

## Extracts: Becoming a Penal Colony

- (1) Convicts: Punishment & Transportation
- (2) Convicts: Working for Freedom
- (3) Convict Systems: Assignment, Probation & Exile
- (4) Hulks and Macquarie Harbour
- (5) Convict resistance
- (6) Port Arthur
- (7) Point Puer: boy convicts

*These extracts are from an earlier version of Becoming Tasmania. They were edited out so that the published book was a manageable size and did not become a 'general history.' However, by making these 'general' elements available online it should assist readers to further interpret the published material.*

*Please note: a 'lace doily view' of convict history is not intended, because one cannot ignore the 'drama of justice' nor the pain and punishment that operated on VDL while it was predominantly a prison island.<sup>1</sup>*

### **Background: General**

What was Van Diemen's Land's European encampment to become because of convict transportation? While this is an interesting question, its huge scope requires that the focus here is restricted to 'getting the convicts onto the island'. This is central to it's becoming a penal colony, for as Lloyd Robson noted 'at the heart of the society and economy of VDL ... was the convict labourer and his treatment, dispersal, punishment and reward.'<sup>2</sup>

### **Background: Penal Plan**

Van Diemen's Land becoming a penal colony was a matter of British political and legal policy. As a result of these repressive socio-political and legal policies John West and R. W. Giblin both suggest that by sending its criminals to the island the UK government had used VDL merely as the 'dust-hole of the Empire' and a 'dust heap'. Contradicting these widely held views, Geoffrey Blainey considered that Australia was too far away from the UK to have been used just for this purpose.<sup>3</sup> Yet governmental expectations of convict reform meant that the bureaucracy hoped that the convicts would become 'peasants' after their penal sentence had expired. They were not expected, nor were many even eligible, to return to the UK.

Alternative views of convict history have stressed that trade and sea power were the vital selection factors involved not simply ridding Britain itself of convicts. Dallas encapsulated this fundamental feature of British colonial policy

Transportation was a mercantilist device for providing any likely colonial venture with a sufficiency of unfettered labour. Some form of slavery was essential in a civilisation which had not yet learned to respond to wage incentives.<sup>4</sup>

'Slavery' and 'Civilization' are subjective terms, although Dallas has remarked, when discussing so-called convict slavery, that many colonial masters treated their convicts like horses to be broken in, fed and watered. Conversely, Australian masters could not legally flog their convicts: only magistrates could order the lash, although many masters were close friends of local magistrates. On balance Dallas noted that the same work practices often applied in England.<sup>5</sup>

**Terms:**

A **ticket-of-leave** was issued for good behaviour, but could be withdrawn for bad behaviour. The length of the sentence was used to determine eligibility: four years for a seven-year sentence, six years for 14 years, and eight years if sentences to transportation for life. A **conditional pardon** (which could be withdrawn) was given for good conduct (including helping capture escaped convicts, etc.) The 'condition' was that the ex-convict must remain in Australia — but not necessarily the original colony of transportation — for the remainder of their sentence. An **absolute pardon** cancelled the unserved part of the sentence, without any conditions. These could not be revoked.

Note: these periods were varied: for example see Post-Cessation below



INTERIOR OF CELL.

Pentonville: an example of a British prison cell from which convicts were transported.  
Note its similarity to those at Port Arthur

## Becoming Tasmania extract (2): Convicts: Working for Freedom

### ‘Snakes and Ladders’

No matter what the answers may be to questions asked about convict origin or the type of criminals; convicts have been dubbed ‘half-citizens’.<sup>6</sup> At various times while convict transportation applied they could not sue or be sued because in the eyes of the law they had forfeited many of their civil rights. They had, according to Robert Hughes, begun their ‘game’ of convict snakes and ladders: good behaviour raised them up a rung while bad conduct was a ‘snake’, and a potentially harsh one.<sup>7</sup> In addition, ‘rebels’ were stripped of their full citizenship for overtly demanding their ‘industrial’ or ‘agrarian’ rights. Moreover, recent data has shown that amongst female convicts a high proportion of them were first offenders. Leniency for first offences hardly existed at this time, and in a London poem, females feared their ‘most dismal ... doom upon VDL shore’.<sup>8</sup>

Sent to their doom or not, Lt-Governor George Arthur’s convict system relied upon six classes of male convicts. Female convicts, as explained shortly, were not subjected to this six-class system, which included, for example, harsh treatment for those from the fifth class. They might be chained to wooden posts in what were called ‘stone-breaking stalls’ [three-sided brick walls three feet high and

demolished at Port Arthur in 1847].

In theory the six classes were:

<b>First Class</b>	<b>Public Works: slept out of barracks, worked for wages whole of Saturday</b>
<b>Second Class</b>	<b>Public Works: slept in barracks, work for self on whole of Saturday</b>
<b>Third Class</b>	<b>Public Works: able to work for wages from noon on Saturday</b>
<b>Fourth Class</b>	<b>Misbehaviour class working in irons [short term]</b>
<b>Fifth Class</b>	<b>'Incorrigible' characters, worked in irons separate from other classes</b>
<b>Sixth Class</b>	<b>Political prisoners' or those sentenced in colony to secondary punishment stations; possibly Maria Island, Sarah Island, Port Arthur or Norfolk Island.</b>

One of the first steps up the citizenship ladder towards becoming free was to obtain permission to 'sleep out of barracks'. During early colonial times, while sought after by felons, free settlers found this unsettling because 'street robberies ... commenced again with a vengeance'. Minor crimes noted, actually getting back to the top of the ladder, namely, full citizenship via an absolute pardon, was only restored for outstanding public service while under sentence.<sup>9</sup> Convicts assisting in the capture of escapees - bushrangers or 'bolters' - might reap such rewards. For example, if anyone helped capture Martin Cash and his bushranging colleagues the authorities offered 50 sovereigns and a conditional pardon, which was later increased to 50 sovereigns, a free pardon and a free passage from the colony.<sup>10</sup>

Otherwise, in mid 1820, the wording of a 'Certificate of Freedom' declared that under the King's Arms [or seal] - 'blank' (convicts name here) hath duly served the period for which he has been transported, and is henceforth restored to freedom'. Yet most convicts gained conditional pardons to which they only became eligible after specified periods with a Ticket-of-Leave. Tickets read that - 'blank' - was permitted to 'employ self [off the government store] in any lawful occupation within the district of - blank - for their own advantage during good behaviour, or until His Honor's further pleasure shall be known'.<sup>11</sup>

NSW Governor Lachlan Macquarie saw his power to grant pardons as a 'great indulgence' that only he could bestow upon the convicts. In 1823 the British Government reduced this level of gubernatorial authority to merely making recommendations to the Sovereign.<sup>12</sup> Tasmania's Lt-Gov. George Arthur, for example, sent a recommendation for free pardons for a convict who had informed on a 'robbery from the Treasury', another he sent for a life-sentenced convict said to be of 'irreproachable character'. Arthur also sought conditional pardons for two convicts who had helped capture bushrangers and another for a life-sentenced man who had become 'honest, industrious [and] well conducted'.<sup>13</sup>

Clearly, convicted criminals could become reformed, or perhaps pretended to join in an escape only to act as a snitch! Even so, seven-year convicts had to have held their Tickets-of-Leave for a minimum of one year before becoming eligible for another rung up the ladder. This holding period was increased to two years for fourteen-year sentences and yet was set at a mere three years for lifers. However, obtaining approval advice on such 'Royal Indulgences' or pardons could take years to travel to and return from London amidst British bureaucratic files. After being made a separate administration in 1825, VDL Lieutenants' Governor were able to seek Royal approval directly from London, rather than via the incumbent NSW Governor.

#### **Tickets-Of-Leave'**

Separate data for 'Tickets-Of-Leave' holders was maintained. These were convicts who have been granted a 'sip at freedom' to work for themselves and so were thereafter only required to report at regular intervals to the police.<sup>14</sup> Even with tickets, these 'paper-men' as they might be called, were only half-free convicts and were expected to remain away from the 'temptations of the towns'. Worth mentioning, such tickets - between 1824-1838 - rarely topped 11 per cent of all convicts in VDL.<sup>15</sup>

By way of this becoming 'half-free' practice, the government hoped that the ticket-holding convicts could support themselves. In addition, they might, if married, also support their families rather than continuing to be a drain on scarce rations. It must be clarified, however, that obtaining a Ticket-of-

Leave did not mean a sentence was complete, and we have the words of a legal advisor to the Colonial Office to confirm this. James Stephen told Under Secretary for Colonies, Horton that:

The intermediate condition between the State of a convict, whose sentence is in full force, and that of a person who has received a free pardon, that is, of the holder of a Ticket of leave, seems to have been devised for the wholesome purpose of ascertaining, by experiment, whether the Convict was disposed to make good use of his liberty before the restraints of the Law are irrevocable withdrawn.<sup>16</sup>

Subsequently, Philip Tardif's research suggested that a relatively quick turnover towards a Ticket of Leave and onto eventual emancipation prevailed. He also added that 63 per cent of all female convicts sent to VDL were sentenced to only seven years transportation, which meant that they became eligible for 'tickets' after only 3 years and six months. It also appears that in VDL's early years many females were 'on their own hands'. They were not assigned nor imprisoned (except if unruly) and were apparently without much supervision, at least until a government notice appeared in January 1818 requiring them to 'apply for a ticket'.<sup>17</sup>

Task work labour also shortened the duration of their sentence: see 'Working towards Freedom.' Convicts' admittedly very hard labour earned them credits that reduced their sentence duration. 'Tickets' could therefore be earned quite speedily: convicts sought to leave their lowly condition in life as soon as possible through the very same gruelling work that was often harshly imposed upon them. Conversely, insubordination of any kind might cause a convict harm, either physical or through a regression (down a 'snake') to harsher workloads or an extension of their original sentence.

#### **Working towards freedom**

Even after transportation ceased, freecomers felt VDL was still full of convicts, and this included pardoned felons. This was partly because of another 'ladder', the sentence reduction process.<sup>18</sup> First, convict hours of work were generally and seasonally all the hours from sunrise to sunset. Although in very early colonial times convicts could work for themselves after the working day for the government ended. Yet even the standard hours of work performed amounted to between 1¼ days to 1½ days of 'normal' labour - hard or otherwise - each and every day. In this way convicts sentences were ever reducing...

After tighter regulations were instituted an example of basic daily tasks were laid down in Department of Convict Discipline regulations published in October 1842. These stated that: 'Task work, during a long day' included the following expectations:

- **Ten men excavating from a bank, and carting to a distance of 150 feet in sand or light earth, easily worked with spade or shovel, 50 cubic yards**
- **Two men sawing per week, 800 feet, although an allowance was made if the convicts had to cut and roll the logs**
- **Three brick makers had to prepare 7000 bricks each week.**

These tasks were tough, but going beyond them sped up a convict's sentence. Special 'Gang Credit Books' had to be regularly 'entered up and signed weekly by the overseers' to underpin this process, which detailed record keeping mostly commenced under George Arthur. The 'weak link' in this convict credit system, however, was the 'employment of convicts overseers, who exercised a petty tyranny over the men in their gangs', with many brutal ex-soldiers taking on such roles.<sup>19</sup> That is, becoming a bully was only too easy for certain types of personality. In fact, one particular overseer had been a slave hunter and later a British soldier, who was flogged others for insubordination fairly regularly. Yet he was just as frequently promoted to overseer and tracker of convict 'runaways'.<sup>20</sup>

Nevertheless, increasing numbers of felons became emancipated because of Lt-Gov Arthur's and his successors' systems of convict administration. Despite seeking and maintaining tough conditions for convicts as a deterrent - the 'snake' aspects of convictism - inversely this meant that they could use 'ladders' while working hard. In fact, many convicts actually put in 'over time' to become free sooner! In March and April 1850 a government notice was gazetted along these lines which suggested that female probation pass-holders would earn their tickets-of leave earlier if they maintained a stable work record with the same master. Should their current master no longer required their services, this remission would apply if they obtained a certificate of good behaviour from their master.

As late as 1858 William Nairn, the Acting Comptroller of Convicts, explained this sentence reduction system to the local Parliament.<sup>21</sup> His method of commuting sentences allowed for 'four-sixteenths' of any sentence to be commuted for each day's ordinary labour, although this is not to forget that they also faced potentially tortuous punishment for under achieving. Nairn further explained that he gave what we might term bonuses of 'five or six-sixteenths for special or extra work'. For example, he told the parliamentarians that 'a convict under a sentence of four years and earning six-sixteenths off on each working day, would earn a remission of 352 days, thus completing his sentence in 3 years and 13 days'. Therefore, the labour force that Lieutenant Governor William Denison held to be so crucial to the island's economy was becoming self-eroding.

### **Ticket Holders**

Convicts were not all kept in chains, and Tickets-of-Leave were indeed a step up the 'ladder' to freedom. As noted above and defined by law, tickets were only a 'conditional remission of sentence' and in 1830, for example, only 745 were in operation: 235 in Hobart Town, 138 in Port Dalrymple and 373 in 'the interior'.<sup>22</sup> One vital difference between these tickets of leave and pardons was that the tickets were 'resumable at the pleasure of the Governor'. Tickets, seen only as 'written permission to employ himself [or herself] within the said colony for his [or her] own benefit', could be revoked. A pardon could not be repealed, unless by royal warrant. This still applied in 1854 when revised Ticket-of-Leave regulations were still being issued, which continued to require twice yearly reporting at June and December convict musters. The rules also clearly noted that 'holders must bear in mind that their indulgence is revokable'.<sup>23</sup>

Going further, and partly as a device initiated to ease VDL's economic depression, in mid-1845 convicts were invited to apply for broader freedom. Their existing pardon and convict records might be marked 'AC' for Australian Colonies, so that might move around the country. Indeed, following a gazetted notice on this many convicts had their conditional pardons endorsed as 'Extended to AC'.<sup>24</sup> Notwithstanding this boon, most pardons, except for convicts granted tickets of leave immediately on arrival in Sydney [which caused political concern there] most conditional pardons granted in VDL *excluded* NSW.<sup>25</sup> One side effect of this movement restriction, in times of economic depression, caused VDL to become clogged with unemployed convicts and ex-convicts. Compounding this problem many emancipists did not automatically obtain absolute pardons after their sentences ended, as is explained below.

Even pardons, while doubtless seen as freedom by convicts most had 'conditions' placed on them such as imposing limitations on where they could live; they might not be able to leave VDL, for example. In 1840s, when the rules for convict pardons were changed, those with so-called 'Exceptive Absolute Pardons' (who could go everywhere except Europe) had to reapply at a small cost to the applicant. They also had to carry the new document at all times. If the form became worn out they had to pay for another certificate and Governor Macquarie set NSW and VDL's fees at 5s and 8d for the clerical work involved so that this European exclusion could be removed from their 'parchment'. Writing up Tickets of Leave or Certificates of Freedom cost 2s 8d each, and even gaining one's certificate after an expired sentence cost 6d.<sup>26</sup> In addition, to have these documents officially printed cost another 6d. So 'becoming free' was never cost free!

Unless marked 'AC,' ticket holders also had to remain in the location of their original transportation. Because British authorities were apparently reluctant to grant Absolute pardons in case the felon decided to return to the UK, this meant that VDL authorities simply granted even more conditional ones. This alone helped create a new a class of non-indigenous 'Vandemonians' who, although no longer liable to wear chains, were still restrained in their movements.<sup>27</sup> As explained, such convicts were still only 'half-citizens' and had to continue to attend musters - head counts of convicts - during which they must remain absolutely silent on pain of forfeiting their tickets. They could also even have their savings bank accounts assumed by the Crown, although 'if a convict was charged with a crime, for instance, the government might release some of the money to pay for a lawyer'.<sup>28</sup> Any change of address must also be reported to the Muster Master. In short, the full force of the law had come down upon the transported lawbreakers short of death, and remained upon them until they were, and even after they were, emancipated over time, by hard labour and or good behaviour.

## Post-Cessation

Even after convict transportation ceased the act of becoming free was not always easy! The local Tasmanian government also found that the end of transportation did not mean the end of its worries either. A long-running dispute began over which government (British or Tasmanian) was liable to pay for the convict system, given that the convicts were in large part sent out as 'exiles' from England or its dependencies.<sup>29</sup>

Regarding the serving prisoners, Lord Newcastle advised Lt. Governor Denison where the British Government stood as at February 1854. To underpin the division of costs at minimum Newcastle wished that the granting of Tickets of Leave be 'accelerated by at least one half of the period which they (convicts) would have to serve under the existing regulations'. Obviously, Britain wanted the convicts off the books as soon as possible!

From 18 July 1854 the rules were to be 'placed upon an altogether different footing'. Therefore, to implement Newcastle's instructions Denison reissued the existing official sentence guidelines. They **were now to be read at an 'accelerated' rate, namely half this time**, eg. 10 years before becoming eligible for a ticket was now five years.

- Life Sentence convicts to serve 12 years for Ticket of Leave, and further 2 years for a Conditional Pardon
- 14 & 15 Years convicts to serve 10 years for Tickets and 18 months for a Conditional Pardon.
- & years to serve 3 and half years for a Ticket and 12 months for a Conditional Pardon

These would also have to be read against the task work formula: issued in 1858 and noted above

On 14 February 1854 Newcastle further explained the division of convict costs. In future any convict who committed afresh crime within 12 months of 'becoming free' would be at the expense of the British, but conditions applied:

Any convict who, within twelve months of becoming free, either by expiration of sentence or by receipt of a conditional pardon, shall be convicted of an offence for which he is sentenced to a punishment of two years or upwards, shall be maintained at the expense of the Imperial Government; but no claim whatever shall be admissible upon the Home Government in respect of the punishment of a convict for any fresh crime which he may commit after the lapse of one clear twelvemonth from the date of his becoming free.

... the maintenance of invalid, lunatic or pauper convicts and those free men who, at the time of their arrival in the Colony as convicts, were above sixty years of age, but of no other free men, shall be chargeable to the British Treasury.<sup>30</sup>

## Terry Newman

---

### Endnotes:

<sup>1</sup> 'Lace doily' is Richard Bladel's appellation cited in 'Scrub-bashing through the past' *Mercury* 12/4/2003 p.38.

For a history of prisons see N. Morris & D. J. Rothman [Eds] *The Oxford history of the prison: the practice of punishment in western society* New York: Oxford University Press, 1998 p.47.

<sup>2</sup> Robson, L *History of Tasmania* Vol. 1 p.118

<sup>3</sup> West, J 'Tasmania' p.298, and 'dust heap' Giblin 'History' p.592; dust may also be interpreted as a polite 19<sup>th</sup> century term for excrement. Blainey, G 'Tyranny of distance' Melbourne: Sun books, 1966 p.24 and Macintyre, S *A concise history of Australia* Cambridge University Press, 1999 p.37

<sup>4</sup> Dallas, K. M. 'First settlement of Australia; considered in relation to sea-power in world politics' *THRA P&P* 1952 No.3 p.12

<sup>5</sup> Dallas, K. M. 'Slavery in Australia – convicts, emigrants, Aborigines' *THRA P&P* Vol. 16 No.2 September 1968 p.63

<sup>6</sup> Dallas, K. M. *Trading posts or penal colonies* Devonport: Richmond, 1969 p.118

<sup>7</sup> Hughes, R 'The Fatal Shore: a history of the transportation of convicts to Australia, 1787-1868' London: Harvill, c1986 p.385

- 
- <sup>8</sup> See Weidenhofer, M 'Convict years: transportation and the penal system 1788-1868' Melbourne: Lansdowne, 1973 and also Oxley, D 'Female Convicts' in Nicholas, S [Ed] *Convict Workers; reinterpreting Australia's past* Cambridge: Cambridge University Press, 1988 p.90
- <sup>9</sup> Robson, L History, p.18, 'robberies' from Fitzsymonds, E [Ed] 'Mortmain' Hobart: Sullivan's Cove, 1977 p.28
- <sup>10</sup> Government Notices reproduced in Lennox, G 'A visitor's guide to Port Arthur and the convict systems' Rosetta: Dormaslen, 1994 'inside cover and pp.13-6
- <sup>11</sup> HRA SIII Vol III p.515
- <sup>12</sup> HRA SIII Vol II p.7
- <sup>13</sup> This sample from correspondence concerning dozens of convicts 14/2/1829 HRA SIII Vol VIII pp.214-40
- <sup>14</sup> Levy, M. C. I. 'Governor George Arthur: a colonial benevolent despot' Melbourne: Georgian House, 1853 p.142
- <sup>15</sup> Brand, I Convict probation system, p.92. VDL Statistics 1838 Table 36, and 'paper-men' see Laugesen, A p.146
- <sup>16</sup> James Stephen to Horton 27/3/1825 HRA S IV Vol I p.609
- <sup>17</sup> Bartlett, A 'Launceston female factory' *THRA P&P* Vol 41 No.2 June 1994 p.115
- <sup>18</sup> Brand, I 'Convict probation system in VDL, 1839-1854' p228 and Eldershaw, P. R. 'Guide to Public records of Tas,' Section Three Convict Department ' Hobart: AOT 1965 p.48
- <sup>19</sup> 'weak link' mentioned in 'The Convict Precinct' Port Arthur Historic Site Management Authority <http://www.portarthur.org.au/convicts.pdf> – also refers to 'stone-breaking stalls'.
- <sup>20</sup> Maxwell-Stewart, H 'The rise and fall of John Longworth: work and punishment in early Port Arthur' *Tasmanian Historical Studies* Vol 6 No.2 1999 pp.96-114
- <sup>21</sup> LC PP 41/1858 'Memorandum: remission of sentences to be earned by convicts'
- <sup>22</sup> 'remission' Act Geo IV No. 2 Hobart Town Gazette 20/08/1835 p654 and HRA SIII Vol VIII p.495 and see Ross Almanac 1830 p.221
- <sup>23</sup> Refer 'Rule 8' in Ticket-of-Leave Regulations 3/3/1854 issued by J. S. Hampton Hobart: Government Printer, 1854 'Convict Assignment Opinion' in Macquarie University's Decisions of the Superior Courts of NSW [http://www.law.mq.edu.au/scnsw/Cases1827-28/html/convict\\_assignment\\_opinion\\_\\_18.htm](http://www.law.mq.edu.au/scnsw/Cases1827-28/html/convict_assignment_opinion__18.htm)
- <sup>24</sup> Hobart Town Gazette 1/7/1845 p.768 and Hood, S 'Transcribing Tasmanian convict records' Port Arthur: Port Arthur Historic Site Management Authority, 2003 p.36
- <sup>25</sup> Alternatively, in November 1849, for example, the convict ship *Adelaide* landed in VDL with 299 convicts, but only a handful stayed on the island. The balance went to Sydney and obtained their tickets there.
- <sup>26</sup> See HRA SIII Vol II p.23 and Notice *Hobart Town Gazette* 12/1/1847 p.96, or *Tasmanian Almanack* Hobart: Bent, 1824 p.43
- <sup>27</sup> *Colonial Times* November 9 1844 quoted in Finlay, E. M. 'Making good in VDL Robert Logan- convict and merchant' *THRA P&P* Vol 40 No 2 June 1993 p.77
- <sup>28</sup> Kercher, B 'Perish or Prosper: the law and convict transportation in the British Empire, 1700–1850' *Law and History Review* Vol 21 No.3 Fall 2003 and [http://www.historycooperative.org/journals/lhr/21.3/forum\\_kercher.html](http://www.historycooperative.org/journals/lhr/21.3/forum_kercher.html) paragraph No.95
- <sup>29</sup> For part of this story see S. Petrow 'Claims of the colony: Tasmania's dispute over the Port Arthur penal settlement 1856-1877' *THRA P&P* Vol. 44 pp221-40.
- <sup>30</sup> PP 31/1860.