, thinking he would probably return to matters when he knew more of the colony. Stephen also read letters written by Philippa Bowden, matron of the *Anson*, and the Middlesex magistrate, Mr Sergeant Adams told him that Mrs Bowden shared the opinion 'commonly' believed about Eardley-Wilmot's 'habits' in life. She thought he treated her with 'indifference'. Received when Stephen was recommending Eardley-Wilmot's recall, this letter must have convinced him that Eardley-Wilmot was experiencing difficulties.<sup>94</sup>

The Lieutenant-Governor's dismissal was almost certainly decided on 26 and 27 April in London, when Stephen spoke with George Dougan about Van Diemen's Land 'where he had been for nine years'. Such a 'picture of vice & degradation', Dougan had never 'contemplated of any human Society'. Stephen therefore 'thought it necessary to report the whole (tho' without D's name) to Mr. Gladstone & to urge the recall of Sir E Wilmot the Lt Governor — & this was effected before the week closed.' Following Stephen's insistence, Gladstone 'scarcely knew what to suggest' and how 'to proceed'. He then 'advised sending Latrobe at once from Port Philip as a provisional arrangement'.<sup>95</sup> As Barron and Cable commented, it was unlikely Dougan's evidence alone could have convinced Gladstone to dismiss Eardley-

<sup>93</sup> CO885/2/11 War and Colonial Department and Colonial Office No. XXIX Murdoch to Earl Grey 15 August 1846, p. 28; TAHO NS488/22.

<sup>94</sup> CO280/184 (AJCP 536) notes from Stephen to Lyttelton, 7 February 1846, pp. 29–34 following Eardley-Wilmot to Stanley (No. 113) 5 August 1845, pp. 26–29; Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', pp. 88–89.

<sup>95</sup> Sir James Stephen's diary Add 7511 (AJCP M2591), diary entries for 26 and 27 April 1846, p. 60.

Wilmot, and there is no indication in Stephen's diary that he was aware of the moral charges made by Nixon through Edward Coleridge and Archdeacon Marriott.<sup>96</sup>

In early January 1846, following a visit by historian Montgomery Martin, Stephen was concerned about his own 'infirmity' and thought he should keep 'out of the way of listeners'.<sup>97</sup> As Alan Shaw noted, it was necessary that others took the opinions of the 'querulous even complaining neurotic' with great reservation. In May 1846 Stephen praised Gladstone for recalling Eardley-Wilmot and 'for that let him be held in homage'. This comment, Shaw noted, meant Stephen was putting Gladstone in a 'special category' for Stanley rarely praised anyone.<sup>98</sup>

In 1847 Stephen finally supplied the names of his informants: George Dougan, Archdeacon Marriott and Dr John Hampton. Hampton, who Stephen expected would be the new Comptroller-General of Convicts, arrived in Britain from Van Diemen's Land at the end of April 1846, and Stephen and Hampton met 'for the 1<sup>st</sup> time' on Monday 4 May.<sup>99</sup> Gladstone's private secretary, Stafford H Northcote (1818–87),<sup>100</sup> disputed some of the reasons given for Eardley-Wilmot's dismissal. He understood the reason was Stanley and Gladstone's 'general dissatisfaction' with his 'mode of transacting public business'. He was 'utterly incompetent to administer a very important and very difficult system of convict discipline', and allowed the 'most horrible and unheard of wickedness' to become general among convicts.<sup>101</sup> So too, Northcote, in combining Eardley-Wilmot's administrative inadequacies and the claims of homosexuality, linked the reasons given in both the official despatch and the secret letter.

### Family seeks information

The accusations which reached Eardley-Wilmot's family in England were more specific than the official despatch, and referred to him 'living in terms of scarcely concealed concubinage with some of the females who were received as guests at Government House'.<sup>102</sup> In response, Eardley-Wilmot's son John Eardley-Wilmot (1810–92) sought details from Gladstone and

<sup>96</sup> Barron and Cable. 'The Diary of James Stephen 1846', p. 508.

<sup>97</sup> Sir James Stephen's diary Add 7511 (AJCP M2591), 15 January 1846, p. 16.

<sup>98</sup> Shaw, 'Gladstone at the Colonial Office 1846', pp. 16–17; Sir James Stephen's diary 28 June 1846, p. 70 'for let him be held in homage'.

<sup>99</sup> Sir James Stephen's diary 4 May 1846, pp. 61–62; Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 189.

<sup>100</sup> Northcote had also been Gladstone's private secretary when he was vice-president of the Board of Trade, and also when Secretary of State for War and the Colonies, see W D Rubinstein, 'Northcote, Stafford Henry, first earl of Iddesleigh (1818–1887)' *ODNB* May 2009 [<http://www.oxforddnb.com/view/article/20328>].

<sup>101</sup> Northcote, *The Case of Sir Eardley Eardley-Wilmot*, p. 4.

<sup>102</sup> *Hansard Third Series* Vol. xciii, House of Commons, Richard Spooner 7 June 1847, col 191.

asked for the names, places and circumstances of his father's detractors. In reply, he was told those who provided information about the 'existence of such rumours' did not wish to support this with 'any statements or particulars'. They wanted their claims founded 'upon general notoriety', and it was not in Gladstone's 'power' to convey what he had 'not received'.<sup>103</sup>

Several times John Eardley-Wilmot (junior) corresponded and met with Gladstone asking that his request be granted. He also wished to explain his dismissed father's situation.<sup>104</sup> On 31 May 1847 Gladstone wrote a letter of apology to John Eardley-Wilmot for the attacks on his father's 'private life'.<sup>105</sup> Not satisfied, John continued seeking information, but, due to the time taken for travel between Van Diemen's Land and England, unknown to him, his father had died on 3 February.<sup>106</sup> The news reached England on 3 June. Whether Gladstone then apologised is unknown. It is possible he did, as his diary entry for 10 June reads: 'Wrote to Sir J.E. Wilmot'.<sup>107</sup>

Despite Gladstone's failure to supply the names of his informants, John Eardley-Wilmot was successful in his quest. Copies of correspondence between Marriott, 'one of the 3 gentlemen' who complained to Stephen of the Lieutenant-Governor's 'immoral conduct', and Lieutenant-Charles Eardley-Wilmot of the 96<sup>th</sup> Regiment, brother of John Eardley-Wilmot (Lieutenant-Governor's son) revealed Hampton's involvement. The information was taken to the colony on the ship which took the papers about the 1847 House of Commons debate over Eardley-Wilmot's dismissal. The name of the third man was not 'made known' to John Eardley-Wilmot, but in March 1848 Marriott acknowledged being 'one of the Three'.<sup>108</sup>

Archdeacon Marriott's involvement was confirmed by Robert Cecil, a visitor to Van Diemen's Land in 1852. The excessively unpopular 'little man' had a 'weak voice ... fits of absence of mind' and forgot to practice the 'little etiquettes that the sensitive dignity of the

<sup>103</sup> BL Mss. 44365 *Gladstone Papers*, Gladstone to Eardley-Wilmot [junior] 9 March 1847, p. 123.

<sup>104</sup> Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, p. 535; copy in BL Mss. 44364, 31 May 1847, p. 65; Also letters of 24 April 1847 from King's Bench Walk; 3 May 1847, 6 May 1847 and 7 May 1847, see *Leamington Spa Courier*, 15 May 1847, p. 1.

<sup>105</sup> Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, p. 626; see also *Hansard Third Series* Vol. xciii, cols 189–229, 7 June 1847 House of Commons, including Gladstone's apology of 31 May 1847 col 200; In his diary he noted writing to 'J.E.E. Wilmot', see Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, 31 May 1847, p. 624, Tuesday 1 June 1847 'Saw Mr Eardley Eardley-Wilmot & others', p. 625.

<sup>106</sup> Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, 4 May 1847, p. 535; copy in BL Mss. 44364, f.65.

<sup>107</sup> Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, p. 627.

<sup>108</sup> John Eardley-Wilmot admitted that during spring of 1848 he sent his brother, a Police Magistrate in Hobart Town, 'the names of the 2 gentlemen'. 'It seems ... some months before I wrote Archdeacon Marriott ... acknowledged himself to some extent, as one of the Three, altho' he asserts that the quality of his information had been misunderstood at the Colonial Office', BL Mss. 40600 J Eardley Wilmot to Peel, 28 August 1848, pp. 423–26.

colonial *nouveaux riches* required'. Likeable, the 'finikin' and narrow-minded Archdeacon had denounced Eardley-Wilmot to Gladstone as 'richly deserved' of criticism or dismissal because of incapacity and gross immorality.<sup>109</sup>

The third man was George Dougan. He was probably 'Mr Dugan', appointed by Franklin as second clerk to William Franks in the principal superintendent's office in Launceston on 21 September 1837 on an annual salary of £60.<sup>110</sup> He also seems to be Mr Dougan, appointed fifth clerk in the police department at Launceston on 13 October 1837,<sup>111</sup> and G A Dougan, appointed on 27 July 1838 as clerk in the survey department receiving £80 annually.<sup>112</sup> George Dougan, a friend of Bishop Nixon, was briefly employed by the probation department, and in 1845 he worked as a clerk for the lawyer George Pritchard.<sup>113</sup> Sadly for the former Lieutenant-Governor, the names of his detractors were revealed too late.

### A 'sacrificed victim' relieved by 'DEATH'

If press reports are indicative of Sir John Eardley-Wilmot's wellbeing, it can be assumed he was healthy until June 1845 when he suffered a 'minor illness'. Though 'naturally hale and hearty', the *Colonial Times* admitted that, to a 'man of his years', the demands of governing the colony must be 'laborious'.<sup>114</sup> Four days before Denison's arrival the *Cornwall Chronicle* reported Eardley-Wilmot was 'in a very critical condition'. After Denison's arrival there were more indications of infirmity, from which he was 'slowly, but certainly improving', and from whom he had 'received the kindest attention'.<sup>115</sup>

Three days later, although suffering 'severely' he was 'progressively improving', but 'mental disease had too deeply affected the corporeal frame', and later that day 'an evident change took place'. The following day Eardley-Wilmot's medical attendants diagnosed a 'mortal attack' of 'Peritonitis, or inflammation of the Peritonaeum, the membrane, by which all the

<sup>109</sup> *The Papers of the Prime Ministers of Great Britain, Series Two. The Papers of Sir Robert Peel* BL Mss. 40600 John Eardley Eardley-Wilmot to Peel, 28 August 1848 pp. 423–26; Christ Church Oxford (Salisbury Papers) letters Vol. 16, Robert Cecil to Lady Salisbury 3 June 1852 cited in Lloyd Robson, *A History of Tasmania: Volume I. Van Diemen's Land from the Earliest Times to 1855* (Melbourne, 1983), p. 434.

<sup>110</sup> CSO5/ 1/60 Principal Superintendent to the Colonial Secretary 21 September 1837, p. 241.

<sup>111</sup> CSO50/ 1/11 Convict Department, Police Office (Blue Book 1837), p. 77. The initial is difficult to read. It is either 'J. Dougan' or 'G. Dougan'. 'Blue books' were annual returns of statistics sent to the CO.

<sup>112</sup> CSO50/ 1/12 Survey Department (Blue Book 1838), pp. 80, 100.

<sup>113</sup> Pritchard employed Dougan during 1845 see George Pritchard to E T Wilkinson 27 January 1846, ML Document 209, cited in Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', p. 170.

<sup>114</sup> *Colonial Times*, 21 June 1845, p. 3.

<sup>115</sup> *Cornwall Chronicle*, 23 January 1847, p. 65; *The Colonial Times*, 29 January 1847, p. 3; According to Denison, Eardley-Wilmot was 'very ill' and his fever 'would probably be made worse were he to hear the usual salute fired' during the landing, see R Davis and S Petrow (eds), *Sir William and Lady Denison, Varieties of Vice-Regal Life (Van Diemen's Land Section)* (Hobart, 2004), p. 23.

viscera are surrounded, and with which the whole cavity of the abdomen is lined'.<sup>116</sup> No record has been located of the medical treatment he received, but evidence presented to a jury following a death at the Brickfields Hiring Depot four months later is relevant. An assigned convict who was 'labouring under acute *peritonitis*' was returned to the Brickfields for medical treatment. Dr Casey ordered 'jalup and ginger — 20 grains of each'. When this did not provide relief 'immersion in a warm bath' followed, then an application of warm turpentine to the 'stomach and bowels externally, and a blister, also six ounces of wine and a powder, and warm bricks', to her feet. She died three hours later from 'natural causes'.<sup>117</sup>

Previous 'sufferings' had 'considerably reduced' Eardley-Wilmot — 'sensible to the last', he 'gradually declined and died without a struggle' soon after eleven o'clock on 3 February 1847 at his private secretary's residence in Macquarie Street, shown in figure 10.2. Death 'relieved this sacrificed victim' who was 'liberated from the mental sufferings his assassins occasioned him by DEATH'.<sup>118</sup> The *Colonial Times* gave the cause as 'mental disease' from 'having suffered the most accumulated injuries — at having been the victim of ingratitude here, and injustice in England'. It had been a 'moral assassination'. He had been 'murdered'. The editor, John C Macdougall, a supporter of the late Lieutenant-Governor, published five sombre poems. They indicated his 'toils are o'er, There is no sorrow in the tomb', the 'breath of falsehood' would no longer surround him 'with its sickening gloom'.<sup>119</sup> To the *Colonial Times*, Eardley-Wilmot died 'literally, as did Napoleon, from mental disease and starvation', from 'complete exhaustion of the frame — in customary phraseology, a decay of nature'.<sup>120</sup>

In respect, shops and offices closed on the day of the public funeral. Among the mourners were Eardley-Wilmot's sons Augustus Hillier (Henry); Robert Charles Chester (Chester) and Charles Octavius, the interim administrator Charles LaTrobe and the new Lieutenant-Governor, Captain (later Sir) William Denison. Held at St David's Church, the funeral service was read by Reverend William Bedford, with responses by Archdeacon Marriott. The

<sup>116</sup> *Colonial Times*, 16 February 1847, p. 2.

<sup>117</sup> *Hobart Town Courier*, 16 June 1847, p. 2 italics in original; Christina McInnis per *Sea Queen* 1846.

<sup>118</sup> *Cornwall Chronicle*, 6 February 1847, p. 823; *Colonial Times*, 5 February 1847, p. 3.

<sup>119</sup> *Colonial Times*, 9 February 1847, p. 3, 16 February 1847, p. 2 and 5 February 1847, p. 3; *Colonial Times*, 12 February 1847 for the poem 'Monody on the Death of Sir John Eardley-Wilmot', cited in Morris Miller, *Pressmen and Governors*, p. 145, it appears any surviving copies of this issue are rare, because it is neither available on the National Library website <http://trove.nla.gov.au/ndp/del/home> nor on microfilm at TAHO; *Times*, 3 June 1847, p. 3.

<sup>120</sup> *Colonial Times*, 16 February 1847, p. 2 and 6 February 1847, p. 2.

organist, Mrs Elliott, played ‘The Dead March in Saul’, and an ‘appropriate psalm’ was sung by the vocalists of the Choral Society.<sup>121</sup>



**Figure 10.2:** Sir John Eardley Eardley-Wilmot’s secretary’s cottage, site of the Lieutenant-Governor’s death 3 February 1847.<sup>122</sup>

Eardley-Wilmot had given instructions from his deathbed that the heads of churches should march together at his funeral. Except for the ministering priest the clergy of all denominations would walk in their several classes, in one body, and the representatives of the three endowed churches, the Archdeacon, the Moderator and the Vicar-General would walk abreast during the procession to St David’s Burial Ground.<sup>123</sup> Reflecting the uneasy truce between the Catholics and the Church of England, this instruction was not upheld. The Catholic priests, by ‘rapid evolution, shot ahead of the procession, nearly ousting the Anglicans’.<sup>124</sup> Eardley-Wilmot’s body was placed in a coffin ‘lined with white silk, and stuffed’ and then in a ‘heavy lead’ coffin on which was a brass plate inscribed:<sup>125</sup>

SIR JOHN EARDLEY EARDLEY-WILMOT, BARONET,  
Born in 1783; died February 3, 1847,  
Aged 64 years

<sup>121</sup> *Hobart Town Courier*, 13 February 1847, p. 3; ‘Funeral programme for Sir John Eardley Eardley-Wilmot 1847 Feb. 10 [manuscript]’, National Library of Australia (hereafter NLA) MS 6156 <http://nla.gov.au/nla:cat-vn2896960>

<sup>122</sup> The cottage in the grounds of the Tasmanian Museum and Art Gallery as viewed from Davey Street, 2010.

<sup>123</sup> *Britannia and Trades Advocate*, 11 February 1847 cited in Upward, ‘The Dismissal of Sir John Eardley Eardley-Wilmot’, p. 147; *Hobart Town Courier*, 13 February 1847, p. 3.

<sup>124</sup> West, *The History of Tasmania*, p. 198; see chapter seven for more on Catholic and Anglican differences.

<sup>125</sup> *Hobart Town Courier*, 13 February 1847, p. 3

The lead coffin was placed in another coffin, covered with ‘crimson silk velvet and richly mounted’ with a centre plate inscribed the same as the plate on the lead coffin. These three caskets were put in a ‘heavy packing case’ which was lowered to the floor of the vault of the ‘ordinary depth of six feet’ and ‘floored and walled with brick-work’. At the conclusion of the graveside ceremony the lid of the packing case was lowered, and an undertaker’s assistant ‘went down and nailed it fast’.<sup>126</sup>

Eardley-Wilmot’s ‘mortal remains’ were to be removed from their ‘temporary resting place’ and conveyed to England in the packing case ‘by his son Major Wilmot’<sup>127</sup> in accordance with Eardley-Wilmot’s wish to be ‘reverently placed in the mausoleum of his ancestors’ (at St John the Baptist, Berkswell).<sup>128</sup> His wish was not granted, and three years later, ‘by public subscription’, a monument, as shown in figure 10.3, was erected. A memorial plaque was erected inside St John the Baptist Church, Warwickshire, in part inscribed:

AND DIED AT HOBART TOWN FEBY 3. A. D. 1847,  
WHERE HIS REMAINS ARE INTERRED.

In his Will, dated 2 July 1846, Eardley-Wilmot requested to be ‘buried at such place and in such manner so that such my burial be as private as possible’.<sup>129</sup> This did not happen. His Will also provided details of his marriage to Elizabeth Parry. Money from real estate had already been distributed among their children. The three surviving children from his second marriage were instructed to divide ‘£5000’ from his real estate,<sup>130</sup> and after the distribution of ‘goods chattels and personal estate and effects’ the residue was to be paid to his wife Eliza.<sup>131</sup> She died on 15 December 1869 at 24 Royal York Crescent, Clifton, Gloucester at the age of seventy-one.<sup>132</sup> Eardley-Wilmot’s son Augustus of New Norfolk, and John Dunn, the younger, of Hobart Town were the executors of his estate. Probate was proved in March 1847, his ‘goods, chattels rights credits and effects’ in the colony did not exceed £300 in value.<sup>133</sup>

<sup>126</sup> *Hobart Town Courier*, 13 February 1847, p. 3

<sup>127</sup> *Hobart Town Courier*, 13 February 1847, p. 3; NLA Stanley Family Papers (AJCP M463) Charles Stanley, ‘Journal of the voyage to Tasmania on board the *Windermere*’, 16 February 1847.

<sup>128</sup> *Hobart Town Courier*, 6 February 1847, p. 2; *Times*, 3 June 1847 p. 3; *Colonial Times*, 17 August 1847, pp. 2–3; Reference has been made to St John the Baptist Church, Berkswell in chapter one.

<sup>129</sup> TAHO AD960/2, Will No. 317, p. 333 (2 July 1846).

<sup>130</sup> The £5,000 was to be divided as: Eliza £4,000, Chester £500, Charles £500.

<sup>131</sup> TAHO AD960/2, Will No. 317, p. 333 (2 July 1846).

<sup>132</sup> Bristol Record Office Archive Enquiries [bro@bristol.gov.uk](mailto:bro@bristol.gov.uk) (12 March 2007) that the address, 24 Royal York Crescent – was a very ‘good’ address at the time; Dame Eliza Eardley-Wilmot’s will was proved at the Principal Registry by the oath of Robert Charles Chester Eardley-Wilmot of 76 Oxford Terrace Edgeware Road, Middlesex their son, one of the executors. The will was first sworn as ‘Effects under £8000’ and re-sworn at the Stamp Office February 1870 under £7,000; *Examiner*, 22 February 1870, p. 2 for death notice.

<sup>133</sup> TAHO AD960/2, Will No. 317, p. 333 (2 July 1846); Eardley-Wilmot’s three sons, Augustus [Henry], Robert [Chester] and Charles married John Dunn’s sisters — Matilda, Jeanie and Grace. The press reported





**Figure 10.3:** Sir John Eardley Eardley-Wilmot’s grave  
St David’s Burial Ground (now St David’s Park), Hobart.

In the colony the loss profoundly affected some citizens. Louisa Anne Meredith’s family enjoyed a ‘delightful sojourn at Government House, with the late — alas! that he is gone! — kind-hearted, witty, generous Sir Eardley Eardley-Wilmot’. Louisa was disgusted by the ‘utter and flagrant falsehood of the cowardly and cruel accusations made by anonymous slanderers’. She, her husband Charles, and ‘two other families’ had been ‘resident guests’ when it was ‘wickedly declared’ that ‘No ladies ever visited at Government House’. Such claims were best met by simple facts.<sup>134</sup> This is an interesting statement when considering Louisa’s background. Her father was the son of an inn keeper, and the family lived in intermittent poverty, but Louisa’s mother, determined to equip Louisa to enter society, fostered her talents

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that on the marriage of his son Augustus [Henry], Eardley-Wilmot would give him £10,000, see *Colonial Times*, 1 February 1845, p. 3.

<sup>134</sup> Louisa Anne Meredith, *My home in Tasmania during a residence of nine years* (Swansea, 2003) (first published London, 1852), Volume Two, p. 202.

in music, painting and literature. In Birmingham Louisa (née Twamley) married her cousin Charles while he was visiting from Van Diemen's Land, and they settled in Van Diemen's Land after first living in New South Wales and western Victoria.<sup>135</sup>

Eardley-Wilmot's 'agreeable dinner-parties' were attended by the 'worthy or desirable', and a ball was 'thronged by all the visitable world of Hobarton and the vicinity' where the company 'very possibly' included some of 'the heartless maligners themselves'. In attempting to explain the detrimental reports, Louisa was 'rather tempted' to believe they 'emanated from disappointed suitors for admission'. The 'candid and open hearted' Lieutenant-Governor was 'highly refined and witty' and appreciated 'intelligence in those around him'. Another of Louisa's comments might help explain some of the opposition aimed at Eardley-Wilmot. He rarely bothered to disguise his feeling of indifference towards the 'dull, the pompous, or the vulgar'.<sup>136</sup> Mrs C B Lyons also knew he had enemies. 'Poor old Sir Eardley has gone ... from a world where he played so ill a part: his is a melancholy picture of the closing scene of life, and should be a warning to the living to act more becomingly.'<sup>137</sup>

### Reaction in England: a 'triumphant acquittal'

When news of Eardley-Wilmot's death reached England on 3 June 1847 his dismissal received further prominence.<sup>138</sup> A 'long animated' and 'most eloquent debate' in the House of Commons on 7 June completely exonerated him from the 'cowardly and malicious charges'. This was 'ample proof' of the 'moral assassination of a good and worthy gentleman'.<sup>139</sup> Sir Robert Peel paid the 'highest compliment' to his friend's parliamentary conduct and to his 'peculiar qualifications' to govern the convict colony. The 'charges of immorality' in his private life 'were entirely without foundation' and, 'in every respect, false and slanderous'. His friend and former Commons colleague, Richard Spooner, member for Birmingham, 'ably vindicated' his character against the charges,<sup>140</sup> charges which, according to Lord Russell, had been 'swept to the winds'.<sup>141</sup>

<sup>135</sup> Anne McMahon, Review of V R Ellis, *Louisa Ann Meredith; a tigress in exile*. Blubber Head Press, Sandy Bay, 1979, in THRA P&P 26.4 (December 1979), pp. 147–51.

<sup>136</sup> Meredith, *My home in Tasmania during a residence of nine years*, pp. 203–04.

<sup>137</sup> P L Brown (ed), *Clyde Company Papers IV, 1846–50* (London, 1959), Mrs C B Lyons to Mrs Williams, Parramatta 9 March 1847, p. 178.

<sup>138</sup> *The Era* (London), 13 June 1847, p. 9; *The Aberdeen Journal*, 16 June 1847, p. 8; *Morning Chronicle*, 5 June 1847, p. 5; *Hampshire Telegraph and Sussex Chronicle*, 3 April 1847, p. 8.

<sup>139</sup> *Colonial Times*, 19 October 1847, p. 2; Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, p. 626; *Hansard Third Series* Vol. xciii, House of Commons, 7 June 1847, cols 189–229 with Gladstone's apology, of 31 May 1847, col 200.

<sup>140</sup> *Hansard Third Series* Vol. xciii, 7 June 1847 House of Commons, cols 205–08; *Times* 8 June 1847, p. 3.

<sup>141</sup> *Hansard Third Series* Vol. xciii, 7 June 1847 House of Commons, col 210.

According to the *Times*, nothing had ‘ever transpired’ to justify allegations that Eardley-Wilmot was ‘guilty of the violations of the decency of private life’.<sup>142</sup> It was ‘injustice’ which ‘killed him’, the situation enough to break the heart of an ‘honorable and sensitive man’. His last moments ‘must have been embittered by the sense of his disgrace’ and regret that he did not ‘see the blot which had sullied his name wiped away by the verdict of this country’. His ‘triumphant acquittal’ from damaging charges brought against him in his absence had been ‘fully established’.<sup>143</sup>

Another controversial figure offered his assessment. Bishop Nixon decided to ‘affirm, as an act of justice’ his ‘private opinion’ on Eardley-Wilmot’s character, and to ‘declare’ that ‘in common with others’ his ‘general impressions of the late Governor’ were that ‘it was impossible for any sensible or religious man to pass them by as idle rumours’.<sup>144</sup> Nixon claimed he had ‘never, directly or indirectly forwarded, or caused to be forwarded a single moral charge against Sir E W to the Colonial Office’, but he had complained officially of his conduct towards him as ‘Bishop of the Diocese’. He passed ‘no opinion ‘on Eardley-Wilmot’s ‘general conduct’, but merely ‘denied charges’ against him, which, Nixon told Gladstone, he ‘never heard of in the Colony’, and which, he was ‘satisfied, were untrue’.<sup>145</sup>

Entries in Gladstone’s diary indicate that Eardley-Wilmot’s dismissal was a concern before news of his death reached England. On 17 May 1847 Gladstone wrote to his brother John Neilson Gladstone ‘on Sir E Eardley-Wilmot’. The following day he ‘Saw Sir J Graham on Sir E. Eardley-Wilmot’s case — Spooner’ also.<sup>146</sup> What was discussed is speculation, as Gladstone’s diary entries do not elaborate. There were two more related entries for the month: 27 May 1847 Saw ‘Sir R Peel on the Sir E. Eardley-Wilmot case — J. Stephen on do’,<sup>147</sup> and 29 May 1847, ‘Sir R Peel (here on Sir E Eardley-Wilmot’s matters)’.<sup>148</sup>

Forty-eight years later Gladstone recalled that it had been ‘represented’ to him that Eardley-Wilmot’s ‘regard to women constituted a notorious scandal in the colony’. Nixon had been ‘very prominent in urging’ him to take some ‘step to abate’ the ‘scandal’. Enquiring from Nixon in 1846 for the evidence on which ‘to proceed’, Nixon replied ‘there was no more need

<sup>142</sup> *Times*, 26 March 1847, p. 2.

<sup>143</sup> *Colonial Times*, 19 October 1847, p. 2; *Leamington Spa Courier*, 12 June 1847, p.1.

<sup>144</sup> BL Mss. 44365 Nixon to Gladstone 23 June 1847, pp. 307–08, Nixon’s underlining; see also chapter seven.

<sup>145</sup> BL Mss. 44365 Nixon to Gladstone 23 June 1847, pp. 307–08.

<sup>146</sup> Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, p. 621, this was probably Richard Spooner, MP for Birmingham in the House of Commons.

<sup>147</sup> Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, p. 623.

<sup>148</sup> Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, p. 624.

of evidence in such a case than for establishing the existence of the sun on a bright noon-day. So positive were these assurances' that Gladstone addressed Eardley-Wilmot. At the time Nixon 'entirely disclaimed any concern in the matter', which left Gladstone in a 'hopeless position'. His 'mind contemplated all things in the abstract', and at the age of 'thirty-five' he 'could not grasp or estimate the element of flesh and blood which counts for so much'.<sup>149</sup>

Whether or not Gladstone was of sound mind has been raised by one near contemporary, but a lack of documentation makes a diagnosis impossible. John West, writing in 1852, thought Gladstone's despatch in which he dismissed Eardley-Wilmot was a 'singular example' of his mental habits. Gladstone complained that Eardley-Wilmot's statements were obscure, yet gave his own views in 'odd and scarcely intelligible terms'. As an example, West quoted him stating he thought Eardley-Wilmot's reports about the moral condition of the convicts were 'too little penetrating' and his aim had not been 'to examine the inner world of their mental, moral, and spiritual state'. Gladstone also 'charged' Eardley-Wilmot with 'neglecting the vices of the stations — an error in judgment' so serious to make his removal necessary.<sup>150</sup>

One author suggested the 'intensity' of Gladstone's 'absorption' in issues and his influence in persuading others to join him was largely due to the 'pressures and strains within his own temperament'. Totally unpredictable, the logic he applied to particular courses of action was 'special' to him, with strangers unable to assess if he was influenced by external pressures.<sup>151</sup> Despite Gladstone's 'absorption' and admission that he considered things in 'the abstract', rather than being of unsound mind, perhaps he merely lacked social skills, empathy and understanding.<sup>152</sup> When he left the Colonial Office in June 1846 Stephen was relieved:

Gladstone I do not like. He has reigned for six months & what is the fault I have to find with him? Want of magnanimity & of all other imperial virtues, microscopic in his views & in his ways, — too civil & not quite civil enough — something of a Jesuit in manner & address — subtle almost to a disease. There is neither force, nor expansion, nor grace, nor dignity, nor high courage — at least none of these things make themselves manifest if there they are.<sup>153</sup>

<sup>149</sup> BL Mss. 44790 Gladstone's Autobiographical Note 1894, pp. 135–36 cited in Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', Appendix p. 201. According to the British Library (October 2009) this volume of Gladstone papers has not been microfilmed and is not available for loan or copy.

<sup>150</sup> West, *The History of Tasmania*, p. 196.

<sup>151</sup> D A Hamer, 'Understanding Mr Gladstone', *New Zealand Journal of History* 6.2 (October 1972) pp. 121, 122, 127–28.

<sup>152</sup> Barron and Cable. 'The Diary of James Stephen 1846', p. 509; BL Mss. 44790, pp. 135–36 cited in Upward, 'The Dismissal of Sir John Eardley Eardley-Wilmot', Appendix p. 201.

<sup>153</sup> Sir James Stephen's diary (1 January–6 September 1846) [microform] Cambridge University Miscellaneous Collections Add 7511 (AJCP M2591), 28 June 1846, p. 70.

In his biography, Colin Matthew describes Gladstone as not ‘merely’ a politician ‘wrestling’ with an intellectual crisis. He had the ability to live life with equal intensity at many levels. In the 1840s and early 1850s he was not fully committed, with the ‘ability to change levels’. This gave him his ‘great public weapon — surprise, and his great private resource — variety’.<sup>154</sup> Similarly, John Morley described Gladstone as composed of many ‘curious dualisms and unforeseen affinities’, yet ‘infinitely mobile’ with ‘free energy, endurance’ and ‘elasticity’. He also knew ‘fatigue and weariness’. He had ‘vigour of physical organisation’ and strength of mind, but was unable to deal with business then ‘switch-off’ or ‘let it fall from his grasp, it became part of him’.<sup>155</sup> These traits may explain his impulsiveness in sending both the secret letter and the official despatch.

Until a new Lieutenant-Governor could be sent from England, Gladstone entrusted the administration of the colony to Charles Joseph LaTrobe. The usual channel of communication for instructions from the Secretary of State to LaTrobe, Superintendent of the Port Phillip district, was through the Governor of New South Wales, Sir Charles FitzRoy. On this occasion, Gladstone wrote direct to LaTrobe instructing him to proceed ‘by the most expeditious route to Hobart Town’.<sup>156</sup> He later apologised to FitzRoy for this breach of etiquette, but ‘the urgency of the case’ prevented him conveying instructions through him.<sup>157</sup> Appointed by Royal Warrant on 6 May 1846, LaTrobe took the prescribed oaths before the Executive Council on 13 October 1847 and assumed administration.<sup>158</sup> To the local press he was ‘untried’, with ‘no means of testing his abilities or his powers’.<sup>159</sup>

LaTrobe was directed to make a detailed investigation of the convict system. He was instructed to organise new probation gangs composed ‘exclusively of convicts recently arrived from England’ and had the ‘freest scope’ to use his discretion. He was required to employ the ‘speediest and most effective means’ at his command to ensure future convict arrivals were not ‘subject to the same evils’ which ‘injuriously affected’ earlier arrivals.<sup>160</sup>

<sup>154</sup> Matthew, *Gladstone 1809–1874*, p. 95.

<sup>155</sup> John Morley, *The Life of William Ewart Gladstone Volume 1 (1809–1859)* (London, 1903), pp. 184–85, 190.

<sup>156</sup> Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, Tuesday 5 May 1847 ‘Wrote Mr Latrobe’, p. 535.

<sup>157</sup> *Historical Records of Australia* (hereafter *HRA*) *Series I Governors’ Despatches to and from England Volume xxv* (Sydney, 1925), Gladstone to FitzRoy 7 May 1846, pp. 41–42 enc in Gladstone to FitzRoy 7 May 1846, pp. 41–42, FitzRoy to Gladstone (No. 39), 24 October 1846, pp. 229–30, also note 6 pp. 779–80.

<sup>158</sup> *Hobart Town Gazette Extraordinary* Vol. XXXI no 1589, 14 October 1846, p. 1209.

<sup>159</sup> *Hobart Town Advertiser*, 29 September 1846, p. 2.

<sup>160</sup> *BPP Crime and Punishment Transportation Vol. 7* Gladstone to LaTrobe (No. 10) 16 May 1846, p. 397; CO408/27 (AJCP 886) Stephen to Phillips, 13 May 1846 pp. 120–21 in which Stephen told Phillips that Gladstone thought it was ‘difficult to judge whether the evils that are assumed to exist are chargeable in any degree on the present system of Convict Management itself, or only on the manner in which it is administered’; *Examiner*, 12 December 1846, p. 3.

Here again, Gladstone was admitting failures in the system of transportation, and therefore indirectly absolving Eardley-Wilmot from blame even before the Lieutenant-Governor had received his notice of dismissal. This reinforces the dilemma of accepting Gladstone's claims that he recalled Eardley-Wilmot for the flawed manner with which he met the special demands of the British convict system.

In his report LaTrobe was to consider two points. The first, the system as he found it, and second, to ascertain how far probation answered the ends proposed.<sup>161</sup> Gladstone also 'specifically' drew his attention to the 'reported prevalence' of 'unnatural crime' among the convicts. Regarding this latter point, LaTrobe reported being 'aware of the circumstances' which 'may be supposed to have engendered and fostered it', and where, whether on probation stations or elsewhere, crimes of the description in question were 'perpetrated'. After investigation, he was satisfied unnatural crime existed in 'various forms'.<sup>162</sup> He 'unhesitatingly' concluded probation had 'failed in attaining the ends proposed', and worked neither advantageously for the prisoners, the colony, nor the Government. Probation had not had a 'fair trial', and 'could never have *in this distant Colony*'. Instead, he favoured the '*Dispersion*' of convicts under assignment 'immediately on arrival'.<sup>163</sup> The probation system, founded on 'unsound principles', was a 'fatal experiment as far as it had proceeded', and the faster it was 'put an end to the better, for the credit of the Nation and humanity'. There was an 'absolute necessity' for a change. An alternative was not easy to propose, but despite problems, it was necessary prisoners in 'one form or other' were still transported.<sup>164</sup>

LaTrobe's report was printed for the House of Commons and published in *British Parliamentary Papers* without Enclosures No. 5 and No. 6.<sup>165</sup> Enclosure No. 5 referred to the prevalence of homosexuality among the convicts, while No. 6 detailed the dismissal of seven officers from the Convict Department.<sup>166</sup> Similarly, James Boyd's report on the probation

<sup>161</sup> Ian Brand, *The Convict Probation System: Van Diemen's Land 1839–1854* (Sandy Bay, 1990), pp. 109–10; The report, 'A despatch from C J LaTrobe Esq. to Earl Grey: the present state and prospects of the convicts in Van Diemen's Land', is reproduced in full on pp. 107–207 in this publication.

<sup>162</sup> Brand, *The Convict Probation System*, p. 111.

<sup>163</sup> LaTrobe's decision in favour was similar to that already discussed, especially in chapter 5; see Brand, *The Convict Probation System*, pp. 115–16 for LaTrobe's comments.

<sup>164</sup> Brand, *The Convict Probation System*, pp. 129–30; *BPP Crime and Punishment* 8, LaTrobe to Grey 31 May 1847, pp. 53–54.

<sup>165</sup> There is a notation to this effect in *BPP Correspondence and an act relating to convict discipline and Transportation 1847–50. Crime and Punishment Transportation* 8 (Shannon, 1969), LaTrobe to Grey 31 May 1847, p. 68.

<sup>166</sup> *BPP Crime and Punishment* 8, LaTrobe to Grey 31 May 1847, pp. 41–87; see CO280/206 (AJCP 551), pp. 146–77 for the full text of LaTrobe to Grey; the dismissed officers were: Mr G Robertson; Lieut. Butler; Major de Gillern; Captain Gardiner; Lieut Lloyd; Mr A. Pineo and Mr Thos. Lafarelle, see pp. 181–94; the full report is also in GO33/1/66 from p. 1311.

station at Darlington was published in *Parliamentary Papers*<sup>167</sup> and in James Syme's 1848 publication, *Nine Years in Van Diemen's Land*, both without reference to homosexuality.<sup>168</sup> This 'editing' of official documentation suggests the deliberate omission of details which Colonial Office officials were unwilling to acknowledge — maybe because these were the same officials who formulated the probation system which amassed large groups of men together. This omission may even have been a way of avoiding reference to Eardley-Wilmot's earlier relevant reports or because of sensitivity about possible political embarrassment.

In Enclosure No. 5 LaTrobe concluded 'Unnatural Crime' had been proved or 'suspected upon good grounds to prevail' to a 'great extent' among the convicts, the increase in 'vice' attributed to the introduction of the probation system. There was an 'increased prevalence' of unnatural crime among the 'better class of the Colonists', especially those in contact with convicts through their professional functions. Any 'satisfactory proof' of this though, would only be found in the records of the Police Courts. However, a return of the committals for the previous eleven years did not support his contention.<sup>169</sup> Homosexual acts were made an offence under English criminal law in 1533, and the death penalty existed under the English 1828 Offences Against the Person Act, for 'every person convicted of the abominable crime'. There were no executions for buggery or sodomy after 1836,<sup>170</sup> and under an 1861 Act the penalty was reduced to penal servitude between ten years and life.<sup>171</sup>

Reports from both LaTrobe and Eardley-Wilmot can be supported by nosological returns from the convict stations between January and September 1846, during which time, at least seventy-nine cases of 'diseased appearance' were reported. Fifty of these convicts were under treatment as out patients and twenty-nine admitted to hospital.<sup>172</sup> John Frost, in public lectures in 1856, disclosed that Eardley-Wilmot showed him the report of the 'medical men from the mines', an account of the 'most revolting nature' with eighty cases of 'disease consequent on

<sup>167</sup> *BPP Crime and Punishment Transportation* 7 pp. 409–15.

<sup>168</sup> James Syme, *Nine Years in VDL comprising an account of its Discovery, possession, settlement, progress, population, value of land, herds, flocks &c. An Essay on prison discipline* (Dundee 1848), pp. 269–89; see Ian Brand, *The Convict Probation System*, pp. 107–207 for 'A despatch from C J La Trobe Esq. to Earl Grey: the present state and prospects of the convicts in Van Diemen's Land', 31 May 1847, and pp. 209–23 for 'Darlington Probation Station Maria Island: a private report by James Boyd'.

<sup>169</sup> CO280/206 (AJCP 551) LaTrobe to Grey 31 May 1847, Enclosure no 5, pp. 146–77, which was not published for the House of Commons.

<sup>170</sup> H Montgomery Hyde, *The Other Love: An Historical and Contemporary Survey of Homosexuality in Britain* (London 1970), pp. 91–92, the 1828 Act 9 George IV c. 31 replaced the 1533 Act 25 Henry VIII chapter 6, frontispiece and p. 92.

<sup>171</sup> Montgomery Hyde, *The Other Love*, frontispiece; see pp. 91–92 for the 1861 Offences Against the Person Act (24 & 25 Vict c. 100).

<sup>172</sup> CO280/206 (AJCP 551) LaTrobe to Grey 31 May 1847, Enclosure no 5, p. 152; it was inferred the 'diseased appearance' was a sexually transmitted disease related to homosexuality; Samuel Johnson, *Dictionary of the English Language* (London 1828), 'nosology' — 'doctrine of diseases', p. 798.

this horrible crime'.<sup>173</sup> LaTrobe was satisfied the existence of unnatural crime was 'the fruit of the faulty system and discipline to which the "doubly convicted" [had] ... so long been subjected'.<sup>174</sup> Therefore, by default, LaTrobe removed moral responsibility from Eardley-Wilmot and directed it at the British government.

LaTrobe's appointment terminated with the arrival of 'William Thomas Denison, Esq., Captain in the Corps of Royal Engineers' with his wife, their family and six servants on the *Windermere*.<sup>175</sup> Denison had expected to find Eardley-Wilmot had departed for England. Instead, he was 'in a dying State' living with his son in the secretary's cottage. Eliza Stanley, the wife of one of his staff felt 'so overflowed [sic] with the bustle and excitement', but found the situation 'somewhat perplexing', because they had 'not the slightest chance' of being in their 'own house'. She confided to her mother-in-law that Eardley-Wilmot was 'very ill, so ill' that he begged no guns be fired on Denison's landing. Government House and the gardens were 'in a most neglected state dirty and out of order', which did not seem to bother her, as it was all 'much larger than anyone expected' and 'almost entirely furnished'.<sup>176</sup> The seriousness of Eardley-Wilmot's illness was all too apparent. He died a week later while Denison's first levée was in progress at Government House.<sup>177</sup>

The failure of transportation was officially recognised in London in 1847, and an attempt was made to replace it by transporting convicts whose time had half expired, at their own expense, with part of the cost of transporting each convict's family paid by the British Government. Transportation as a deterrent had failed. The system became a financial burden on Van Diemen's Land as Britain transferred more of the system's costs to the colony, and as a result, many settlers became anti-transportationists. Newly designed prisons in England were seen as alternatives to transportation, both economically and morally.<sup>178</sup> The 541 ton barque *Duchess of Northumberland*, the last convict ship to Van Diemen's Land arrived on 21 April 1853 with 216 female convicts and twenty-seven children.<sup>179</sup> Convict establishments gradually closed as

<sup>173</sup> John Frost, *The Horrors of Convict Life Two lectures delivered in the Oddfellow's Hall Padiham August 31<sup>st</sup> 1856 by Mr John Frost*. Originally published London, 1856 (Hobart, 1973), p. 43.

<sup>174</sup> CO280/206 (AJCP 551) LaTrobe to Grey 31 May 1847, Enclosure no 5, pp. 171–72.

<sup>175</sup> *Times*, 1 July 1846 p. 2, from the *London Gazette* 30 June 1846, notice from 'Whitehall Downing Street 27 June'; On 20 June 1846 Gladstone wrote to Captain William Denison, see Foot and Matthew, *The Gladstone Diaries III, 1840–1847*, p. 545; *Colonial Times and Tasmanian*, 29 January 1847 p. 3.

<sup>176</sup> NLA, Stanley Family Papers (AJCP M463) Mrs Charles Stanley (née Clayton) to Mrs Stanley her mother-in-law 26 January 1847, Charles Stanley to Catherine Stanley 16 February 1847 and Eliza Stanley to her mother-in-law, 26 January 1847.

<sup>177</sup> Stanley Family Papers (AJCP M463) Charles Stanley to Catherine Stanley, 16 February 1847.

<sup>178</sup> Shaw, *Convicts and the Colonies*, pp. 347–48

<sup>179</sup> See Christine Woods, *The Last Ladies: Female convicts on the Duchess of Northumberland, 1853* (Hobart, 2004) for details of these female convicts.



the number of convicts declined, Port Arthur in 1877, followed by the Female House of Correction at Cascades. Convicts were then held in the Hobart Gaol in Campbell Street.

As John West concluded, Eardley-Wilmot considered himself ‘the servant of the crown, reserved in his decisions by ‘absolute and specific instructions’. The precision of Stanley’s commands ‘left no alternative but to obey’. Had Eardley-Wilmot immediately declared the ‘impracticability’ of Stanley’s schemes he might have been recalled and the responsibility of failure would then have remained with Stanley, but Gladstone and the Colonial Office made him the scapegoat for the failure of the probation system.<sup>180</sup> In 1884 settler James Fenton made a similar claim. The British government ‘attributed the evils of the penal system to defective management in the colony rather than to the imperfections of the system itself’.<sup>181</sup>

The ‘improvement of the moral and spiritual condition of the convicts’ could not be fulfilled with transportation as it was practiced between 1840 and 1846. The ‘state of affairs’ in the colony shocked Gladstone, and for this the British Government was responsible.<sup>182</sup> By 1848 Earl Grey admitted that reports from LaTrobe and Denison proved ‘conclusively’ that the failure of probation could not be attributed to Franklin and Eardley-Wilmot, but to ‘inherent defects in the system itself’. Though true, to Shaw this did not excuse Franklin and Eardley-Wilmot from claiming the system was working well. Instead, they should have drawn attention to its defects.<sup>183</sup> Rumours of Eardley-Wilmot’s immorality directed attention to those who tried to convince Gladstone of his alleged failings.

This chapter has detailed Sir James Stephen’s activity in Eardley-Wilmot’s removal, while that of Francis Richard Nixon, the Anglican Bishop of Van Diemen’s Land, whose view of Eardley-Wilmot as an enemy of the Church of England was covered in chapter seven. It is realistic to deem these were some of the men who influenced Gladstone, but clearly Stephen was the ‘architect’ of Eardley-Wilmot’s recall.

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<sup>180</sup> John West, *The History of Tasmania: Vol I* (Launceston, 1852), p. 259; West, *The History of Tasmania*, pp. 195–96.

<sup>181</sup> James Fenton, *A History of Tasmania from its discovery in 1642 to the present time* (Hobart, 1884) Facsimile edition (Hobart, 1978), p. 162.

<sup>182</sup> K Fitzpatrick, ‘Mr Gladstone and the Governor’, p. 38.

<sup>183</sup> A G L Shaw, ‘Sir John Eardley-Wilmot and the Probation System in Tasmania’, *THRA P&P*, 11.1 (September, 1963), p. 16.

## CONCLUSION

The introduction to this thesis stated the prime focus was an administrative study and critical analysis of Sir John Eardley Eardley-Wilmot's administration of Van Diemen's Land at a time of penal reform in England and in the penal colony. The aim was also to determine if Eardley-Wilmot was as incompetent as has been claimed; if he was, in fact, as Lord Stanley professed, in referring to his role in British politics, a 'muddle brained blockhead', or whether, as Eardley-Wilmot himself believed, that he was the 'Victim of the most extraordinary conspiracy that ever succeeded in defaming the character of a Public Servant'<sup>1</sup> who was 'treated with injustice' while the prey of an unworkable penal system.<sup>2</sup>

Repeated complaints from Colonial Office officials about administrators were not unique. Ralph Darling, Governor of New South Wales 1825–31 was in a similar situation to Eardley-Wilmot. Both men were appointed to their respective colonies when Colonial Office staff were implementing changes in the convict system and seeking to maintain effective discipline in the colonies. It was also a time when free settlers, who were arriving in increasing numbers, were seeking to improve their prospects in life. Darling was appointed when New South Wales was moving towards a free colony, and when it had 'evolved far from its penal settlement origin',<sup>3</sup> while Eardley-Wilmot was appointed at a time of change from the assignment system to probation.

Even before Eardley-Wilmot was appointed to the colony, British officials did not have full confidence in him. This was particularly demonstrated by descriptions from Lord Stanley and Sir James Stephen. Increasing arrivals of convicts following the cessation of transportation to New South Wales and the expense of sustaining the probation system strained Van Diemen's Land's resources and exacerbated problems.

His personal situation, having arrived without his wife, caused consternation among some settlers, and encouraged claims of immoral behaviour, none of which could be substantiated. The colony was entering a recession and colonists were unable to afford hired convict labour, previously free under assignment. Revenue derived from land sales became increasingly less

<sup>1</sup> CO280/196 (AJCP 545) Eardley-Wilmot to Secretary of State for the Colonies, 30 October 1846, p. 586.

<sup>2</sup> *Hansard Third Series* Vol. xciii (London, 1847), 7 June 1847, cols 195–96.

<sup>3</sup> Brian H Fletcher, *Ralph Darling. A Governor Maligned* (Melbourne, 1984), p. 317; Brian Fletcher, 'Ralph Darling', in David Clune and Ken Turner (eds), *The Governors of New South Wales 1788–2010* (Annandale NSW, 2009), pp. 148–51.

than the costs of police and gaols, further adding to an unstable economy. All these difficulties were made worse by constant orders from the Colonial Office to reduce costs, while Britain sent increasing numbers of convicts, all of which impacted on Eardley-Wilmot and his administration. That the probation system failed to provide a reformatory culture, was later vindicated by Charles LaTrobe.

Eardley-Wilmot received little support from the Colonial Office for predicaments unique to his administration. It was the only Australian colony where probation was the system of convict administration. Due to the vagaries of sea travel, the time taken for despatches to reach England, and then for replies to arrive in Hobart Town could take as long as twelve months. Negatively, such delays could also be used as a means of explaining a lack of action. Due to such delays, it is therefore difficult to ascertain how another administrator, in the same situation, could have acted more effectively. Even considering the information supplied to William E Gladstone, supplemented by the nervous temperament of Sir James Stephen, it is difficult to understand why, after only three years of implementing a completely new experimental structure, that Eardley-Wilmot was not given the required support from Whitehall to assist its success. He had lived sixty years in England, during which impressive career he had been hailed for his contributions to advances in criminal law especially affecting juveniles. In contrast, during only three years in Van Diemen's Land, although having been appointed by Colonial Office officials, these same officials repeatedly criticised him.

Eardley-Wilmot was also accused of having not supplied information about homosexuality in the convict gangs, yet, particulars had been given in evidence to the Select Committee on Transportation in 1837–38. As detailed in chapter five, Gladstone acknowledged receiving despatches from Eardley-Wilmot informing him of the practice and Sir James Stephen admitted the 'crime' was of 'much more frequent occurrence' than reported.<sup>4</sup>

Leaving aside the contentious issue of his official reporting, as shown, there were elements of discrimination in the complaints and expectations made of Eardley-Wilmot. Placed in a position of administering a completely new convict system, he was in an unenviable position. It was impossible for him to manage a convict system for which Britain did not provide adequate support and finance. Although he depended very much on the reports from

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<sup>4</sup> CO280/193 (AJCP 542) p. 115 of Eardley-Wilmot to Stanley (Miscellaneous No. 54), 17 March 1846, pp. 109–111 with enc pp. 115–22 and stamped as received at the Colonial Office on CO 6 August 1846.

personnel at probation stations and probation gangs, equally, he acted and made recommendations on the reports' suggestions and observations. Female convicts and the boys at Point Puer posed even more acute problems than the men, while many females had the additional dilemma of infants and children.

Chapter six explained how Eardley-Wilmot had warned that boys at Point Puer would be corrupted again if they continued to associate with 'old convicts' when unable to obtain paid employment, and his attempts to reform the juveniles in Van Diemen's Land were decisive with constructive suggestions for improving the future of the succeeding generations. Those of 'good conduct' who were able to provide for their 'own maintenance' should be granted a conditional pardon and 'widely spread' in other Australian colonies, where they would continue to gain from the instruction received at Point Puer.<sup>5</sup> Despite his constructive suggestion, Gladstone ignored Eardley-Wilmot's recommendation for conditional pardons. However, possibly due to Eardley-Wilmot's previous experience with juveniles brought before the courts in England, these areas were more efficiently administered by Matthew Forster under Eardley-Wilmot's guidance than has generally been acknowledged. The extensive criticism of Eardley-Wilmot's management of these institutions and matters was not justified, and, as shown in chapter five, some of the blame directed at him for his reports, was actually due to Forster, who consistently failed to prepare the regular reports required of him. Despite continual complaints about Eardley-Wilmot's lack of adequate reporting to the Colonial Office, he did regularly report to London, if not to the satisfaction of critical officials.

The colony's earlier Lieutenant-Governors (apart from Sir John Franklin) wholly administered the assignment system. During the early 1820s, the principal factors underpinning the effective convict system, inter-linked with expanding colonial economic development, and supported by prosperous settlers, rested on a large convict labour force supplemented by a very small free labour force combined with free land and capital. Colonists who were granted land were fortunate in having the means, and therefore the ability, to quickly improve their situation, and lay the foundation of economic stability.<sup>6</sup> This thesis contains many examples where these two systems and their associated economical situations deviate.

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<sup>5</sup> CO280/184 (AJCP 536) Eardley-Wilmot to Stanley (No. 164), 25 October 1845, pp. 82–83; *Hobart Town Courier*, 17 February 1847, p. 2.

<sup>6</sup> R W Hartwell, *The Economic Development of Van Diemen's Land 1820-1850* (Melbourne, 1954), p. 17.

A feature of William Sorell's administration (1817–24), was his capacity to accommodate an increasing number of convicts. Like Eardley-Wilmot, Sorell too, was required to accommodate unexpected arrivals, but had the advantage of being able to facilitate the assignment of convicts to free settlers, many of whom had capital to invest and who started arriving in shiploads around the same time. Sorell, therefore, had considerable advantages over Eardley-Wilmot. When George Arthur arrived in 1824, the colony had only been established for twenty-one years, but the European population had increased four-fold in the seven years of Sorell's administration. Van Diemen's Land was advancing economically, and the arrival of 'a better class of people' as masters of assigned servants had led to 'a state of more rigid servitude' than in the past when the settlers had needed servants regardless of their conduct.<sup>7</sup> Appointed to administer the colony in the turbulent 1840s, Eardley-Wilmot was denied such advantages. He coped with difficult circumstances, and any assessment has to consider these factors.

The need for an administrative case study of Eardley-Wilmot is essential when considering publications about other governors. The life and administration of Sir John Franklin has been extensively researched by Kathleen Fitzpatrick.<sup>8</sup> Fitzpatrick detailed Franklin's administration of assignment, leading to probation. Similarly, A G L Shaw wrote a biography of Sir George Arthur.<sup>9</sup> Publications of both Shaw and Fitzpatrick provide extensive coverage of both Franklin and Arthur, and as such, they emphasise the lack of studies on Eardley-Wilmot and his successor William Denison, although Denison's *Varieties of Vice-Regal Life* does, in part, correct this imbalance.<sup>10</sup>

Details of the life and administrative experience of Sir John Eardley Eardley-Wilmot adds to the body of knowledge about the administration of the probation system and compares the system with that of assignment. More specifically, it reveals inherent problems with probation, and a lack of understanding at the Colonial Office of the system's many disadvantages. The root cause of its failure essentially verified that transportation could not

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<sup>7</sup> *Historical Records of Australia. Series III. Despatches and Papers relating to the settlement of the states. Vol. iv* (Sydney, 1921) Sorell to Arthur, 22 May 1824 Enc No. 1 pp.134–54 in Arthur to Bathurst 9 June 1824 pp. 133–54; A G L Shaw, *Convicts and the Colonies: A Study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (London, 1966), p.188.

<sup>8</sup> Kathleen Fitzpatrick, *Sir John Franklin in Tasmania 1837–1843* (Melbourne, 1949); Kathleen Fitzpatrick, 'John Franklin in Tasmania' *Royal Australian Historical Society: Journal and Proceedings* 23.3 (1965), pp. 213–20.

<sup>9</sup> A G L Shaw, *Sir George Arthur, Bart 1784–1854* (Carlton, 1980), see also M C I Levy, *Governor George Arthur: a colonial benevolent despot*. (Melbourne, 1953).

<sup>10</sup> R Davis and S Petrow (eds), *Sir William and Lady Denison, Varieties of Vice-Regal Life (Van Diemen's Land Section)* (Hobart, 2004).

work in a post-assignment world, and the failure of the system resulted in the end of transportation to Australia within eight years.

In Warwickshire Eardley-Wilmot afforded accused criminals the opportunity of defending themselves. In turn, at the end of his administration in Van Diemen's Land, he was denied the same consideration, and for that reason alone, it is understandable that he assumed there was an 'extraordinary conspiracy' against him, and that he was 'subjected' to Gladstone's 'condemnation' which was 'founded on anonymous information'.<sup>11</sup> The Home Office eventually admitted to an error in judgment and to have seriously under-estimated the colony's financial problems: and after Eardley-Wilmot's death, a debate in the House of Commons completely cleared him of all charges. These admissions were significant, and as such, while not admitting he was the victim of an 'extraordinary conspiracy', they were admitting that he was unjustly treated by superiors with political agendas.

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<sup>11</sup> CO280/196 (AJCP 545) Eardley-Wilmot to Secretary of State for the Colonies, 30 October 1846, p. 586.

## APPENDIX A

### The Eardley-Wilmot family

**Figure 1: Wilmot Family Generations<sup>1</sup>**

1. **Robert Wilmot** of Chaddesden, Derby. Serjeant at law<sup>2</sup>.
2. **Nicholas Wilmot** of Osmaston (1611–82) married Dorothy Harpur (died 1682).
3. **Robert Wilmot** MP for Derby 1689 studied law at Grey's Inn. He represented the borough of Derby in Parliament at the Revolution. Married Elizabeth Eardley, seven sons and one daughter.<sup>3</sup>
4. **Robert Wilmot** (died 1738) married Ursula Marow, two sons and one daughter.<sup>4</sup>
5. **John Eardley Wilmot** (born Derby 1709 died 1792) Lord Chief Justice, married 1743 Sarah Rivett (1722–72) both buried in vault under St John the Baptist Church, Berkswell with memorials inside church.<sup>5</sup>
6. **John Wilmot** (1750–1815) of Berkswell Hall, barrister; called to the Bar; Master in Chancery in 1783,<sup>6</sup> MP for Tiverton 1776–84, MP for Coventry 1784. Married Frances, daughter of Jemima and Samuel Sainthill, parents of four or five daughters and one son. Divorced 1791.<sup>7</sup> In 1793 John married Sarah Ann Percival (née Haslam).<sup>8</sup> The second son of John and Sarah, he died at Bruce Castle, Tottenham. In 1812, by Royal Licence, he changed the family name to Eardley-Wilmot.
7. **John Eardley Eardley-Wilmot** only son of John and Frances Wilmot born London 21 February 1783 baptised 29 March 1783 St Andrew's Church Holborn, died Hobart Town 3 February 1847.

**LIEUTENANT-GOVERNOR OF VAN DIEMEN'S LAND 1843–46.**

<sup>1</sup> Unless noted here or chapter one, details are from *Burke's Peerage, Baronetage and Knightage* (1999) Vol 1, pp. 933–935 or Charles Mosley (ed), *Burke's Peerage & Knightage*, 107<sup>th</sup> ed. Vol. 1 Delaware USA, Burke's Peerage & Gentry LLC, 2003, pp. 1259–262.

<sup>2</sup> John Wilmot, *Memoirs of the life of the Right Honourable Sir John Eardley Wilmot, Knt. Later Lord Chief Justice of the Court of Common pleas* (London, 1811), p. 2.

<sup>3</sup> Wilmot, *Memoirs of the life of the Right Honourable Sir John Eardley Wilmot, Knt*, pp. 2–3.

<sup>4</sup> Wilmot, *Memoirs of the life of the Right Honourable Sir John Eardley Wilmot, Knt*, p. 3.

<sup>5</sup> Cited by author March 2006. see also *The Gentleman's Magazine Compendium 1731–1868* (London, 1901), (Archive CD Books, 2002) Part XIII pp. 32–33; *Diary or Woodfall's Register* 7 February 1792, Issue 898 and 9 February 1792 Issue 900.

<sup>6</sup> RS EC/1779/21 John Eardley-Wilmot, Certificate of candidature for election ([www.royalsoc.ac.uk/dservea](http://www.royalsoc.ac.uk/dservea))

<sup>7</sup> National Library of Australia (hereafter NLA) 'The trial of Fanny Wilmot, wife of John Wilmot, Esq. M.P. for adultery with a footman' [electronic resource] <http://nla.gov.au/nla.cat-vn3267802> evidence of Elizabeth Barnes, p. 5 and William Garthwaite, p. 8.

<sup>8</sup> *The General Biographical Dictionary* Vol. XXXII (London, 1817), p. 163.

**Figure 2:** John Eardley Eardley-Wilmot (1783–1847) married Elizabeth Emma Parry 21 May 1808 (died 22 March 1818).<sup>1</sup>

1. **Elizabeth Emma Wilmot** [Emma] baptised 7 September 1809 Leek Wootton, Warwick, alive 1846, married George Graeme Blackwell 13 March 1829.<sup>2</sup>
2. **John Eardley Wilmot** (1810–92).<sup>3</sup>
3. **Frederick Marow Eardley Wilmot** (1812–77).<sup>4</sup>
4. **Edward Revell Eardley-Wilmot** (1814–99).
5. **Arthur Parry Eardley-Wilmot** (1815–86).<sup>5</sup>
6. **Henry Robert Eardley-Wilmot** (born 1816).<sup>6</sup>
7. **Augustus Hillier Eardley-Wilmot** (twin) (1818–92).
8. **Selina Matilda Caroline Eardley-Wilmot** (twin) born Berkswell 12 March 1818 baptised 13 March 1818 St John the Baptist Church Berkswell, married Wade Brown (died 1851) 11 June 1844 in Switzerland.<sup>7</sup> She then married Reverend Joseph Abbott, and died 20 March 1902 at Hopton Hall Great Yarmouth.

<sup>1</sup> *The Annual Register, or a view of the history and politics of the year 1847*, Vol. 89 (London, 1848), p. 204.

<sup>2</sup> *International Genealogical Index* (hereafter *IGI*) Warwickshire 1992 p. 43,650 for baptism and marriage.

<sup>3</sup> London *IGI* 1992 p. 43,653 parents: John Eardley Wilmot/Elizabeth Emma.

<sup>4</sup> *Leamington Spa Courier*, 12 June 1847; *Burke's Peerage* (2003) pp. 1259–62.

<sup>5</sup> Royal Society Certificate of candidature EC/1851/21.

<sup>6</sup> Warwickshire *IGI* 1992 p. 43,651.

<sup>7</sup> *The Gentleman's Magazine Compendium 1731–1868* (London, 1901) Archive CD Books, Rodney Neep 2002, Part XIII, pp. 32–33; Warwickshire *IGI* 1992, p. 43,655; *Times* 19 June 1844, p. 0; 14 November 1843, p. 3; *Morning Chronicle*, 19 June 1844, p. 7; Brown nominated as sheriff for Wiltshire in 1844 and 1845, see *Times*, 14 November 1843, p. 3 and 13 November 1844, p. 6.



**Figure 3:** The sons of John Eardley Eardley-Wilmot and Elizabeth Emma Parry.

**John Eardley Wilmot** born 16 November 1810 Leek Wootton, Warwick, baptised 5 January 1811, attended Rugby School. On 27 April 1839 he married Eliza Martha Williams-Bulkeley (1812–87).<sup>1</sup> John died 1 February 1892 at Leek Wootton.

**Frederick Marow Eardley Wilmot** born 29 May 1812 died 30 September 1877, attended Rugby School, married Frances Augusta Pennington (died 1915) 19 June 1851. Author of *A History of Royal Military Academy*, Major-General Royal Artillery, served in the Kaffir Campaign 1846–47. The inventor or improver of various details in Gun founding, distinguished for his acquaintance with the science of casting cannon and of mechanics and metallurgy as applied in the manufacture of military material. Eminent Officer of Artillery, also as a Physical Observer in Magnetism and Meteorology. Lieutenant-Colonel and Brevet-Colonel Royal Artillery, Superintendent Royal Gun Foundries and Director Magnetical Observatory Cape of Good Hope.<sup>2</sup>

**Edward Revell Eardley-Wilmot** born 11 February 1814 died 30 May 1899, Reverend Honorable Canon of Worcester in May 1847. On 4 August 1840 married Frances Anne Elkins (died 1846). On 8 February 1848 he married Emma Hutchinson (died 1907).

**Arthur Parry Eardley-Wilmot** born April 1815 baptised 11 June 1815 St John the Baptist Church Berkswell, died The Holne, St Marychurch Road Torquay 2 April 1886. Married 28 July 1868 Charlotte Louisa Mackenzie Wright (died 1870). Royal Navy 1828; Lieutenant 1840; Captain 1854; Captain of *Sphinx* 1854–57; at bombardment of Sebastopol; Captain of HMS *Rattlesnake* 1862–66; Commodore west coast of Africa 1862–64; ADC to Queen 1866–70; Superintendent Deptford Dockyard 1866–71; CB 1855; retired 1876; granted Greenwich Hospital pension of £A150 in 1884.<sup>3</sup>

**Henry Robert Eardley-Wilmot** baptised 20 July 1816 St John the Baptist Berkswell,<sup>4</sup> Major Royal Artillery Kaffir Wars, died Kaffirland [?] 1 January 1852.

**Augustus Hillier Eardley-Wilmot** [Henry] (twin) born 12 March 1818 Berkswell baptised 13 March 1818 St John the Baptist Church Berkswell<sup>5</sup> died 9 January 1892 London.<sup>6</sup> Arrived Hobart Town 13 December 1843, married Matilda Jessie Dunn (died 1904) in Hobart Town 20 May 1845.<sup>7</sup>

In December 1843 Lieutenant H [Augustus Hillier, known as ‘Henry’] Eardley Wilmot of the Royal Artillery arrived in the *Amelia* and assumed office of Aide-de-Camp to his Excellency. Leave to serve on the staff was granted by Sir George Murray, Master-General of the Ordnance.<sup>8</sup> In 1844 he was Aide-de-Camp to the Lieutenant-Governor,<sup>9</sup> in 1844, 1845 and

<sup>1</sup> London *IGI* p. 43,653; Rugby School register pers comm with Jo Outhwaite [counter@rugbyschool.net](mailto:counter@rugbyschool.net).

<sup>2</sup> Royal Society Certificate of candidature Frederick Marow Eardley-Wilmot EC/1863/16; Rugby School register.

<sup>3</sup> Warwickshire *IGI* 1992 p. 43,648 baptised as Arthur Harry; RS Certificate of candidature EC/1851/21.

<sup>4</sup> Warwickshire *IGI* 1992 p. 43,651.

<sup>5</sup> Warwickshire *IGI* 1992 p. 43,648.

<sup>6</sup> *Mercury*, 14 January 1892, p. 1, died aged 74 yrs.

<sup>7</sup> TAHO NS282/10/1 St David’s Church Matilda 18 yrs, witnesses: E Eardley Wilmot, John Dunn, Thos Belcher; RGD37 1929/1845.

<sup>8</sup> *Hobart Town Courier*, 15 December 1843, p. 2; *Austral-Asiatic Review*, 22 December 1843, p. 3.

<sup>9</sup> *The Hobart Town Almanack for 1845* (Hobart Town, 1845).

1846 he was the Lieutenant-Governor's private secretary.<sup>10</sup> He was chief police magistrate in 1850.<sup>11</sup> On 1 February 1845 when reporting the forthcoming marriage of Augustus [Henry] and Matilda, the *Colonial Times* noted her 'fortune on the marriage day' would be '£5000, and it is said Sir Eardley gives the young gentleman double that sum'. The marriage would 'commence a new class, that of aristocracy, in the colony'.<sup>12</sup>

On 17 April 1845 the *Austral-Asiatic Review* was 'happy to announce' due to the:

alarming posture of affairs in New Zealand, Lieutenant Henry Wilmot, of the 8<sup>th</sup> Battalion, Royal Artillery, ADC to His Excellency Sir Eardley Wilmot by express permission of the Master-General of the Ordnance, until he shall obtain his company, has volunteered to proceed to New Zealand in the performance of the active duties of the important arm of the service to which he belongs. Colonel Elliott, commanding the troops here, and His Excellency Sir Maurice O'Connell command the Australasian military district, having been pleased to accept the handsome offer of Lieutenant Wilmot's services, who will depart for New Zealand immediately.<sup>13</sup>

Augustus Hillier [Henry], Robert Charles Chester (Chester), and Charles Octavius married three sisters, Matilda, Jeanie and Grace the daughters of Catherine (née Coleman) and John Dunn, banker of Van Diemen's Land. Dunn (born 1790 Scotland died 1861 Hobart). John, Catherine and son John commenced their journey to Hobart Town aboard the 'unseaworthy and overloaded' *Hope*. Passengers transferred to the *Heroine* and arrived on 22 September 1822.<sup>14</sup>

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<sup>10</sup> *Wood's Van Diemen's Land Almanack, and Law and Commercial and Daily Remembrancer for 1846* (Launceston, 1846), p. 17.

<sup>11</sup> *The Irish Exile! and Freedom's Advocate*, 9 February 1850 cited in P A Howell, 'The Irish Exile: and Freedom's Advocate. The rise and fall of a convict newspaper in the Denison Period', *Tasmanian Historical Research Association Papers and Proceedings* 26.4 (December 1979), p. 123.

<sup>12</sup> *Colonial Times*, 1 February 1845, p. 3.

<sup>13</sup> *Austral-Asiatic Review*, 17 April 1845, p. 4, see also *Leamington Spa Courier*, 12 June 1847, p. 1.

<sup>14</sup> P H Wessing, 'Dunn, John (1790–1861)' *Australian Dictionary of Biography* 2006 [<http://www.adb.online.anu.edu.au/biogs/A010323b.htm>]

**Figure 4:** John Eardley Eardley-Wilmot (1783–1847) married Eliza Chester  
31 August 1819.<sup>1</sup>

Eliza/Elizabeth Chester born c.1798, the eldest daughter of Sir Robert Chester MD of Bush Hall Hertford (Master of the Ceremonies to George III, George IV and William IV) sister of Sir Robert Chester (Master of the Ceremonies to Queen Victoria)<sup>2</sup> died 15 December 1869 at 24 York Crescent, Clifton Gloucester.<sup>3</sup>

1. **Robert Eardley-Wilmot.**
2. **Robert Charles Chester Eardley-Wilmot** (1822–1910).
3. **Charles Octavius Eardley-Wilmot** (1824–86).
4. **Eliza Harriott Eardley-Wilmot** (alive in 1846).<sup>4</sup>
5. **Dulcibella Cecilia Eardley-Wilmot** born c1827 died 11 June 1838 buried St John the Baptist Church crypt.

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<sup>1</sup> *The Annual Register, or a view of the history and politics of the year 1847*, Vol. 89 (London, 1848), p. 204.

<sup>2</sup> *Colonial Times* 5 February 1847, p. 3; *Burke's Peerage, Baronetage and Knightage* (2003) pp. 1259–62.

<sup>3</sup> Genealogy, Family Trees and Family History Records online [<http://www.ancestry.com.au/>] 6 December 2007] England & Wales Free BMD Index 1837–1983; Bristol Record Office Archive Enquiries [bro@bristol.gov.uk](mailto:bro@bristol.gov.uk) (12 March 2007).

<sup>4</sup> Memorial in Berkswell Church; TAHO AD960/2 p. 333 Eardley-Wilmot's Will no. 317 dated 2 July 1846.

**Figure 5:** The sons of John Eardley Eardley-Wilmot and Eliza Chester.

**Robert Eardley-Wilmot** died as an infant.

**Robert Charles Chester Eardley-Wilmot**<sup>5</sup> [Chester] born 4 June 1822 Leamington died 24 May 1910 London, married St David's Church, Hobart Town 4 December 1849<sup>6</sup> Jeanie Louisa Stewart Dunn (d 19 March 1909) second daughter of Catherine and John Dunn.

Chester attended Rugby and Charlton Kings Matric Michs, and on 26 March 1840 aged 18 he was admitted to Caius as pensioner (i.e. no scholarship). On 19 January 1844 he was expected to 'enter the army, as ensign in the 96<sup>th</sup> Regt' and would 'of course have the special permission of his Grace the Commander-in-Chief to remain on the staff of the Governor as Private Secretary, he will have the period necessary for promotion passing away without doing regimental duty.'<sup>7</sup> Chester was Aide-de-camp to his father; Clerk to the Executive Council of Van Diemen's Land 1855–64. On 3 January 1870 he was living at 76 Oxford Terrace Edgeware Road Middlesex;<sup>8</sup> and was Secretary to the Board of Directors of convict prisons until 1892. He died aged 88, while living at 32 Tedworth Square London.<sup>9</sup>

In 1870 he was an executor for his mother's estate. She died 15 December 1869 at 24 Royal York Crescent, Clifton Gloucester.

**Charles Octavius Eardley-Wilmot** [Charles] (1824–1886) married St David's Church, Hobart Town 3 May 1849.<sup>10</sup> Grace Sophia Dunn (baptised Hobart Town 22 August 1828 died 30 September 1865).<sup>11</sup> He married 2 October 1866 Elizabeth Brooke (d 9 February 1924) 2<sup>nd</sup> daughter of Charles Brooke.<sup>12</sup>

<sup>5</sup> J A Venn, *Alumni Cantabrigensi, Part II 1752–1900*, p. 514 from Dr John Pollard, Archivist, Trinity Hall. Secretary Prison Department VDL see *Burke's Peerage Baronetage and Knightage* (2003) pp. 1259–62.

<sup>6</sup> Venn, *Alumni Cantabrigensi*, p. 514; TAHO NS282/10/1 St David's Church, Hobart Town Rev Wm Bedford, Witnesses: William Denison Lt. Governor, Andrew Clarke, C L Denison, Jno Dunn, Catherine Belcher, RGD37 145/1849.

<sup>7</sup> *Austral-Asiatic Review*, 19 January 1844, p. 2.

<sup>8</sup> Bristol Record Office Archive Enquiries [bro@bristol.gov.uk](mailto:bro@bristol.gov.uk) pers comm with archivist about executor for his mother's will.

<sup>9</sup> Venn, *Alumni Cantabrigensi*, p. 514; *Burke's Peerage Baronetage and Knightage* (2003) pp. 1259–62.

<sup>10</sup> TAHO NS282/10/1 St David's Church Hobart Town, RGD37 128/1849 Grace 19 yrs, witnesses: Augustus Hillier Eardley-Wilmot, Helen Elizabeth Power, John Dunn junior.

<sup>11</sup> TAHO NS282/8/1 Hobart Baptism; RGD32 2738/1828 Grace Sophia Dunn.

<sup>12</sup> *Burke's Peerage, Baronetage and Knightage* (2003) pp. 1259–62.

## Appendix B

### Officials

#### Figure 1: Administrators of Van Diemen's Land 1803–50

##### Hobart Town — County of Buckinghamshire

1803–04	(Risdon Cove) Lieutenant John Bowen RN
1804–10	(Sullivan's Cove) Colonel David Collins
1810	Lieutenant Edward Lord (acting)
1810–12	Captain John Murray (acting)
1812–13	Major Andrew Geils

##### Port Dalrymple — County of Cornwall

1804–08	Captain William Paterson
1808–10	Captain John Brabyn
1810–12	Major George Gordon

On 3 June 1812 Port Dalrymple was made a dependency of Hobart Town and the whole island came under a succession of Lieutenant-Governors.

##### Van Diemen's Land

1813–16	Colonel Thomas Davey
1817–24	Colonel William Sorell
1824–36	Sir George Arthur
1836–43	Sir John Franklin
1843–46	Sir John Eardley Eardley-Wilmot
1846–47	Charles Joseph LaTrobe (acting)
1847–55	Sir William Denison

#### Figure 2: Governors of New South Wales 1810–50

1810–21	Major-General Lachlan Macquarie
1821–25	Major-General Sir Thomas Brisbane KCB
1825–31	Lieutenant-General Ralph Darling
1831–37	Major-General Sir Richard Bourke KCB
1838–46	Sir George Gipps
1846–55	Sir Charles Augustus FitzRoy KH KCB

### Figure 3: Principal officers concerned with the Crown

#### Secretaries of State for the Colonial and War Departments 1830–50<sup>1</sup>

1830	Frederick John Robinson, Viscount Goderich (Earl of Ripon)
1833	Lord Edward Geoffrey Smith Stanley (14 <sup>th</sup> Earl of Derby)
1834	Thomas Spring Rice (Lord Monteagle)
1834	George Hamilton Gordon (Earl of Aberdeen)
1835	Charles Grant (Lord Glenelg)
1839	Constantine Henry Phipps, 1 <sup>st</sup> Marquis of Normanby
1839	Lord John Russell (Earl Russell)
1841	Lord Edward Geoffrey Smith Stanley (14 <sup>th</sup> Earl of Derby)
1845	William Ewart Gladstone
1846	Viscount Henry Howick (3 <sup>rd</sup> Earl Grey)
1852	Sir John Pakington (afterwards Lord Hampton)

#### Permanent Under-Secretaries-of-State for the Colonies

1825	Robert William Hay
1836	Sir James Stephen
1847	Herman Merivale
1859	Sir Frederick Rogers (later Lord Blachford)

#### Parliamentary Under-Secretary 1830–52<sup>2</sup>

1830	Viscount Henry Howick (3 <sup>rd</sup> Earl Grey)
1833	John George Shaw Lefevre
1834	Sir George Grey
1835	Honourable J Stuart Wortley
1835	William Ewart Gladstone
1835	Sir George Grey
1839	Henry Labouchere
1839	Robert Vernon Smith
1841	George William Hope
1846	Lord Lyttelton
1846	Benjamin Hawes
1851	Frederick Peel
1852	John Otway Desart (3 <sup>rd</sup> Earl of Desart)

#### Prime Ministers of Great Britain<sup>3</sup>

1827	Tory	Viscount Goderich
1828	Tory	Duke of Wellington
1830	Whig	Earl Grey
1834	Whig	Viscount Melbourne
1834	Tory	Duke of Wellington (provisional)
1834	Tory	Sir Robert Peel
1835	Whig	Viscount Melbourne
1841	Tory	Sir Robert Peel
1846	Whig	Lord John Russell
1852	Tory	Earl of Derby

<sup>1</sup> J C Sainty, *Office-Holders in Modern Britain. VI. Colonial Office Officials* (London, 1976), pp. 8, 36–51; H E Edgerton, *A Short History of British Colonial Policy 1606–1909* (London, 1950), pp. 478–79.

<sup>2</sup> Sainty, *Office-Holders in Modern Britain. VI*, pp. 9–10, 36–51.

<sup>3</sup> Edgerton, *A Short History of British Colonial Policy 1606–1909*, pp. 659–65.

## Appendix C

**Figure 1:** Typical sentences ordered by Eardley-Wilmot

SURNAME	FIRST NAME	SENTENCE	REFERENCE	COMMENTS
ADDEN-BROOKE	Isaac	Gaol 6 mths hard labour	<i>Leamington Spa Courier</i> (hereafter <i>L'ton Spa</i> ) 17 July 1830 p. 1	Fraudulently obtaining 27 lbs weight twine and 13 lbs weight of cord from Elizabeth wife of John Britton of Birmingham.
ARMES	Thomas	Trans 7 yrs	<i>L'ton Spa</i> 5 Jan 1839 p. 1	Stole a hive of bees at Sutton Coldfield.
ASHMORE	John	Trans 7 yrs	<i>L'ton Spa</i> 20 Oct 1838 p. 3	At Berhemhill one live tame rabbit, the property of Wm Hammond, the younger; and one cock fowl, five hen fowls five pullet fowls, one duck and one bag, the property of Wm Hammond the elder.
ATKINSON	James	Trans 7 yrs	<i>L'ton Spa</i> 14 Mar 1840 p. 1	Stole axle-tree property of George Allcock, Old Stratford. He sold axle-tree to Binn. Guilty to former charge.
BAKER	John	Trans 14 yrs	<i>L'ton Spa</i> 8 Jan 1831 p. 3	Aged 18. Stole five tame rabbits with Samuel James (both with previous conviction) and Benjamin Ryland.
BAKER	Thomas	Trans 14 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole 5lbs veal, butter and other articles property of Joseph Williams. Previous conviction produced.
BARNARD	Thomas	House of Correction	<i>L'ton Spa</i> 23 Aug 1828	Stole 1 pr shoes property of James Barnard Wall of Allesley.
BEECHAM	John	Gaol 3 mths hard labour	<i>L'ton Spa</i> 17 July 1830 p. 1	Embezzling the price of load of coals which he sold for his master George Farr, Shirley Street to Mr Stevens publican, Old Stratford.
BROWN	Patsey	Trans 7 yrs	<i>L'ton Spa</i> 12 Mar 1831 p. 4	Aged 8. Stole 5s 0d (in penny pieces). A boy of 'very depraved habits', was 'very disorderly' in gaol. Sent to hulk <i>Euryalus</i> at Chatham.
CLUTTERBUCK	William	Trans 14 yrs	<i>L'ton Spa</i> 12 Mar 1831 p. 4	Charged & sentenced with Richard Higam.
COOPER	Thos	House of Correction 3 mths hard labour	<i>L'ton Spa</i> 17 July 1830 p. 1	Stealing a handkerchief from the person of John Cope of Birmingham.
CRISP	Emma	Trans 7 yrs	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole with Geo White a shoulder of mutton, the property of Wm Gardener of Birmingham; her previous conviction for felony was proved. [Left the Downs 6 January 1831 per <i>America</i> arrived VDL 9 May 1831.]
DUDLEY	William	Trans 10 yrs	<i>Lton Spa</i> 5 Jan 1839 p. 1 and 18 Jan 1840, p. 3	Stole at Foleshill from the dwelling-house of George Sidwell, a quantity of silk to the value of £2 10 0d. Put on board the <i>Warrior</i> hulk at Woolwich.
DUTTON	Joseph	Trans 7 yrs	<i>L'ton Spa</i> 20 Oct 1838 p. 3	Stole new shoes and boots at Cheltenham the property of James Smith.
DUTTON	Samuel	Trans 7 yrs	<i>Lton Spa</i> 13 July 1830 p. 1	Stole with Henry Smith one block of tin, goods of William Partridge of Birmingham. Previous conviction for felony proved. [A Samuel Dutton left Portsmouth 13 Dec 1832 per <i>Lotus</i> for VDL.]
ELLINGHAM	Thomas	Trans 7 yrs	<i>L'ton Spa</i> 20 Oct 1838 p. 3	Stole 2 shirts belonging to Henry Wood.

SURNAME	FIRST NAME	SENTENCE	REFERENCE	COMMENTS
FALLOWS	Mary	Gaol 1 mth hard labour	<i>L'ton Spa</i> 17m July 1830 p. 1	Guilty to a charge of stealing two clogs, the goods of John Freeman of Birmingham.
FISHER	Samuel	Trans 7 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole 2 prs shoes and some leather from the shop of Charles Horsman of Snitterfield. Previous conviction produced. [Samuel Fisher aka Samuel Crowson left Portsmouth on 16 October 1831 per <i>Georgiana</i> (2) and arrived VDL 1 February 1833.]
FREETH	James	Trans 7 yrs	<i>L'ton Spa</i> 13 July 1830 p. 1	Stole a door belonging to Thos Abbott of Birmingham. Previous conviction of felony at Warwick Sessions October 1826.
GILKS	George	Trans 7 yrs	<i>L'ton Spa</i> 7 Jan 1837 p. 1	Charged & sentenced with Wm Roberts bacon value £7, ham value £1. [On 21 Jan 1837 on hulk <i>Ganymede</i> at Woolwich awaiting transportation. Both departed 15 April 1837 per <i>Blenheim</i> (1) and arrived VDL 10 July 1837.]
GREAVES	George	House of Correction 6 mths hard labour	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole 8 pennyweights of silver from his employers, Messrs Thomas and George Waterhouse of Birmingham.
GROUTAGE	Joseph	House of Correction 1 year hard labour	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole a watch from the person of Rd Blodwell at Birmingham.
HAWKINS	Henry	Trans 7 yrs	<i>L'ton Spa</i> 13 July 1830 p. 1	Stole 16 horse shoes, the goods of John Turvey, of Birmingham; the prisoner had only just been discharged from Gaol on the expiration of a previous sentence of 3 months' imprisonment
HAYES	John	Trans 7 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole 2 saws and goods belonging to Thos Houseman. Previous conviction produced.
HEMMING	Ellen	7 days in county gaol then send to asylum	<i>L'ton Spa</i> 20 Oct 1838 p. 3	Stole 2½ yards black satin and one silk apron, the goods of Robert Wilkes.
HIGAM	Richard	Trans 7 yrs	<i>L'ton Spa</i> 12 Mar 1831 p. 4	Charged and sentenced with Wm Clutterbuck.
HILL	Thomas	Trans 7 yrs	<i>L'ton Spa</i> 13 July 1830 p. 1	Stole a ham belonging to Benj Egerton of Birmingham (a previous conviction was put in).
HILL	Charles	Trans 10 yrs	<i>L'ton Spa</i> 14 Mar 1840 p. 1	At Alcester burglariously broken and entered dwelling house of Rev Francis Palmer, stole mosaic snuff-box, gold snuff-box, medal, silver seal spoons, other silver and plated articles.
HOLT	John	Trans 7 yrs	<i>L'ton Spa</i> 13 July 1830 p. 1	Stole mixed metal from his masters Messrs. Hunt and Baker of Birmingham. Previous conviction of felony at Warwick Midsummer Sessions 1826.
HORTON	William	Trans 7 yrs	<i>L'ton Spa</i> 12 Mar 1831 p. 4	
HUNT	John	Trans 10 yrs	<i>L'ton Spa</i> 6 Jan 1838, p. 1	With William Wilkes convicted of killing one lamb at Coleshill, the property of John Pipe, with intent to steal the carcass.
INGRAM	John	Trans 7 yrs	<i>L'ton Spa</i> 12 Mar 1831 p. 4	
JAMES	Samuel	Trans 14 yrs	<i>L'ton Spa</i> 8 Jan 1831 p.3	Aged 13. Stole five tame rabbits with John Baker (both previously convicted) and Benjamin Ryland.



SURNAME	FIRST NAME	SENTENCE	REFERENCE	COMMENTS
JOHNSON	George	Trans 7 yrs	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole two 'shawls and divers other articles' (with Isaac Taylor) goods of Wm Fulford of Birmingham. Previous conviction and 9 months imprisonment. Aged 20.
JONES	Thomas	Trans 14 yrs	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole seven packets of halfpence, the monies of John Corfield, of Birmingham: although the prisoner is only 16 yrs old a previous conviction of felony was put in.
JONES	William	Trans 7 yrs	<i>L'ton Spa</i> 14 Mar 1840 p. 1	Stole one great coat value £5 property of James Coape of Leamington. Pawned coat at Coventry. Previously convicted of felony.
KELSEY	Thomas	Trans 10 yrs	<i>L'ton Spa</i> 5 Jan 1839 p. 1	Breaking and entering the brew-house of John Farnell at Nuneaton with intent to commit a felony.
KINCHIN	William	Trans 7 yrs	<i>L'ton Spa</i> 20 Oct 1838 p. 3	At Stretton-upon-Dunsmore one shirt, a pair of half-boots a silk umbrella, the property of Joseph Johnson, and a jacket and shirt, his special property.
LEATHER	William	Trans 7 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole 5 lbs veal and other articles belonging to Joseph Williams, Birmingham. Tried with James Ross. Previous conviction produced. [A William Leather was transported from London 27 November 1831 for VDL per <i>Gilmore</i> (1) and arrived 22 March 1832]
MASSEY	James	Trans 7 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole 14s 0d from Mary Biggs of Birmingham. Previous conviction produced.
MAVIS	Richard	House of Correction 3 mths hard labour	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole a pair of shoes, the property of John Aston of Birmingham.
NICHOLLS	William	Trans 7 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole watch from John Hawkins. Previous conviction produced.
OAKLEY	John	Trans 14 yrs	<i>L'ton Spa</i> 8 Jan 1831 p. 3	Stole 8½ lbs beef. Had former guilty verdict.
OAKLEY	William	Trans 7 yrs	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole five files (with Sam. Chinn) goods of Rd. Marston of Birmingham, previous conviction and 6 mths imprisonment aged 18. Chinn sentenced to 3 mths hard labour and 'once privately whipped'.
PARKER	Thomas	Trans 7 yrs	<i>L'ton Spa</i> 13 July 1830 p. 1	Stole a pair of shoes, the goods of Edw. Rollings, of Birmingham: this prisoner had been only 6 weeks out of gaol from a former conviction.
PARTRIDGE	Thomas	Trans 7 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole loaf of bread & other goods belonging to Rd Welch. Previous conviction produced.
PERKS	William	Prison one mth & private whipping	<i>L'ton Spa</i> 8 Jan 1831 p.3	Aged 20. Stole pig's head from butcher. Perks claimed dog stole the head, but the jury found no teeth marks on pig's head.
PORTER	Francis	Trans 7 yrs	<i>L'ton Spa</i> 6 Jan 1838, p. 1	Guilty of stealing, at Birmingham, 5 lbs 10 oz. of quicksilver, the property of Peter Borins.
REAPER	William	Trans 7 yrs	<i>L'ton Spa</i> 20 Oct 1838 p. 3	Stole new shoes and boots at Cheltenham the property of James Smith.
RICHARDS	Samuel	Trans 14 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole 3 packets with 5s 0d of copper money property of John Griffiths. Previous conviction produced.

SURNAME	FIRST NAME	SENTENCE	REFERENCE	COMMENTS
ROBBINS	Job	2 mths House of Correction hard labour	<i>L'ton Spa</i> 20 Oct 1838 p. 3	At Lapworth stealing rope the property of John Sparrey.
ROBERTS	William	Trans 7 yrs	<i>L'ton Spa</i> 7 Jan 1837 p. 1	Charged & sentd with George Gilks bacon value £7, ham value £1. [On 21 Jan 1837 on hulk <i>Ganymede</i> at Woolwich awaiting transportation. Both departed 15 April 1837 per <i>Blenheim</i> (1) and arrived VDL 10 July 1837.]
ROSE	Edw.	Trans 7 yrs	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole 15 bushels of malt, the goods of Abraham Hopkins, of Birmingham. Charged with Matthew Jones who received same sentence.
ROSS	James	Trans 7 yrs	<i>L'ton Spa</i> 2 July 1831 p. 4	Stole 5 lbs veal and other articles belonging to Joseph Williams, Birmingham. Tried with William Leather. Previous conviction produced.
RYLAND	Benjamin	House of correction 6 months	<i>L'ton Spa</i> 8 Jan 1831 p. 3	Stole 5 tame rabbits with Samuel James and John Baker. Had no previous conviction. Aged 13.
SHAW	William and Richard	Privately whipped and discharged	<i>L'ton Spa</i> 17 July 1830 p. 1	Assaulting their master, Mr Ezra Milward, gunmaker, of Birmingham were fined 20s each and ordered to enter into their own recognizances of £10 each. Having paid the fine and given the recognizances, they were discharged.
SHELTON	James	Trans 7 yrs	<i>L'ton Spa</i> 21 Jan 1837 p. 2	By 21 Jan 1837 on hulk <i>Ganymede</i> at Woolwich awaiting transportation.
SHEPHERD	William	Trans 7 yrs	<i>L'ton Spa</i> 20 Oct 1838 p. 3	Stealing new shoes and boots at Cheltenham the property of James Smith.
SMALLWOOD	Joseph	House of Correction one year hard labour	<i>L'ton Spa</i> 17 July 1830 p. 1	Guilty to charge of stealing fowls, at Birmingham, the property of Jabez Vale.
SMITH	Jane	3 mths gaol	<i>L'ton Spa</i> 17 July 1830 p. 1	Fraudently obtained sugar and other goods value 7s 3d from Mr John Buckerfield grocer of Alcester by falsely representing she was authorised by Mr Chas Field, a farmer.
SMITH	John	Trans 7 yrs	<i>L'ton Spa</i> 7 Jan 1837 p. 2	By 21 Jan 1837 on hulk <i>Ganymede</i> at Woolwich awaiting transportation.
SMITH	William	Trans 7 yrs	<i>L'ton Spa</i> 17 July 1830 p. 1	Stole two cheeses with James Wright, the goods of Robt Prince of Aston. Had a previously conviction and served 3 mths in prison. Aged 19.
STOKES	Elizabeth (wife of Wm Stokes)	3 mths hard labour	<i>L'ton Spa</i> 17 July 1830 p. 1	Pleaded guilty to three indictments, charging her with stealing silk and other goods, from the shop of John Boucher of Birmingham.
TASKER	Thomas	Trans 10 yrs	<i>L'ton Spa</i> 5 Jan 1839 p. 1	Stealing at Eathorpe a bay gelding the property of George Harris.
UNDERHILL	William	One week in the gaol	<i>L'ton Spa</i> 18 Oct 1828 p.3	Stole 2 lbs white lead, the property of Wm Buddle the elder and William Buddle of Leamington, his employers.
WILKES	William	Trans 10 yrs	<i>L'ton Spa</i> 6 Jan 1838, p. 1	With John Hunt convicted of killing one lamb at Coleshill, the property of John Pipe, with intent to steal the carcass.
WOOTTON	Henry	County Asylum	<i>L'ton Spa</i> 18 Oct 1828 p. 3	Aged 11. At Aston he stole a case of surgeon's instruments the property of James Wilkinson.

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