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THE TRANSPORTATION OF CONVICTS TO NEW SOUTH WALES, AUSTRALIA,
1787-1840: COULD FREE MEN AND BONDSMEN EXIST TOGETHER?

BY

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Submitted to the Department of History
of the University of Windsor in
partial fulfilment of the
requirements for the
Degree of Master
of Arts

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ABSTRACT

From the sailing of the First Fleet in 1787 - carrying a ship-load of derelicts to the underbelly of the world namely, Australia - to its abolition to New South Wales in 1840, the transportation system, as practiced by Britain, created an uneasy alliance between the free and the "enslaved" in the Australian colony of New South Wales. This alliance was finally shattered by the free inhabitants who rebelled against "contamination" by those in custody, resulting in the final abolition of transportation to New South Wales. A free society cannot be a society of gaolers.

In order to understand the development of this repugnance on the part of the free population, a synopsis is given of the background to this punishment of transportation and, of the founding of the first colony at Sydney, Australia.

Then, a general view is given of the life which those who were deported from their home-land, could expect to undergo in the penal colony.

Thirdly, various views of the free population are studied, in order to depict their growing concern over the defiling masses in their midst.

In contrast, the following chapter reveals how the convicts themselves viewed their life, which they saw, not as one of ease and pleasure but, one of torture and of living death.

The fifth chapter offers some of the hopes which were expressed for the continuance of the transportation system, hopes which were finally dashed to the ground by the crescendo of protest against it.

Threading a path through government debates and journalistic outpourings, the controversy over the continuation of the transportation system is then discussed, from the earliest years of the experiment, right up to its final abolition in England in 1868.

Convict labour, it is concluded, was responsible for much of the colony's development but, when this same convict element became a very real threat to the existence of the free society which it had helped to create, then nothing could save it from extinction.

PREFACE

The nineteenth century was an age of progress for Britain, both domestically and externally and, it is hoped that this study will illuminate the awakening consciousness of a maturing society and the special problems facing the colony of New South Wales as it tried to attain a responsible status within the Empire, held back as it was by the bonds of detention.

The reason for choosing this particular topic is not exactly clear to me. I had originally planned to write about the effect of the Industrial Revolution upon the society of the nineteenth century Britain but somehow, I did not feel comfortable with this topic. It would not be academic to confess that the present topic came to me "out of the blue" but, that is what happened and, as I worked with the material and began to delve deeper and deeper into it, my enthusiasm grew.

Because of the time period, 1787 - 1840, and the locale of the topic - New South Wales, Australia, there was some difficulty in obtaining primary sources which was happily alleviated by my being able to obtain material from the British Museum, London, England and, surprisingly enough, from the Detroit Public Library, Detroit, Michigan.

ACKNOWLEDGEMENTS

Deep appreciation must be expressed to Dr. J.K.A. O'Farrell for his kindly and scholarly guidance in the writing of this paper and, to Reverend Henry Hill and, to Dr. Timothy Suttor, for their learned and friendly encouragement.

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Jean Elaine Fitzsimmons

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CHAPTER I
INTRODUCTION

A. The Transportation of Convicts

To the student of British history, the nineteenth century affords a wide vista of developments, social, economic, humanitarian and, political. Society was being changed, both by internal and external pressures, with the result that many institutions, which had carried on quite successfully for centuries, were now being seriously questioned and either changed or abolished altogether.

Hilaire Belloc suggests that when one enters the period extending from the battle of Waterloo to the end of the century, one is entering "... what is perhaps the most extraordinary episode in the story of any ancient and settled nation."¹ The settling of new lands was nothing new but, what made it exceptional in England's case was the scale and rapidity of the enterprise, the whole being bound together by a "moral unity."² All of these developments earned this century the appellation of, "the English Century."³

Faced with increasing internal pressure as a result of the expansion of the urban populations towards the close of the

1 Hilaire Belloc, A Shorter History of England (New York, 1934), p. 546.

2 Ibid., p. 547.

3 Ibid.

eighteenth and the beginning of the nineteenth centuries, one problem became especially embarrassing to Whitehall and that was the question of what she was to do with her criminal citizens.

The practice of banishment or, exile, was not peculiar to England alone, in that it was resorted to with regularity as far back in time as ancient Greece when patriots were forced to seek residence elsewhere. This was voluntary exile however and, John Dunmore Lang,⁴ writing in 1837, felt that there could be no comparison between the penal settlements of the eighteenth and nineteenth centuries, and those of ancient Greece precisely because of this element of the voluntary in the Greek system.⁵

Banishment was also known to Roman officials, especially during the period of the empire. Roman law placed the exile under a death sentence if found within the precincts of Italy and, forbade everyone, under the severest penalties, from supplying him with the necessaries of life or from taking him into their homes. This sentence, known as the "aquae et ignis interdicto" was gradually incorporated into the legal

⁴ John Dunmore Lang (1799-1878). Presbyterian clergyman, politician, educationist, immigration organizer, historian, anthropologist, journalist. First Presbyterian minister in Sydney in 1823. Editor of the Colonist, The Colonial Observer, and the Press. 1850, founded the Australian League which advocated self-government for the Australian colonies and the abolition of transportation.

⁵ John Dunmore Lang, Transportation and Colonization; Or, The Causes of the Comparative Failure of the Transportation System in the Australian Colonies; With Suggestions for Ensuring its Future Efficiency in Subserviency to Extensive Colonization (London, 1837), p. 2.

systems of most of the states of modern Europe.⁶

Augustus introduced several important modifications of the ancient Roman law and may be said to have laid the foundations of the subsequent system of transportation in England.⁷ For certain political crimes which did not brand the offender as "infamous" in the eyes of the law, he established a type of punishment known as "relegatio" or, banishment to a particular place either temporarily or, permanently, without affecting either his rank or fortune as a Roman citizen.⁸ On the other hand, those convicted of "infamous crimes" now known as felonies, were subject to "deportatio" or, transportation, which implied banishment for life, either with or without hard labour.⁹ The first of the European nations to follow the Roman example were Portugal and Spain. The Spanish however, merely extended pardon to certain types of criminals confined in the gaols, on their becoming menial servants, all to be employed exclusively in the colonies of the New World. The Portuguese, for their part, seem to have been long in the habit of sending regular shipments of convicts to their colonial settlements on the African coast or

6 Lang, op. cit., p. 3.

7 Ibid., p. 6.

8 Ibid., p. 9.

9 Ibid.

in the East Indies, to be employed in hard labour.¹⁰

The increase in England of thieves, robbers and other criminals was one consequence of those changes which substituted a mercantile for an agricultural economy and widened the gap between the rich and the poor.¹¹ Crime, as a social problem, did not really come to the fore until great numbers of poor people had been turned away from their manorial occupations and set adrift in a society which was more and more, refusing to support them. Swarming to the cities, they found employment hard to find, with the result that they became idle, unwanted persons, forced to earn their living by whatever means were available, usually stealing. In reaction to this situation, "respectable" citizens established a brutal law code so that, by the seventeenth century, some three hundred crimes were designated as felonies.¹² Such a criminal code strikes us in this age as extremely cruel but, it was mitigated by two practices, the first of which was

10 Spain followed no organized system of indenture comparable with that of English and French colonies. Her criminals however, were quite often, political malcontents and drunken sailors who, upon release, voluntarily went to the New World. Portugal on the other hand, followed a definite policy of deportation of criminals, and as early as 1415, convicts were sent to work on fortifications in north African posts taken from the Moors and, some of the earliest settlers of Brazil were exiled criminals. Upper Guinea and the rivers and creeks of Senegambia were frequented in the 1460's by the Portuguese, among whom were many fugitives and men banished for committing "most heinous crimes and incestuous acts."

11 Abbot Emerson Smith, Colonists in Bondage, White Servitude and Convict Labour in America, 1607-1776 (Gloucester, 1965), p. 89.

12 Ibid., p. 90.

known as "pleading of clergy."¹³ This simply meant that anyone able to read a book was released from the death penalty and was subject only to thumb branding because of the ancient theory that all who could read were in holy orders and were therefore, exempt from the heavier secular penalties.¹⁴

The second mitigating qualification was the granting of the royal pardon.¹⁵ Early in the seventeenth and continuing on into the eighteenth century, it was customary for judges to draw up a list of convicts considered worthy of pardon, which was usually granted immediately.

By the statute, 39 Elizabeth, cap. 4, banishment, implying expulsion from the kingdom, was decreed for the first time in England as the punishment for "dangerous rogues and vagabonds."¹⁶ James I practically converted this statute into an Act for the transportation of criminals to America in 1619 when he informed the officials of the colony of Virginia that "a hundred dissolute persons" would be sent there.¹⁷ Transportation was thus irregularly introduced into England and was continued through the seventeenth and eighteenth centuries right up to the outbreak of the American Revolution.

13 Smith, op. cit., p. 90.

14 Ibid.

15 Ibid.

16 Lang, op. cit., p. 9.

17 Ibid.

Montesquieu,¹⁸ in his Of Severity In Punishment, pointed out that when there was no difference between the punishments for crimes of differing gravity, variations had to be introduced in the prospect of pardon. In England, he noted that murder was not committed by thieves, because those convicted simply of theft could hope that the death sentence would be commuted to one of transportation, a hope which murderers could not entertain. He therefore felt that, "(A) wise use of prerogative pardon can have admirable effects."¹⁹

But, it is most important to remember that, according to Habeas Corpus and common law, it was illegal to inflict the punishment of exile or transportation but, it was quite legal to pardon a felon on the condition that he transport himself out of the country.²⁰ Transportation at first, was dependent upon the willing assent of the prisoner to work for American contractors, which assent was given in exchange for a pardon.²¹

The system of transportation did not originate from any conscious theory as to its value as a method of punishment but

¹⁸ Montesquieu, Baron de La Brede et de. Charles de Secondat (1689-1755). French lawyer, man of letters and political philosopher. Counselor of Bordeaux parliament (1714) and its president (1716). Withdrew from law practice to devote himself to study and writing.

¹⁹ James Heath, Eighteenth Century Penal Theory (London, 1963), p. 78.

²⁰ Sir William Blackstone, Commentaries on the Laws of England (Philadelphia, 1771-1772), I.137; IV,394 in Smith, op. cit., p. 91.

²¹ Heath, op. cit., p. 69.

rather, from the great want of labour in the colonies.²² The first act of Parliament expressly sanctioning transportation as a punishment was, 4 George I. cap. 11 (A.D. 1717) which declared that other punishments then in use were proving ineffective in the curbing of crime in England.²³

The expenses incurred in the migration of the offenders were paid by the criminals themselves and it was not until 1718 that the transport traffic was regulated by an Act of Parliament, 4 George I. cap. 11, which stated that transportation should, thereafter, become a government monopoly and that instead of having the offenders arrange for their own passage, this would now be the responsibility of the government.²⁴ During the voyage, the prisoners were in the custody of contractors to whom receipts were given on arrival indicating the number of convicts transported, and the contractors, on their return to England, received payment for all those men delivered alive.

Lang states that if a contemporary historian may be believed, the convicts were very acceptable to the colonists in America and between 1619 and the outbreak of the American Revolution, the number transported amounted to at least five

²² Richard Whately, Substance Of A Speech On Transportation, Delivered In The House Of Lords, On The 19th Of May, 1840 (London, 1840), p. 91.

²³ Ibid.

²⁴ Henry Melville, The Present State Of Australia, Including New South Wales, Western Australia, South Australia, Victoria And New Zealand With Practical Hints On Emigration :To Which Are Added The Land Regulations, And Description Of The Aborigines And Their Habits (London, 1851), p. 2.

hundred a year.²⁵ None of these convicts however, were ever sent to New England (Massachusetts, Connecticut, New Hampshire, Maine, Vermont and Rhode Island). "The puritanical character and origin of the population of these provinces preclude such an idea."²⁶ Instead, convicts were sent to Virginia, Maryland, Delaware, North Carolina, South Carolina, Georgia, New Jersey, New York and Pennsylvania. These men were literally bought by the planters and worked with the negro slaves "under the lash of an overseer." Evidently, the British Government never enquired how the convicts were treated, providing only that they never returned to England. The convicts were scattered over a vast extent of territory and were commingled with a population of upwards of 1,500,000²⁷ with the result that any taint of a convict element rapidly disappeared.

It cannot be denied that insofar as it actually prevailed, transportation to the American colonies proved highly efficient in securing the attainment of a cheap and steady source of labour for the growing communities. Many problems however, arose because of the great number of "dissolute persons" who were periodically "dumped" onto American shores under no other restraint than their obligations to those masters who had applied for their services. Then too, the increase in the importation of Negro slaves into the American colonies diminished

25 Lang, op. cit., p. 38.

26 Ibid.

27 Ibid., p. 40.

the need for convict labour, while "the extreme impolicy of exhibiting white men in a state of slavery, in the midst of a gradually increasing black slave population, became more and more apparent."²⁸ To the American planter, the captured Negro was healthier and more robust than the "rejects" from England, with the result that as early as 1692, Maryland passed an act prohibiting shipmasters from landing convicts on her shores.²⁹

As early as 1697, the attention of the British Government was riveted on the problem of transportation because of the protests of some of the American colonists. Nothing of substance came of this however, for many American planters were still more than willing to accept the convicts and, Britain herself was in no hurry to find another place to send her criminals.³⁰

With the outbreak of the American Revolution, the traffic in convict labour to the New World came to a standstill. Several voices were raised in opposition to any resumption of the trade to America. Humanitarians such as Howard and Hanway and, liberal thinkers such as Bentham and Blackstone, believed that the reformation of criminals could be better effected in prisons at home rather than on foreign shores.³¹

28 Lang, op. cit., p. 10.

29 Ibid., p.11.

30 Ibid., pp. 12, 13.

31 Eris O'Brien, The Foundation Of Australia, A Study in English Criminal Practice and Penal Colonization in the Eighteenth Century (Sydney, 1950), p. 11.

There was however, no lack of proposals to transport the criminals to other parts of the globe, providing only that they were removed from England. The West Indies, the East Indies, the Falklands and British North America were all suggested as possible receptacles for the convicts. It became clear though, that Britain had never really abandoned the thirteen colonies as her overseas gaol and was merely waiting for the cessation of hostilities, to resume her transporting activities. By February of 1779, with the gaols packed to overflowing, it had become painfully obvious that some other measure would have to be adopted. On 5 February 1779, Sir Charles Bunbury moved in the House of Commons, that a select committee be formed to consider having the East India Company take on the convicts as soldiers or, failing that, to determine whether "the old salutary law" of transportation could not be revived, thus sending the convicts to the West Indies or part of the African coast.³²

It was before this committee which reported on 1 April 1779, that Sir Joseph Banks³³ gave the evidence which earned him the title of "Father of Australia" and in which was the first recorded mention of Australia as a possible penal colony.³⁴ What was being sought was a distant place on the globe from

³² O'Brien, op. cit., p. 113.

³³ Sir Joseph Banks (1743-1820). President of Royal Society. Accompanied Cook on his expedition in the Endeavour in 1768, in the southern seas.

³⁴ O'Brien, op. cit., p. 113.

which escape would be difficult, if at all possible, and where the convicts might maintain themselves with little or no aid from the mother country. Banks suggested Botany Bay in New Holland - remote, fertile and inhabited by "few and inoffensive natives."³⁵ "Thus, it can be seen that the first penal colony envisaged on the Australian Continent was to be an autonomous settlement on the lines afterwards proposed in West Africa."³⁶

Once again however, it seemed as if the British were "stalling" for, there was no attempt to create a penal colony either free or disciplined. Rather, the government continued to use hulks moored off the coast of England and, an effort was made to explore the possibility of a penitentiary system.³⁷ By 1783, it was evident that the hulks were only making matters worse by acting as reservoirs for criminals and, penitentiaries were slow in being realized because of resistance on the part of the Treasury. The result was that, at the end of the American War of Independence, Britain tried to resume transportation to American shores but met with stiff resistance which forced her to look in other directions.

An Act of Parliament in 1783 authorized the King in Council to designate areas, either within or without the

35 O'Brien, op. cit., p. 113.

36 Ibid., p. 114.

37 Ibid., p. 115.

British dominions, to which offenders might be transported.³⁸
 Three locations were put forward: Gibraltar, where the convicts might labour on the fortifications, the Gambia River and Botany Bay.

Eighteen years had passed since the discovery of the eastern coast of Australia by Captain Cook in the Endeavour during the voyage from 1768 to 1771. Although all during those eighteen years, suggestions were put forward as to the utilization of the new possession, the Home government was far too occupied with the ominous clouds hanging over France at this time, to worry much about Australia. In 1783, James Maria Matra, an ex-midshipman of the Endeavour, suggested that the Loyalists, refugees from the rebellious American colonies, be allowed to settle in New South Wales, the name given by Cook to the whole eastern side of the Australian continent, and that the necessary manual labour be supplied from China and the South Sea Islands.³⁹

This project, as first conceived by Matra, had absolutely nothing to do with the problem of settling the convicts but rather, was a scheme of colonization for American Loyalists, a "... hungry, homeless, and most embarrassing host of patri-
⁴⁰ots" and, for native-born Englishmen desiring to emigrate.

³⁸ Edward Jenks, The History Of The Australian Colonies (From Their Foundation To The Year 1893) (Cambridge, 1895), p. 23.

³⁹ A Century Of Journalism, The Sydney Morning Herald, And Its Record Of Australian Life, 1831-1931 (Sydney, 1931), p. 2.

⁴⁰ O'Brien, op. cit., p. 116.

For the Government however, the case was entirely different since the disposal of her criminal overflow was uppermost in her mind in this endeavour. Yet, the scheme is not exactly clear-cut because in the official instructions received by Captain Phillip, commander of the First Fleet, which carried the first settlers reluctant though they may have been, to New South Wales, he was ordered to send back to England immediately, all data pertinent to probable future free emigration.⁴¹ Also, there lurked the vague but nagging suspicion of the activities of the French who had been conducting exploratory voyages in the Pacific. They may or may not have had intentions of colonization but, if they had, England intended to do all she could to prevent it.⁴² Although Britain had no great plans for the Australian continent, neither did she want any other nation to possess it for, in the event of a war, it would prove to be a valuable naval station against her enemies.⁴³

The situation then was this: a convict settlement formed no part of the early schemes of settlement in New South Wales; its inclusion however, was the price paid for government assistance, without which, all plans would have been to no avail.⁴⁴ It was felt that a man who had put himself outside

⁴¹ Jenks, op. cit., p. 25.

⁴² Marjorie Barnard, A History Of Australia (New York, 1963), p. 31.

⁴³ O'Brien, op. cit., p. 117.

⁴⁴ Jenks, op. cit., p. 25.

of the law should be turned in some way to profit. "All the schemes for colonization of New South Wales ... have a neat, often unreasonably reasonable, profit motif, supported by deductions that smack of medieval dialectic."⁴⁵

Yet, it was another two years before the question of Australia was settled, since it was not until the younger Pitt assumed leadership in 1784, that the island was once again a topic of debate in the government. There had been suggestions that the convicts be sent to Africa; many people however, including Edmund Burke, thundered against it, saying that such a reprieve was in actual fact, a far more cruel death sentence than the gallows.⁴⁶ On 20 April 1784, a committee was appointed to deal with the problem. Mr. John Barnes, an African merchant, described the fertility of the soil of the Island of Lemane, four hundred miles up the River Gambia, the harmlessness of the natives, and the healthy climate.⁴⁷ Eight other witnesses however, condemned this project, declaring that the climate was in actual fact, fatal to white men. An army surgeon estimated that two-thirds of the forces stationed there each year died, and that the remainder were incapacitated for eleven out of twelve months.⁴⁸ A man-o-war, if stationed off the coast, would bury nine-tenths of her crew in a year and the whole of it, if stationed

45 Barnard, op. cit., pp. 30, 31.

46 O'Brien, op. cit., p. 120.

47 Ibid., p. 121.

48 Ibid., p. 122.

up the river.⁴⁹ Other witnesses spoke of the "turbulent and thieving" natives, and the poor trade prospects. Such "lurid revelations" condemned the project although two Orders in Council were issued on 13 May 1784, naming Africa as the destination of several male transportees.⁵⁰

Finding Pitt disposed to make use of Matra's plan, Admiral Sir George Young,⁵¹ in January of 1785, remodelled it to fit the new conditions and presented it to the government.⁵² Young was a friend of Sir Joseph Banks who, from that April day in 1770, when he had arrived with Cook in Botany Bay, had never ceased to sing its praises and, it was largely because of his efforts and persistence that Sir George Young's scheme was elaborated and accepted.⁵³ The motives of the Pitt government in taking such a step are still open to debate. On the one hand, the Whig historians maintained that the motive was simply that of disposing of the criminal overflow of the country,⁵⁴ whereas the Imperialists, with "a nice

49 O'Brien, op. cit., p. 122.

50 G.B. Barton, History of N.S.W. from the Records, I, 495; Papers of the Privy Council at the Public Records Office, 2/130, pp. 219, 221, in O'Brien, op. cit., p. 122.

51 Admiral Sir George Young (1732-1810). With Pigot at capture of Louisbourg in 1758 and, Quebec, 1759. 24 August 1781, knighted. 4 July 1794, became rear-admiral. 14 February 1799, became vice-admiral. 23 April 1804, became admiral. 1791, promoter and one of the first proprietors of the Sierra Leone Company. 1792, spoke out against African slave trade before bar of House of Commons. 1786-1796, treasurer of board of commissioners of the Thames navigation. F.R.S. (elected 15 February 1781) and, F.S.A.

52 A Century Of Journalism, p. 2.

53 Ibid., p. 3.

54 O'Brien, op. cit., p. 126.

disregard for cold facts and a tendency to be misled by contemporary pamphleteers,"⁵⁵ felt that the purpose of the government was to found a second and less rebellious America in the Southern Hemisphere "... to be the chief jewel in the new Imperial diadem."⁵⁶ The evidence however, would seem to support the Whig theory because, despite plans for a commercial colony in New South Wales, it is not certain that the colony of Botany Bay would have been founded when it was had it not been for the extreme condition of overcrowding in the English gaols.⁵⁷ Admittedly, once it had been decided to empty the contents of the gaols and hulks into Botany Bay, commercial schemes did erupt which would tend to support the claims of the Imperialists. "It is incontestable, however, that the disposal of the convicts was the paramount motive which led the British government to embark on the hazardous and costly experiment of founding a colony in the Antipodes."⁵⁸ Some critics voiced concern over the fact that the South Sea Islanders were about to be overwhelmed by the dregs of the English gaols. The commercial advantages however, to be gained from the venture soon overcame all cries of protest. Throughout all of these proceedings, little empathy was displayed for the convicts they so glibly talked of shipping to the opposite end of the world except to bid them to

55 O'Brien, op. cit., p. 126.

56 Ibid.

57 Ibid.

58 Ibid.

"... prepare to suffer the punishment they had so justly incurred."⁵⁹

Despite the government's acceptance of these proposals, delay upon delay set in, until by the time the scheme was actually implemented, one of the main factors of the argument had practically been eliminated. The American Loyalists, weary of the government's inertia and preferring the devil they knew to the devil they did not know, had either grown reconciled to their status as citizens of the new American nation or, had crossed the border and settled down north of the Great Lakes as Canadians.⁶⁰

The convict question still remained, and it was sufficient in the end to push the government into action. In August of 1786, Viscount Sydney,⁶¹ the head of the Colonial Administration, formally directed that a fleet should depart for New South Wales with a number of convicts and the necessary military and civil personnel to control them, the whole being under the command of Captain Arthur Phillip.⁶² This under-

⁵⁹ O'Brien, op. cit., p. 129.

⁶⁰ A Century Of Journalism, p. 3.

⁶¹ Viscount Sydney, Thomas Townshend (1733-1800). M.A. Cambridge, 1753. Appointed clerk to household of Prince of Wales, later George III, around 1775. 1760, elder Pitt made him clerk of the board of green cloth. 23 December 1767, joint-paymaster of the forces and he was sworn to the privy council 27 March 1782; secretary of war in Rockingham's second administration. Leader of Commons, July 1782 to April 1783. Created Baron Chiselhurst, 6 March 1783. Secretary of state under Pitt, 23 December 1783 to 5 June 1789. Same year, was created Viscount Sydney. Governor of the Charterhouse and from 1793, was deputy-lieutenant of Kent.

⁶² A Century Of Journalism, p. 3.

taking was set forth by Orders in Council issued at the close of 1786 which stated that:

It being the intention of government to remove the inconvenience, which this country suffered from the gaols being so exceedingly crowded with criminals, who had been by the laws condemned to transportation, the east coast of New Holland was the place determined upon to form a settlement for this salutary purpose. 63

63 John Hunter, Esq., An Historical Journal of the Transactions at Port Jackson and Norfolk Island with the Discoveries which have been made in New South Wales And In The Southern Ocean, since the publication of Phillip's Voyage, compiled from the Official Papers; Including the Journals of Governor Phillip and King, and of Lieut. Ball; And The Voyages From The First Sailing of the Sirius in 1787, to the Return of that Ship's Company to England in 1792 (London, 1793), p. 1.

B. The First Fleet

Nearly twelve months passed before the final arrangements were made and even then, the equipment and supplies for the colony were pitifully short of their proper requirements.⁶⁴ Setting sail from England on 13 May 1787, and proceeding by way of Rio de Janeiro and the Cape of Good Hope, the Fleet reached Botany Bay, so-called by Cook because of the luxuriance of its shrubs and flowers, on 18 January 1788. Despite such an abundance of foliage however, there was no fertile soil and more important, there was no water. Phillip, then, moved a few miles up the coast and entered a spacious harbour now called Port Jackson - named, so the report goes, for the sailor who first sighted the opening.⁶⁵ After spending only eight days at Botany Bay, the members of the First Fleet settled at what is now called Sydney, named in honour of Viscount Sydney, on 26 January and, by the 7 February, the landing was complete. Anthony Trollope, writing in 1875 of his travels through the Australian colony, noted that:

Those among us who are no longer young remember that Botany Bay and Van Diemen's Land were the names which in our youth we associated with expatriated rascaldom. Botany Bay was never used. I do not know that any convict ever set his foot there. 66

64 A Century Of Journalism, p. 3.

65 Anthony Trollope, The Tireless Traveler, Twenty Letters to the Liverpool Mercury, 1875, edited Bradford Allen Booth (Berkeley, 1941), p. 131.

66 Ibid., p. 135.

The First Fleet carried with it little more than a thousand souls, of whom just over seven hundred were convicts.⁶⁷ Even at this early date, it is on record that, quite early in the history of New South Wales, a number of the transportees were condemned for "having conspired to cease work as a protest against the conditions of their employment"⁶⁸ or, in modern terminology, for having participated in a strike:

But, whatever their offence, they were in the eye of the law and of the authorities to whose charge they had been committed, felons to be subjected to the decrees of the savage penology of the age; men and women whose outlook on life was often necessarily hopeless and never anything but sombre. ⁶⁹

These were the principal tools with which Phillip had to construct his settlement, for the remainder of the majority were those who had been sent out to control the convict element. Those free settlers who had made the voyage were often lacking in the rudimentary experiences necessary for survival. Thus, with plenty of work to be done, there were few qualified persons to do it. Among the hundreds of convicts sent out in the First Fleet, no attempt had been made on England's part to select men whose previous employment or training would have been of use to the community.⁷⁰ Few, if any, were skilled artisans, mechanics or farmers. In fact,

⁶⁷ A Century Of Journalism, p. 3.

⁶⁸ Ibid.

⁶⁹ Ibid., pp. 3, 4.

⁷⁰ Arthur Griffiths, Memorials Of Millbank, And Chapters In Prison History, Vol.II (London, 1875), p. 5.

the one person in the colony competent enough to give any practical direction at all, was the governor's valet, and he died in 1791!⁷¹

Supplies were sadly inadequate "and for some years after its inauguration, the spectre of famine stalked the settlement and privation was its daily lot."⁷² Often, both convicts and officials were reduced to half rations with the knowledge, at least on the part of the governor, that their survival depended upon the arrival of the ships from England. Scurvy took its toll and the constant use of salted provisions made those who survived the voyage out, a prey to dysentery and other diseases. From 1788 until 1792, the infant settlement was plagued by a famine and, as late as 1802, it was found that the hours of work would have to be reduced because of the shortage of rations and the weakened state of the men.⁷³ Vegetables were to be had only rarely and the meat was frequently salted. The supplies of clothing were also irregular and insufficient and never lasted more than a few weeks. In 1798, no worthwhile clothing had been received for two years and ships continued to arrive without any, so that as late as 1810, the convicts were almost destitute and unprovided with either proper clothing or bedding.⁷⁴ By 1819, the factory

71 Griffiths, op. cit., p. 7.

72 A Century Of Journalism, p. 4.

73 Gordon Greenwood, ed., Australia, A Social And Political History (Sydney, 1955), p. 19.

74 Ibid.

at Parramatta had eased the situation somewhat by providing "slops" to take the place of the clothing which was not being sent from England.

Another problem to be dealt with was that of the aborigines, "- black, naked, not living in houses, possessing no individual property, and cannibals; but still owning the land in tribes, and showing their appreciation of ownership by their intertribal jealousies and wars."⁷⁵ It never occurred to Phillip that he should abandon land which he had been ordered to occupy, simply because it belonged to someone else. "Nor to those who ruled at home had the idea yet come home that justice forbade the English nation to possess itself of a country inhabited, but untilled by a savage race."⁷⁶ Phillip wanted no harm to come to the natives, but he found that any attempts to offer friendship to the natives were only too often rebuked by the aborigines who perceived that he was trying to take their land away from them.

Gradually, the settlement began to take on shape and form. The country round Sydney having become crowded with convicts, a portion of them were removed to Norfolk Island but this, being too distant, Van Diemen's Land or, Tasmania, as it is now called, was chosen as a more convenient area.⁷⁷ In 1805, a second convict depot was established there and, "flourished

75 Trollope, op. cit., p. 132.

76 Ibid., p. 133.

77 Ibid., p. 135.

as far as a convict depot can be said to flourish."⁷⁸ Other convict establishments were attempted. One was started in Victoria but did not succeed there due to a lack of sufficient water. At King George's Sound, within the present confines of Western Australia, another penal settlement was begun but, its life span was very short owing to the fact that it was soon expelled by the stern moralists of the Swan River. Ironically, it was these same moralists who later were to beg Britain for convict labour to help the colony through bad times.⁷⁹

78 Trollope, op. cit., p. 135.

79 Ibid., p. 136.

CHAPTER II
THE NEW LIFE OF THE RELUCTANT PILGRIMS

A. Government Service

Tense and prolonged was the controversy concerning the efficacy of the system of transportation to New South Wales. Some voices proclaimed on the one hand, that the system was the best method of opening up the new country and of providing the convicts with a new way of life. On the other hand, some voices rose in sharp denunciation of the system which was creating a cesspool of depravity rather than a thriving new colony. A third group, that of the convicts themselves, voiced its opinion by speaking out against the galling and degrading slavery in which they were forced to live. All three of these elements were interwoven in the subsequent dispute over the continuance of the transportation system to New South Wales. Before proceeding with this dispute, it would be advisable to view the general picture of convict life as demanded by the penal code of that time.

Once the convicts were landed, a full description of them was taken by the clerks from the office of the Superintendent of Convicts, after which, they were conveyed to the prisoner's barracks. At first, these inspections were somewhat lax because of the lack of information concerning the convicts. By 1806 however, the inspection had settled

into a regular routine since by that time, the Home government was sending a record of every convict - his place of birth, age, occupation, religion, crime, previous record, behaviour on the hulks and, in the convict ship during the passage out.¹

Regulations prohibited employers or their agents from negotiating with the convicts until after this inspection by the Superintendent of Convicts. By application to the land board, a settler could obtain the needed convict labour by describing the particular type he needed, the number of convicts already in his employ and, what he then had under cultivation in the way of land.² The offences for which the convicts had been transported were kept secret from the masters, nor did the masters care to know; all they demanded was diligent labour from their newly acquired help.³ Preference was given to the new settler in order to facilitate expansion. A stipulation was made in order to forestall abuse of the system, namely, that no one could apply for a particular individual, by which means culprits who had friends in the colony could again "enjoy the company" of those who

1 C.M.H. Clark, A History Of Australia, I, From The Earliest Times To The Age Of Macquarie (Melbourne, 1962), p. 238.

2 P. Cunningham, Two Years In New South Wales; A Series Of Letters, Comprising Sketches Of The Actual State Of Society In That Colony; Of Its Topography, Natural History, &c. &c. Volume II (London, 1827), p. 188.

3 Henry Melville, The Present State Of Australia, Including New South Wales, Western Australia, South Australia, Victoria And New Zealand With Practical Hints On Emigration: To Which Are Added The Land Regulations, And Description Of The Aborigines And Their Habits (London, 1851), p. 132.

were now "gentlemen commoners," thus destroying the whole purpose of their transportation thither.⁴

The distribution of the convicts often depended more upon their wealth and social position than upon their criminal record.⁵ Those convicts with money or property capable of being converted into ready cash were granted "tickets-of-leave" which meant that they were free to work for wages and find their own lodgings, but they could not move out of their police district, return to any part of the United Kingdom or any British colony, or exercise any legal rights in the courts of New South Wales.⁶

The remaining convicts were drafted into servitude. Since the government had first choice, the skilled men were taken for government work, the educated being sent to clerical jobs in the commissariat or in the Governor's service, while the uneducated were distributed to the government farms, road work or, wharf labour.⁷

Those not taken by the government were then distributed to the settlers of Sydney by the Superintendent of Convicts or, by local magistrates, depending upon the location. Francois Xavier Prieur, a French-Canadian sentenced to transportation for his part in the Canadian Rebellion of 1837, led

⁴ Cunningham, op. cit., p. 188.

⁵ Clark, I, op. cit., p. 239.

⁶ Ibid.

⁷ Ibid.

by Louis-Joseph Papineau, has left an account of his experiences which exemplifies much of what faced the man banished from his native soil. It seems that in Prieur's case, rather than being immediately assigned either to government or to private service, he and his fellow Canadian captives were kept under government supervision for almost twenty months before they were allowed to work for Australian residents.⁸ Upon arrival at the government installations, Prieur and his mates were issued a wardrobe which consisted of a coarse cotton shirt, a pair of trousers, a jacket, and a grey cap plus a pair of heavy hobnailed shoes but, no stockings,⁹ after which, all of the convicts were ordered to stand in a line while two officers of the establishment, one carrying a pot of black paint and the other a branding iron, moved up and down, stamping the clothes of the prisoners on the back, the legs, arms and chest with the letters of the penal station which in Prieur's case were "LB" for "Long-Bottom."¹⁰ Then the men were set to work in a stone yard on the bank of a little bay of the Parramatta River. Some dug up the stone from the quarry; some carried it in wheelbarrows, and others smashed it up on a heap formed for this purpose, all of which was continued until six o'clock at night.¹¹ For this work, he was to be paid 7/6^d per week

8 Francois Xavier Prieur, Notes of A Convict, 1838, trans. George Mackaness (Sydney, 1949), p. 94.

9 Ibid., p. 86.

10 Ibid., p. 84.

11 Ibid., p. 85.

of which 3/9^d was given in payment for his labour and 3/9^d as a "nest-egg" for the future, which was put into a Savings Bank.¹²

Four shelter sheds or huts, served as quarters, to which were added a little store-room, a kitchen, some other little buildings and a barracks, occupied by a squad of soldiers and policemen. All of the buildings were arranged in a square which could not be crossed on pain of fifty lashes, with each hut housing fifteen to sixteen men in a space only fifteen feet by six feet.¹³ This at least, was some kind of improvement for, until 1819, the government made no attempt to provide proper quarters for the convicts. When a ship arrived, the men were usually told to find lodgings for themselves, the rent for such being paid by working in their free hours or by thieving.¹⁴

Each man prepared and cooked his own rations: seven o'clock in the morning was the time set aside for breakfast; twelve o'clock noon, that for dinner with an hour for each and, at the close of the day, supper was eaten. Prieur however, found the food detestable because breakfast consisted of a porridge made of maize flour to which was added some flour of inferior quality.¹⁵ Dinner, which unfortunately all too often

12 Prieur, op. cit., p. 94.

13 Ibid., p. 83.

14 Gordon Greenwood, ed., Australia, A Social And Political History (Sydney, 1955), p. 19.

15 Prieur, op. cit., p. 84.

had to serve as supper as well, consisted of half a pound of beef, brought from Sydney in the worst possible condition, plus about twelve ounces of bread badly made from the worst quality of flour.¹⁶ Lacking was fresh running or well water and so the men had to collect rain water from small reservoirs dug in the ground.

To alleviate this situation somewhat, the government allowed the convicts, between the regular hours of work, to undertake some private work, which consisted of collecting shells from the shore of the bay near which they were working, to be sold to the lime-burners for the manufacture of lime.¹⁷ In this way, a little extra money could be earned with which to purchase some rice and sugar for the Sunday dinner. Also, some men used their spare time to cultivate their own small vegetable gardens in order to supplement their meagre diet. A further concession was made to the convicts by the granting of a ration of Indian corn for working the bullocks. It was found that by roasting and grinding it, a kind of coffee could be produced which, although abominable, was better than the unchanged water in the tanks.¹⁸

Women convicts fared little better than their male counterparts, handicapped as they were in comprising only a small percentage of the total number of convicts sent out to the colony. This discrepancy was soon found to be incompatible

16 Prieur, op. cit., p. 84.

17 Ibid., p.92.

18 Ibid.

with the growing society of New South Wales and free females were encouraged to emigrate as well as free men. When sailing up the magnificent harbour of Port Jackson, they might have thought of the new and better lives awaiting them. As they drew nearer to the settlement however, these hopes were dashed by the sight of "(R)eckless, swearing men, and wanton-looking, ragged, and foul-mouthed women,..."¹⁹ A reeking odour from the rum shanties greeted them on their walk to the temporary shelter at the Sydney gaol where many of them spent the night in noise and indecent revelry, and who were received not by clergymen but by, "... the depraved who sought their lower fall..."²⁰ The next day, they were taken to the Female Factory at Parramatta, about fifteen miles from Sydney. They went in parties, rowed up in boats by convict constables, among whom were some of the most brutal and abandoned of men.²¹ During the eight to ten hour trip, the women were often made drunk and had whatever they had brought with them, stolen.

In the early days of the colony, Parramatta was the real seat of government and, the granary, which had been turned into a factory in 1810, served not only as a gaol for punishment, but also as a reception centre for women out of service or newly introduced into the colony from shipboard.²²

¹⁹ James Bonwick, Curious Facts Of Old Colonial Days (London, 1870), p. 149.

²⁰ Ibid., p. 150.

²¹ Ibid.

²² Ibid., p. 151.

Bonwick gave a vivid description of his impression of the Factory:

The state in which the place itself was kept, and the state of the disgusting filth in which I found it, - the disordered, unruly, licentious appearance of the women manifested the little degree of control in which the female convicts were kept. 23

The filthy beds of wool provided the women with an excuse to tramp the streets at night, with the result that prostitution was soon rife.

The women laboured at making rude cloth from the wool and from this cloth making "slops" for the men. They were not allowed to stray far, at least until a certain quantity of work had been done and then, they could go where they pleased and entertain whom they pleased.²⁴ The women also worked at keeping the huts clean, acting as nurses in the hospitals, and as attendants in the orphan institutions which were usually filled with the offspring of those female convicts in service. Once she showed signs of pregnancy, the woman was sent to the Factory, which also served as a lying-in hospital.²⁵ No attempt was ever made to find the father and the children were raised by thirty resident convict nurses, and then, when they were three years old, they were transferred to orphan schools where they would live.²⁶

23 Bonwick, op. cit., p. 152.

24 Ibid., p. 153.

25 Ibid., p. 154.

26 Ibid.

In 1821, a new self-contained factory was opened at Parramatta and the women were thereafter divided into classes according to their conduct.²⁷ The hours of work were regularized; proper provision was made for washing, mending and cooking on the premises and, uniforms were provided. Like the former institution, this factory became the depot for servants, wives and mothers, as well as the centre for the infliction of punishment and, from 1822 to 1842, the number of inmates increased from some two hundred to over one thousand.²⁸ The Factory itself ceased to exist in 1848, when it became a hospital for the poor and the insane but, not before it had become, "a hotbed of depravity where idleness gave full scope for the growth of every vicious propensity."²⁹

It was said in colonial times that, within a year of arrival in Sydney, most women would find their way to the Female Factory.³⁰ Women with children were sent direct to the institution, as were those about to bear children. Servants for private service were taken directly from the convict ships rather than from the factory and then only on trial for, if they were not suitable, they could be sent back.³¹ Most of the women ended up before the courts and the reasons

27 Greenwood, op. cit., p. 21.

28 Ibid.

29 Ibid.

30 Hugh Anderson, Farewell to Old England, A Broadside History of Early Australia (London, 1964), p. 130.

31 Ibid.

were as varied as their original sentences. For example, Ellen Caton, whose tongue was never still, was charged by her master with neglecting her work and, when reprimanded, told him to "go hang himself."³² She was sentenced to Parramatta for a month. Then there was Sarah Berry who was charged with running away from assignment to Mr. McNoughton four times to solace herself with the overseer of a government gang on the South Head road. She was sentenced to three months factory discipline and future assignment at a place far distant from Sydney.³³

32 Anderson, op. cit., p. 130.

33 Ibid., p. 131.

B. The Assigned Servant

So far, what has been described is what the newly arrived convict met with when placed in government service. It now remains to depict the situation of the convict assigned to a free settler. Although the greater number of convicts transported to the Australian colonies between the years 1788 and 1840, were employed by private persons during a part, if not throughout the whole term of their sentences, the assignment system was not fully developed until the 1820's.³⁴ Governor Phillip, after the first year in the new colony, decided that the settlement would not survive if it continued to depend upon the labour of convicts working in gangs on government projects. He felt that only by assigning convicts to free settlers, by granting land to officers, by the working of that land by convicts and, the granting of land to ex-convicts as a reward for good conduct, could the colony hope to prosper.³⁵

In August of 1800, there were only three hundred and fifty-six assigned convicts in New South Wales and it was not until 1804 that any attempt was made to convert the assignment of convicts into a regulated system.³⁶ In January of 1804, all existing regulations on assignment were codified into a comprehensive body of law, which stated that all

³⁴ Greenwood, op. cit., p. 21.

³⁵ Manning Clark, A Short History of Australia (New York, 1963), p. 28.

³⁶ Greenwood, op. cit., p. 22.

employers were to clothe, house and feed each convict for at least twelve months.³⁷ The hours of labour were to be ten hours for five days of the week and, six hours on Saturday, all extra time being at the disposal of the convicts themselves although, masters were to have first call on their time, if they were willing to pay for it.³⁸ Formerly, masters were not allowed to pay their assigned servants wages. Indeed, money was expressly forbidden to the convicts and, many free men were sent to the tread-mill and worked with the prisoners, merely for having given a few halfpence or a fig or two of tobacco to men in the gangs and many masters of estates, had their assigned servants taken away from them because they gave money or other indulgences to encourage the men at their work.³⁹

In 1816, because of the abolition of colonial currency and the adoption of "sterling accounting," it was ordered that in addition to the ration allowed to assigned men, the sum of £ 10 sterling per annum be paid to every male convict and £ 7 to every female convict, the purpose of this payment being to compensate the convicts for the loss of time during which they could have been earning.⁴⁰ But, the difficulty lay in the fact that the convicts could not always buy the various articles which they needed, whereas it was not usually too

37 Greenwood, op. cit., p. 22.

38 Ibid.

39 Melville, op. cit., p. 136.

40 Greenwood, op. cit., p. 23.

difficult to procure spirits, which gave rise to the custom of paying a greater part of the wages in kind such as in tea, sugar, tobacco, etc.⁴¹ The practice of paying wages continued until the end of the assignment system even though by the 1830's, the government had ceased to recognize the practice of paying any wages whatever to the convicts.⁴²

For many years after the arrival of free emigrants, there were periodic musters of both free and bond, who were required to assemble at certain places appointed beforehand, and a census was taken. After awhile, only prisoners were required to attend these gatherings. Such meetings were held in order to give the convicts the chance to voice any grievances which they might have concerning their masters and, to enable the authorities to examine the clothing of the men and to ascertain their general state of health.⁴³ These musters also allowed for the corrections of the returns of the convict population and the accurate whereabouts of each prisoner. Employers were required by law to supply their assigned servants with adequate food, clothing and bedding and, if well-grounded complaints were made by the servants, or if the prisoners appeared unsuitably dressed, the masters were held responsible and received reprimands in the first instance and, if repeated, the convicts were "resumed" and sent to another settler.⁴⁴

41 Greenwood, op. cit., p. 23.

42 Ibid.

43 Melville, op. cit., p. 133.

44 Ibid.

Usually, the men slept in huts walled round with and roofed with bark or, built of split wood and plaster with thatched roofs, with each hut usually being occupied by about four men. Each Saturday, the men washed their clothes, ground their wheat and drew their provisions which consisted of seven pounds of beef, a peck of wheat, four and a half pounds of pork, two ounces of tea, two ounces of tobacco and one pound of sugar.⁴⁵ Most of the settlers also allowed their men to raise their own little vegetable plots or, supplied them from their own produce.⁴⁶ Wages were paid only at the master's discretion. Each man however, was supplied with two full suits annually, a bed-tick (to be stuffed with grass), a blanket, tin-pot, knife, iron pot and frying pan. Tea, tobacco and sugar were considered bonuses and in case of misbehaviour, were withheld.⁴⁷

The principles of the system remained unchanged until after 1821. Although masters were expected to clothe and feed their servants and take them to church on Sunday, there was no officer to ensure that these regulations were carried out;⁴⁸ yet it was in the interest of the settlers to see that these rules were adhered to in order to ensure a healthy working force.

45 Cunningham, op. cit., p. 189.

46 Ibid.

47 Ibid., pp. 189, 190.

48 Greenwood, op. cit., p. 22.

Favoritism was a serious hindrance to the system since a great deal of power was invested in the Board of Assignment. Because this Board was composed of government officers, it was only natural that those who were on good terms with the government should receive preferential treatment, to the detriment of those who stood in opposition to it.⁴⁹ Since all of the colonists were dependent upon convict labour for the cultivation of their land, the power of refusing to grant convicts and, the right to "resume" those already assigned, rendered the free employer completely at the mercy of those in power.⁵⁰

In 1829, the home government decided to interfere with the local arrangements and to vary the assignment system and as Melville put it, "... ever since, there has been a constant patching and tinkering, and a very considerable waste of public money, without affording any benefit to the prisoners, but causing very considerable injury to the colonists."⁵¹ The first experiment tried was that of probation, the principal feature of which was the retaining of the men in probation gangs on their arrival in the colony, before they were assigned.⁵² This plan however, undid the benefits of the assignment system for, now that the convicts were herded together, idleness was engendered and bad associations were formed.

⁴⁹ Melville, op. cit., p. 134.

⁵⁰ Ibid.

⁵¹ Ibid., p. 135.

⁵² Ibid.

At first, it was decided that those assigned to probation gangs should work on the roads and public works but then it was decided that they should be educated and so, schoolmasters were appointed to every station.⁵³ Thus, according to Melville, instead of working, probationers were wasting their time and, stations where hundreds of men congregated, produced not "...⁵ worth of public labour in as many months."⁵⁴ Transporting criminals half way around the world and then educating them was at last considered to be an unnecessary expense and so, it was determined that in future, the term of probation would be served in England and that when sufficiently educated the men would be sent out to Australia as "exiles."⁵⁵ The result was that a privileged class of prisoners was created which arrived in the colony armed with concessions which they were prepared to exercise at the first opportunity.

All convicts to a man, were intent upon achieving their liberty and, one of the most common methods of doing this was by a "ticket-of-exemption" which exempted the convict from government labour for good behaviour although, this ticket could be recalled at any time because of misconduct.⁵⁶ In the late 1820's, this ticket merely granted the privilege of living with a particular person, usually a relative, until the

53 Melville, op. cit., p. 135.

54 Ibid., p. 136.

55 Ibid., p. 137.

56 Greenwood, op. cit., p. 27.

following 31 December.

Also, governors granted what were known as "tickets-of-leave" for good conduct, or occasionally for extra work, skill or ingenuity.⁵⁷ This ticket exempted its holder from both government and assigned service and allowed him to work for himself, and by law, (6 Vic. cap. 7, 1843) to "... acquire and hold personal property and maintain any action or suit for the recovery of any personal property so acquired, or for any damages or injury sustained, in the court of the colony wherein he resides,"⁵⁸ but although the government ceased to clothe and feed him, he still remained under the surveillance of magistrates; he was still legally, a convict and, the ticket could at any time be cancelled for misconduct. By 1813, the holding of tickets had become a standard practice although, they were only issued to those prisoners who had been employed either by the government or a private employer for three years and who were, "sober, industrious and honest."⁵⁹ Ticket holders were mustered every Sunday and obliged to attend church with the other convicts.

By a regulation of June 1819, the term of probation was lengthened to four years and tickets were granted at the suggestion of the principal Superintendent of Convicts. Such tickets were frequently granted to women and to educated con-

57 Greenwood, op. cit., p. 28.

58 Melville, op. cit., p. 139.

59 Greenwood, op. cit., p. 28.

victs immediately upon their arrival, at marriage, or at the arrival of a free husband or wife from England.⁶⁰ Masters often recommended their own servants and, in 1821, there were 1,579 convicts holding tickets of leave in New South Wales, 313 of whom were women.⁶¹

Aside from the expiration of the original sentence, there were other ways in which a convict could gain his freedom and, these were by conditional and absolute pardons.⁶² The latter restored the rights and privileges of a free man while the former restored the rights and privileges of a free man conditional on his not returning to the United Kingdom.⁶³ A government order of 1813 required a convict under life sentence to serve fifteen years before he could apply for an absolute pardon, and ten years before he could apply for a conditional pardon. Those convicts under a limited sentence were required to serve three-quarters of their original sentences for an absolute pardon and two-thirds for a conditional pardon.⁶⁴

To those emancipated convicts who wished for the status of settler, grants of land were made to every male of thirty acres, plus twenty more for his wife should he marry and ten

⁶⁰ Eris O'Brien, The Foundation Of Australia, A Study in English Criminal Practice and Penal Colonization in the Eighteenth Century (Sydney, 1950), p. 189.

⁶¹ Greenwood, op. cit., p. 28.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

more for each child in the family at the date of settling.⁶⁵ He was to be furnished with a year's supply of provisions for himself and his family and with seed and stock to commence the farm on which he was supposed to reside. He was also given an assigned servant by the government for a period of eighteen months, paying for any others at his own expense.⁶⁶

At first, there were no regulations governing emancipation and Governor Phillip used his pardoning prerogative sparingly and with discretion, regarding emancipation as a reward for industry and good behaviour, the prospect of which he felt, would be a strong incentive to reformation.⁶⁷ The lot of the freedman however, was not enviable for, any person who had at any time arrived in one of the colonies under sentence was liable to be punished for subsequent offences when free, much more severely than one who had come to the colony as a free man or one who had been born in the colony; for example, where the latter would receive a sentence of two months for an offence, the freedman might receive a sentence of seven years.

These then, were the various circumstances under which a convicted criminal, finding himself, or herself, in the convict settlement of Australia, could expect to live for a portion of his life, if not for the remainder of it.

65 O'Brien, op. cit., p. 190.

66 Ibid.

67 Ibid.

68 Greenwood, op. cit., p. 29.

CHAPTER III

THE RISING CONCERN OF THE FREE POPULATION

In 1827, when Peter Cunningham, Surgeon of the Royal Navy, wrote his Two Years In New South Wales, he expressed the opinion that, although many were deterred from emigration to Australia, "fearful of trusting their persons and property among such a dubious community,"¹ their fears were actually unfounded. He felt that only a short stay in the colony was necessary to convince even the "most timorous" of minds of the benefits of the convict element to Australia such as the supply of cheap labour to both the government and the settlers and, the creation of a market for a portion of the surplus produce, by the demands of the troops and those in government employ.² In this way, the unproductive element of the British population was turned into a productive asset by converting "pests" into "useful auxiliaries" in order to increase Britain's wealth and strength.³ He logically concluded that:

Few people will be found foolish enough to manifest an eagerness for the furtherance of objects which would prove detrimental to their private interests; and when we see the whole

1 P. Cunningham, Two Years In New South Wales; A Series Of Letters, Comprising Sketches Of The Actual State Of Society In That Colony; Of Its Peculiar Advantages To Emigrants; Of Its Topography, Natural History, &c. &c. Volume I (London, 1827), p. 12.

2 Ibid.

3 Ibid., p. 210.

body of Australian settlers eager for the continuance of convict transportation to their shores, we may reasonably conclude that they expect to derive therefrom some considerable benefit. 4

Cunningham's observations were correct up to a point. When he was writing in 1827, the prevailing attitude of the colony was that the transportation of convicts thither was a boon to its economic development. Less than a decade later however, by January of 1834 to be exact, the mood of the colony had changed since the carefree optimism of the settlers had been replaced by an unsettling doubt as to the benefits to be gained by the transportation system, which doubt turned more and more, into a fear that only evil could come of the system, that society in New South Wales was gradually being debased and warped by the convicts in their midst.

Although in theory, the colonial idea had never been excluded from British policy, in practice, the penal policy predominated and would have continued but for the divergence of the Australian settlement into two widely different directions.⁵ The colony now seemed to be heading in the direction of colonial expansion, "with all the problems, constitutional and economic, necessarily connected with this change,"⁶ while at the same time, she tried to maintain the transportation system and adjust it to function in the altered circumstances.

4 Cunningham, I, op. cit., pp. 12, 13.

5 Eris O'Brien, The Foundation Of Australia, A Study in English Criminal Practice and Penal Colonization in the Eighteenth Century (Sydney, 1950), p. 235.

6 Ibid.

To any governor faced with the task of controlling this colony, the problem unfolded itself in a myriad of ways. It was his responsibility to maintain law and order and civil government, which included checking the traffic in spirits and the trading monopolies.⁷ Also, the assignment system had to be adjusted so as to satisfy the claims of the government as to the use of the prisoners, and at the same time to subsidize the new and growing body of settlers. Above all, he had to exercise discipline among the convicts and provide for those who had been liberated.⁸ This proved to be an overwhelming task because it attempted to stabilize two contradictory systems within one colony, an attempt which ended ultimately with the emphasis being given to the free population over the needs of the original convict settlers.

The presence of the convicts in such great numbers, mingled with a free population, entailed numerous social and political problems. In his Curiosities Of Colonization, G.W. Rusden pointed out that although it was convenient to have convict labour rather than none at all, it had not proved highly productive.⁹ Many of the prisoners had turned out to be hard-working, sober, industrious men, some of whom were "... far more moral than many unconvicted countrymen

7 O'Brien, op. cit., p. 235.

8 Ibid.

9 G.W. Rusden, Curiosities Of Colonization (London, 1874), p. 92.

who remained at home."¹⁰ The efficient control however, of the convicts so as to produce the greatest amount of profit by their labour, and to "do one's duty to them as fellow creatures"¹¹ was a task for which few in the colony were fitted; "... amongst the mass of prisoners there were so many hardened in guilt, and repulsive of control or of respect, that the machinery and care required to constrain them made the labour of the mass comparatively costly."¹² A high degree of education and achievement on the part of the master afforded no guarantee that he could be safely entrusted with the control and care of his fellow-men. The majority of employers treated their servants, if not with warmth, then with a distant kindness. There were however, some holdings on which the most disgraceful scenes were common. Although convict labour, in one sense, took the place of slave labour, Rusden felt that there was a "repulsiveness about the convict which did not attach to the slave"¹³ and, worst of all, "(T)here was a slow but sapping degradation of the free by contact with the criminal."¹⁴

10 Rusden, op. cit., p. 92.

11 Ibid.

12 Ibid.

13 Ibid., p. 95.

14 Ibid.

Richard Whately,¹⁵ Anglican Archbishop of Dublin, pointed out that the most obvious way of making the convict labour advantageous to the colony was to make the convicts as unlike slaves as possible,¹⁶ which meant that their position had to resemble that of free men as far as possible. As for those who were themselves "little different in character, tastes and habits from their convict-servants,"¹⁷ they could be expected to live on terms of almost perfect equality with them. Such a situation, Whately pointed out, could not be allowed in any settlement designated for penal servitude. It was only natural, he suggested, that governors would prefer the position of Governor of a flourishing colony to that of a House of Correction and that settlers would prefer to treat their charges with indulgence rather than find themselves in the position of prison warders.¹⁸ "He is neither expected nor exhorted to regulate his treatment of convicts with a view to the diminution of crime in the British Isles, but to the profits of his farm in Australia."¹⁹

15 Richard Whately (1787-1863). English logician and theologian. Opposed Tractarian movement; supported Roman Catholic emancipation; advocated state endowment of Catholic clergy; a founder of Broad-Church policy; in favour of common unsectarian religious education for Protestant and Roman Catholic schools (1831-1853). Consecrated Archbishop of Dublin, 23 October 1831; 1832, founded chair of political economy in Trinity College. Took seat in House of Lords 1 February 1833.

16 Richard Whately, Remarks On Transportation, And On A Recent Defence Of The System; In A Second Letter To Earl Grey (London, 1834), p. 29.

17 Ibid., p. 32.

18 Ibid.

19 Ibid., p. 35.

For Whately, as for many others, it was perfectly clear that the attempt to combine "salutary punishment with successful colonization,"²⁰ led in the end only to the failure of both objectives. To him, a community of masters and slaves was as bad as a community of jailers and prisoners; "... the union of the two in one system, - the system of punishing criminals by assigning them as slaves to labour for the benefit of private individuals - is incomparably the worst of all."²¹

From such observations, both written and spoken, public opinion was gradually aroused against the transportation system and, whereas there had once been whole-hearted support of the convict population because of their economic value to the colony, now there were half-uttered warnings and whispered fears over the proximity of the convict element. Up until 1833, it had been agreed among the colonists to carry on with the convict system, despite their growing misgivings, until such time as a sufficiently large body of free labourers came to the colony to replace the convict servants.²² By 1833, because of the policy of leniency advocated by Governor Bourke, it was felt that there was an alarming increase in crime and insubordination in the Hunter River District.

20 Whately, Remarks On Transportation, p. 40.

21 Richard Whately, Substance Of A Speech On Transportation, Delivered In The House Of Lords, On The 19th Of May, 1840 (London, 1840), p. 25.

22 C.M.H. Clark, A History Of Australia, II, New South Wales And Van Diemen's Land, 1822-1838 (Melbourne, 1968), p. 202.

In all of New South Wales, perhaps no one was more exasperated with this new policy than "Major" Mudie who, after ten years of struggle, had "created civilization where hitherto barbarism had prevailed"²³ at Patrick's Plains where his holdings were. He retaliated by a policy of severity and, by August of 1833, a crisis had developed. Between August and November of 1833, Poole, Hitchcock, Riley, Nagle, James Brown, Henry Brown, Harvey, Perry and Ryan, all assigned servants on his land, had been flogged so regularly that the men began to fight back. When Poole swore profanely at Mudie, during which three others joined in, Mudie brought them before the neighbouring magistrate, "who being swept on by the general hysteria in the district"²⁴ sentenced Poole to be flogged and the other three to be sent to the iron gang. Poole escaped to the bush, released the other three, when all four of them descended on Mudie's estate seeking revenge. They pillaged the stores, threatened the women and then rushed to the water-hole where Mudie's partner, Larnach, and nine other men were washing sheep. Failing to injure them, the prisoners rushed on to the estate of a Mr. Sparke, a flogger, stripped him, tied him to a post and flogged him with a cat-o-nine tails.²⁵ Soon after this, they were captured by the Mounted Police. Asked by Chief Justice Forbes,²⁶ before whom they

23 Clark, II, op. cit., p. 204.

24 Ibid.

25 Ibid., p. 205.

26 Sir Francis Forbes (1784-1841). Chief Justice, New South Wales, 1823-1837. 14 October 1824, obtained trial by jury for the colony.

were tried, if they had anything to say in their defence, they replied that the harsh treatment by their masters had driven them beyond the point of endurance.²⁷

This incident helped to open the Pandora's box over transportation. Some were shocked by the brutality which had driven these men to act as they had, while others agreed with Mudie that such tactics were the only way to prevent society from sinking into anarchy.²⁸ A judicial enquiry, headed by the Solicitor-General and the principal Superintendent of convicts, found that Mudie's complaints were, for the most part, unfounded.²⁹ The issue now however, was not just the behaviour of one man but, the whole future of transportation to New South Wales.

Lachlan Macquarie, Governor of New South Wales from 1809 to 1821, unwittingly brought to the surface even at that early date, the horror with which the free community beheld the convicts since through his efforts to force society together, the community showed its abhorrence of any association at all with the convict classes.³⁰ To Macquarie, there were only two classes in society - those who had been convicted and those who ought to have been.³¹ This colony of New South Wales he felt, was one where free settlers had no place. Convict labour was employed in the erection of public buildings,

27 Clark, II, op. cit., p. 205.

28 Ibid., p. 206.

29 Ibid.

30 Rusden, op. cit., p. 94.

31 Ibid.

the tilling of the land and the growth of industry, all of which, Macquarie felt, the convicts had ample reason to be proud. It is not surprising therefore, that by the end of his term as governor in 1821, the convicts made up 41.1% of the total population.³² Proceeding on such reasoning, he tried to force together free and emancipist. He even carried his policy as far as arresting two free young men and the two free women with whom they were walking, for walking on a part of prohibited government land, sentencing the women to imprisonment and the men to flogging. Despite even these erratic measures though, Rusden noted that when he arrived in the colony some twenty years later, "the hard and fast line of demarcation was (still) maintained with strictness on one side, and submitted to without resistance by the other."³³

After the Mudie affair, the Sydney Herald began a campaign against the contaminating effects of the convict population, accusing these people not only of "idleness, insolence, insubordination and depravity"³⁴ but of the still greater crime of trying to drag all of the populace of New South Wales down to their own level.³⁵ For this reason, the newspaper called for an inquiry by the English government

³² C.M.H. Clark, ed., Select Documents In Australian History, 1788-1850 (Sydney, 1950), pp. 405, 406.

³³ Rusden, op. cit., p. 94.

³⁴ Clark, II, op. cit., p. 207.

³⁵ Ibid.

into the whole system:

The abolition of transportation would be the prelude to that revolution in morals and politics, to the creation of indispensable conditions for the way of life of a colonial bourgeoisie, for the respectability and moral rectitude of the free rather than the present corruption and levelling of the bond. 36

Only by the complete abolition of the entire system of transportation could the colony ever hope to grow into a healthy settlement, claimed the Herald. As Whately pointed out, it would be ludicrous to suppose that honest labourers could be enticed to New South Wales as long as fresh convoys of criminals were still arriving in the colony. "As well might any one think to purify one of the London sewers through which a continued stream of filth is flowing, by pouring in from time to time some cupfills of pure water."³⁷

When the colony was first formed in 1787, it was essentially, a "convict dump" and for the period 1788-1799, 66.8% of the population was composed of convicts.³⁸ Never again was the convict element to attain such heights in the colony for, with the turn of the century, free emigration began to trickle into New South Wales so that, in 1800, only 31.6% of the population was of convict origin.³⁹ Many of the new emigrants were of Irish extraction, driven from their

36 Clark, II, op. cit., p. 207.

37 Whately, Substance Of A Speech On Transportation, p. 50.

38 Clark, Select Documents In Australian History, pp. 405, 406.

39 Ibid.

homeland by recurrent potato famines and by the social, political and economic consequences of the Act of Union of 1800. Part of this "Catholic and peasant migration"⁴⁰ later found its way to Australia when, after 1815, so many were left jobless by the cessation of war time industries.

With the "Rum Rebellion" of 1808, in which Governor William Bligh was deposed from office, the convict population demonstrated its grip on the society of New South Wales by supporting the rebel officer clique led by John Macarthur, thus helping this group to overcome the legitimate government which was supported almost unanimously by the free settlers. By such a move, the convicts provided the settlers with yet another cause for alarm over the presence of such a criminal element in New South Wales.

Whately stated that he was criticized for not advocating emigration as a means of "swamping the felony" and giving a new character to society.⁴¹ His retort to this was:

Should he have told these people to go ahead and settle in such a neighbourhood as in any part of Europe would blast a man's character if he were known to have lived there, ... one, compared with which the foulest haunts of debauchery and crime in this metropolis are decent and respectable! 42

Why, he asked, would a man want to emigrate to a colony where his servants would only plunder him of his property and

⁴⁰ E.P. Thompson, The Making Of The English Working Class (Harmondsworth, 1968), p. 471.

⁴¹ Whately, Substance Of A Speech On Transportation, p. 51.

⁴² Ibid., p. 52.

corrupt his children who would become familiarized with
 "... such language and such scenes as are the most polluting
 to the youthful mind,...".⁴³

Although there was controversy over transportation to Australia, the colony did not present a united front in its attacks on the system. Most of the leading members of the Legislative Council of the colony, had been all their lives, familiar with the system of prison labour, and some resented the new surge of feeling which was now being expressed against convict labour in favour of free. Still others took the "pseudo-philosophic view" that the system was not only beneficial to the colony, but beneficial to the convicts as well, by offering them a new start on life.⁴⁴ Hence, the anti-transportation cause fell largely to those in the colony who were supported by the free immigrant classes.

Their cause found support with several notables among whom were Edward Gibbon Wakefield. On Friday 21 August 1829, a London newspaper, the Morning Chronicle, published the first of eleven "Letters from Sydney" in which a colonist, apparently disillusioned by his own experiences, discussed the obstacles any settler would face upon emigrating to Australia.⁴⁵ In actual fact, the author, E.G. Wakefield, had never set foot in Australia, much less farmed there and, his

⁴³ Whately, Substance Of A Speech On Transportation, p. 53.

⁴⁴ Sir Henry Parkes, Fifty Years In The Making Of Australian History (London, 1892), p. 10.

⁴⁵ John Fisher, The Australians, From 1788 to Modern Times (New York, 1968), p. 87.

"Letters" were composed in an English prison, where he was serving a three year sentence for abducting an heiress.⁴⁶

His misdeeds however, atoned for, he became a respected member of society, and lent his voice to the pleas of the abolitionists. Life and property, he argued, were not secure in any society composed of criminals and ex-criminals and ruled by a governor who was really nothing more than a "jailer-in-chief."⁴⁷ He believed that the government's policy of handing out grants of land would have to be discontinued if convict labour was to be replaced by that of free citizens since, no one, as long as he could get land under grant for next to nothing, would be content to work for anyone else.⁴⁸ He suggested that instead, the land should be sold to selected couples at a price high enough to pay for the passages of more free emigrants.⁴⁹

Another instrument of protest held by the abolitionists was the newspaper, The Sydney Morning Herald. Nearly every edition of the paper at this time, contained some reference to the "maleficent activities of the bushrangers"⁵⁰ ranging from horse-stealing to murder, from all of which was drawn the inevitable conclusion that the system of transportation lay

46 Fisher, op. cit., p. 87.

47 Ibid.

48 Ibid., p. 88.

49 Ibid.

50 A Century Of Journalism, The Sydney Morning Herald, And Its Record Of Australian Life, 1831-1931 (Sydney, 1931), p. 82.

at the root of the troubles besetting New South Wales:

Through thick and thin, through good report and ill, year in and year out, it fought for the abolition of transportation to Australia, and would listen to no argument which tended to approve any continuation of, or which tried to find any benefit in, that black and most debasing system 51

The emancipists for their part, were naturally anxious that there should be no further continuation of a system which constantly reminded them of their own origins, to say nothing of the injury to their material and social status to which such reminders usually led.⁵²

Although condemnations of the presence of convicts in the colony were loud and clear, there were some who felt that the problem could be solved by abolishing merely the assignment system and then putting the convicts to work on government projects. One such advocate was Reverend John Dunmore Lang. In November of 1836, he had arrived back in London aboard the Abel Gower and during his leisure hours aboard, he had written some of his Transportation And Colonization which was composed in order to point out to the British government and to the British people, the absolute necessity of some "immediate and extensive" change in the management of the transportation system to Australia.⁵³ He pointed out that human nature "revolts at the execution of sanguinary

51 A Century Of Journalism, p. 79.

52 Ibid.

53 Clark, II, op. cit., p. 321.

laws,"⁵⁴ resulting in the creation of public sympathy for the criminal. Instead, the legislator should incline to mildness rather than to severity and "depend, for the moral effect of the punishment on its being uniform in operation, definite in its amount, and certain in its infliction."⁵⁵ In view of these facts, Lang felt it was impossible that the assigning of convicts to private settlers in Australia, should realize any one of these requirements of punishment. The solution, he felt, was to abolish the assignment system and turn all of the convicts over to the government to serve on public works "and be subject to one uniform and undeviating system of penal discipline."⁵⁶

When the colony was first formed, the assignment of convicts as agricultural labourers, mechanics or house servants to private individuals, was really more a matter of convenience to the government than a well-defined system of penal discipline in that, in this way, the government was relieved of the maintenance of the large population of convicts while at the same time, the settlements were supplied with the necessary labour force.⁵⁷ Settlers however, found it more to their advantage to make the situation of their assigned servants as comfortable as possible in order to get the greatest amount of work out of them. This led to in-

⁵⁴ Lang, op. cit., p. 124.

⁵⁵ Ibid., pp. 124, 125.

⁵⁶ Ibid., p. 125.

⁵⁷ Ibid.

equalities in the whole system, for while some masters treated their servants with kindly concern, others bludgeoned theirs into a state of hardship and brutality, "almost intolerable to human nature."⁵⁸

Sidney's Emigrant's Journal, edited by Samuel and John Sidney, also voiced objections to the assignment system by declaring that assignment was "at odds with humanity, justice, and national economy."⁵⁹ This publication pointed out, as had Lang, that the prisoners were either assigned to the "uncontrolled tyranny of irresponsible masters,"⁶⁰ or, they were left to "herd together in sinks of ruffianism and corruption..."⁶¹ with neither "discipline nor inspection, education or religious instruction"⁶² to benefit them. Under such circumstances, it would be small wonder, claimed the Journal, if the whole colony developed into "monsters of fraud, violence and horrible debauchery."⁶³

58 Lang, op. cit., p. 126.

59 Samuel and John Sidney, Sidney's Emigrant's Journal (April 19, 1849), 226.

60 Ibid., 209.

61 Ibid.

62 Ibid.

63 Ibid.

CHAPTER IV

THE CONVICTS PRESENT THEIR VIEWS

Edward Gibbon Wakefield exhibited in writing, the blind naivety with which the majority of the free population of New South Wales regarded the condition of the prisoners in their midst. According to his analysis, transportation amounted only to a realization on the part of the criminal that he would no longer be able to rob and "enjoy the fruits of robbery." Thus, he felt that the criminal was a little sorry at being cut off from what he formerly enjoyed, and that was all the punishment that he really suffered.¹ He stated that although some convicts in New South Wales were subject to severe punishment such as chain gangs and banishment from the settled parts of the colony to a penal settlement,² he knew that such punishments were only inflicted for crimes committed in the colony, not for crimes committed in Great Britain.³

1 Edward Gibbon Wakefield, Facts Relating To The Punishment Of Death In The Metropolis (London, 1831), pp. 186, 187.

2 The ultimate end of a troublesome inmate was a penal settlement in which were usually to be found the dregs of convictism. When all other means of coercion failed, offenders were sent to these penal settlements located at Moreton Bay, Norfolk Island and Van Diemen's Land, thus collecting together in one group, some of the most depraved and most desperate of those evicted from England. Because of the intolerable treatment to which they were subject, convicts in these settlements often committed murders on their own comrades so that they could get back to Sydney and be hanged.

3 Wakefield, Facts Relating To The Punishment Of Death In The Metropolis, p. 189.

Another opinion along these same lines was that expressed by Richard Whately, who felt that "the slight punishment" endured at New South Wales was much less than it would have been if inflicted in England because disgrace was "little felt when removed from those whose opinion he cares for."⁴ He thus rendered the conclusion that, "(I)t is impossible to consider the life of a transported convict as a life of pain, ...".⁵

How blind these men and their compatriots were, can be exemplified by those accounts written by the convicts themselves, depicting the harshness and the brutality which many a time escaped the eye of the free on-looker. Edward Lilburn wrote of his experiences in the penal colony telling how, upon landing, they were hurried up the country, carrying tied to their bodies, a rug, a blanket and a small canvas bag containing their little "necessaries," otherwise, they would be stolen, "to be worked like oxen, from day light until dusk, under a burning sun and a heartless overseer, with no better encouragement than the threat of the lash."⁶

The tale of Ralph Rashleigh,⁷ convicted felon, serving

⁴ Richard Whately, Thoughts On Secondary Punishments, In A Letter To Earl Grey. To Which Are Appended Two Articles On Transportation To New South Wales, And On Secondary Punishments; And Some Observations On Colonization (London, 1832), p. 130.

⁵ Ibid.

⁶ Hugh Anderson, Farewell to Old England, A Broadside History of Early Australia (London, 1964), p. 81.

⁷ This name is actually an alias since there is no record of anyone by the name of Rashleigh being tried for the crime recounted in the book, namely housebreaking, for which he was sentenced to death, which sentence was commuted to transportation to Australia.

his sentence in the penal colony, would seem to stand at the opposite end of the spectrum to those who told of the life of ease of the assigned servant for he depicts his stay at the farm of one Bob Arlack ("Lunnon Bob"), at Campbelltown. To begin with, the principal building of the Arlack farm. "touched even the nadir of Australian architecture of that day, in sheer ugliness and shapelessness."⁸ Peering out from under a man's tattered hat, was Mrs. Arlack:

... The foulness of her person and clothes, neither of which seemed ever to have been washed, was reflected in the condition of the hut, which contained a simple chaos of everything that a house could contain. The floor was fouled with chicken's dung, with puddles of noxious water in every hollow. Fleas held carnival on the floor and clouds of humming flies revelled in the air. 9

Two rough sleeping berths of bark, two blocks of wood to serve as seats and some pieces of broken iron pots, and some rough rags which were to serve as his blankets, made up the interior of the hut he was to occupy. While he was sweeping the filthy floor, his companion in the hut walked in, "(H)e was as gaunt and woebegone a wretch as Rashleigh had seen since coming to the colony, and was in a state of extreme emaciation."¹⁰

Arlack insisted on each man doing the full allotted task of "thirteen superficial rods, two spits deep"¹¹ per day.

8 Ralph Rashleigh, *Adventures Of An Outlaw, The Memoirs Of Ralph Rashleigh A Penal Exile In Australia, 1825-1844* (New York, 1929), p. 144.

9 Ibid., pp. 145, 146.

10 Ibid., pp. 147, 148.

11 Ibid., p. 149.

This measurement was based upon what could normally be done on moist soil, but the land on which Rashleigh and his roommate had to work was so hard that the hoe rebounded from the surface more often than it penetrated. Arlack was typical of a large class of settlers in New South Wales at that time. "To him a Government servant was simply a slave, a mechanism for making money by means of merciless overworking."¹² If any man broke down physically under the strain of the often too heavy and unaccustomed work, the "weakling" was simply returned to the Government in exchange for a new one.

Although the Governor, Sir Ralph Darling, had enacted legislation to compel the settlers to supply their servants with reasonable quantities of food and clothing, there were many ways by which such regulations could be avoided until the men were nothing more than, "... half-starved, spirit-broken wretches ...".¹³ Many of the settlers were time-expired convicts who had themselves suffered from ill-treatment and hardship and sometimes, some of this was transferred to their own men. Recourse against such actions was to be had in the magistrate but, as the magistrates were to a man, employers of assigned convicts, their interest was naturally the maintenance of the most stringent system of discipline and subordination, which left the convict plaintiff practically helpless.¹⁴

12 Rashleigh, op. cit., p. 150.

13 Ibid.

14 Ibid.

Men working in government service doing manual labour seldom fared any better. Government service for convicts was divided into road parties and chain gangs. The road parties were deployed along many miles of road wherever their services were needed such as in Sydney or other towns.¹⁵ The chain gangs represented greater restraint for, convicts were sent there for the commission of crimes in the colony although occasionally, new arrivals from England who were considered of a "desperate character" were drafted into them immediately.¹⁶ The great hardship lay in the unremitting labour expected of each man of not less than ten hours a day, encumbered by leg-irons weighing six to seven pounds, which were never removed.¹⁷

Each gang was under an over-seer - usually an old convict - who was certain to fall either on the side of "culpable leniency" or of "brutal cruelty." A tale was told of an overseer sent to bury a man, who although weak and insensible was nevertheless still alive. "For God's sake," cried the poor wretch, "don't cover me up. I'm not dead."¹⁸ The overseer replied that he would not be back that way again before nightfall and so, to avoid having to make a second trip, he proceeded to cover the miserable devil up. At the same time, there were those overseers who were so lenient as to allow the men to leave the work parties to rob the surrounding

¹⁵ Arthur Griffiths, Memorials Of Millbank, And Chapters In Prison History, Volume II (London, 1875), p. 73.

¹⁶ Ibid., p. 76.

¹⁷ Ibid., p. 77.

¹⁸ Ibid., p. 23.

countryside and then return at nightfall to share the plunder with him.¹⁹

After a few months at the Arlack farm, Rashleigh ended up in a government gang at Newcastle. Along with one hundred and thirty other men, he was herded onto the Alligator and, after a voyage of forty-eight hours from Sydney to Newcastle, he landed, "(F)ilthy and stinking" at their new abode. After a welcome bath in the sea, the men were paraded before the military commandant and then were broken up into groups and despatched to various localities, Rashleigh being sent to a coal mine. There, he had to fill wagons with coal, drag them to the opening at the shaft's foot and tip all the contents, all under the blows and threats of the taskmaster.²⁰ When night fell, they were given a small portion of boiled maize grain, a morsel of salt beef and, water and then they slept naked in any part of the workings since the heat was so oppressive that any clothing at all would have been unbearable.²¹

The convict miners remained underground the whole week and on Saturday afternoons, they were taken to the surface to wash themselves and their clothes in the sea water, after which they were marched to the convict barracks and confined there until Monday morning. On his first Saturday, Rashleigh noticed that there was scarcely one of the older miners whose back and buttocks were not lacerated by the marks of the lash.²²

19 Griffiths, op. cit., p. 23.

20 Rashleigh, op. cit., p. 240.

21 Ibid., p. 241.

22 Ibid., p. 242.

At dawn the following day, the men were roused by the hoarse shouts of a barracks officer and turned out into a yard around a series of triangles. A clerk sat at a table and four scourgers stood beside the triangles, each with a number of whips laid out on a bench. These floggers were held in the lowest contempt by their fellow-convicts and were distrusted by the authorities, who always ordered a constable to stand behind each flogger and "lay on with a stick" if the scourgers seemed to relax in their office.²³ Hour after hour, the "orgy of punishment" went on until not less than fifty men had been lashed, none with less than seventy-five stripes.²⁴ Rashleigh observed that during these so-called examinations, the ceremony of the oath was dispensed with and the accused man was not allowed to speak in his own defence.²⁵ The convict overseers simply stated their complaints and the sentence was automatically passed.

Rashleigh endured nine gruelling months of unremitting, unvarying labour, receiving in all, six hundred and fifty lashes for offences he claimed were largely invented by the overseer until, he was finally brought before the Sydney court and charged by the principal overseer of the mine, with "incorrigible laziness," for which he received one hundred lashes and was ordered to the lime burner's gang.²⁶

23 Rashleigh, op. cit., p. 243.

24 Ibid.

25 Ibid.

26 Ibid., p. 244.

As well as being flogged, men could be sent to the lime burner's, about a mile from Newcastle, across the river, on the opposite side of the river Hunter.²⁷ The lime burner's camp consisted of two lines of hovels enclosed by a tall palisade made of strips of the outer coat of the cabbage palm.²⁸ The men sent here were the "exiles and outcasts" of the criminals, namely, "the weak, the vicious and the untameable."²⁹ The overseers would "rouse up the poor, half-starved skeletons of fellows at midnight to load lime, when the boats happened to come in with a night's tide."³⁰ Here, they had to carry baskets of unslacked lime a great distance into the water while unloading the boats; in this way, their backs became raw and eaten full of holes. The sheds in which they slept were close to water and the slabs were so far apart that, "one might have almost galloped a horse through."³¹ Many were clothed in nothing more than rags; for warmth, they gathered seaweed off the beach and numbers of them would cover themselves with it; "in short, they buried themselves in a dunghill to keep warm."³²

27 Rashleigh, op. cit., p. 244.

28 Ibid., p. 247.

29 Ibid.

30 An Emigrant Mechanic, Settlers And Convicts; Or, Recollections Of Sixteen Years' Labour In The Australian Backwoods (London, 1847), p. 23.

31 Ibid.

32 Ibid., p. 24.

Immediately upon arrival, Rashleigh was given a basket and ordered to join the rest. He appealed to the overseer to be allowed to do some other kind of work because of the soreness of his back, which was raw from the one hundred lashes. The overseer affected sympathy and asked to be shown the wounds and when Rashleigh gingerly peeled off the bit of rough rag which he had used as a dressing, the brute flung a handful of quicklime into the sores and then cut him sharply across the back with his stick.³³ Rashleigh picked up his basket and waded out into the salt water which "set the lime sizzling in his festering wounds, while the brine seemed to eat into the raw cuts left by the lash."³⁴ Almost mad with the pain, he was kept at work until about ten o'clock at night when the last of the boats were loaded.

Every man wore not less than two sets of leg-irons - many had four and six sets as punishment for excessive delinquencies³⁵ - at all times and their working hours were governed only by the ebb and flow of the tide, bringing in the ships and taking them out again. Nor was it uncommon for overseers to work the men sometimes as long as fifteen hours a day, until they could no longer stand.³⁶ In the summer, the skin peeled off their bodies and in winter, they huddled together, freezing and frostbitten, subsisting only on a weekly allowance of three and a half pounds of maize and an

33 Rashleigh, op. cit., p. 247.

34 Ibid.

35 Ibid., p. 248.

36 Ibid.

equal weight of ill-cured salt beef, such rations often being diminished by the pilfering activities of the officials of the commissariat.³⁷ "In three months the vast majority were successfully broken in strength and cowed in spirit; shells of humanity governed by an overmastering instinct for food."³⁸

Rashleigh often wondered why the men did not mutiny. Sometimes, maddened by the pain of lime and sea water in their raw wounds, they would drown themselves under the very eyes of their tormentors. This, however, was the only outward manifestation of rebellion, for the simple reason that these men were too broken in spirit to attempt anything more. Also, the schemes for escape which were laid were often as not thwarted by some convict who would inform the officials. An overwhelming lack of trust among the men thus pervaded the whole camp. Nor was it uncommon for someone to deliberately engineer an escape with the intention of betraying his comrades, in the hope of being appointed overseer or given some other privileged post.³⁹

Thomas Cook, an attorney's clerk, sentenced to fourteen years transportation for writing and sending a letter to one William Churton, threatening to kill him and destroy his property, left yet another record of the life led by the convict in Australia.⁴⁰ In his, System pursued by the Underlings of hunting down their Victims, he gave an extract from the

37 Rashleigh, op. cit., p. 248.

38 Ibid., p. 252.

39 Ibid., p. 255.

40 Anderson, op. cit., p. 73.

career of a Michael Burns, a fellow convict:

Sixteen days on bread and water for insolence.
Fourteen days on bread and water for neglect
of work.

One month in the Gaol Gang on suspicion of
robbing the store at Longridge. This charge
was grounded on his refusing to account for
some first class tobacco found in his pos-
session.

One month bread and water for neglect of work.

Three hundred lashes and confined to gaol
until further orders for conspiring to set
fire to agricultural produce at Longridge.
Confinement to gaol for being twenty yards
from the lumber-yard gate.

Two hundred lashes for striking a fellow
prisoner.

Three hundred lashes, twelve months confine-
ment in gaol and twelve months added to his
colonial sentence for taking to the bush
and robbing shepherds huts at Cascade.

During the gaol term, Burns was given twenty
days on bread and water for insolence to a
gaoler. Two months of this same nourishment
and fifty lashes for the same offence soon
after.

Insolence to a soldier brought another
hundred lashes.

Three months solitary confinement in a dark
cell for singing a song.

Three hundred lashes for insolence and threat-
ening language to the gaoler, who declared
himself to be in bodily fear.

Another hundred lashes for singing a song.

Two months solitary for sending the doctor to
a fellow prisoner in the gaol.

For trying to break out of gaol, two hundred
lashes, and, a refinement in torture, seven
weeks on the chain in a solitary cell while
his lacerated back healed.

Soon after the end of his term in gaol, he was
given three hundred lashes, and was ordered to be
worked in heavy irons on a chain, and to sleep
in gaol until he left the island. This was
punishment for bushranging and robbery. 41

This list continued but, in the end, Burns was broken.

One hundred lashes for being unable to work; fifty lashes

41 Anderson, op. cit., pp. 73, 74.

and bread and water for the same reason. Two further floggings of fifty stripes each and further sentences of bread and water brought Michael Burns' pitiful existence to a close. Cook concluded with the information that, "a total number of two thousand lashes (were) inflicted on this man in little more than two years."⁴²

It was thus small wonder that the convicts should try to escape when they had the chance, from the hells to which they had been consigned, and, having done so, that they should take to a lawless life as bushrangers or highwaymen, bent on extracting from those around them, revenge for the miseries which they had been forced to endure.

Public reaction to such accounts was varied in both England and Australia. As far back as the sailing of the First Fleet, it seemed as if the government at least, had immediately forgotten about the enterprise for, the domestic scene presented a much more demanding problem in the form of the Warren Hastings' trial and the controversy over the Regency Bill when George III finally lapsed into complete insanity in 1788.⁴³ But, in 1789, the first accounts of the colony began to drift back to England and, Governor Phillip's account of the "voyage out" went through several editions within three months, indicating that the general public at least, was interested in the enterprise.⁴⁴

⁴² Anderson, op. cit., p. 74.

⁴³ Eris O'Brien, The Foundation Of Australia, A Study in English Criminal Practice and Penal Colonization in the Eighteenth Century (Sydney, 1950), p. 255.

⁴⁴ Ibid.

But such interest, both public and official, seemed to centre on "the bizarre, on the expense, or the influence on crime, or the effect of morals."⁴⁵ Australian public feeling was well formed by the 1830's and presented a strange mixture of compassion and indifference. Some events caused outbursts of disapproval such as the pummelling of female convicts in the ribs with sticks, by the constables, when the women did not move fast enough to suit them.⁴⁶ And yet, when a woman was sent to the Female Factory for telling lies about her mistress, the concern of the colonists was not for the offender but for her mistress who would lose her labour. Inequalities in punishments bothered them not at all. Whereas a free man might be chastised for being drunk, a convict could be flogged or sent to the mill for seven days. It seemed as if the suffering of the convicts provided just so much sport for the free onlookers. When a Mr. Sutor, who had not arrived free in the colony, taught his parrot to sing, "My heart with love is breaking" to his fiance, because he was so afraid of rejection by her, the Sydney Gazette held him up to ridicule for the amusement of the populace.⁴⁷ "It was as though all their pitiful efforts to cast off the chains with which they were bound to the wheel of life were but sport for

⁴⁵ C.M.H. Clark, A History Of Australia, I, From The Earliest Times To The Age Of Macquarie (Melbourne, 1962), p. 139.

⁴⁶ Sydney Herald, 9 January 1832, in, C.M.H. Clark, A History Of Australia, II, New South Wales And Van Diemen's Land, 1822-1838 (Melbourne, 1968), p. 194.

⁴⁷ Sydney Gazette, 19 May 1825, in Clark, II, op. cit., p. 152.

those on whom the gods or chance had forged lighter chains.⁴⁸ Thus, any display of rebellion on the part of the convicts as exemplified by the writing of reports such as those discussed above, would be looked upon by Australians either as something else to joke about over the evening meal or as exceedingly unseemly conduct on the part of people who were being given the chance to reform their lives by taking the free settlers as their good example. Compassion there was and many an Australian heart froze with horror at the degradation which these wretches were forced to succumb to, but the all-important question to the settler was. "Is this person productively useful?" "They were all quite happy to reduce unnecessary cruelties and abominations, provided such gestures of humanity did not decrease the productive power of the convict, or increase the cost of administering the system."⁴⁹

48 Clark, II, op. cit., p. 152.

49 Ibid., p. 195.

CHAPTER V

WHY TRANSPORTATION TO AUSTRALIA HAD TO FAIL

The two preceding chapters have exemplified two attitudes of mind concerning the transportation system, neither of them positive. They both represented the reaction to the negative aspects of the system - on the one hand, the fear of contamination by the convicts by one segment of the population and on the other hand, the fear of the convicts themselves of not surviving the brutal treatment meted out to them. Yet, there was not a unanimous demand for its abolition.

On 5 May 1840, a petition¹ signed by 1,027 free inhabitants of New South Wales, was presented in the British House of Commons, asking that transportation be not abolished. They referred to certain "evidence" given before the House which implied that transportation was fulfilling neither of its obligations, namely, the punishment of the convicts and, their moral reformation.² Not only this, but the evidence went on to say that the system was acting "as a stimulus to crime in the mother country, and as an encouragement to immorality in this (Australia)."³ The petitioners alleged that such statements were "in many instances either utterly unfounded, or

1 Great Britain, Parliament, Parliamentary Papers (House of Commons), 1851, Vol. XLV, p. 437.

2 Ibid.

3 Ibid.

extreme exaggeration."⁴ Instead, they found the system to be of "high importance" and "an admirable means of punishment and of moral reformation for convicts."⁵ As to the charge that transportation was an obstacle to the emigration of free labourers, these petitioners stated that it had the opposite effect, since it enabled the colonists to make more extensive purchases of land:

... it is thus a system of healthy action and re-action within itself, by which a combination of benefits almost unexampled is effected, the relief of England from her criminals ensuring a positive advantage to her colony, and this very process re-acting for the production of another advantage common to both countries, in continuing to supply the urgent wants of the colony by the introduction of labourers taken from the class most liable to commit crime, and alike burthensome to themselves and others in their native land. 6

Reverend John D. Lang, having lived for several years in Australia, felt that he was well qualified to ascertain "from long experience and careful observation,"⁷ the real nature of transportation as a mode of punishment. If, he said, transportation had ceased to be formidable in England, the fault lay not in the system but with "a system of colonial

4 Parliamentary Papers, 1851, Vol. XLV, p. 437.

5 Ibid., p. 438.

6 Ibid., p. 439.

7 John Dunmore Lang, Transportation And Colonization; Or, The Causes Of The Comparative Failure Of The Transportation System In The Australian Colonies: With Suggestions For Ensuring Its Future Efficiency In Subserviency To Extensive Colonization (London, 1837), p. 18.

mismanagement, which no person but the inmate of a lunatic asylum would attempt to defend."⁸

Beccaria⁹ felt that, "... a punishment may not be an act of violence of one or of many against a private member of society, it should be public, immediate, and necessary; ..." ¹⁰ and, according to Lang, all of these conditions were met by transportation for, it was arrived at by "a wise and humane legislature, and the legal award duly enforced thereafter by a firm and unflinching executive."¹¹ After a while however, through a system of pardons and indulgences, "the most injudicious and unwarrantable,"¹² the punishment of transportation was rendered a mockery of all law and justice. Transportation, once feared by criminals more than death itself, had become sterile. But, Lang maintained that no other means could possibly be devised for ridding the country of a large proportion of her culprit population and for eventually transforming a considerable portion of that population into reputable citizens.¹³

8 Lang, op. cit., p. 21.

9 Cesare Bonesana, Marchese Di Beccaria (1738-1794). Criminologist and economist. First modern writer to criticize the death penalty. In his, Dei delitti e delle pene, argued for a proportioning of penalties to offences and stated that certainty of penalties was more effective than severity.

10 Lang, op. cit., p. 18.

11 Ibid.

12 Ibid., p. 27.

13 Ibid., p. 117.

Alexander Maconochie,¹⁴ writing in 1838, also seemed to offer hope for the transportation system yet he realized the very real dangers inherent in it. He felt that, in general, the amount of suffering which the convict underwent was much greater than it appeared to be in England, suffering caused not so much by physical torment as by degradation and moral suffering.¹⁵ Many may have become so conditioned to "filth, slovenliness, suspicion, contempt, and the habit of submitting to, and commanding their tempers under such treatment, ..." ¹⁶ that they did not feel the weight of the punishment as severely as others, usually those who had not been in the colony long and who, writhed "under everything approaching to indignity, ... unable to conceal, or restrain, the feeling excited by it."¹⁷

He felt that such a degradation of one class could lead only to the injury of other classes of society. "The Servants being made slaves, the Masters are made slave-holders; and the modification of slavery thus introduced is of the worst

¹⁴ Alexander Maconochie (1787-1860). Naval officer, geographer and penal reformer. One of the founders and first secretary of Royal Geographic Society, 1830. 1833, first professor of geography at the University of London. 1840, appointed superintendent of penal settlement at Norfolk Island. Formulated principles upon which modern penology is based. Recalled, 1841. 1849, Governor of new prison at Birmingham.

¹⁵ Alexander Maconochie, Thoughts on Convict Management and Other Subjects Connected With the Australian Penal Colonies (Hobart Town, Van Diemen's Land, 1838), p. 5.

¹⁶ Ibid.

¹⁷ Ibid.

character."¹⁸ The result of such a situation could only be suspicion and division in society. The masters were placed in the most difficult and trying situation, since they were expected to be both liege lord and taskmaster to their men. They were charged with both the punishment and reformation of their country's criminals; yet they neither knew nor cared about either operation; their main concern was to make the most of the labour under their control.¹⁹

To improve such a situation, Maconochie suggested that punishment for past crimes be carried out in seclusion from the free population altogether, at stations specially appointed for this purpose.²⁰ The punishment itself, would consist of hard labour "enforced, if necessary, by physical means, for, in this stage it is desirable that the convicts' minds should be humbled,"²¹ combined with moral, religious, and mechanical instruction. His reasoning for such a system underlined the basic problem plaguing the operation of the transportation system:

I contend that the seclusion of the prisoners while under direct punishment is desirable for the sake both of the free and bond, - the sight of such infliction being morally as injurious to the one, as the being indiscriminately seen when under it is to the other class. 22

18 Maconochie, op. cit., p. 6.

19 Ibid., p. 11.

20 Ibid., p. 17.

21 Ibid., p. 18.

22 Ibid.

Men such as Lang and Maconochie felt that the benefits to be accrued from transportation far outweighed the disadvantages, if only certain corrective measures were taken. Two years later however, Archbishop Whately in 1840, was to say that the only realistic way to deal with the problem of transportation was to abolish it altogether, because in actual fact, a penal colony was the worst possible place for liberated convicts and, conversely, they made the worst possible settlers.²³ In such a society, two-thirds of the total population would be "tainted with crime" and, above one third of the free population would be emancipists like himself, including some of the wealthiest:

He is placed in circumstances every way the most unfavorable, when not only surrounded with every variety of bad characters, but also fully aware that they are acquainted with his delinquency, and conscious that he knows theirs.²⁴

Joseph Wood Krutch, in his introduction to the tale of Ralph Rashleigh, stated that, "(T)he only way to dispose of a man safely is to kill him."²⁵ Any punishment short of death could be justified only on the theory that the victim may possibly be returned to society the better for his punishment. The experiences however, through which Rashleigh, together with hundreds of others passed, were not only calculated to render him more desperate and brutal than when

²³ Richard Whately, Substance Of A Speech On Transportation, Delivered In The House Of Lords, On The 19th Of May, 1840 (London, 1840), p. 67.

²⁴ Ibid., p. 70.

²⁵ Ralph Rashleigh, Adventures Of An Outlaw, The Memoirs Of Ralph Rashleigh A Penal Exile In Australia, 1825-1844 (New York, 1929), p. xi.

first apprehended, but also kept constantly before his mind the fact that there was no possibility of his improving his lot, "either by remaking his character or even by being obedient and tractable to his masters."²⁶ He could not hope to regain a place in a law-abiding society or even "by orderly conduct, to earn for himself a tolerable life in captivity."²⁷ Under the circumstances, no one was encouraged to do his best and everyone was led to feel that rebellion and violence offered the only possible chance of escape.²⁸

His ability to persevere through every torment, showed that Rashleigh was by no means a vicious incorrigible. He had, if not "criminal instincts," a weakness of character, but he was by no means as bad as some of those who were placed in authority over him, and:

... the society which saved him from the hangman's rope without wanting to know to what it was delivering him over was a society which simply lacked the courage of its own ruthlessness - which sought to escape the responsibility of his execution while allowing its subordinates to do all they could to make him die. 29

It is quite true that many segments of the free population found nothing shocking or shameful in the transportation system. This is only logical, because in the majority of cases, convict labour lay at the basis of the prosperity of their settlements. Either they would not see the dangers of the system, or they could not, blinded as they were by

26 Rashleigh, op. cit., p. xi.

27 Ibid.

28 Ibid., p. xii.

29 Ibid., pp. xii, xiii.

their success. Melville noted that, "(T)hose few persons who are advocates for it, belong to the class of traders who look upon pounds, shillings, and pence, as the only desirable things of this life - ...".³⁰ Not only the men of the soil but, the officers of the various departments of the administration, realized that their futures depended upon the continuance of the system. It was in the interest of all parties in the convict system to keep things as they were, and as far as possible, to leave well enough alone.

Archbishop Whately felt that only failure could result from the policy of using convicts to spawn new colonies, "(W)e send out colonies of the limbs, without the belly and the head;...".³¹ The ancients, on the contrary, sent out representatives of the parent state of all ranks, led by one of the chief men of the state. With him went his companions and friends, as likewise happened with the lower classes and so, they always found themselves moving with and not away from the state in which they had been living.³² With them went their institutions, their gods, their festivals and their games. "The new colony was made to appear as if time or chance had reduced the whole community to smaller dimensions, leaving it essentially the same home and country to its sur-

³⁰ Henry Melville, The Present State Of Australia, Including New South Wales, Western Australia, South Australia, Victoria And New Zealand With Practical Hints On Emigration: To Which Are Added The Land Regulations, And Description Of The Aborigines And Their Habits (London, 1851), p. 151.

³¹ Whately, Thoughts On Secondary Punishments, p. 190.

³² Ibid., p. 191.

viving members."³³

Completely different was the method of colonization employed in New South Wales, "... - a colony founded and maintained on principles which, if acted on by an individual in private life, would expose him to the charge either of insanity or of shameless profligacy."³⁴ How could any colony be expected to flourish when it sprang from such contaminated roots?

Disband the colony now, Whately cried, and remove all unemancipated criminals. He did not know how these convicts were to be disposed of, but he felt that anything would be better than allowing them to remain in the colony. The seat of government should be removed to some site as yet untainted with "... the defiling associations of crime and infamy"³⁵ and the names of places, for example Botany Bay, should be changed so that they would no longer conjure up visions of punishment and exile. Look at the United States, Whately demanded, which was founded in the not too far distant past and was now a "gigantic people," and then look at Australia and think of her origins and "who it is that posterity will then curse for bringing this mildew on the social intercourse of the world; ...".³⁶

33 Whately, Thoughts On Secondary Punishments, p. 191.

34 Ibid., p. 201.

35 Ibid., p. 202.

36 Ibid., p. 204.

Lang offered a note of defence for the presence of the convicts in the colony. It was not, he said, the object of the founders of the colony of New South Wales to form a community consisting solely of convicts.³⁷ Rather, the object had been to employ the transported criminal, whom the mother country "had vomited out of her political system"³⁸ to prepare the way for a settlement of freemen where:

... his spirit harassed with toil, ignominy, and privation, and deprived of all hope of ever returning to the scenes of his former crimes and temptations, he might be led to bethink himself of his past encounters, and to return to the paths of virtue, - ... 39

In the period from about 1819 to 1830, there had been a huge convict influx, so much so, that in 1831, convicts numbered 21,825 or, 42.7% of the population.⁴⁰ The free settlers had been clamouring for more and more convict labour and so, in order to satisfy them and at the same time, reduce government expenditure in feeding them, Governor Darling (1825-1831) closed down most of the government farms in New South Wales and distributed the convicts amongst the settlers. But, they still were not satisfied with the result that in the following decade (1830-1840), free emigration increased until by 1840, there were 91,158 men of free origins in the colony as opposed to only 38,305 convicts.⁴¹

37 Lang, op. cit., p. 58.

38 Ibid.

39 Ibid.

40 C.M.H. Clark, ed., Select Documents In Australian History, 1788-1850 (Sydney, 1950), pp. 405, 406.

41 Ibid.

This trend was aided by Governor Bourke (1831-1837) who wanted both to check the abuse of power exercised by settlers and magistrates over the convicts and, to help the labour situation. He wanted to substitute "an intelligible qualification and a strict routine of business" for the vesting of discretionary power in the Superintendent of Convicts and in this way, he hoped to dispose "both equitably and productively of the services of the convicts."⁴² He was supported in this endeavour by Chief Justice Forbes who declared that the colony had been made a receptacle for the debris of the United Kingdom and was, as a result, swamped with a vast overflow of immoral people "who could only be counteracted by an extensive introduction of free and virtuous inhabitants."⁴³

After the convict had plowed the land, built the road, supplied the labour for the settler, what then? Was he reformed; was he considered fit enough to be allowed back within the boundaries of a law-abiding society? In the majority of cases, the answer was, No. It is true that, many convicts, having served their sentences, did become land-holders and, some even rose to positions of eminence within the colony but, the taint of their criminal doings remained with them and hung like a pall over the free segment of society in New South Wales. Could a colony grow and mature while she yet retained criminals in her midst? Could a society be considered respon-

⁴² C.M.H. Clark, A History Of Australia, II, New South Wales And Van Diemen's Land, 1822-1838 (Melbourne, 1968), p. 196.

⁴³ Ibid., p. 224.

sible enough to govern itself while a segment of the population remained enslaved? These questions arose time and time again to those who desired something more than the dubious status of a penal colony and to those who feared that if the restraint of convictism was not removed from New South Wales, then surely the one consequence which could be expected was that the free would slowly but inevitably be dragged down into the cesspool surrounding them. Undoubtedly, the time had come when the colony was sufficiently productive, and attractive enough to entice a stream of free emigration and, it was felt that the "white-slave system"⁴⁴ could not be allowed to exist side by side with free enterprise.

⁴⁴ Samuel Sidney, The Three Colonies Of Australia, New South Wales, Victoria, South Australia; Their Pastures, Copper Mines, & Gold Fields (New York, 1860), p. 118.

CHAPTER VI
THE END OF TRANSPORTATION

From its inception, the transportation system had created a spirited debate over its practicability. As early as 1809, an American Congregational clergyman and historian, Abiel Holmes, remarked in the Quarterly Review that, "... it is better to use men in this way than to waste them at the gallows; but it is the most expensive and least efficacious method of colonization."¹ Matthew Flinders, an English explorer of the late eighteenth and early nineteenth centuries, wrote in 1814 that the time had come to think whether "this new colony" would ever be likely to answer the original aims of those who undertook it - namely, of converting convicted felons into good citizens and of making this colony advantageous to the mother country.² But, from his own observations, he felt that any claims as to the success of the system were unwarranted, for "it does not appear that any considerable number of the convicts sent thither have been reclaimed

1 Abiel Holmes, "American Annals; or a Chronological History of America from its Discovery in 1492 to 1806," Quarterly Review, II (November 6, 1809), 312.

2 Matthew Flinders, "A Voyage to Terra Australis, undertaken for the Purpose of completing the Discovery of that vast Country, and prosecuted in the Years 1801, 1802, and 1803, in his Majesty's Ship Investigator, and subsequently in the Armed Vessel Porpoise and Cumberland Schooner. With an Account of the Shipwreck of the Porpoise, Arrival of the Cumberland at Mauritius, and Imprisonment of the Commander during six Years and a half in that Island," Quarterly Review, XII (October, 1814), 40.

from their vicious habits of life."³ He suggested two alternatives, one of which was to present the convicts to the Americans who were in need of labour. The other alternative, and the one which he felt was by far the best, was to keep the convicts at home and use them to cultivate waste land. Two thousand convicts employed in this way would benefit the nation as a whole, whereas two thousand men sent to New South Wales would cost the public two hundred thousand pounds for their passage and eighty thousand pounds a year during the term of their sentences, "without adding one farthing to the national wealth, or becoming a whit more industrious or moral than they were the day they left the hulks."⁴ He was not to be misunderstood as saying that the colony should be abandoned to some other nation, quite the contrary. England had a mission to fulfill in spreading Englishmen and the English language to every corner of the globe, but he added; "we would have them to be Englishmen of good character, of decent and industrious habits, not convicted felons."⁵ For this purpose, he advocated free emigration to New South Wales.

In 1816, Mr. Bennett stated from the floor of the Commons that, "(S)uch was the monstrous inconsistency of those who originated the plan, and of the legislature which sanctioned it,"⁶ that any scheme of reformation of the criminals in Australia was impossible. When they were sent to America,

3 Flinders, op. cit., 40.

4 Ibid., 42.

5 Ibid., 43.

6 Great Britain, 1 Hansard's Parliamentary Debates, XXXIII (1816), 988.

they were immersed in a large population but, in New South Wales, they were all herded together, creating an exclusive society where "the most melancholy vice and immorality prevailed."⁷ Mr. Goulburn⁸ retorted that it was only natural that there should be an excessive amount of crime in the early days of the colony but, he had learned from recent intelligence that "morals had been considerably ameliorated, and the catalogue of crimes comparatively small."⁹ His reports indicated that many of the convicts had filled positions of respectability and that some had even returned to England, there to "do honour to the society they had once disgraced,"¹⁰ thus giving ample cause for hope of the "progressive amelioration of the colony."¹¹

An indignant protest was lodged against the system by one Dr. Halloram who, in 1819, complained bitterly of the treatment he had received while a prisoner aboard the hulks. Convicted of forging a frank, he was sentenced to seven years transportation and sent on board the Alonzo, a hospital ship, where, seized with a violent illness, he was removed to the

7 Hansard, XXXIII (1816), 988.

8 Henry Goulburn (1784-1856). English statesman. Commissioner to negotiate peace with the United States in 1814. 1821-1827, chief secretary for Ireland. Chancellor of exchequer, 1828-1830 and 1841-1846. Home secretary, 1834-1835.

9 Hansard, XXXIII (1816), 989.

10 Ibid.

11 Ibid., 990.

Baring transport and left unattended for nineteen hours.¹²
 He had been promised by Lord Sidmouth¹³ that he would receive accomodation befitting his position but instead, he found himself lodged in the same cabin with twenty felons. His vessel contained from two to three hundred persons, all lodged in about fifty cribs. "Who could contemplate the horrors of these white slave ships, without indignation at the government by which their existence was permitted?"¹⁴
 Halloram recollected the uproar caused in Europe by a paper in which it was stated that the room allotted to each negro in a slave ship was only one foot, six inches by six feet. His area was only one foot, one inch by six feet. "And yet he had no doubt the 'humanity' of the noble secretary of state would be forced upon the House, in answer to these glaring facts."¹⁵

To such denunciations, Mr. Bathurst replied that really any system of punishment must subject the criminal to certain privations. If it was held that these ought not to be experienced by a gentleman, then it would follow that the punishment of transportation for example, ought to be reserved for

¹² Great Britain, 1 Hansard's Parliamentary Debates, XXXIX (1819), 88.

¹³ Lord Sidmouth, Henry Addington, 1st Viscount Sidmouth (1757-1844). English Tory statesman. Speaker, House of Commons, 1789-1801. 1801-1804, first lord of treasury and Chancellor of Exchequer. Home secretary, 1812-1821. His repressive measures helped to provoke the Peterloo Massacre of 1819.

¹⁴ Hansard, XXXIX (1819), 89.

¹⁵ Ibid., 90.

the lower classes only.¹⁶ Mr. Lawson further pointed out that the reason people sympathized with the slaves was not because of the punishment but because they were innocent. What similarity was there between the situation of the innocent and that of the convicts, he asked? "Why were such cases compared unless it were to excite impressions which, though favourable to the criminal, would only tend to lessen the terrors of the law?"¹⁷ If the death penalty was abolished, a measure for which there was some support at that time, then a secondary punishment would have to be found, terrifying enough to take its place, and that punishment it was declared, was transportation. Now, what would be the result if the severity of transportation was lessened? The result, he maintained, would be an increase in crime, for those with "slender incomes" and those wishing to escape from stultifying situations at home would now have the means of moving to another country at the government's expense.

However necessary the punishment of transportation may have been felt to be by some honourable members of Her Majesty's Government, the report of the Select Committee on Criminal Laws, which was published that year (July, 1820), stated that transportation neither deterred nor reformed.¹⁸ The prisoner heard the sentence pronounced and "in general

¹⁶ Hansard, XXXIX (1819), 93.

¹⁷ Ibid., 96.

¹⁸ "Report from the Select Committee on Criminal Laws, &c.," Quarterly Review, XXIV (October, 1820), 243.

wears out his time unreclaimed, comes back with his appetite for crimes whetted by abstinence, and is usually soon remanded to his place of banishment, a more corrupt and corrupting member of society than ever."¹⁹ The Committee further found that, where the colonial population was small, even though consisting principally of convicts, there were few tangible motives for committing crime but, the moment any settlement became populous, then the entire effect was destroyed, for the chances of escape were increased and the presence of a growing society necessarily lessened somewhat the dread of being sent there. The only end served was that:

- they were got rid of for a time by removal at a great expense to the most distant quarter of the habitable world and continue as 'indigent, wretched, costly, and corrupt' at Port Jackson and on the Coal River, as they could have been in any corner of the mother country; ... 20

In 1827, the convict establishment was separated from the civil in New South Wales; "in short, it ceased to be a penal settlement and became a colony in which His Majesty's Government maintained an open-air jail."²¹ This separation was the prelude to the abolition of transportation. The colony had become a source of wealth for, the sheep industry had attracted well-to-do and educated settlers who were unwilling to abandon the social and political status which they had enjoyed in England.

¹⁹ "Report from the Select Committee on Criminal Laws, &c.," op. cit., 243.

²⁰ Ibid., 245.

²¹ Historical Records of Australia, ser.1, Vol. XIII, pp. 143 et seq., 470 et seq., in, Marjorie Barnard, A History Of Australia (New York, 1963), p. 243.

Agitation for an elected assembly began as early as 1824, and the issue was kept constantly before the public by the Press in both England and Australia. In England, the Quarterly Review of 1824, commenting on the situation, noted that the original planners of the settlement expected nothing more than being able to unload "a set of desperate malefactors whom it would have been inconvenient to turn loose upon the public."²² These early free pioneers had had to struggle in order to survive, "against a variety of accidents and misfortunes, physical and moral, which not all the aid and encouragement of the mother-country were for a time entirely able to avert."²³ Now they desired to advance further and to diminish the control of the mother country over them. The Quarterly Review however, queried whether the colony realized what would happen if England withheld its annual grant for the maintenance of convicts, withdrew the garrison and left the settlement "to the mercy of a body of ten thousand hardened malefactors, who have no kindred ties to soften them, no property to attach them, no principles of religion or morality to restrain them."²⁴ But the British government, made wary by the experience of the American Revolution, decided to pacify Australia rather than lose her. "She believed, with

22 "A Statistical Account of the British Settlements in Australasia, including the Colonies of New South Wales and Van Diemen's Land," by W.C. Wentworth, a review article in, Quarterly Review, XXXII (October, 1825), 313.

23 Ibid.

24 Ibid.

the rest of Europe, in the efficacy of constitutional self-government. It was impossible to give it to a penal settlement. The alternative was to abolish transportation.²⁵ Only the economic advantages of the system could have induced the colonists to accept transportation for as long as they did but, when it became incompatible with the further maturing of the colony, then its defences crumbled.

The Edinburgh Review joined the fracas in January of 1834, when it stated that either transportation should be abolished completely and replaced with some new punishment or, the present system should be changed so as to render it more effectual.²⁶ There were however, obstacles to the latter course, one being that any improvements would be a remedy too slow in progress "for an evil which requires an immediate cure,"²⁷ and the second being that masters would be loath to become more severe with their servants for fear of jeopardizing the results of their labour. Rather, the Review favoured a system whereby a considerable portion of the punishment of transportation would be undergone in England. "Imprisonment with hard labour, and with the entire prevention of all communication amongst the prisoners is, we think, by far the best mode of punishment which has yet

²⁵ Barnard, op. cit., p. 244.

²⁶ "Du Système Pénitentiarié aux États Unis, et de son application en France, suivi d'une Appendice sur les Colonies Pénales, et de Notes statistiques," by G. de Beaumont and A. de Tocqueville, a review article in, Edinburgh Review, Or Critical Journal, LVIII (January, 1834), 345.

²⁷ Ibid.

been devised."²⁸ It was realized that this plan meant in effect, the continuation of transportation, but it was felt to be an important change in the system, for the convict would repay out of his wages, the whole expense he might have incurred, including his arrest, trial, maintenance during punishment and finally, his passage out to the colony. If this amount was deemed to be too great then a smaller sum could be charged.

By the combined effect of this inducement, and of a punishment at once extremely irksome and favourable to serious reflection, we feel confident that they might in almost every instance be led to accept, as the greatest favour, the offer of being allowed to emigrate, on the terms we have described. 29

Four years later in 1838, the Quarterly Review held out little hope for the system and called for its abolition. It acknowledged the fact that convict labour had contributed to the growth of the colony, but that advantage it now felt, was exhausted. Once the strenuous infancy of the colony had been outgrown, what was needed was not simply hard work from the men but trustworthy qualities and skill, either mental or manual.³⁰ Such considerations led to a general opinion among the "well-informed Australians" that free labour would better answer the needs of the settlers than the labour of convicts. The prevalence of such sentiments and the influx

28 "Du Système Pénitentiarié," op. cit., 346.

29 Ibid., 357.

30 "Reports from the Select Committee on Transportation," Quarterly Review, LXII (October, 1838), 500.

of free settlers, which was increasing daily, gradually diminished the desire of the settlers "to hamper themselves with assigned convicts, except for the rude works of the road and the field; ...".³¹ The journal contended that the time had come when the transportation system could no longer be continued on the present scale with any advantage to the colony, the mother country, or the criminals themselves.

"In a word, it is our belief that transportation, to be a useful ingredient in our code, must no longer be inflicted as a punishment, but rather permitted and promoted as a refuge."³²

Thus, using the reports of the parliamentary committee on secondary punishments, dated September 1831 and June 1832, the reports of the French commissioners, Messrs. de Beaumont³³ and de Tocqueville³⁴ of 1833 and, the miscellaneous information of many other competent judges on the subject, the Quarterly came to the conclusion that the only foundation for punishment could be the imprisonment of the offender at home with hard labour, wholly apart from his "vicious companions."³⁵

³¹ "Reports from the Select Committee on Transportation," op. cit., 501.

³² Ibid., 502.

³³ Gustave Auguste de Beaumont de La Bonninière. (1802-1866), French publicist. Co-author with de Tocqueville of Traité du Système Pénitencier aux États-Unis (1833) and Marie, ou l'Esclavage aux États-Unis (1835).

³⁴ Alexis Charles Henri Maurice Clerel de Tocqueville (1805-1859). French writer sent to the United States to study the American penitentiary system. Member of the Constituent Assembly (1848) and the Legislative Assembly (1849). Minister of Foreign Affairs (1849). Opposed coup d'état of 2 December 1851, and was imprisoned for a short time for this.

³⁵ "Reports from the Select Committee on Transportation," op. cit., 502.

Sir William Molesworth,³⁶ in response to a suggestion that transportation be continued, moved in the House of Commons that same year that a committee be formed to enquire into the success of the transportation system as a mode of punishment, its moral effect on the penal colonies and, what improvements could be brought to bear upon it.³⁷ If, he said, transportation was continued, it would eventually be indistinguishable from punishment in the hulks and gaols at home, except that it would be more expensive. The Committee was presented with evidence which pointed to the demoralizing effect of transportation upon the troops in charge of the convicts and upon the convicts themselves and the prevalence of unnatural crime among at least two-thirds of the convicts in Norfolk Island was attested to by one Dr. Ullathorne.³⁸ The Committee stated that the system seemed to have lost all sense of terror, at least for those criminals in England, for

³⁶ Sir William Molesworth (1810-1855). English politician. Projected the London Review, 1835. 1836, purchased Westminster Review and amalgamated them. 1837, transferred ownership to John Stuart Mill. First commissioner of board of works, 1853. Responsible for opening Kew Gardens to the public on Sundays.

³⁷ Great Britain, 3 Hansard's Parliamentary Debates, LIII (1840), 1237.

³⁸ Dr. William Bernard Ullathorne (1806-1899). Roman Catholic bishop of Birmingham and afterwards, Archbishop of Cabasa. 1832, accepted invitation of Bishop Morris to assist him in the Australasian mission as vicar-general. At the same time, received appointment as His Majesty's Catholic Chaplain in New South Wales. Established Roman Catholic hierarchy in New South Wales. 1840, returned to England. 21 June 1846, consecrated at Coventry to the see of Hetalona. 29 September 1850, went to the newly erected see of Birmingham. Remained there thirty eight years until he was allowed to retire.

to them it meant only penal labour and privations;³⁹ but Molesworth produced evidence which pointed to a great deal more actual suffering in the colony than was realized in England. Sir Francis Forbes, Chief Justice of Australia, stated that "transportation is capable of being carried to an extent of suffering such as to render death desirable, and to induce many prisoners to seek it under its most appalling aspects."⁴⁰ Transportation thus, according to the findings of Molesworth's Committee, failed in its purpose both in the mother country and in the colony, for as far as the criminals in England were concerned, it was not something to be feared whereas, once they reached the colony, they often experienced suffering which was so great as to be inhuman.

Concerning the free population, Molesworth was convinced that only the worst could happen because of their proximity to the convicts. The settler, he stated, dwelt "in a vast and ill-regulated gaol."⁴¹ On roads and everywhere he looked, he saw gangs of wretched beings in chains, "displaying all the outward tokens of misery,"⁴² and the settler himself was turned into a gaol-keeper, a slave master. "The feelings, on one side, must be those of distrust and apprehension, on

39 Hansard, LIII (1840), 1249.

40 G.M. Young and W.D. Hancock, ed., English Historical Documents, 1833-1874, Volume XII(1) (London, 1956), p. 523.

41 Hansard, LIII (1840), 1260.

42 Ibid.

the other of hatred and fear."⁴³ Yet, Sir William Molesworth noted that the contrary opinion was held in the mother country, namely, that transportation encouraged the "virtuous sensibilities" of those sent to the colonies and yet, he asked, on what could this assumption be based? Did transportation prevent crime? No; according to the findings of the committee, it produced little apprehension at home. Did it improve the character of the transported convict? No; it led instead to the utter demoralisation of the criminal. Did it diminish the number of offenders? No; it only changed the address of some of them at enormous expense "and a small portion of our burden of crime is transported from England to be increased a hundred-fold in Australia."⁴⁴ Was it a punishment of which a civilized nation could be proud? No; countered Molesworth, "it is unequal, uncertain, productive of more pain than terror, cruel, tyrannical, and disgraceful."⁴⁵ He agreed with Lord John Russell,⁴⁶ who believed that the assignment system should be abolished and that the convicts sentenced to seven years transportation should be allowed to choose whether or not they would be transported, but he disagreed with Lord

⁴³ Hansard, LIII (1840), 1260.

⁴⁴ Ibid., 1261.

⁴⁵ Ibid.

⁴⁶ Lord John Russell. 1st Earl Russell of Kingston Russell (1792-1878), British statesman. Whig M.P., 1813. Leader of Whigs in House of Commons, 1834. 1835, Home Secretary. 1839, Colonial Secretary under Melbourne. 1846-1852, Prime Minister and first Lord of Treasury. 1852-1853, Foreign Secretary under Aberdeen. President of Council, 1854-1855. Foreign Secretary under Palmerston. Created earl, 1861. 1865-1866, Prime Minister.

Russell's statement that those sentenced to more than seven years transportation should be sent to Norfolk Island under severe punishment and then removed to the public works of New South Wales.⁴⁷ Who was to build the gaols on Norfolk Island? If the convicts were to do this, how would they be disciplined during the construction? A hulk could not be moored in Norfolk Harbour, and so, discipline would have to be maintained by the lash, thus continuing indefinitely the system in operation.

Abolish transportation, Molesworth advised, and put the criminals in gaols, hulks and penitentiaries built for this purpose. He was challenged in this by Viscount Mahon⁴⁸ who felt that although transportation was accompanied by some disadvantages, it was yet "frought with manifold benefits far outweighing the evils,"⁴⁹ for it tended to the improvement of the colony, the mother country, and the convicts themselves,⁵⁰ and this in turn tended to prevent crime.

47 Hansard, LIII (1840), 1262.

48 Viscount Mahon, Philip Henry Stanhope, fifth Earl Stanhope (1805-1875). Historian. Styled Viscount Mahon from 1816 till succession to peerage. 22 March 1831, appointed deputy-lieutenant of Kent. December 1834 to April 1835, Under-Secretary for Foreign Affairs under Wellington. 5 August 1845, became secretary to board of control for India. 2 March 1855, succeeded father as fifth Earl Stanhope. Acted as examiner in new school of jurisprudence and modern history at Oxford. 30 October 1867, appointed as first commissioner to inquire into state of established church in Ireland.

49 Hansard, LIII (1840), 1291.

50 Ibid., 1292.

The floor was then taken by Mr. C. Buller, Member for Liskeard, who wished to point out to his honourable associates that it was clear that there was a certain point in the condition of a colony when it was no longer practicable to make it a penal colony, and it seemed to him that the colony of New South Wales had arrived at that point.⁵¹ The great object now to be sought by Britain was the promotion of free immigration to the colony since it had outgrown its needs for convict labour. This thought was echoed by Archbishop Whately in his address to the Commons two weeks later, (19 May 1840) when he said that it would be better not to have such colonies, "better ... that the whole region should have been swallowed up in the ocean, than that it should have been erected into such a monument of national folly and perversity; ...".⁵²

Finally, on 22 May 1840, an Order in Council abolished transportation to New South Wales.⁵³ For another twelve years however, convicts were sent to the two Australian islands of Van Diemen's Land Norfolk Island and, sporadic shiploads of convicts were sent to ports in eastern Australia in the 1840's. From 1850 to 1868 nearly 10,000 male convicts were sent to the isolated colony of Western Australia when

⁵¹ Hansard, LIII (1840), 1301.

⁵² Great Britain, 3 Hansard's Parliamentary Debates, LIV (1840), 254.

⁵³ C.M.H. Clark, ed., Select Documents In Australian History, 1788-1850 (Sydney, 1950), p. 156.

the last of the convict ships docked at Freemantle.⁵⁴

In June of 1849, those who had demanded the abolition of transportation, demonstrated their fierce determination to keep their settlement free from convictism when the Legislative Council had expressed the willingness of the colony, for which it declared itself the spokesman, to introduce into it, convicts holding tickets of leave or conditional pardons on the condition that an equal number of free immigrants be sent out at the expense of the Imperial government.⁵⁵ On 8 June 1849, the convict ship, Hashemy, entered Port Jackson and anchored off Sydney.⁵⁶ On the same day and the following day, several ships with immigrants arrived, the Emigrant with 320 people on board, and the John Bright with 236.⁵⁷ On 9 June 1849, the Emma Eugenia, with 181 immigrants, the Diana with 229, and the James Gibb, with 284, also arrived.⁵⁸ "Thus, to furnish material for the anti-transportation orators, the detested convict ship lay upon the waters of Port Jackson, surrounded by ships full of free immigrants whose total number had reached with-

⁵⁴ Geoffrey Blainey, The Tyranny of Distance, How Distance Shaped Australia's History (Melbourne, 1968), p. 151.

⁵⁵ Sir Henry Parkes, Fifty Years In The Making Of Australian History (London, 1892), p.12.

⁵⁶ Ibid.

⁵⁷ Ibid., p. 13.

⁵⁸ Ibid.

in two days 1,250."⁵⁹ Immediately, an open air meeting was called at the Circular Quay, almost within sight of the ships, to protest the landing of the convicts. Despite a heavy rain, between seven and eight thousand people attended and drew up a Protest, contesting the transportation of criminals to New South Wales:

Firstly. - Because it is in violation of the will of the majority of the colonists, as is clearly evidenced by their expressed opinions on the question at all times.

Secondly. - Because numbers among us have emigrated on the faith of the British Government that transportation to this colony had ceased for ever.

Thirdly. - Because it is incompatible with our existence as a free colony, desiring self-government, to be made the receptacle of another country's felons.

Fourthly. - Because it is in the highest degree unjust to sacrifice the great social and political interests of the colony at large to the pecuniary profit of a fraction of its inhabitants.

Fifthly. - Because, being firmly and devoutly attached to the British Crown, we greatly fear that the perpetration of so stupendous an act of injustice by Her Majesty's Government will go far towards alienating the affections of the people of this colony from the mother country. 60

This agitation against the renewal of transportation continued on into the next year when it was manifested at a great Anti-Transportation Meeting, held in the old Barracks Square on 16 September 1850.⁶¹ By now, public opinion had formed itself between two opposing sides. On the one side, were the large country estate employers, men who, having obtained free grants of land and the free assignment

59 Parkes, op. cit., p. 13.

60 Ibid., pp. 13, 14.

61 Ibid., p. 15.

of convict servants, were not readily conducive to the idea of parting with them, even though these men were themselves little more than licensed squatters. On the other side, were the independent elements of the population - the merchants, the business men, the shopkeepers, the artisans and, nine out of ten of the immigrant classes.⁶² At the meeting held on 16 September, it was moved by Mr. Thomas Sutcliffe Mort (1816-1878), a pioneer of commerce in New South Wales, that an association be formed to "unite every individual in the colony interested in preventing the revival of transportation,"⁶³ not to be dissolved until the question was finally determined. This association was formed in September of 1850 and merged with the Australian Anti-Transportation League, which united all of the colonies in the work of resistance. Victory was not long in coming for, "the hateful Orders in Council" authorising the revival of transportation, were finally revoked in 1852.⁶⁴ Following are some of the concluding sentences of Robert Lowe's,⁶⁵ later Lord Sherbrooke, speech in seconding the adoption of the Protest:

... It was not the mere fear of competition amongst the operatives that now united them on this question; it was not a mere breeches-

62 Parkes, op. cit., p. 15.

63 Ibid., p. 16.

64 Ibid.

65 Robert Lowe, Viscount Sherbrooke (1811-1892). British and Australian political leader. Practiced law in Sydney, Australia, 1842 and was a member of the Legislative Council of New South Wales from 1843-1850. Liberal M.P., 1852; vice-president of education board, 1859-1864 and, helped to defeat the Whig reform bill of 1866. 1868-1873, Gladstone's Chancellor of the Exchequer and, from 1873-1874, held the post of Home Secretary.

pocket question with the labouring classes, though it might be with the employers. It was a struggle for liberty - a struggle against a system which had in every country where it had prevailed been destructive of freedom. Let them not be deluded by this insidious attempt. Let it go home that the people of New South Wales reject, indignantly reject, the inheritance of wealthy shame which Great Britain holds out to her; that she spurns the gift, deceitfully gilded though it be; that she spurns the degradation, however elegantly it may be glazed over. Let them send across the Pacific their emphatic declaration that they would not be slaves - that they would be free. Let them exercise the right that every subject had - to assert his freedom. 66

Another blow was dealt to the cause of transportation by Australia's first major gold strike in Victoria in 1851, and which was responsible for the increase in population from 405,000 in 1851 to 1,145,000 in 1861.⁶⁷ At first, it seemed as if the colony would be ruined by its seeming good fortune, for none of the ordinary interests and industries of society could be carried on while workmen were so scarce and wages so high.⁶⁸ But by 1852, the great stream of people flowing into the colony turned the tide and, every profession and trade sprang into new life. One serious drawback however, soon manifested itself. The attractions of the gold-fields had drawn from the neighbouring colonies, and more especially from Tasmania, great numbers of convicts who,

66 Parkes, op. cit., pp. 17, 18.

67 Chester G. Starr, Charles E. Nowell, Bryce Lyon, Raymond P. Stearns, Theodore S. Hamerow, A History Of The World, Volume II, 1500 to the present (Chicago, 1960), p. 430.

68 Alexander Sutherland and George Sutherland, The History Of Australia And New Zealand From 1606 To 1890 (London, 1894), p. 98.

having served a part of their sentence, had been liberated on the condition of good behaviour.⁶⁹ They crossed over by the hundreds and, in the confused state of the colony, they found "only too great an opportunity for the display of their criminal propensities and perverted talents."⁷⁰ Being somewhat less than enthusiastic over the hard life of a gold miner, many of them became bush-rangers, swooping down upon the convoys escorting the gold from the diggings. To prevent any further influx of such undesirables, the Legislature in 1852, passed what was called the Convicts Prevention Act, which declared that no person who had been convicted and had not received an absolutely free pardon, should be allowed to enter the colony and that all persons coming from Tasmania should be required to prove that they were free, before being allowed to land.⁷¹ It further stipulated that any ship captain bringing into the colony any convict was to be fined £100 for the offence.

Notwithstanding the abolition of transportation to New South Wales in 1840, the agitation against its continuance to Tasmania and other localities in Australia was not abated. On 18 June 1852, the Duke of Newcastle⁷² presented in the

69 Sutherland, op. cit., p. 99.

70 Ibid.

71 Ibid.

72 Duke of Newcastle, Henry Pelham Fiennes Pelham, fifth Duke of Newcastle (1811-1864). Lord of Treasury, 31 December 1834 to 20 April 1835. 1846, chief secretary to Lord-Lieutenant of Ireland. 1851, took seat in House of Lords. Entered colonial office, 1852. 12 June 1854, left colonial for war office. 1859, Secretary of State for colonies.

House of Lords, a petition from the people of New South Wales, Victoria, Van Diemen's Land, South Australia and New Zealand, demanding the immediate abolition of the existing penal policy.⁷³ The Earl of Desart, not wishing to cast any aspersions upon the characters of the petitioners nevertheless produced a letter from the religious instructor on board the Rodney, dated 20 January 1852 which stated that upon the arrival of that ship in Hobart Town, there were 870 applications for the 240 men on board; that 1,150 applications were requested for the next ship; that all of the convicts were employed at once at an advance of thirty per cent of their wages, in some cases seventy per cent; that the ship was crowded with persons of all classes anxious to obtain convict servants, and that the confusion on board was so great that a guard had to be placed before the cabin door in order to prevent anyone from being injured.⁷⁴

One week later however, (25 June 1852) Mr. Hume⁷⁵ presented a petition to the House which he said he had just then received from Van Diemen's Land, passed by the Legislature of that colony, in which it was stated that from 1841 to 1851, the colonists had been constantly petitioning the govern-

⁷³ Great Britain, 3 Hansard's Parliamentary Debates, CXXII (1852), 902.

⁷⁴ Ibid., 903.

⁷⁵ Mr. Joseph Hume (1777-1855). Politician. Leader of radical party for thirty years. Qualified M.D. Privy Councillor; Deputy-Lieutenant for Middlesex; Vice-President of Society of Arts, F.R.S. and twice lord rector of Aberdeen University.

ment to discontinue the transportation of convicts there.⁷⁶
 The colonists now wished to be entrusted with the management of their own affairs and they felt that the presence of the convicts hampered such designs, burdened as they were with the expense of the convict establishment which they felt should be borne by the mother country.

Deliberations continued, with some members of the House expressing concern over the fact that transportation might be abolished completely. Lord Campbell⁷⁷ stated that from his position as a Judge, he ascertained that the sentence of transportation had a deep effect not only on those on whom it was passed but on those who heard it pronounced.⁷⁸ He, therefore, felt that transportation afforded the best opportunity of reforming criminals and of protecting the community from the perpetration of their crimes.

Sir John Pakington⁷⁹ replied that he had recently heard from Western Australia that it was still willing to receive

76 Hansard, CXXII (1852), 1317.

77 Lord John Campbell, 1st Baron Campbell (1779-1861). British jurist. M.P. 1830. Active in law reform. 1832, solicitor-general; attorney-general, 1834-1841; chief-justice of queen's bench, 1850; Lord Chancellor, 1859.

78 Great Britain, 3 Hansard's Parliamentary Debates, CXXIV (1853), 168.

79 Sir John Pakington, 1st Baron Hampton (1799-1880). 1852, admitted to Privy Council and appointed secretary for war and the colonies. 8 March 1858, appointed first lord of admiralty. Created G.C.B. 30 June 1859. 8 March 1867, secretary of state. Appointed first civil service commissioner, November 1875. Gazetted lieutenant of Worcestershire yeomanry cavalry, November 1859. President of Institute of Naval Architects for twenty one years.

convicts as was Moreton Bay which wished to be separated from New South Wales in order that they might receive convicts.⁸⁰

But he impressed upon the members of the House, the fact that throughout the whole of the colonies there was "the deepest dislike and hatred of the continuation of the convict system;...".⁸¹ Public meetings were held, especially in

Victoria "when the most unanimous and the strongest feelings had been expressed, and the Legislatures of New South Wales and Victoria had all addressed the Crown, entreating that transportation might be stopped."⁸² Even the Melbourne

Chamber of Commerce spoke out in defence of the stand of the colonists, as exemplified by this speech of its Chairman on 24 February 1853:

Addresses to a commercial association may not generally embrace subjects of a social and moral character, but the situation of our colony is peculiar, and I trust that it is not necessary to plead that the material interests of society are not paramount to virtue and happiness. I am the more encouraged to allude to the absorbing subject of transportation, because I feel that, not only in this society, but throughout the entire colony, there is but one sentiment on the subject. It is indeed, an enormous evil that into the bosom of this rising society there should be thrust thousands of criminals yearly ejected from the bosom of a mighty Empire. 83

In Van Diemen's Land, employers favoured the retention of the system "but the great majority of the population were

80 Hansard, CXXIV (1853), 567.

81 Ibid., 568.

82 Ibid.

83 Ibid., 569.

decidedly opposed to the continuance of transportation."⁸⁴

Its Legislature, like that of other colonies, was two-thirds elected by the people, and one-third nominated by the government and the elected members unanimously supported this appeal as did a considerable portion of the nominated members.⁸⁵ Mr. Adderley could conceive of nothing more injurious to the interests and honour of the country than:

... the system of prevarication, change of purpose, breach of faith, and perpetual infractions of promises, which had attended the long course of experiments by which this country had attempted to keep up that anomalous and vicious system of penal discipline, at one time under the name of transportation, at another under that of 'deportation.'⁸⁶

On 20 August 1853, the Transportation Bill received Royal Assent⁸⁷ whereby transportation to Van Diemen's Land was abolished and transportation for all sentences of less than fourteen years was commuted to a prison term in England of shorter duration with the option being given to Judges of passing sentences of transportation for periods exceeding fourteen years.⁸⁸

In 1856 another Transportation Bill, the "Transportation And Penal Servitude Bill," was introduced into the

⁸⁴ Hansard, CXXIV (1853), 569.

⁸⁵ Ibid.

⁸⁶ Ibid., 584.

⁸⁷ Great Britain, 3 Hansard's Parliamentary Debates, CXXIX (1853), 1824.

⁸⁸ Great Britain, 3 Hansard's Parliamentary Debates, CXLV (1857), 137.

House, this time with the intention of abolishing transportation altogether in favour of imprisonment, but with the provision that convicts who had served portions of their sentence in good behaviour, could be sent out of the country to the colonies to work.⁸⁹ Mr. Bentinck, the honourable Member for West Norfolk, pointed out one objection to this proposal and that was the existence of a "maudlin humanity towards a man who has committed a crime"⁹⁰ which existed in England and which could probably work to the detriment of legal legislation. Mr. Collier, however agreed with the plan, since he felt that transportation worked only when a criminal was sent to a colony which demanded convict labour and where the colonists were desirous of receiving him but, it failed when the criminal was merely deported to a penal settlement or "a prison at the other end of the world."⁹¹ Transportation had outlived the former situation and was now well into the latter and Collier felt that the best course of action would be to keep the convicts out of places like Norfolk Island, and after serving some or all of their sentence in England, send them to Western Australia where they were really wanted.

Lord Stanley felt that the question was not so much whether transportation was desirable but whether or not it

89 Hansard, CXLV (1857), 137.

90 Ibid., 145.

91 Ibid., 157.

was possible.⁹² After reading every report on the subject and talking with those best acquainted with the situation, he could only conclude that any attempt to found another penal colony in any part of the globe would end in "disappointment and failure"⁹³ and that the only course left open to the government short of total abolition of the entire system, was to send convicts to Western Australia where their labour was in great demand. The British Government however, would have to be very careful not to send an excessive number of convicts and only those whom it was felt might be reclaimed, and Western Australia would have to understand that transportation would continue only so long as she wanted it and that the first sign of resentment or hostility on the part of the colony, would signal the immediate cessation of the convicts.⁹⁴ It was because of this feeling of compulsion on the part of the mother country, that such a strong reaction had been raised against the transportation system in Tasmania, and England wished to avoid any further such eruptions of sentiment. On Friday 26 June 1857, the Bill was passed into law.⁹⁵

Even so, the denunciations of the transportation system continued to flow in from the other Australian colonies. They unanimously protested against the convicts being in

92 Hansard, CXLV (1857), 174.

93 Ibid.

94 Ibid., 176.

95 Great Britain, 3 Hansard's Parliamentary Debates, CXLVI (1857), 416.

Western Australia because pardons had been granted to them, pardons conditional on their never returning to England, but nothing prevented them from passing into the neighbouring colonies.⁹⁶ It was felt that these colonies were being forced to suffer merely because Western Australia wanted the government expenditure that went along with the convict establishment, a sum which came to something like £100,000 a year. The colonies of Victoria, South Australia and even Cape of Good Hope passed laws forbidding convicts with conditional pardons from settling there.⁹⁷ Victoria considered herself the hardest hit, for within one year, three-quarters of all of her crime had been committed by conditionally pardoned convicts arrived from the surrounding areas.⁹⁸

On 27 February 1865, Lord Taunton⁹⁹ presented in the House of Lords, more than thirty petitions from the city of Melbourne and other places in the colony of Victoria, "praying for the immediate abolition of the transportation of convicts to Australia."¹⁰⁰ Taunton himself felt that

⁹⁶ Great Britain, 3 Hansard's Parliamentary Debates, CLXI (1861), 1236.

⁹⁷ Ibid., 1237.

⁹⁸ Ibid.

⁹⁹ Lord Taunton, Henry Labouchere, Baron Taunton (1798-1869). June 1832, Lord of Admiralty in Grey's administration. 1835, master of mint. 6 May 1835, admitted to Privy Council and became Vice-President of board of trade. February to August 1839, under-secretary of war and colonies. Chief secretary to Lord-Lieutenant of Ireland, July 1846. November 1855, secretary of state for colonies. 18 August 1859, created Baron Taunton of Taunton. Took seat for first time in House of Lords, 24 January 1860.

¹⁰⁰ Great Britain, 3 Hansard's Parliamentary Debates, CLXXVII (1865), 737.

transportation to Western Australia could have been continued for some time longer had it not been for the jealousy of the other colonies and the publication of the report of a Royal Commission which stated that transportation to Western Australia could not only be continued but extended, which report created an uproar in those colonies fighting for its abolition. One of the petitions from Melbourne had been signed by five thousand people, by men such as the Mayor, the Bishop of the Church of England, the Roman Catholic Bishop, the Heads of the Presbyterian Church, members of other Churches, the Chief Justice and all of the other Judges, the President of the Council and the Speaker of the Assembly,¹⁰¹ men who were not likely to be carried away by the public furor. They charged that Western Australia acted as a "conduit pipe" in bringing convicts into other parts of Australia, causing an increase of crime and expenditure for police and other administrative duties which came to an amount ten times greater than it would have been in the mother country.¹⁰²

The controversy continued until 10 February 1865 when Mr. Moor queried Mr. Cardwell in the Commons as to whether Her Majesty's Government intended to discontinue transportation to Australia, to which Mr. Cardwell replied that papers had been laid on the Table to show the government's intention to propose a measure for the total abolition of transportation to the Australian colonies within three years¹⁰³ and

101 Hansard, CLXXVII (1865), 738.

102 Ibid.

103 Ibid., 137.

thus, by 1868, the system of transportation had ceased to play any part at all in the conduct of British affairs.

CONCLUSION

When the French nation had cast about for a solution to its problem of disposing of criminals, it too decided upon transportation to a remote area. Obock, Gabun and Guiana were tried at intervals, but it seemed that New Caledonia best suited their purposes.¹ The scheme, begun in 1864, was much akin to that begun in the Australian colonies at an earlier time, although a more elaborate definition of it. They both sought basically the same goal - to make convict labour productive in the colonies and, after a period of probation, to assign the convicts to farmers.² Then the critics began to say to the French authorities what had been said to the English; firstly, that colonies could not be built by idlers and secondly, that the system failed to reform the convicts themselves. Assigned to domestic service, they repeated the Australian experience by serving as "aids to immorality."³ "In every field, labour on a slave basis had either completely broken down or had proved woefully uneconomical."⁴ The curious fact about the French situation was how little the moral factor mattered. The experiment was concerned only with new and cheaper

1 Stephen H. Roberts, The History Of French Colonial Policy, 1870-1925 (London, 1963), p. 518.

2 Ibid.

3 Ibid., p. 520.

4 Ibid., p. 521.

material for colonizing purposes.⁵ In fact, it was admitted that the failure was complete, far more so than in the Australian colonies, probably because the material on which to work was far more degraded in the French instance.⁶ Commissions in New Caledonia pointed out that original promiscuity and subsequent loneliness each failed to reform the average individual. "At the least, the result was a forced atrophy, both physical and moral."⁷ As a result, further transportation to New Caledonia came to an end in February 1897 when, as a leading French periodical stated, "the tap of dirty water was shut off."⁸ Those convicts however, remaining in the colony, served out their sentences and then remained on the island.

The experience of New Caledonia would seem to justify the conclusion that, "economically, penal colonization is an absurdity; from the colonial point of view, it is a scandal; and morally, it is a crime."⁹ The stigma which is attached to any colony on account of its being a gaol imposes a burden on its development for decades. As in the case of Australia, so with New Caledonia, the discovery of a mineral, led to the downfall of the system, the mineral

5 Roberts, op. cit., p. 521.

6 Ibid.

7 Ibid.

8 Ibid.

9 J. Harmond, Domination et Colonisation (1910), p. 148, in Roberts, op. cit., p. 522.

in this case being nickel, which was discovered in 1875.¹⁰ This discovery hastened the maturing of New Caledonia into a society which was incompatible with the convict regime. "Settlement and convictism are mutually exclusive terms under modern conditions, and, when the two conflict, one has to go; there can be no compromise between them."¹¹

A mere convict colony is one of the most difficult things to achieve. Immigrants will always come, business enterprises will be undertaken; children will be born and will grow up in that society. Men are asked to become gaol-keepers, in many instances, a position they must hold if they are to employ convict labour. Those who do not directly employ convicts nevertheless feel their presence pervading the entire atmosphere of the settlement. Perhaps, there was no direct negative influence on the free population of Australia, but there was a stigma, a very real stigma which prevented the colony from enjoying many of the rights and freedoms enjoyed by other colonies, such as the right to self-government.

The total number of convicts sent to New South Wales and Van Diemen's Land during the years of transportation, was 122,620 males and 24,960 females plus the 9,688 men sent to Western Australia between 1850 and 1868 plus the 1,173 "exiles" sent to New South Wales as an experiment in 1849 plus about 4,580 sent to Moreton Bay, Port Phillip and Nor-

10 Roberts, op. cit., p. 523.

11 Ibid.

folk Island, making a grand total of 163,021 persons sent out to the colony as convicts from the United Kingdom.¹² But Australia, could not remain a colony of bondsmen and free men. The two could not work together. In the early days of the colony, one segment of the populace needed the other as a vital source of labour but the time eventually came when this was no longer so. The criminal segment of society was felt to be an albatross around the neck of the whole settlement, an albatross which had to be dispensed with.

But in spite of the hostility directed against the convicts by those who had come to the colony as free men, there can be no denying the fact that a convict ethos was created, an ethos which was to permeate the entire Australian character. By means of convict labour, the earliest settlements of Australia grew and prospered thus laying the foundation for the future development of the entire continent.

Men however, had emigrated to Australia in order to live freer lives, not to be weighted down by the shackles of a prison warder. Only by smashing those shackles could that dream of a new life ever hope to unfold.

¹² L.L. Robson, The Convict Settlers Of Australia, An Enquiry into the Origin and Character of the Convicts transported to New South Wales and Van Diemen's Land 1787-1852 (Melbourne, 1965), p. 4.

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