

**AFTER ARTHUR: POLICING IN VAN DIEMEN'S  
LAND 1837 - 1846**

Dr Stefan Petrow  
University of Tasmania, Tas

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## Introduction

Between 1824 and 1836 Governor George Arthur was the autocratic ruler of Van Diemen's Land and controlled the colony in large part by a powerful and numerous police force.<sup>1</sup> In 1835 there was 1 policeman to every 88.7 people, making Van Diemen's Land one of the most heavily policed societies in the world. Arthur attributed the island colony's low crime rate and absence of disorder to the efficiency of his police, many of whom were convicts. While many Vandiemonians welcomed this security, many others, especially in the large towns of Hobart Town and Launceston, accused the felon police of abusing their powers, of making arrests on flimsy excuses, and of corruption. They privileged individual liberties over security for life and property.

After Arthur's departure, the economic and social circumstances of Van Diemen's Land changed and this had an impact on policing. Firstly, neither of Arthur's successors, Sir John Franklin and Sir John Eardley Eardley-Wilmot, had Arthur's autocratic personality and what is more important lacked the administrative ability to make the convict system run like clock work.<sup>2</sup> Secondly, from 1 July 1836 the British Government refused to pay for the heavy police costs and required Franklin and Eardley-Wilmot to fund the police and gaols from local funds. This created tension between the two Governors and the Legislative Council and the colonists, and made the funding of the police a controversial issue.

Thirdly, there was a change in the management of convicts. Under the assignment system convicts were usually assigned to work for private employers, who provided shelter, food, clothing, and food according to government regulation.<sup>3</sup> In response to criticisms that the assignment system was too lenient, the British Government introduced the probation system in 1842. This system worked male convicts in probation gangs scattered throughout the penal colony for at least two years. For another two years a convict received a probation pass, allowing him to work for wages while reporting to the police. If well behaved, he became eligible for a ticket-of-leave and later a conditional pardon. At the same time as the management system changed, the British Government flooded the colony with convicts, including those from New South Wales when transportation ended in 1840. The annual population of convicts increased from 17,661 in 1836 to 30,279 in 1846.<sup>4</sup> Especially under Eardley-Wilmot, the probation system seemed to run out of control and convicts were not as disciplined as colonists expected. Bushranging, subdued under Arthur, became a much greater threat. Fourthly, in the 1840s Van Diemen's Land experienced an economic depression and the large numbers of convicts on release and the increasing numbers of free immigrants found work scarce.<sup>5</sup> Large numbers of people, not just convicts, therefore, were in financial need and were forced to steal to survive. Finally, the other major change was the appointment of Francis Burgess as Chief Police Magistrate in September 1843. Burgess had been a successful Chief

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<sup>1</sup>S. Petrow, 'Policing in a Penal Colony: Governor George Arthur in Van Diemen's Land 1824-1836', *Law and History Review*.

<sup>2</sup>A.G.L. Shaw, 'Three Knights: Sir James Stephen, Sir John Franklin, and Sir John Eardley-Wilmot', *Tasmanian Historical Research Association Papers and Proceedings*, vol. 36, 1989, pp. 141-53.

<sup>3</sup>A.G.L. Shaw, 'Sir John Eardley-Wilmot and the Probation System in Tasmania', *Tasmanian Historical Research Association Papers and Proceedings*, vol. 11, 1963, pp.5-19; A.G.L. Shaw, *Convicts and Colonies: A Study of Penal Transportation from Great Britain and Ireland to Australia and Other Parts of the British Empire*, Melbourne: Melbourne University Press, 1978, chapters 11-14.

<sup>4</sup>P.R. Eldershaw, *Guide to the Public Records of Tasmania*, Section Three: Convict Department Record Group, Hobart: State Library of Tasmania, 1966, p. 64.

<sup>5</sup>R.M. Hartwell, *The Economic Development of Van Diemen's Land 1820-1850*, Melbourne: Melbourne University Press, 1954, ch. 3.

Commissioner of Police in Birmingham and imported his ideas on the ‘new science’ of policing, especially the prevention and detection of crime and the training of police, to Van Diemen’s Land.<sup>6</sup> During the 1830s ideas for reforming the police were heatedly debated and Burgess injected new perspectives into a locally devised policing system.<sup>7</sup>

In response to these changes, an anti-transportation movement emerged and railed against convict immorality.<sup>8</sup> Widespread homosexuality, crime, and even cannibalism were attributed to convicts, demonstrating that the probation system did not reform, merely hardened. In reality, these claims were extreme. At double that of England, the crime rate was high, but in a convict colony might well have been much higher. Homosexuality existed and cannibalism might have occurred, but anti-transportationists magnified their allegations for political purposes, as Sturma has shown New South Wales colonists did in 1844.<sup>9</sup> By building an atmosphere of crisis, the anti-transportationists in Van Diemen’s Land extracted major concessions from the British Government. In 1846 transportation was suspended indefinitely and the British paid two thirds of the cost of police and gaols.<sup>10</sup>

Against this background, the changes to Arthur’s policing system will be examined. Themes will include the debate over who should pay for the police, the pay and conditions of police, their appointment and dismissal, how police work affected the public perception of the police, and how the police dealt with threats to order, crime, and morals. To charges that the police were too authoritarian were added allegations that the police were too inefficient to deal with threats to person, property, and morals, especially under Eardley-Wilmot.

### **Colonial and Imperial Politics**

When he arrived in the colony, Governor Franklin found the police in a ‘very efficient state’.<sup>11</sup> The system was ‘excellent’ and managed in a ‘very able manner’ by Chief Police Magistrate Forster. With the spread of population to remote areas, Franklin had to appoint new Assistant Police Magistrates and police, for example at Morven, Avoca, and Spring Bay. The Secretary of State, Lord Glenelg supported increases in the police of Van Diemen’s Land to ‘the full extent which its resources may permit’.<sup>12</sup> Successive Secretaries of State adopted this policy. The cost of the police for 1838 was estimated at £24,836 2s. 6d.

Many colonists felt unhappy about paying the escalating police costs to control the increasing number of British criminals. Every time the police estimates were debated in the Legislative Council, the unofficial members supported the vote only in the belief that, after paying for emigrants, the revenue from land sales and rents would cover police and gaol expenses.<sup>13</sup> But

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<sup>6</sup>M. Weaver, ‘The New Science of Policing: Crime and the Birmingham Police Force, 1839-1842’, *Albion*, vol. 26 (2), 1994, pp. 289-308.

<sup>7</sup>For the proposals for police reform in England see D. Philips and R.D. Storch, *Policing Provincial England, 1829-1856: The Politics of Reform*, London: Leicester University Press, 1999.

<sup>8</sup>W.P. Morrell, *British Colonial Policy in the Age of Peel and Russell*, Oxford, 1930, pp. 387-426; L. Robson, *A History of Tasmania: Van Diemen’s Land From The Earliest Times to 1855*, Volume 1, Melbourne: Oxford University Press, 1983, pp. 491, 497-9.

<sup>9</sup>M. Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales*, St. Lucia: University of Queensland Press, 1983, chapter 3.

<sup>10</sup>Shaw, *Convicts and Colonies*, ch. 15; Morrell, *British Colonial Policy*, p. 391.

<sup>11</sup>AJCP CO 280/79, reel 278, p. 107, D.89, Franklin to Glenelg, 10 August 1837.

<sup>12</sup>AJCP CO 280/79, reel 278, p. 107, D.89, Glenelg to Spearman, 28 April 1838.

<sup>13</sup>AJCP CO 280/94, reel 476, p. 419, D.45, Franklin to Glenelg, 17 May 1838, Montagu to Gregory and Boyes, 2 May 1838; K. Fitzpatrick, *Sir John Franklin in Tasmania, 1837-1843*, Melbourne: Melbourne University Press, 1949, pp. 99-100, 215-17.

in May 1838, Franklin, facing a budget deficit, told the Colonial Office that revenue from land was falling and he did not expect to be able to pay the expenses of emigration, let alone the police. He was compelled to transfer £5000 from the Military Chest to the Colonial Chest to meet the expenses of police and gaols. He hoped not to have to repeat this action, but his problems were many. Colonial prosperity had declined with the fall in the price of wool on the English market, banks limited their discounts, and settlers felt disinclined to speculate in purchasing Crown lands. Even if prosperity did return, sales of Crown land would not produce much revenue because 'most of the valuable tracts of land' had been granted or sold and a recent distribution of 25,000 acres to applicants for secondary grants diminished the amount of land available. The emigration of farmers and stock to Port Phillip further diminished his revenue and deprived the colony of potential land buyers.

Franklin busily collected outstanding proceeds from the sales and rents of Crown land, but suggested two ways of making good his budget deficit.<sup>14</sup> One was for the Commissariat to pay for police and gaols and the expenses of emigration. The other suggestion was to pay for police and gaols out of the land revenue, but to make up any deficiencies from the Commissariat. Franklin conceded that the British Treasury Lords would not consent to pay the total police costs, but if they paid two thirds of the cost, then the Legislative Council would vote for the remaining one third. Indeed, a resolution to this effect in the Legislative Council had only been defeated by Franklin's casting vote. Given the large number of 18,000 British convicts, Franklin judged that the Legislative Council and residents would consider one third as 'a fair and reasonable charge'. He assured Glenelg that he could not consistently with 'the safety of Life and Property' reduce police numbers. On the contrary, police numbers should be increased for the better 'discipline and control of the Convict population and for the prevention of Bushranging'.

Glenelg reprimanded Franklin for defraying the expenses of the police from the Military Chest, which was devoted to convict purposes.<sup>15</sup> Those funds had been part of the Estimates approved by the House of Commons and could not be used for other purposes without parliamentary consent. This response inflamed rather than resolved the issue. In 1839 Franklin's Estimates included police costs of £24,471 2s. 6d. for 1840, but the Legislative Council voted by seven votes to six to pay only £8,247 6s. 10d.<sup>16</sup> In their resolution against the Estimates, the Legislative Councillors stated that they did not think the costs were 'too large' for the needs of the colony or that the police were 'inefficient'. They wanted the British Government to treat them fairly and pay a fair share of policing costs. If Franklin reduced the police numbers to the equivalent of one third their cost, the convicts could not be controlled and Van Diemen's Land would be ruined and the Legislative Council knew it. Franklin left it to the experience of Legislative Councillors 'to decide upon the Force requisite to preserve that security of life and property which, so happily for us all, exists throughout society'.<sup>17</sup> This ploy worked and the non-official members of the Legislative Council passed the full police estimates.<sup>18</sup> But Franklin desperately wanted to stop the annual 'struggle' between his government and the Legislative Council by 'appropriating a fixed amount of the Land Fund in and of the Local Revenue yearly', allocating the rest to immigration. The Colonial Office praised his handling of the Legislative Councillors and sanctioned the use of

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<sup>14</sup>AJCP CO 280/94, reel 476, p. 419, D.45, Franklin to Glenelg, 17 May 1838; AOT GO1/32, p. 158, D.383, Stephen to Spearman, 26 April 1838; Launceston Advertiser, 19 July 1838.

<sup>15</sup>AOT GO1/32, p.158, D.383, Glenelg to Franklin, 9 November 1838.

<sup>16</sup>AJCP CO 280/109, reel 485, p.90, D.102, Franklin to Glenelg, 10 July 1839, minute by Franklin, 8 June 1839.

<sup>17</sup>Hobart Town Gazette, 21 August 1840. p.789.

<sup>18</sup>AJCP CO 280/121, reel 493, p.152, D.130, Franklin to Russell, 15 October 1840, minute by Franklin, 17 August 1840.

25 per cent of the Land revenue for the police in 1841, but thought the financial his financial resources adequate to pay for the police and, at it had in New South Wales, urged Franklin to impose a local assessment to fund the police in the expanding rural districts.<sup>19</sup>

Relations between Van Diemen's Land and the Colonial Office cooled during Lord Stanley's tenure as Secretary of State. Stanley ruled the colonies with 'a rod of iron'.<sup>20</sup> In 1843 Franklin was reprimanded after establishing a Water Police to stop convicts escaping and to detect smugglers, who deprived the colony of revenue.<sup>21</sup> As the Water Police were employed on imperial work, Franklin charged only a part of their expenses to colonial funds. Stanley took a dim view of this decision. He laid down that imperial funds should not be used for colonial purposes based on the argument that the arrangement would improve security and prevent convict irregularities.<sup>22</sup> As the British Government funded the heavy expenses of the Marine and Port Departments, Stanley instructed the Commissariat to cease payments for the Water Police and to reclaim any payments already made. Stanley wanted 'the most rigid economy' exercised in the public service.<sup>23</sup>

Events such as a declining land revenue, a great increase in convicts, and a wider use of probation gangs placed great pressure on police resources. Franklin felt compelled to point out to Stanley that the argument that the British Government should pay all police expenses was never stronger.<sup>24</sup> Franklin, no doubt angered at rumours of his recall, argued that the interests of Van Diemen's Land had been made 'sufficiently subservient to those of Great Britain by the mere fact of its having been rendered the almost sole Depository of British Felons'. He expected a budget deficit of £17,907 in 1843 or worse if the Land Fund did not meet moderate expectations. He had investigated ways of economising, but almost every public department was 'much more extensive than it would be were this not a Penal Colony'.

After Franklin's departure, the new Governor, John Eardley-Wilmot, felt the sting of Stanley's acidic reply. Stanley directed that 'you must dismiss from your mind all expectations' that the British Government would resume payment of the police.<sup>25</sup> Given the abundant convict labour allowed for colonial purposes, his government did not think it 'unfair' to expect the colonists to pay for their police. Moreover, the convict service incurred a heavy expense and Stanley did not intend to increase those expenses to wipe out the colonial debt. He hoped that 'a searching revision of the public expenditure' would reveal ways to economise. If money could not be found to fund the colonial public service, then it would be Eardley-Wilmot's 'duty to discontinue their employment instead of looking to this Country for assistance'.

During Eardley-Wilmot's tenure as governor, the colony experienced a depression and he tried to reduce the expense of the public service without seriously affecting the police.<sup>26</sup> He courted Stanley's anger by intimating that the colony would require some help with police costs in future to deal with the large influx of convicts from Britain, New South Wales, and other British colonies. Police numbers would increase as prisoners graduated from

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<sup>19</sup>AOT GO 1/39, p.523, D.142, Russell to Franklin, 25 September 1840; AJCP CO 280/121, reel 493, p.152, D.130, CO to Trevelyan, 25 June 1841; AOT GO1/43, p.603, D.302, Russell to Franklin, 31 August 1841.

<sup>20</sup>Cornwall Chronicle, 8 March 1845.

<sup>21</sup>AJCP CO 280/153, reel 517, p.114, D.12, Franklin to Stanley, 12 January 1843.

<sup>22</sup>AJCP CO 280/153, reel 517, p.114, D.12, Stanley to Eardley-Wilmot, 10 September 1843.

<sup>23</sup>AOT GO1/51, p.529, D.95, Stanley to Eardley-Wilmot, 22 September 1843.

<sup>24</sup>AJCP CO 280/153, reel 518, p.411, D.30, Franklin to Stanley, 24 February 1843.

<sup>25</sup>AOT GO1/51, p.529, D.95, Stanley to Eardley-Wilmot, 22 September 1843.

<sup>26</sup>AJCP CO 280/167, reel 525, p.403, D.41, Eardley-Wilmot to Stanley, 9 February 1844; AJCP CO 280/179, reel 532, p.262, D.291.

punishment gangs to become probationers, ticket of leave men, and conditional pardon men. This freedom would provide greater opportunities 'to indulge in vice and to commit crime, with little or no means of Employment'.<sup>27</sup> While under punishment, they were a charge of the British government, but when free on licence they became an expense of the colony, increasing the cost of the police and courts. These developments bespoke a need to increase not decrease police numbers and improve the means of 'surveillance and control'.<sup>28</sup> Police expenditure had to be further increased to meet the growth of bushranging.<sup>29</sup>

Vandiemonians became increasingly estranged by Stanley's refusal to help. The Legislative Council rejected the imposition of new taxes in the Highway and Lighting and Drainage Bills until the British Government paid for the police.<sup>30</sup> A placard supporting the rejection exhibited 'an inflammatory tendency, if not directly leading to riot and violence', Eardley-Wilmot informed his imperial masters. Stanley showed no sympathy. He merely expressed dissatisfaction with the growing budget deficit and warned against future excess.<sup>31</sup> Opposition grew. The first public petition pleading for justice from the Colonial Office was sent to England in late 1845.<sup>32</sup> On 1 November 1845 six non-official members of the Legislative Council, who became known as the Patriotic Six - Swanston, Dry, Kermode, Gregson, Kerr, and Fenton - resigned their seats rather than vote for the police estimates.<sup>33</sup> Eardley-Wilmot regarded this as an 'improper and unconstitutional' act, which disrupted all public business. The disaffected members should have prepared their own Estimates and he would have sent them with his for decision by the Colonial Office.

In any case, Eardley-Wilmot's representations were not without effect. On 18 July Lord Stanley, speaking during the second reading of the Waste Lands Amendment Bill, admitted that Britain had financially mistreated Van Diemen's Land by forcing it to bear a large sum for police and gaols.<sup>34</sup> The Bill transferred to the English Government the meagre proceeds of land sales and relieved Van Diemen's Land of police and gaol costs. Not long afterwards, Stanley was out of office and the new Secretary of State William Gladstone provided further details. After Gladstone's full discussions with the Treasury, the British Government agreed to pay two thirds of the current police costs of £32,923 5s. 2d. or £24,000 per annum: in return, his government would assume control of the Land Fund and expected closer fiscal control.<sup>35</sup> Gladstone hoped this decision would be seen by the non-official members of the Legislative Council in 'a Spirit of Liberal Justice' towards Van Diemen's Land and would end 'a controversy which could not be continued without serious injury to the interests of the Colony'. Eardley-Wilmot's critics did not allow him to claim the kudos for Gladstone's concession. The Hobart Town Advertiser saw it as 'the first instalment of our rights', which owed little to the Governor's efforts.<sup>36</sup> The Courier thought the petition from the people of Van Diemen's Land was the crucial factor because it 'roused equity from its slumber'.<sup>37</sup>

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<sup>27</sup>AJCP CO 280/179, reel 532, p.262, D.291.

<sup>28</sup>AJCP CO 280/171, reel 528, p.135, D.184, Eardley-Wilmot to Stanley, 26 August 1844.

<sup>29</sup>AJCP CO 280/184, reel 536, p.514, D.149, Eardley-Wilmot to Stanley, 25 September 1845.

<sup>30</sup>AJCP CO 280/184, reel 536, D.125, Eardley-Wilmot to Stanley, 26 August 1845.

<sup>31</sup>AJCP CO 280/184, reel 536, D.125, Colonial Office to Eardley-Wilmot, 20 April 1846.

<sup>32</sup>Hobart Town Advertiser, 1 August 1845.

<sup>33</sup>AJCP CO 280/185, reel 537, p.167, D.170, Eardley-Wilmot to Stanley, 5 November 1845.

<sup>34</sup>Colonial Times, 11 November 1845.

<sup>35</sup>AOT GO1/61, p.211, D.67, Gladstone to Eardley-Wilmot, 14 March 1846; AOT GO 33/55, p.1332, D.124, Eardley-Wilmot to Gladstone, 24 August 1846.

<sup>36</sup>Hobart Town Advertiser, 7 August 1846.

<sup>37</sup>Hobart Town Courier, 12 August 1846.

Although the cost was high, Franklin and Eardley-Wilmot made the most of police time by using them in various ways. The core police duties were to preserve the public peace, to prevent and detect crime, and to enforce convict discipline.<sup>38</sup> But their use for other duties saved the government much money. The police mustered passholders once each month and ticket of leave men three times a year, sending a report to the Comptroller General after each muster. Ticket of leave holders had to register their address with the police. The police escorted convicts to and from their road gangs. Thus 'keeping the necessary check' on convicts occupied much time. The police protected Crown interests in various ways. They reported trespasses on Crown land and seized any timber cut by unlicensed people. The police enforced the prohibition on distillation and prosecuted offenders, as well as issued permits for the sale of wines and spirits. They prepared jury lists, took census returns, and obtained information on the amount of land under cultivation, the amount of crops produced, the number of factories, mines and mills in operation, and the average rate of wages paid by employers. In addition to these administrative duties, the police investigated the character of individuals applying for convict servants and for pauper relief or entry into the hospital.

### **Police Numbers and Organisation**

From the late 1830s, Chief Police Magistrate Forster received numerous and urgent representations from all parts of the colony to increase police numbers.<sup>39</sup> He believed that the 'proper discipline' of convicts could not occur if settlers lived too far from police protection and supported the formation of new police stations. He maintained that the colony could never 'prosper' without security for life and property, which was more than self-justificatory rhetoric. Franklin concurred on the need 'to maintain discipline and good order', responding especially to calls for police protection of economic interests.<sup>40</sup> He sanctioned police stations at Evandale and Great Swan Port to stop cattle and sheep stealing.<sup>41</sup> When businessmen engaged in Bay Whale Fishing at Recherche Bay had difficulties in controlling the behaviour of their employees and offered to pay the salary of a Police Magistrate, Franklin agreed to pay the salaries of constables and thus support this valuable industry.<sup>42</sup> As George Town developed as a major trading port, especially for stock, to the Australian mainland and became a growing town, Franklin improved police protection there.<sup>43</sup> By 1844 there were seventeen police districts under the control of Police Magistrates or Assistant Police Magistrates.<sup>44</sup>

Some police were detailed on special duty. The Mounted Police appointed by Arthur were increased to thirty-one and were used to carry information between police districts and to escort prisoners where violence was anticipated.<sup>45</sup> But Forster had no direct control over the Mounted Police, who were soldiers under the orders of the colony's military commander.<sup>46</sup> Forster wanted to appoint constables to the Mounted Police, who would be under his direct control and supervision, arguing that their duties would be 'more efficiently and promptly executed', their time would be spent solely on police matters, and their costs would be

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<sup>38</sup>AOT POL 319/6, Burgess to Finance Committee, 23 December 1844.

<sup>39</sup>AOT POL 318/5, Forster to Colonial Secretary, 20 April 1837.

<sup>40</sup>AJCP CO 280/81, reel 280, p.435, D.135, Franklin to Glenelg, 21 December 1837.

<sup>41</sup>AOT POL 318/5, Forster to Colonial Secretary, 20 April 1837; AJCP CO 280/81, reel 280, p.435, D.135, Franklin to Glenelg, 21 December 1837.

<sup>42</sup>AOT GO 33/29, p.263, D.72, Franklin to Glenelg, 16 July 1838.

<sup>43</sup>AJCP CO 280/104, reel 482, p.178, D.2, Franklin to Glenelg, 12 January 1839; Launceston Advertiser, 28 June 1838.

<sup>44</sup>AOT POL 319/6, Burgess to the Finance Committee, 23 December 1844.

<sup>45</sup>AOT POL 318/4, Forster to Colonial Secretary, 19 January 1837.

<sup>46</sup>AOT POL 318/5, Forster to Colonial Secretary, 22 June 1837.

‘considerably decreased’. No change was made until Franklin was required to pay all the costs of the Mounted Police in 1839. To save money, he reduced the number of soldiers and added ten ‘trustworthy and intelligent’ constables with a knowledge of horses and riding abilities.<sup>47</sup> As noted above, in 1843 Franklin also established a Water Police to exercise surveillance over the increasing number of ships visiting port. He appointed twelve constables and a coxswain to watch the port of Hobart Town for smugglers, to arrest runaways from the waterside probation stations, and to prevent persons leaving the port without clearance.<sup>48</sup> In 1844 two constables were appointed as watchmen on the Launceston wharves to stop smugglers.<sup>49</sup>

By 1846 nine Police Magistrates and ten Assistant Police Magistrates controlled 517 police and four Mounted Police.<sup>50</sup> The population of Van Diemen’s Land was 70,164 in 1847, giving a ratio of one policeman to every 134.7 people compared with a ratio of 1 policeman to every 88.7 people in 1835. In New South Wales the ratio appears to be 1 policeman to every 324 people.<sup>51</sup> Although the colonists were not as heavily policed under Franklin and Eardley-Wilmot, police numbers were still high, but their pay and conditions were still not commensurate with their intrusive powers.

### **Pay and Conditions**

To the ‘persevering exertions and influence’ of Police Magistrates Franklin largely attributed ‘the security of person and property, and the general peaceful state of the community’.<sup>52</sup> A Police Magistrate was paid £300 per annum and £50 for house and forage allowance. In May 1839 Franklin supported their application for more pay. He cited the increased cost of living, their ‘incessant, arduous, and invidious’ duties, and the inadequacy of their pay and allowances to keep them ‘in that degree of respectability which their office requires’. If they suffered ‘pecuniary embarrassment’, confidence in their judicial decisions would be dented. Besides their magisterial duties, they carried out the duties of Commissioners of the Courts of Requests and of the Supreme Court, Deputy Chairmen of the Quarter Sessions, and of Coroners, and visited Road Party Stations. Franklin proposed to grant Police Magistrates an extra £50 after five years’ service and a further £50 after ten year’s service, which the Colonial Office reluctantly sanctioned.<sup>53</sup> Police Magistrates remained powerful individuals under Franklin and Eardley-Wilmot. The journalist F.M. Innes described the police office as ‘an established tyranny, which penetrates a man’s politics, presumes to investigate his character, exposes him to spies, has him enrolled as a favourite or a marked man’.<sup>54</sup>

Most Vandemonians blamed low pay on the failure to attract free and respectable men to the police and on police corruption.<sup>55</sup> They argued that a well-paid police would be more efficient and vigilant than a poorly paid one and more able to resist temptations to prosecute the innocent for fines. Although Franklin regarded the police system highly, financial

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<sup>47</sup>AJCP CO 280/109, reel 485, p.90, D.102, minute by Franklin, 8 June 1839; AOT POL 318/6. Spode to Colonial Secretary, 16 August 1839; AOT CSO 41/3, p.353, Colonial Secretary to Chief Police Magistrate, 4 July 1839.

<sup>48</sup>AJCP CO 280/153, reel 517, p.21, D.3, Franklin to Stanley, 3 January 1843, minute by FWM?, 12 July 1843.

<sup>49</sup>AOT POL 445/1, Burgess to Launceston Police Magistrate, 1 November 1844.

<sup>50</sup>Papers of the Legislative Council of Van Diemen’s Land 1846, Estimate of the Expenditure of the Government of Van Diemen’s Land for 1846, pp. 8-12.

<sup>51</sup>Sturma, *Vice in a Vicious Society*, pp. 74, 188.

<sup>52</sup>AJCP CO 280/108, reel 485, p.197, D.71, Franklin to Glenelg, 1 May 1839.

<sup>53</sup>AOT GO 1/43, p.697, D.303, Russell to Franklin, 31 August 1841.

<sup>54</sup>F.M. Innes, ‘The Convict System of Van Diemen’s Land’, *Monthly Chronicle*, vol. 5, 1840, p. 449.

<sup>55</sup>Hobart Town Advertiser, 19 April 1839, letter from a correspondent; Colonial Times, 30 July 1839; Austral-Asiatic Review, 17 December 1839.

constraints weighed heavily on him when considering proposals to increase their pay. In 1839 Acting Chief Magistrate Josiah Spode reported that the salary of constables at 1s. 9d. per day was too low 'to enable them to live honestly'.<sup>56</sup> As the price of provisions was very high, Spode suggested giving constables a daily ration of one pound of flour. This was approved, as flour was 'much less likely to be misapplied than money' and could be gradually reduced as provisions became cheaper.

Spode was similarly preoccupied with the difficulty of attracting men to the police, especially free men, because of the low pay.<sup>57</sup> He thought that 'no intelligent able bodied man' would join the police. Most free constables were 'nothing more than worn out Soldiers, almost incapable of night duties' and were 'inefficient'. It was likely that the free men in the police would leave for New Zealand or Port Phillip, where a pay of 3s. 6d. could be secured. Spode hoped Franklin would increase the pay of free policemen with the aim of replacing as many convict constables as possible. Forster, now acting Colonial Secretary, pointed out that constables had one day in two off police duty when they could earn money and thought that 3s. 6d. per day was 'quite out of the question'. If the pay was increased, then police numbers would have to be reduced because the colony could not bear the expense.

Instead, Franklin preferred a less expensive option. In 1840 the conditions for receiving a conditional pardon were relaxed for convicts of 'very good conduct'.<sup>58</sup> Convicts sentenced to seven year's transportation would be admitted to the police after three years in Van Diemen's Land and could receive a conditional pardon after one year in the police; convicts sentenced to 14 year's transportation, with four years in the colony, could receive a conditional pardon after two years; and a life transportee with five years experience in the colony could receive a conditional pardon after three years police service. Thus only 'the well conducted could benefit and we should have a free Police instead of a Convict one in name with all the advantages of the latter'. Emancipists could leave the police after serving 'faithfully for the periods required'. In February 1842 Franklin attempted to attract ticket-of-leave men to the police by allowing those sentenced to seven year's transportation with four years served in the colony to receive a conditional pardon after six months good conduct in the police, after one year for those sentenced to fourteen years and six years in the colony, and after fifteen months for those sentenced to life after eight years in the colony.<sup>59</sup> These incentives, which the Launceston Advertiser thought would purify the force and induce good conduct, remained in place until April 1843, when police shortages were less of a problem.<sup>60</sup>

Another incentive to stay in the police was introduced in 1841 with the appointment of senior constables.<sup>61</sup> In Hobart Town the number of constables were reduced from 111 to 103 of whom twenty-five of the best behaved were called senior constables and were paid 2s. 6d. per day. In Launceston the number of constables were reduced from 56 to 52 of whom ten were promoted to senior constable. This plan aimed to induce 'good conduct' in constables and improve the quality of constables deployed on town duty. Even critics praised Chief Police

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<sup>56</sup>AOT POL 318/5, Spode to Colonial Secretary, 8 June 1839; AOT CSO 41/3, pp. 355-6, Colonial Secretary to Spode, 10 July 1839.

<sup>57</sup>AOT CSO 5/235/5988, p.249, Spode to Colonial Secretary, 10 March 1840, minute by Forster, 15 March 1840.

<sup>58</sup>AOT GO33/35, p.50, D.70, Franklin to Russell, 31 May 1840, Forster to Franklin, 18 May 1840; AOT GO1/40, p.293, D.63, Russell to Franklin, 14 December 1840.

<sup>59</sup>Hobart Town Gazette, 25 February 1842, p. 186.

<sup>60</sup>AOT POL 526, Forster to Police Magistrates, 10 April 1843; Launceston Advertiser, 25 June 1840.

<sup>61</sup>AOT CSO 5/283/7475, p.105, Forster to Colonial Secretary, 23 April 1841.

Magistrate Forster for further reforming the police.<sup>62</sup> The Hobart Town Advertiser credited Forster with ‘having worked a bad system in the best possible manner’.<sup>63</sup> To put police wages into comparative perspective, in 1844 the wages of labourers ranged from 1s. daily without board or lodgings at Morven to 3s. 6d. at Hamilton: at Hobart Town, labourers were paid 3s. daily.<sup>64</sup>

Apart from pay, constables and their families did receive some concessions. They were supplied with bedding and medical attention.<sup>65</sup> Sometimes, widows of policemen received a gratuity reflecting appreciation of their husband’s service to the police.<sup>66</sup> The long and faithful service of senior officers could be rewarded with a gratuity on retirement. For example, Chief District Constable Alfred Thrupp served the district of Brighton well for ten years and at the behest of the settlers was given a gratuity by Franklin in 1837.<sup>67</sup> Senior District Constable John Swift performed his various duties in Hobart Town ‘faithfully’ and efficiently for thirteen years despite ‘much wanton annoyance’ and in 1841 received a pay increase from £100 to £150.<sup>68</sup> Convict constables who performed exceptional service received their just deserts. In 1842 Constable John Reading received a ticket of leave for capturing five convicts illegally at large.<sup>69</sup>

### **Appointments and Dismissals**

Franklin thought it imperative that the officers appointed to enforce penal discipline and government regulations should be ‘most scrupulously observant’ in abiding by those regulations.<sup>70</sup> Those who were not, even Police Magistrates, faced dismissal. When settlers at Brighton complained that their ‘interests and security’ had been neglected because Assistant Police Magistrate Frederick Roper employed constables and prisoners at the watch house on his private business and was addicted to ‘low and dissipated habits’, Franklin dismissed him.<sup>71</sup> He also dismissed the Chief Constable for using constables on private business and for slack supervision. Section 59 of the Police Act 1838 empowered the Chief Police Magistrate, subject to the Lieutenant-Governor’s approval, to fine constables guilty of neglect, disobedience of orders, or misconduct £10.<sup>72</sup>

Although the Police Magistrate of Hobart, John Price, was inclined to protect policemen, he did investigate complaints and dismissed a number for various acts of misconduct.<sup>73</sup> Burgess also adopted a firmer stance. Policemen convicted of delinquencies were dismissed from the force and sent to a road gang or Port Arthur.<sup>74</sup> For example, twelve constables were fined £5

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<sup>62</sup>Hobart Town Advertiser, 30 April 1841; Tasmanian Weekly Dispatch, 30 April 1841; Hobart Town Courier, 30 April 1841; Launceston Advertiser, 6 May 1841.

<sup>63</sup>Hobart Town Advertiser, 8 July 1842.

<sup>64</sup>Hobart Town Gazette, 24 September 1844, p. 1171.

<sup>65</sup>AOT POL 318/6, Spode to Colonial Secretary, 21 May 1840; AOT POL 445/1, Spode to Police Magistrate, Launceston, 17 September 1840; AOT GO 33/51, p.504, D.75, Eardley-Wilmot to Stanley, 12 June 1845.

<sup>66</sup>AOT CO 280/183, reel 535, p.59, D.62, Eardley-Wilmot to Stanley, 8 July 1845; AOT GO1/60, p.196, D.28, Gladstone to Eardley-Wilmot, 22 January 1846.

<sup>67</sup>AOT GO 33/27, p.711, D.111, Franklin to Glenelg, 18 October 1837; AOT GO 1/30, p. 417, D. 299.

<sup>68</sup>AOT POL 318/6, Spode to Colonial Secretary, 26 February 1841.

<sup>69</sup>AOT GO 1/45, p.37, D.41, Stanley to Franklin, 9 January 1842.

<sup>70</sup>AOT CO 280/106, reel 483, p.99, D.33, Franklin to Glenelg, 18 February 1839.

<sup>71</sup>AOT CO 280/96, reel 277, p.210, D.90, Franklin to Glenelg, 17 August 1838.

<sup>72</sup>Vict. No. 22, Police Act 1838, section 59.

<sup>73</sup>Hobart Town Advertiser, 24 January 1840; Austral Asiatic Review, 8 September 1840.

<sup>74</sup>Hobart Town Advertiser, 1 October 1844.

each and dismissed for allowing an absconder to escape.<sup>75</sup> In Hobart Town Price used an undercover agent to feign drunkenness and to confirm that two constables stole from drunks. They were dismissed and sentenced to eighteen months hard labour. But sometimes the vacancies could not be filled in Launceston and some dismissed men were reinstated.<sup>76</sup>

After his appointment in September 1843, Chief Police Magistrate Francis Burgess sought to make the police as 'efficient as practicable'.<sup>77</sup> In November 1843 he decided to select men who were under 35 years, at least 5 feet 8 inches tall, and 'stout made, or otherwise efficient'.<sup>78</sup> Candidates were selected from the ample number of Third Class Probation Passholders, who had by their grade displayed good conduct.<sup>79</sup> By removing and punishing 'black sheep' and appointing where possible free men, Burgess sought to improve public confidence in the police, but he found free men very reluctant to join the police or stay for long.

## Police Work

According to the Hobart Town Courier, 'the great body of the people' considered the 'partial employment' of convicts as constables as 'absolutely necessary' to deal with transported criminals.<sup>80</sup> Free men did not understand the criminal mind and would be useless in combatting crime and in many cases their conduct was 'very indifferent'. Some argued that if convict constables were necessary, then men with proven good conduct who had earned a ticket of leave should be appointed.<sup>81</sup> Not wishing to lose their indulgence, they would perform their duties 'discreetly and diligently'. According to ex-convict William Gates, the policeman was regarded 'by all classes as a sort of degraded being, scorned and contemned by the freeman, and hated and despised by the lower orders'.<sup>82</sup> The Tasmanian Weekly Dispatch thought it wrong to allow convict constables to treat the free inhabitants as 'only one remove from the laws and regulations of a chain gang'.<sup>83</sup> It was, moreover, 'an illegal and unconstitutional delegation of power' to appoint convicts as constables, which, if true, was never successfully tested in the courts.<sup>84</sup> The appointment of convicts as policemen deterred the immigration of free labour because Van Diemen's Land was seen as fit only for slaves and slave-holders.<sup>85</sup>

Apart from questions of image and perceived need, it was how the convict police operated in practice that shaped views on their acceptance. Abuse of the power of arrest caused most debate and distress. According to the Cornwall Chronicle, the convict police operated 'much more efficiently in the coercion of the *free* than in the subjugation of the *bond*, the apprehension of felons, or the prevention of crime'.<sup>86</sup> Convict constables enjoyed arresting respectable citizens whether they were guilty of an offence or not, and placing them overnight in the watchhouse with 'the scum and refuse' of society, who reeked of rum and tobacco, 'the

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<sup>75</sup>Hobart Town Advertiser, 4 October 1844.

<sup>76</sup>Launceston Advertiser, 21 March 1845.

<sup>77</sup>AOT POL 445/1, Burgess to Police Magistrates, 7 February 1844.

<sup>78</sup>AOT POL 526, Champ to Police Magistrate, Oatlands, 9 November 1843.

<sup>79</sup>AOT POL 526, Burgess to Police Magistrate, Oatlands, 1 February 1844.

<sup>80</sup>Hobart Town Courier, 6 January 1837; see also Cornwall Chronicle, 3 March 1838 and J. Dixon, *The Condition and Capabilities of Van Diemen's Land as a Place of Emigration*, London: Smith, Elder & Co., 1839, p. 46.

<sup>81</sup>Colonial Times, 21 April 1840, letter by Jorgen Jorgensen.

<sup>82</sup>W. Gates, *Recollections of Life in Van Dieman's Land*, Sydney: D.S. Ford, 1961 (first published in 1850), Part 2, p. 20.

<sup>83</sup>Tasmanian Weekly Dispatch, 6 December 1839.

<sup>84</sup>Tasmanian Weekly Dispatch, 8 May 1840.

<sup>85</sup>Tasmanian Weekly Dispatch, 8 May 1840.

<sup>86</sup>Cornwall Chronicle, 23 September 1843, emphasis in original.

nauseous symbols of the Saturday night's dirty debauch'.<sup>87</sup> Convict policemen thought arresting innocent respectable citizens was 'the safest and easiest road to liberty and preferment' and much preferable to attempting to capture 'an armed and desperate offender'.<sup>88</sup> Anyone arrested, but especially the working classes and convicts, were liable to be 'knocked down and handcuffed in the public streets' and then dragged to the watchhouse.<sup>89</sup> In England handcuffs tended to be used only against 'the greatest ruffians', but in Van Diemen's Land handcuffs seemed to be used even for trivial offenders. According to the *Morning Advertiser*, Price was fond of handcuffs for the free and the bond for they indicated 'the power and not the justice of the laws'.<sup>90</sup> Moreover, one ex-Police Magistrate claimed that anyone arrested was presumed guilty until proven innocent contrary to the prevailing presumption in England.<sup>91</sup>

Price offered naive excuses when respectable people claimed that they had been arrested falsely. He claimed to have visited many parts of the town 'during almost every hour of the night and had never been interfered with or insulted'.<sup>92</sup> It would be safe to assume that policemen knew who Price was, but many other honest and respectable men and women did not enjoy his 'exemption'. Price also seemed remarkably insouciant about police mistreatment of women, implying that only respectable women walking at night faced the possibility of being mistaken for well dressed assigned female servants. In 1846 the women of Launceston, respectable or passholder, were warned that, if they did not 'give a true and just account of who and what they are' to constables at any time, they would be taken to the watch-house and kept there 'until they do make such confession'.<sup>93</sup> But once they had made a confession, they would remain in the watch-house until freed by the watch-house keeper. This order gave constables much scope to bribe or seek sexual favours from women desperate to avoid incarceration. Convicts referred to the police as 'traps', a name which well encapsulated their propensity to entrap and bribe.<sup>94</sup>

Police were canny in the offences with which they charged respectable men. For example, public conveniences were not available in Hobart Town and Launceston and, if a man answered the call of nature, he could be charged with exposing his person, which secured police half of a 20s. fine.<sup>95</sup> This charge was highly embarrassing to respectable citizens and many preferred to bribe a constable than appear in court. As well as exposing the person, obscene language, tearing clothes, or assaulting a policeman were also profitable and were added to charges of drunkenness.<sup>96</sup> The Police Act, first passed in 1833 and amended in 1838, provided police with much discretion and ample opportunity to make money. It contained seventy-two sections, with 'a multitude of rules and directions relative to the regulation of the Police, and the removal and prevention of nuisances in Hobart Town and Launceston'.<sup>97</sup> Forty-four of the sections dealt with the recovery of penalties from 2s 6d. to £20, half of which went to the informer. The

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<sup>87</sup>Colonial Times, 27 August 1844; see also Cornwall Chronicle, 28 March 1840.

<sup>88</sup>Cornwall Chronicle, 4 November 1837, letter by 'An Inhabitant'.

<sup>89</sup>Tasmanian Weekly Dispatch, 8 May, 5 June 1840.

<sup>90</sup>Morning Advertiser, 10 December 1841.

<sup>91</sup>Anon.[A Late Colonial Police Magistrate], 'Notes of a Residence in Van Diemen's Land in 1842-43', Simmond's Colonial Magazine, vol. 3, 1844, p. 165; see also R. Marsh, *Seven Years of My Life or Narrative of a Patriotic Exile*, Buffalo: Faxon and Stevens, 1847, p. 92, 167.

<sup>92</sup>Colonial Times, 19 February 1839.

<sup>93</sup>Cornwall Chronicle, 27 June 1846.

<sup>94</sup>M. Cash, *Martin Cash: The Bushranger of Van Diemen's Land in 1843-4*, Hobart: Walch and Sons, 1870, p. 23.

<sup>95</sup>Colonial Times, 12 May 1840; W. Mann, *Six Years' Residence in the Australian Provinces, Ending in 1839*, London: Smith, Elder, 1839, p. 78.

<sup>96</sup>Cornwall Chronicle, 23 September 1843.

<sup>97</sup>Colonial Times, 13 October 1840.

Cornwall Chronicle admonished magistrates for imposing the highest penalty when wilfulness was not proved. For example, if a constable was assaulted when attempting to stop thieves escaping, the maximum penalty of £10 for such an assault was justified.<sup>98</sup> But in cases of drunkenness, the Chronicle thought clear evidence of assault occasioning bodily harm and not an accidental blow should be proven before imposing £10. In cases of exposing the person, a higher penalty was justified if the offence occurred during the day than at night. The Chronicle was prepared to allow an informer part of the fine only in cases of sly grog selling, smuggling, and illicit distillation.<sup>99</sup> The Police Act 1838 gave some protection to colonists. Section 64 held that where an informer was examined to prove the offence, he did not receive half of the fine and if the penalty for summary conviction exceeded £5, the aggrieved person could appeal to the Court of Quarter Sessions.<sup>100</sup>

The Colonial Times thought that, if revenue was to be raised from police work, then the two major towns should be granted municipal institutions and the police should be under the control of ratepayers.<sup>101</sup> Whatever the virtues of such a proposal, the government would be unlikely to transfer control of the police while Van Diemen's Land remained a penal colony. A more realistic proposal was for respectable citizens to take turns in attending the watchhouse and inquiring into the 'merits' of charges.<sup>102</sup> If the charges were trivial, the offender would be permitted to return home on the promise of appearing in court next day. This would relieve some citizens of the odium of a night in the watchhouse and check false arrests. There is no evidence to suggest that this proposal was adopted. Despite the widespread criticism of the police, the public seemed unwilling to take more responsibility for superintending their duties.<sup>103</sup> The Police Act 1838 again gave some limited protection. Section 60 empowered a District Constable to release on bail by recognizance anyone charged with any petty misdemeanours and brought without a magistrate's warrant to a watch-house at night, on the condition that the person appear before a Police Magistrate next morning.<sup>104</sup>

Sometimes constables did not follow legal procedures and landed themselves in trouble. In 1837 District Constable John Swift took possession of certain articles without a warrant from the house of Thomas McAndrew, which R.L. Murray had claimed were stolen.<sup>105</sup> The Magistrate ruled that no felony had been committed and McAndrew brought an action for trespass against Swift, who lost and was required to pay £27 plus costs of £36 7s. 10d. Murray refused to give Swift the money and the Colonial Office, dismissing Swift's claim that he acted in the public interest, refused to defray the amount because he acted illegally by entering a house without a warrant.

Perjury was commonly practiced by constables and was difficult for magistrates to detect.<sup>106</sup> In early 1844 Burgess issued instructions on taking depositions from witnesses and the examination of prisoners. Constables had to take care when taking depositions and cross-examining witnesses to record 'correctly and as nearly as possible' the words used.<sup>107</sup> Anything said by a prisoner

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<sup>98</sup>Cornwall Chronicle, 23 September 1843.

<sup>99</sup>Cornwall Chronicle, 15 November 1843.

<sup>100</sup>2 Vict. No. 22 sections 64 and 65.

<sup>101</sup>Colonial Times, 13 October 1840.

<sup>102</sup>Hobart Town Courier, 18 May 1838.

<sup>103</sup>Colonial Times, 12 May 1840, letter by Jorgen Jorgenson.

<sup>104</sup>2 Vict. No. 22, section 60.

<sup>105</sup>AOT GO 33/26, p.266, D.29, Franklin to Glenelg, 11 March 1837; AOT GO 1/27, p.21, D.178, Glenelg to Franklin, 15 August 1837.

<sup>106</sup>Colonial Times, 21 April 1840, letter by Jorgen Jorgenson.

<sup>107</sup>AOT POL 321, Chief Police Magistrate to Magistrates, 23 April 1844.

under police examination should be accurately 'taken down and read in evidence against him at the trial'. Prisoners should be given an opportunity to state whether he had been threatened to make statements or confessions. Hearsay evidence, such as 'the conversation, observations, or remarks' of a third party to a witness or from a witness to a third party had to be excluded unless made in the presence of the prisoner, whose remarks or silence were recorded.<sup>108</sup>

### **Threats to Order: Aborigines and Bushrangers**

Two of Arthur's major achievements were to counteract the threat to public order and life from Aboriginal attacks and bushrangers. Under Arthur, many Aborigines were either killed by settlers or disease and those remaining were rounded up and placed on Flinders Island to the north of Van Diemen's Land. But not all Aborigines were transported and as late as 1841 the Van Diemen's Land Company at Circular Head in the north-west complained of numerous 'depredations' by 'a small Party of Natives still at large in the Colony'.<sup>109</sup> The party of two men, a woman, and a youth attempted to murder and wounded some of the company's servants, stole from huts, and speared sheep and horses. Constables later reported seeing a white man with the Aborigines. These attacks were confined to a small area and, although serious for the company's workers, did not threaten social order.

Bushranging presented Arthur with serious threats to public order, and one of his first achievements was to end systematic bushranging. Under Franklin and Eardley-Wilmot bushranging reasserted itself in threatening ways. In 1838 Franklin reported 'several daring outrages, attended with personal violence, robbery, and murder' committed by four armed convicts.<sup>110</sup> The bushrangers survived by intimidating servants into assisting them and moving quickly from district to district. Reacting to the 'alarm' of settlers, Franklin took 'the most vigorous measures' to catch the bushrangers. He sent all able-bodied constables in pursuit and offered 'extraordinary rewards' for their capture and free pardons to convict servants who defended their masters. Convicts who helped capture bushrangers were liable to be killed for their betrayal and were thus given free passage to England.<sup>111</sup> Franklin encouraged settlers to defend themselves resolutely, to tell the nearest Police Magistrate of the appearance of bushrangers as quickly as they could, and to scour the country for signs of bushrangers.<sup>112</sup>

The four bushrangers were captured, but magistrates remained vigilant.<sup>113</sup> Most landholders willingly defended themselves but had farms to work and relied on 'the protecting care of the Government'.<sup>114</sup> This protection was rendered less potent by the withdrawal of military troops. Franklin protested that, as the convict population increased and spread throughout the island on public works and roads, absconding would increase unless the military could be located at each probation station.<sup>115</sup> Already some stations had no military watch and new stations were being formed. In November 1840 Franklin reported that he had three companies of infantry men less than he had in May 1839.

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<sup>108</sup> AOT POL 526, Burgess to Police Magistrates, 22 March 1844.

<sup>109</sup> AOT GO 1/45, p. 187, D.57, Stanley to Franklin, 26 February 1842, Curr to Directors, 12 August 1841, Curr to Colonial Secretary, 3 October 1839, Curr to Archer, 27 July 1841.

<sup>110</sup> AOT GO 33/28, p.785, D.43, Franklin to Glenelg, 14 May 1838; AOT POL 318/5, Forster to Colonial Secretary, 25 April 1838.

<sup>111</sup> AJCP, CO 280/158, reel 520, p.269, D.100, Franklin to Stanley, 21 July 1843.

<sup>112</sup> Hobart Town Gazette, 18 May 1838, p. 353.

<sup>113</sup> AOT POL 319/2, Forster to Police Magistrates, 6 July 1838.

<sup>114</sup> AJCP CO 280/97, reel 478, p.231, D.107, memorial from landholders at Swanport, 25 August 1838.

<sup>115</sup> AOT GO 33/34, p.825, D.44, Franklin to Russell, 3 April 1840; AOT GO 33/36, p.546, D.157, Franklin to Russell, 18 November 1840.

In 1843 bushranging reached an especially dangerous level. The Cornwall Chronicle knew of seven gangs of bushrangers comprised of from two to fifteen men operating in the north alone.<sup>116</sup> Three ‘very determined’ bushrangers, including Martin Cash and Laurence Kavenagh, escaped from Port Arthur, committed various acts of robbery, and eluded capture.<sup>117</sup> Cash had experience as a splitter in ‘the most intricate and impenetrable districts’ and knew where to hide. More importantly, the Emancipists showed ‘a want of energy, if not even a degree of sympathy with robbers, quite inconsistent with the Public safety’. Kangaroo hunters and shepherds allegedly harboured bushrangers and supplied them with ammunition and provisions.<sup>118</sup> Cash used a telescope to watch from the hills and attacked farms at the most vulnerable times, when men were in the fields or constables were not in the vicinity.<sup>119</sup> Bushrangers laughed at the ineffective efforts of convict constables to find them and their ‘overweening confidence’ encouraged others to abscond to the bush. One Police Magistrate, fearing that he would be kidnapped, reportedly asked for military protection, which some regarded as an indication that the police lacked ‘courage and prowess’.<sup>120</sup> According to the Hobart Town Advertiser, colonists faced a more numerous, desperate, and dangerous breed of convicts than the petty larcenists and burglars of the past. The most desperate were the ‘dark, stern, and determined’ Irish prisoners, whose crimes had imperilled the lives of others and risked their own.<sup>121</sup> Convicts who had spent time at Norfolk Island and who were ‘anxious for plunder, and, if necessary, bloodshed’, were especially feared.<sup>122</sup>

To meet this new threat, the Hobart Town Advertiser advocated a remodelled force for the interior, independent of Police Magistrates, and with ‘sufficient arms, discipline, and confidence in one another to fight well and readily’.<sup>123</sup> They would be an elite corps of one hundred well-paid men divided into lots of ten under the charge of roving Inspectors for the north and the south. They would thus emulate the example of the Irish Rural Police, ‘the best of its kind perhaps in the world’. The Hobart Town Courier criticised settlers in the interior for refusing to become special constables because of the associations with the felon police. If a number of settlers had been appointed special constables, they would have promoted ‘order and discipline’ and made bushranging more precarious.<sup>124</sup>

Franklin was sensitive to charges of inefficiency, neglect, and cowardice. Despite the large numbers of convicts dispersed throughout the colony and a relatively small police force, he pointed out that few convicts absconded and, when they did, committed a ‘small amount of crime’ and were usually captured quickly.<sup>125</sup> Only Riley Jeffs and John Conway, who shot District Constable Ward at Avoca, and the Cash gang retained their freedom for long periods. From 1 January 1843 to 9 January 1843, 594 males absconded, of whom 505 were arrested, leaving 89 at large; 148 females absconded, of whom 113 were arrested, leaving 35 at large. In July 1844 Burgess reported that, during the first half year of his tenure, the average period of freedom was twenty-four days.<sup>126</sup>

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<sup>116</sup>Cornwall Chronicle, 6 May 1843.

<sup>117</sup>AJCP CO 280/157, reel 520, p.4, D.63, Franklin to Stanley, 3 June 1843.

<sup>118</sup>Launceston Advertiser, 14 September 1843.

<sup>119</sup>Hobart Town Courier, 17, 24 February, 31 March 1843.

<sup>120</sup>Hobart Town Advertiser, 3 March 1843.

<sup>121</sup>Hobart Town Advertiser, 28 March 1843; compare this claim with an analysis of offences by Irish convicts in Van Diemen’s Land, see J. Williams, *Ordered to the Island: Irish Convicts and Van Diemen’s Land*, Darlinghurst: Crossing Press, 1994, ch. 5.

<sup>122</sup>Colonial Times, 2 April 1844.

<sup>123</sup>Hobart Town Advertiser, 4, 14 April 1843; this suggestion was based on a proposal by John Morgan, see letters in the Hobart Town Advertiser, 28 February 1843 and Colonial Times, 18 April 1843.

<sup>124</sup>Hobart Town Courier, 18 May 1838.

<sup>125</sup>AJCP CO 280/157, reel 520, p.4, D.63, Franklin to Stanley, 3 June 1843; Hobart Town Courier, 12 May 1843.

<sup>126</sup>AOT GO 33/49, p. 11. D.185, Burgess to Colonial Secretary, 22 July 1844.

The police adopted various measures to recapture bushrangers. In July 1843 each magistrate selected four constables as Field Police, men of 'good conduct' and knowledge of the bush.<sup>127</sup> They were stationed at the headquarters of each district ready for immediate deployment and were trained in the use of firearms by the military stationed in their districts. This 'superior class' of Constables received 2s. a day and were 'frequently employed as leaders of Bush parties in pursuit of Runaway convicts'.<sup>128</sup>

Burgess strengthened the quality of men in the interior when in February 1844 he asked Police Magistrates to give him the name of all constables in their district who were not efficient.<sup>129</sup> They were dismissed and replaced by efficient constables from the Hobart Town force. These men proved efficient, not just in dealing with bushrangers, but also in detecting sheep stealers and house breakers.<sup>130</sup> Between January and March 1844 ninety constables were taken from other stations to pursue absconders.<sup>131</sup> Police Magistrate Price sometimes accompanied bands of policemen 'dressed in a blue serge suit and moleskin trousers, assuming the guise of a constable'.<sup>132</sup> His men addressed him 'by the sobriquet of "Jack"'. Price also reportedly 'delighted in acquiring and speaking the vulgar slang of thieves and pick-pockets'.<sup>133</sup>

Aware of the valuable services performed by the native police in New South Wales, in 1843 two of these Aboriginal trackers were secured to pursue bushrangers in Van Diemen's Land.<sup>134</sup> Burgess praised 'their superior sagacity in tracking individuals through the wild and uncultivated part of the country'.<sup>135</sup> They contributed directly to the capture of nine bushrangers, but that was not their only value. The bushrangers feared the tracking ability of the Aborigines and, knowing they must keep moving, felt harassed and fatigued. Thus bushrangers could not 'remain long in the one spot to refresh themselves', knowing that the trackers would soon find them. Captured bushrangers told Burgess that the trackers deterred some convicts from absconding, but he knew that bushranging would continue and the trackers remained a key weapon. As he suspected, the ranks of bushrangers were replenished by runaways from Port Arthur and absconders from road gangs, and the services of the black trackers proved invaluable.<sup>136</sup> But the settlers remained fearful. In 1844 the Campbell Town Mounted Volunteers was formed to protect lives and property and suppress bushranging.<sup>137</sup> Farmyards were 'fortified' and spring guns were set up.<sup>138</sup> Bushrangers even raided houses in the towns, as occurred in Launceston in 1846.<sup>139</sup>

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<sup>127</sup>AOT POL 321, Chief Police Magistrate to Magistrates, 19 July 1843; AOT POL 526, Forster to Police Magistrates, 19 July 1843.

<sup>128</sup>AOT POL 319/6, Burgess to Colonial Secretary, 5 December 1844.

<sup>129</sup>AOT POL 445/1, Burgess to Police Magistrates, 7 February 1844.

<sup>130</sup>Colonial Times, 23 January 1846.

<sup>131</sup>AOT GO 33/49, p.111, D.185, Burgess to Colonial Secretary, 22 July 1844; D, Heustis, A Narrative of the Adventures and Sufferings of Captain Daniel D. Heustis, Boston: Wilder, 1847, p. 124-5. CHECK PUB DATE

<sup>132</sup>M. Cash, Martin Cash: The Bushranger of Van Diemen's Land in 1843-4, 5th ed., Hobart: J. Walch and Son, 1929, p. 98.

<sup>133</sup>J.V. Barry, The Life and Death of John Price: A Study in the Exercise of Naked Power, Melbourne: Melbourne University Press, 1964, p. 16.

<sup>134</sup>AOT GO 33/51, p.72, D.34, Eardley-Wilmot to Stanley, 7 April 1845.

<sup>135</sup>AOT POL 319/6, Burgess to Colonial Secretary, 6 February 1845.

<sup>136</sup>Hobart Town Courier, 5, 12 April 1844, 23 August 1845, 22 April, 20 June 1846.

<sup>137</sup>Cornwall Chronicle, 24 April 1844.

<sup>138</sup>Examiner, 14, 18 December 1844.

<sup>139</sup>Examiner, 11 March 1846.

Individual incidents of disorder occurred periodically. For example, In January 1844 at the Glenorchy Probation Station convicts under the influence of liquor rioted when the Superintendent threatened one of their number.<sup>140</sup> More serious were violent outbursts by the military, especially in Launceston, where relations with civilians were tense. There were 'many very quarrelsome and ill-disposed people amongst the lower orders' in Launceston, who had 'a natural antipathy' towards soldiers and policemen.<sup>141</sup> In May 1845 some fifty soldiers, launching a premeditated attack on citizens with bludgeons and palings, destroyed pubs: order was restored when two companies of soldiers were called out of barracks with fixed bayonets.<sup>142</sup> Very few of the rioters were prosecuted and the police seemed reluctant to interfere with the military.

In Hobart Town altercations between the military were less common, perhaps because the police were better trained. In 1844 the police there were 'instructed in military movements' under the direction of Drill Sergeant Watson.<sup>143</sup> They were thus ready 'to act in concert' to suppress a riot. When crowds assembled at an execution, the well drilled police 'most admirably maintained good order and regularity'.<sup>144</sup> To the appreciation of town residents, these policemen were also used as a Fire Brigade Unit.<sup>145</sup>

### **Policing Crime**

In the late 1830s the relative weakness of police numbers in the interior prompted landholders to provide their own means of protection against criminals. The Northern Association for the Suppression of Felonies offered rewards for the capture of murderers, sheep stealers, embezzlers, and petty thieves.<sup>146</sup> Sheep and cattle stealing lay behind the formation of the Southern Association for the Detection and Suppression of felonies and Misdemeanours in 1838.<sup>147</sup> In the early 1840s absconding probationers stole sheep, pigs, poultry, clothes, and tools with seeming impunity, but, with the high price for wool, large scale sheep stealing was also common.<sup>148</sup> For example, in Evandale a gang of sheep-stealers drove away hundreds of sheep to their yards, which were 'purposely built' to slaughter sheep and pack wool.<sup>149</sup> Some members of the gang sheared the sheep, others picked off pitch marks from the fleece and erased brands, and yet others cut the sheeps' throat and burnt the carcasses. Before their capture, the gang had slaughtered about 1500 sheep.

Despite the concentration of convicts and ex-convicts in the main towns of Hobart Town and Launceston, we find few signs of a panic over the state of crime before 1840. In 1839 Franklin told Glenelg that Hobart Town had 'for many years been almost as free' from burglaries and robberies as any town in England.<sup>150</sup> The Austral Asiatic Review agreed. Most robbery was of 'the most pitiful, pilfering, food-hunting description', but serious crime was strikingly rare for a sea port.<sup>151</sup> Petty robbery by servants and shoplifting seemed to

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<sup>140</sup>AOT CSO 8/110/2317; see also Hobart Town Courier, 29 December 1843.

<sup>141</sup>Cornwall Chronicle, 9 March 1844.

<sup>142</sup>Examiner, 21, 23 May, 11 June, 16 August 1845; see also Cornwall Chronicle, 24 May, 16 August 1845.

<sup>143</sup>Hobart Town Advertiser, 13 August 1844.

<sup>144</sup>Colonial Times, 22 March 1845.

<sup>145</sup>Hobart Town Advertiser, 6 June 1845.

<sup>146</sup>Launceston Advertiser, 27 April, 13 July, 21 September, 9 November 1837, 8 March 1838.

<sup>147</sup>Hobart Town Courier, 9 November 1838; Tasmanian Weekly Dispatch, 22 November 1839, 7 February 1840.

<sup>148</sup>Hobart Town Advertiser, 19 November 1844; Examiner, 25 December 1844; Hobart Town Courier, 6 February 1845; J. Syme, *Nine Years in Van Diemen's Land*, Dundee: The Author, 1848, p. 147.

<sup>149</sup>Cornwall Chronicle, 12 August 1844.

<sup>150</sup>AJCP CO 280/106, reel 483, p.16, D.30, Franklin to Glenelg, 15 February 1839.

<sup>151</sup>Austral Asiatic Review, 22 December 1840.

cause the most alarm.<sup>152</sup> In Hobart Town the police exercised ‘the most unremitting vigilance’ and acquired knowledge of ‘the haunts, habits, and names of those most likely to break the laws’.<sup>153</sup> As the proceeds of most robberies were pledged at pawnshops, the Pawnbrokers’ Act placed pawnbrokers under the ‘most strict and severe’ surveillance.<sup>154</sup> Respectable pawnbrokers aided the police, but many receivers of stolen goods disguised themselves as pawnbrokers and were hard to uncover.<sup>155</sup>

From around 1844 the newspapers began to report more robberies and thefts. In Launceston police numbers were too small to protect remote streets at night and robberies became more frequent.<sup>156</sup> Most crime was blamed on ‘[t]he appalling state of misery and destitution’ and the large numbers of unemployed probationers ‘let loose upon the community’.<sup>157</sup> But crime was no longer just driven by need. The Colonial Times noted the increasing incidence of ‘large, systematic and well concerted robberies’ by men more or often than not armed with guns, bludgeons and tomahawks.<sup>158</sup> Some convicts were expert criminals, such as the cracksman or housebreaker John Thomson, known as ‘Clogger Jack’.<sup>159</sup> Police found him with ‘the most complete set of implements for breaking open iron chests ever seen in the colony’. The port area of Wapping in Hobart Town was the preferred haven for many thievish rogues and vagabonds.<sup>160</sup> The Hobart Town Advertiser claimed that, since the introduction of the probation system, the number of crimes had ‘vastly and disproportionately increased’.<sup>161</sup> Noting the increase in ‘daring ingenuity’ displayed by thieves, the Cornwall Chronicle suggested that they belonged to ‘a “new school” of villainy’ produced by the probation system.<sup>162</sup> According to the American law student and transported political prisoner Linus W. Miller, the convicts leagued together ‘under a systematic plan’ using ‘a vulgar language of their own’ to ‘plunder whatever comes their way’ and it was very difficult for the police to detect them.<sup>163</sup>

Drawing on his English experience, Burgess introduced new arrangements to prevent and detect crime at night. In Hobart Town and Launceston he divided the city into districts or divisions and appointed sergeants to supervise constables under the general orders of district constables.<sup>164</sup> Constables were assigned their own beats on which they were accompanied by a sergeant. Constables reported to the sergeants ‘at certain places and hours during the night’.<sup>165</sup> Burgess attempted to instil a ‘*system* approaching a little to military discipline’. Burgess also appointed three constables as detectives in Hobart Town and Launceston. In Launceston the detectives were ‘a perfect terror to evil doers’ and residents wanted their numbers increased.<sup>166</sup> The police regularly arrested vagrants and others without any visible

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<sup>152</sup>Hobart Town Advertiser, 18 October 1839, letter by ‘A Sufferer’.

<sup>153</sup>Hobart Town Advertiser, 12 September 1843, 9 February 1844.

<sup>154</sup>Colonial Times, 29 October 1839; 4 Vict. No. 3 and 5 Vict. No.5.

<sup>155</sup>AOT POL 318/6, Spode to Colonial Secretary, 19 November 1839; Hobart Town Advertiser, 22 July 1845.

<sup>156</sup>Cornwall Chronicle, 27 April 1844; Examiner, 13 July 1844; Launceston Advertiser, 9 August 1844.

<sup>157</sup>Colonial Times, 5 March 1844; see also Launceston Advertiser, 25 April 1844.

<sup>158</sup>Colonial Times, 2 April 1844.

<sup>159</sup>Hobart Town Advertiser, 9 August 1844.

<sup>160</sup>Colonial Times, 26 December 1845.

<sup>161</sup>Hobart Town Advertiser, 19 November 1844.

<sup>162</sup>Cornwall Chronicle, 11 May 1844.

<sup>163</sup>L.W. Miller, Notes of an Exile to Van Dieman’s Land, Wakefield, Yorkshire: S.R. Publishers, 1968 (first published in 1846), p. 284.

<sup>164</sup>Colonial Times, 5 June 1844, 18 November 1845; Examiner, 20 July 1844.

<sup>165</sup>Examiner, 20 July 1844.

<sup>166</sup>Cornwall Chronicle, 2 April 1845.

means of support.<sup>167</sup> Constables were required to report ‘every robbery or theft however trifling’.<sup>168</sup> At George Town each constable was held responsible for crimes committed on his beat and was ‘tried’ should a robbery be committed.<sup>169</sup>

Burgess’s efforts were appreciated, but he simply lacked the numbers to deal with the criminal population and town residents needed to develop their own methods of protection.<sup>170</sup> The frequent robberies compelled the major merchants and shopkeepers to employ ‘armed confidential persons’ to protect their goods at night.<sup>171</sup> Every town dweller kept at least one dog to protect person and property.<sup>172</sup> The Colonial Times urged residents to form ‘a volunteer force’ of special constables to patrol their districts in liaison with the ordinary police, especially when detachments from Hobart Town were sent in pursuit of bushrangers and were replaced temporarily by Norfolk Islander convicts trained by Price.<sup>173</sup> The Cornwall Chronicle advised citizens to arm themselves and take turns in walking the streets ‘in search of bad characters who infest them’.<sup>174</sup> Residents should also get sturdy shutters and bolts, and burn chamber lamps through the night.

According to the anti-transportationist solicitor Robert Pitcairn, officials doctored the criminal statistics and thus concealed the real number of crimes to show that they were doing their job.<sup>175</sup> Eardley-Wilmot unsurprisingly disagreed. He regarded the protection of life and property as his most important duty and claimed that his critics exaggerated the level of insecurity.<sup>176</sup> He argued, not altogether convincingly, that magisterial and judicial records showed that crime had decreased. For example, the number of persons brought before Police Magistrates decreased from 19,062 in May 1844 to 17,338 in May 1846 at a time when the convict population increased at a time when some 5,000 new convicts arrived in the colony.<sup>177</sup> Moreover, he claimed that Vandiemonians travelled day and night ‘not only without a word, but without even a look of insult’ and that there was no town in England ‘so free from dread and anxiety’. Eardley-Wilmot’s statistics could be attributed to slackening police activity as much as a decline in crime and his other claims contradicted but did not disprove the allegations made against his rule. In fact, critics such as Pitcairn, who alleged that convict indiscipline and lax administration caused crime and violence, carried the day and played a large part in Eardley-Wilmot’s dismissal.<sup>178</sup>

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<sup>167</sup>Hobart Town Advertiser, 16 January 1846.

<sup>168</sup>AOT POL 526, Burgess to Police Magistrates, 26 July 1844.

<sup>169</sup>AOT POL 319/6, Burgess to the Assistant Police Magistrate, George Town, 17 December 1844.

<sup>170</sup>Colonial Times, 24 September 1844; Britannia, 15 January 1846.

<sup>171</sup>Hobart Town Advertiser, 11 April 1845.

<sup>172</sup>AJCP CO 280/179, reel 532, p.262, D.291, Eardley-Wilmot to Stanley, 24 January 1845

<sup>173</sup>Hobart Town Advertiser, 10 August 1844; Colonial Times, 29 April 1845; Spectator, 8 December 1846.

<sup>174</sup>Cornwall Chronicle, 24 May 1845.

<sup>175</sup>AJCP CO 280/192, reel 541, p.95, D.33, memo. by Bicheno, 9 January 1846, Pitcairn to Stanley, 4 February 1846; see also AOT GO 33/55, p.1014, D.118, Eardley-Wilmot to Gladstone, 10 August 1846.

<sup>176</sup>Hobart Town Gazette, 19 July 1846, p. 849, address by Eardley-Wilmot to the Legislative Council, 17 July 1844.

<sup>177</sup>Great Britain. Parliament. Convict Discipline and Transportation: Correspondence on the Subject of Convict Discipline and Transportation, London: T.R. Harrison, 1847, Eardley-Wilmot to Gladstone, 10 August 1846, pp. 110-11.

<sup>178</sup>AJCP CO 280/196, reel 545, p.522, D.164, Eardley-Wilmot to Gladstone, 21 September 1846 and p.302, D.150, Eardley-Wilmot to Gladstone, 22 September 1846.

Another development that caused some frisson in the press was the emergence of juvenile delinquents. In Launceston some young men formed an association called the Mohawk Club around 1839.<sup>179</sup> They attacked ‘peaceable’ inhabitants with rocks, and broke windows and lamps. In Hobart Town ‘a fraternity styling themselves “Bricks”’ directed ‘obscene and blasphemous expressions’ at females and in pubs issued threats of violence.<sup>180</sup> Attached to the Bricks were young boys called Bricklings, who emulated the glorious deeds of their elders. The violent acts of these youths were disturbing enough, but more concerning was the evidence of organised criminal activity, which indicated that adult convicts had contaminated young minds. This evidence included the discovery that a printshop owner had trained a ring of boy thieves to steal and make skeleton keys.<sup>181</sup> Linus Miller warned that ‘the foul leprosy’ existing in society made it difficult for even the free to ‘escape pollution’.<sup>182</sup> Some colonists even claimed that the convicts took ‘delight in corrupting the young’.<sup>183</sup> The presence of evil influences on the young was part of a wider concern with the state of public morals.

### **Policing Morals**

Under Franklin and Eardley-Wilmot we find greater public concern with moral issues than under Arthur, especially the growth of public houses, of female child prostitution, and of homosexuality. As the police were not overly concerned with the policing of homosexuality, I will only deal with the first two moral issues.<sup>184</sup>

### **Pubs**

For Franklin, ‘the worst feature’ of the moral state of Van Diemen’s Land was the large number of pubs, especially in Hobart Town.<sup>185</sup> The pubs formed ‘the darkest shade in the character of the community’ and detracted greatly from ‘the fitness’ of the colony to receive convicts. Teetotallers and temperance enthusiasts faced an uphill struggle to reduce alcohol consumption in convict Van Diemen’s Land.<sup>186</sup> Despite his misgivings, Franklin did nothing to lessen the number of pubs. In 1836 Governor Arthur limited the number of pubs to 100 in Hobart Town, but by 1844 the number had risen to 144 and by 1846 to 150.<sup>187</sup> This rise was allowed because the revenue from licensed pubs saved the government from financial embarrassment. By 1844 the 300 pubs in Van Diemen’s Land, paying a licence fee of £25, raised £7500 per annum.<sup>188</sup> Conservative estimates of the revenue from duties on spirits sold in pubs put the sum at £55,000.

Added to this was the revenue from fines for breaches of the licensing laws. Central to this branch of revenue were the police, many of whom spent much time watching for breaches or entrapping publicans into breaching the various restrictions imposed on their trade as to who they could serve and when. That the police received half of the fine was a powerful incentive to exert themselves against publicans and other trades: the police picked ‘people’s pockets by

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<sup>179</sup>Cornwall Chronicle, 17 August 1839, 31 August 1844.

<sup>180</sup>Hobart Town Courier, 6 November 1840.

<sup>181</sup>Examiner, 28 June 1845.

<sup>182</sup>Miller, Notes of an Exile, p. 360

<sup>183</sup>AOT, NS 22/1, T.C. Brownell papers, p.33, Mrs. Brownell to Mrs. Freeman, 24 January 1838.

<sup>184</sup>For homosexuality see for example AJCP CO280/192, reel 541, p.95, D.33, Eardley-Wilmot to Stanley, 6 February 1846.

<sup>185</sup>AJCP CO 280/153, reel 518, p.411, D.30, Franklin to Stanley, 24 February 1843.

<sup>186</sup>Launceston Courier, 26 September 1842.

<sup>187</sup>Colonial Times, 28 August 1838, 10 September 1844; Britannia, 12 February 1846.

<sup>188</sup>Colonial Times, 10 September 1844.

hard swearing'.<sup>189</sup> After Forster resumed his duties as Chief Police Magistrate, he issued an order which attempted 'to prevent the system of vexatious and money seeking informations'.<sup>190</sup> Before a policeman laid an information offering the possibility of 'a pecuniary award', he had to pay the Police Clerk 1s. in advance. If a policeman failed to obtain a conviction, he had to pay 'all the usual fees for summonses, oaths etc' out of his monthly pay, unless the magistrate certified that the information was 'beneficial to the public interests' or was laid on the order of 'some competent superior officer'. Police Clerks furnished the Chief or Chief District Constable with a monthly charge sheet of failed informations. Forster made it clear that the police would be supported when they acted 'for the public good', but seeking informations for personal gain detracted from 'the general respectability' of the police and deserved punishment.

If enforced, this order would have been a great boon to all citizens, but it was not.<sup>191</sup> Some policemen, the 'Arch-informer' and one-time convict, District Constable Henry Brice was one, continued persistently to inform on publicans with the support of the Police Magistrate of Hobart Town John Price.<sup>192</sup> Unpopular for his discourteous manner, 'strange freaks of temper', and his liking for flogging offenders, criticism of Price intensified when he accompanied his policemen on their 'crusade' against publicans in 1842.<sup>193</sup> His defenders argued that Price deserved credit for checking on his constables' 'remissness' or 'their too great officiousness'.<sup>194</sup> Such action would have been justified, but, his critics pointed out, his behaviour was much more 'inquisitorial [and] tyrannical': accompanied by his 'favourite' constables and dressed like one, he entered private rooms in pubs, some of which had a reputation for respectability, at 11.00 p.m., laid informations, adjudicated on the cases next day, and awarded half the fines to his informing officers.<sup>195</sup> Price, who was married to Governor Franklin's daughter Mary, was oblivious to press criticism and advised his men to take no notice of newspapers as long as they did their duty.<sup>196</sup> He dismissed informing constables only when 'a very clear case' of 'iniquity' was brought to his notice.<sup>197</sup>

Although Hobart Town publicans might concede that the police needed to be especially vigilant in a penal colony, they did not meekly submit to unjust and predatory attacks. Their wealth and influence made them 'important members of the colonial aristocracy'.<sup>198</sup> In April 1839 they formed the Licensed Victuallers' Society to protect individual members against police informations by appointing the lawyer Robert Stewart as their counsel.<sup>199</sup> Stewart was kept busy defending publicans against the police in at least five cases every week. Aiming to make the trade more respectable, the Society also kept a record of members who 'wilfully and

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<sup>189</sup>Colonial Times, 6 April 1841; see also Anon.[A Late Colonial Police Magistrate], 'Notes of a Residence in Van Diemen's Land in 1842-43', Simmond's Colonial Magazine, vol. 3, 1844, p. 165.

<sup>190</sup>AOT POL 321, memo. by Forster, 5 April 1841; Hobart Town Advertiser, 13 April 1841.

<sup>191</sup>Colonial Times, 13 April, 4 May 1841.

<sup>192</sup>Austral Asiatic Review, 11 February 1840; Hobart Town Advertiser, 4 May 1841; Colonial Times, 2 July 1840, 6 July 1841, 10 May 1842.

<sup>193</sup>Hobart Town Courier, 29 July 1842; Colonial Times, 9 August 1842; Tasmanian Weekly Dispatch, 24 January 1840.

<sup>194</sup>Hobart Town Advertiser, 9 August 1842; Austral Asiatic Review, 13 April 1841.

<sup>195</sup>Hobart Town Advertiser, 9, 16 August 1842, letters by John Morgan; T. Rogers, Correspondence Relating to the Dismissal of the Rev. T. Rogers from his Chaplaincy at Norfolk Island, Launceston: n.p., 1849.

<sup>196</sup>Colonial Times, 12 March 1839; Austral-Asiatic Review, 17 December 1839; Franklin certainly approved of Price's work, see AJCP, CO 280/147, reel 513, p. 452, D. 127, Franklin to Stanley, 9 December 1842 and AOT, GO 33/45, p. 469, D. 67, Franklin to Stanley, 13 June 1843.

<sup>197</sup>Colonial Times, 10 March 1839.

<sup>198</sup>Anon., 'The Early Social State of Van Diemen's Land', Meliora, vol. 4, 1861, p. 166.

<sup>199</sup>Hobart Town Advertiser, 19 April, 3 May 1839; Tasmanian Weekly Dispatch, 6 December 1839.

disgracefully' offended against the licensing laws and excluded them from the benefits of the society.<sup>200</sup> With the support of the Acting Chief Magistrate, Josiah Spode, the Society lobbied successfully for amendments to the Licensed Victuallers' Act and removed opportunities for unfair police informations.<sup>201</sup> They argued that 'the public safety' was neglected by constables seeking cause for informations, 'not uncommonly supported by perjury' and secured the following amendments.<sup>202</sup> On Sundays they were allowed to open from 1.00 to 3.00 and 8.00 and 9.00 instead of only 1.30 to 3.00.<sup>203</sup> Informations had to be made within one month of the infringement and not three months. Magistrates were given discretion to lower fines if the circumstances justified it and publicans could appeal to Quarter Sessions against their decisions. This they did to such effect that Stewart was employed by informers at the appeal hearings.<sup>204</sup>

These amendments, the first secretary of the Licensed Victualler's Society John Morgan recalled in 1844, heralded 'a great reform' as 'useless informations were no longer countenanced' and they secured 'a victory over pettifogging tyranny and imposition'.<sup>205</sup> But constables could still exploit the remaining unfair restrictions. One was the penalty of between 20s and £20 for serving convicts or allowing convicts to remain in the pubs, even though convicts with indulgences were not required to wear prison dress and could not be easily if at all distinguished from free citizens.<sup>206</sup> Constables also pounced on any publican who did not clear his tap-room and close his outer doors by 10.00 p.m., even if he was entertaining private guests.<sup>207</sup>

Chief Police Magistrate Burgess endeavoured to stop vexatious informations but more important was the greater participation of unpaid Justices of the Peace at Police office hearings, where they could out vote the Police Magistrate and check perjury.<sup>208</sup> In Launceston this trend was not evident and publicans faced the same kinds of crusades in 1846 as their Hobart counterparts had done earlier in the decade.<sup>209</sup> Chief Constable Midgeley stationed constables outside pubs and prosecuted anyone who left and entered after closing time.<sup>210</sup> This persuaded publicans in Launceston to form their own Licensed Victuallers Society in 1846.<sup>211</sup>

Sly grog shops grew in number from the late 1830s and attracted much odium as the source of crime and immorality.<sup>212</sup> The police tried to suppress sly grog selling, but found it difficult, for they were well disguised as coffee shops or confectioners.<sup>213</sup> They had to entrap sly grog sellers into selling spirits and were denounced for using the spy system for a moral end. The Launceston Advertiser tolerated entrapment, but advised magistrates to sift carefully the details of every case to ensure that its use was not excessive.<sup>214</sup>

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<sup>200</sup>Hobart Town Advertiser, 20 September 1839.

<sup>201</sup>For Spode's support see, AOT POL 318/6, Spode to Colonial Secretary, 2 November 1840; Cornwall Chronicle, 10 July 1841.

<sup>202</sup>Tasmanian Weekly Dispatch, 31 July 1840.

<sup>203</sup>Colonial Times, 26 June 1844, letter by John Morgan.

<sup>204</sup>Tasmanian Weekly Dispatch, 8 January 1841; Colonial Times, 18 January, 6, 13 December 1842.

<sup>205</sup>Colonial Times, 26 June 1844, letter by John Morgan.

<sup>206</sup>Colonial Times, 17 December 1844, letter by John Morgan.

<sup>207</sup>Hobart Town Advertiser, 9 August 1842, letter by John Morgan; Examiner, 2 July 1845.

<sup>208</sup>Colonial Times, 27 August 1844; Britannia, 19 November, 24 December 1846.

<sup>209</sup>Cornwall Chronicle, 4 March 1846, letter by M.T. Davies; Examiner, 28 February 1846; Launceston Advertiser, 3 August 1846; Britannia, 24 December 1846.

<sup>210</sup>Examiner, 31 October 1846; Cornwall Chronicle, 4 November 1846.

<sup>211</sup>Cornwall Chronicle, 14 March 1846; Examiner, 14 November 1846.

<sup>212</sup>Hobart Town Advertiser, 28 June 1839; Tasmanian, 12 July 1839; F.M. Innes, 'The Convict System of Van Diemen's Land', Monthly Chronicle, vol.5, 1840, p. 434.

<sup>213</sup>Launceston Courier, 18 October 1841, letter by 'Observer'; Cornwall Chronicle, 13 August 1845.

<sup>214</sup>Launceston Advertiser, 10 March 1842.

## Prostitution

During public debates on the Molesworth Committee report on transportation, critics—'a theoretical (some say an interested) clique'—claimed prostitution was rife in Van Diemen's Land and that immorality abounded.<sup>215</sup> Franklin told Glenelg that the accusations, especially of female child prostitution, were greatly exaggerated and referred to the early 1830s.<sup>216</sup> But the transportation of female convicts and the emigration of free women, many of whom had been prostitutes, enhanced the possibility that prostitution would increase. Franklin shared the concern of the Colonial Office that the discipline of female convicts was lax and that they were harder to reform than male convicts. He appointed an enquiry into ways of improving their 'conduct and moral character'.<sup>217</sup>

According to the journalist F.M. Innes, writing in 1840, 'one of two streets literally forbid the passage of a respectable individual, they are so tenanted by harlots, whose brazen effrontery is disgusting'.<sup>218</sup> Police Magistrate Price did not appear to regard prostitution as a large or serious concern.<sup>219</sup> He conceded that female convicts with tickets of leave resorted to prostitution and were 'not generally speaking a well conducted class of women', but admitted that they were 'not so strictly watched as the men'.<sup>220</sup> Price was, however, concerned that girls as young as twelve had been found in brothels and received praise for suppressing when brought to his notice 'a species of traffic which is abhorrent to nature'.<sup>221</sup> He was one of a number of 'friends of social order' and of 'the preservation of public morals' who formed the Society for the Suppression of Vice in April 1842.<sup>222</sup> As many convicts were huddled together in penal establishments, some thought that the inmates would leave in a more immoral state than when they entered. This Society aimed to suppress brothels, but more importantly to save 'young females, who, from the loss or neglect of their natural guardians', had been lured into prostitution. The promoters intended to establish an asylum for young girls, where they would receive moral reformation and training for domestic service.

The first meeting brought out a division over the best way to deal with juvenile prostitution and highlighted negative feelings towards the police. Dr. Robert Officer was quick to proclaim the community of Hobart Town as 'a moral prodigy' because, despite the large number of criminals, morality had a 'firm' hold.<sup>223</sup> Officer did not venture to say whether this was due 'to an effective police, to the exertions of our religious ministers, or to the good example of the better portion of the community'. Although vice was no greater than any in English town, they must ensure that it did not grow. Officer suggested using the funds of the Society to encourage the police 'to traduce those whose nefarious practices, as a calling, led young women to irretrievable ruin'. His advocacy of the police received support from Dr. Adam Turnbull, but most other attendees recoiled at the prospect. Robert Stewart thought it 'impolitic' in a penal colony with convict constables to induce the police with rewards 'to

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<sup>215</sup>Anon., 'Van Diemen's Land: Moral, Physical, and Political', *The Colonial Magazine*, vol. 4, 1841, p. 57.

<sup>216</sup>AJCP CO 280/107, reel 484, p.171, D.51, Franklin to Glenelg, 11 March 1839.

<sup>217</sup>AOT CSO 22/50, Government Order, 17 September 1841.

<sup>218</sup>Innes, 'The Convict System', p. 434.

<sup>219</sup>More generally, see K. Daniels, 'Prostitution in Tasmania During the Transition from Penal Settlement to 'Civilized' Society' in K. Daniels (ed.), *So Much Hard Work: Women and Prostitution in Australian History*, Sydney: Fontana Books, 1984, p. 41

<sup>220</sup>AOT CSO 22/50, Government Order, 17 September 1841, p.172.

<sup>221</sup>Hobart Town Advertiser, 26 November 1841.

<sup>222</sup>Hobart Town Advertiser, 15 April 1842; see also Cornwall Chronicle, 11 June 1842.

<sup>223</sup>Hobart Town Courier, 29 April 1842; see also Anon. [Late Colonial Police Magistrate], 'Notes on a Residence in Van Diemen's Land in 1842-43', *Simmond's Colonial Magazine*, vol. 2, 1844, p. 92.

pursue even the vicious'. Stewart tried to remove Price's name from the office bearers but he failed. Thomas Macdowell totally opposed 'bribing' the police to deal with vice. This would invite 'inquisitorial proceedings' and result in the coercion of unfortunate females and not their masters. Two motions expressed the consensus of the meeting. One, moved by Reverend Miller, stated that vice should be discountenanced and suppressed 'by all moral and legal means'. Even this was too strong for some, and another motion from T.G. Gregson stated that 'only moral means' should be used to further the aims of the Society.

The Colonial Times thought the enemies of Van Diemen's Land would make much of such public discussions of vice, even though prostitution was not yet a great evil.<sup>224</sup> But impartial observers would marvel at this manifestation of 'philanthropy and Christian charity'. However, the support for the Society for the Suppression of Vice, or, as it was more popularly and accurately known, the Magdelene Society, was small. The Society could not raise funds for an asylum and thus only a few females received assistance.<sup>225</sup> As the number of female convicts and unemployed female immigrants increased, so too did the number of brothels to meet the demands of a large population of single and transitory males in Hobart Town and Launceston.<sup>226</sup> According to the Cornwall Chronicle in 1845, there was 'now scarcely any quarter' of town free from brothels.<sup>227</sup> While the police prosecuted those that became a public nuisance, suppressing brothels was low on a long list of duties.

## Conclusion

The major change in the post-Arthur period was the British Government's agreement to pay two-thirds of police costs. This minimized a major source of conflict between the colonists and their imperial masters, and was secured by intense politicking. But this was small beer when compared with the large influx of convicts and the introduction of a not very well thought out probation system. The police were barely adequate to deal with the incursions of desperate probationers and crime seemed to have increased in the minds of colonists if not necessarily statistically. Certainly the colonists in the interior had good reason to feel more threatened by bushrangers, but the colonists generally exaggerated their concerns to wrench concessions from the British.

While the police struggled to cope with the growing probationer population, they retained their wide powers to make the lives of free colonists very uncomfortable: abusing their powers of arrest, committing perjury and relentlessly pursuing offenders whose conviction would secure them part of a fine remained sore points for colonists. Chief Magistrate Forster issued an order to stop vexatious informations, but it was difficult to enforce. The crux of the problem was a lack of discrimination in the selection of policemen and their low pay. Few policemen could survive without supplementing their wages with fines and bribes. The appointment of senior constables and the supply of bedding and medical attention gave some policemen an incentive to stay in the police, but increasing the pay of all policemen would probably have been a more effective move.

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<sup>224</sup>Colonial Times, 3 May 1842.

<sup>225</sup>Hobart Town Courier, 28 July 1845.

<sup>226</sup>Hobart Town Advertiser, 7 August 1846; Examiner, 18 November 1846, letter by 'Citizen'.

<sup>227</sup>Cornwall Chronicle, 18 January 1845, 25 November 1846, letter by 'Another Citizen'.

The arrival of Francis Burgess as Chief Police Magistrate was a major step forward. His attempts to deal with bribery and false arrests were not altogether successful, but he did improve the organisation and efficiency of the police. For example, he appointed sergeants to supervise constables, appointed detectives to deal with crime, and dismissed inefficient men. Such measures raised the reputation of the police in Hobart Town and Launceston, but police numbers (especially in Launceston) were too low in proportion to their increasing size. The colonists themselves deserve some criticism. Colonists did not seem to make the most of their limited opportunities to take more of an interest in police work. For example, the participation of lay magistrates at licensing meetings helped to ensure that the process was diligently and honestly performed. But colonist did not press for the attendance of citizens at the watch-house to investigate charges of false arrest and they did not lobby very hard for municipal control of the police. Until there was more direct public control, relations between colonists and the police would remain antagonistic and lacking in mutual respect.